

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 8th November, 2023

Morning Sitting

*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, ring the Bell for a further 10 minutes.

(The Quorum Bell was rung)

(Several Senators walked into the Chamber)

The Speaker (Hon. Kingi): All the hon. Members, kindly let us take our seats. I am informed that we now have quorum. We will proceed with today's business on the Order Paper.

Clerk, kindly proceed to call the first Order.

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

The Speaker (Hon. Kingi): Senate Majority Leader, what is your point of order?

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The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, sorry to disrupt proceedings, but at the rise of the House yesterday, you gave an important Communication. Something which I strongly feel goes to the heart of the exercise that we are carrying out the last two days; an important exercise that this House is undertaking. You gave an important Communication on conduct unbecoming on the part of certain people I would refer to as State officers.

I, therefore, request that we beg your indulgence. Kindly allow us at least a few minutes to react to that Communication, because there are Senators here who have been mentioned, and of course, people are wondering whether there are other forces that are guiding us as we undergo this business.

Mr. Speaker, Sir, I felt that yesterday might have been the time to speak to it, but given that it was very late at night, going almost to 1.00 a.m. in the morning, I request that you allow us to register our dissatisfaction, particularly those that have been mentioned and all of us, as a House.

The Speaker (Hon. Kingi): Very well, Senate Majority Leader. You will allow the Clerk to read the first Order, and then I will allow three Senators from each side to speak for two minutes each. Thereafter, we will go straight to the Business of the day.

Clerk, please proceed.

COMMUNICATION FROM THE CHAIR

COMMENTS AND UTTERANCES MADE IN RELATION TO THE ONGOING IMPEACHMENT PROCESS

The Speaker (Hon. Kingi): I will allow comments on the Communication that I did at the rise of the House last night, and I will take three Senators from each side, each speaking for two minutes. The Senate Majority Leader, kindly take the Floor.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, on behalf of the Senate, I would like to register my disappointment on the increasingly unbecoming conduct of Cabinet Secretary, Hon. Moses Kuria, a man who is continually embarrassing the appointing authority and casting serious doubts on the choice ability of none other than His Excellency the President.

That *Tweet* was in bad taste. It paints Senators as cheap people who have no cognitive abilities to make interpretation of the matters that are before us and make a sober decision that is in the interest of the Constitution and the people of Kenya.

Mr. Speaker, Sir, this is the 14th impeachment hearing that the Senate is hearing, and I have had the opportunity to vote in almost all of them. I take great exception in the conduct of Hon. Moses Kuria in the *Tweet* that he sent out and the things that he said about this House and the colleagues that he has listed.

In fact, I now agree with Members of this House, who have brought a censure Motion before to discuss the conduct of this particular Cabinet Secretary, because at every given opportunity he has done nothing other than embarrass the appointing authority.

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Mr. Speaker, Sir, it is my submission that the sooner Moses Kuria is let off his duty, the better for this administration because every single day, in every action that he undertakes, he continues to embarrass the President and the people. No wonder the people of Kiambu County resoundingly rejected his bid to be their governor. It is because of this kind of habit, the kind of things that he says, how he goes about his duties and his overall conduct as a human being.

Let Hon. Kuria know wherever he is, that Senators cannot be intimidated and that the kind of monkey business he is trying to introduce cannot be allowed to stand because this is a distraction---

The Speaker (Hon. Kingi): Sen. M. Kajwang', please proceed.

Sen. M. Kajwang': Mr. Speaker, Sir, first allow me to congratulate you for your resilience. The Communication being referred to was made at exactly midnight, and that is a sign of the commitment of this House.

You were a bit lenient in your Communication. I do not think that such conduct should just be reprimanded and left at that. I would like to urge you that this particular Cabinet Secretary, who uses social media to disparage the House, to refer to matters before the House and to speak of the House in a manner that is extremely demeaning, should be summoned to appear before the House to substantiate those claims that he has made.

Those kind of utterances have got the effect of belittling this House and taking away any credibility this House would have in future impeachments. We have processed many impeachments in this House. If the conduct of CS Moses Kuria was to be considered, his conduct falls within the threshold of impeachment. If he was a governor and he was brought to this House, he would definitely be impeached. `

I urge Members of the other House - because they are the ones who have the responsibility of censuring and sending home Cabinet Secretaries - to take serious judicial notice of the conduct of this particular Cabinet Secretary.

In addition, this House, through the relevant Committee, can come up with resolutions that can then be used to move the other House to discuss his conduct and have him censured.

I hope that Sen. Cheruiyot, because you have the ear of the President who is the appointing authority, let us not just complain in this House; go and tell the boss that this person is an embarrassment, not just to the Government, but to the Republic of Kenya. He is an embarrassment to the entire East Africa. The deals he has done has made Kenya look like a pariah when it comes to issues of supply chain of oil and edible oil. This man must go. We must pronounce ourselves.

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

Sen. Kathuri: Thank you, Mr. Speaker, Sir, for this opportunity to give my comment on this illicit behaviour of the Cabinet Secretary for Public Service, Performance and Delivery Management.

Hon. Speaker, the process going on in this House is very important for the people of Meru County, whom I represent in this House. When I see a rogue Cabinet Secretary

getting out there to make some very funny comments on social media, it is very embarrassing.

Whatever he is doing is not for the best interests of the people of Meru County. I warn him that he should keep off Meru County affairs. Let him concentrate with the work he has been given by the President. Otherwise, I will request the Senate Majority Leader in the other House to start processing an impeachment Motion for this Cabinet Secretary on this matter.

Mr. Speaker, Sir, as Sen. M. Kajwang' has put it, after this process is done, I would request that Hon. Moses Kuria is called to this House so that we can discipline him.

Otherwise, he is an embarrassment to the people who voted for the Kenya Kwanza Government and he should be relieved of his duties immediately. The President should take notice of the comments we are giving as this House. Henceforth, let Hon. Moses Kuria give us peace as a Meru community. We do not want to support. We know what we want and what best we can do.

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

Sen. Sifuna: Mr. Speaker, Sir, I am happy that we have come full circle because this is something that I have said on many stages that, in fact, Moses Kuria is an incorrigible national shame.

(Applause)

How much embarrassment does the President have capacity to endure? I can assure you that if nothing is done about Moses Kuria, there is more embarrassment coming. That one I can guarantee you.

What is most hurtful is that even after your Communication, the Cabinet Secretary, who ordinarily should be asleep thinking about how he is going to make the lives of Kenyans better, had the audacity to fire off another *Tweet* on the material that was presented before this House.

Mr. Speaker, Sir, honestly speaking, action must be taken. I am made aware by the Members of this House who represent us in the Parliamentary Service Commission (PSC) that Moses Kuria ran away with money belonging to Parliament. He should be brought to answer questions about those things and be removed from his position.

For me, there is nothing that brings me greater joy than being proven right about the things that I have said about this administration. I just want the Senate Majority Leader, to please---

(An. hon. Member spoke off the record)

As you have said yourself, it casts very serious doubt on the capacity of the appointing authority. How much embarrassment can the President take? It is just one man!

As I said, there is a famous poem by Martin Niemöller--- First, he came for the media and when I brought a Motion of censure for the media, some of you were saying, Sen. Sifuna is in the habit of attacking this Government. Now, he has come for the Senate. Do something about this national shame because it will continue unabated. That is who Hon. Moses Kuria is.

I thank you.

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

Sen. Wamatinga: Thank you, Mr. Speaker, Sir. I rise to put weight on this important matter. It is time that as a country we should stand up with one voice and be counted, and tell the President that some of these rogue Cabinet Secretaries he has appointed to Government should not hold him hostage.

At this time when Kenyans are suffering from the high cost of living, the least that we need are these Cabinet Secretaries who cannot even pronounce them to the policy direction, instead take it to the *Tweet* and the media to abuse and belittle this House.

I join ranks with my colleagues. It is high time we tell the President he that must put the house in order. Some of these Cabinet Secretaries are a big shame to the nation. The only thing that they can do when we complain of high cost of living, they tell us to go and dig our wells to produce our oil. It is unacceptable.

I would want to put it in unmistakable terms that Central Region has no shortage of intelligent people who are capable of running the docket that Moses Kuria is running. He should be shown the door as early as today.

We have the power to tell the President that, indeed, such Cabinet Secretaries like Moses Kuria should be fired today, in the morning, if not yesterday.

It is a great shame to this House and to the nation, that someone in the middle of the night, instead of addressing the pertinent issues that are confronting Kenyans, he would take with a cup of---

Mr. Speaker, Sir, he should be fired.

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

Sen. Onyonka: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute on this important matter. I want to generalize my comments because there is an observation I have made. Many of our leaders want to destroy institutions that have the responsibility of making sure that our country runs properly.

Hon. Moses Kuria is somebody I have been in Parliament with for many years, including yourself. To a large extent, we have found him extremely intelligent and somebody who made sense. To some extent, he makes himself look such a foolish man, you wonder whether he even ever stepped into a House of Parliament. Sometimes, Hon. Moses Kuria does not understand that what he says means a lot to Kenyans and, indeed, our words have consequences.

I plead with him and many other leaders to realize that these Houses; the National Assembly and the Senate, are not just talking shops. This is a place where we discuss national policy, influence public opinion and where it is assumed that we will be providing direction on where our country is going.

I plead with anybody who knows Hon. Moses Kuria, like I do, and many others, to talk to him and tell him that he has to up his game. At this rate, all of us are going to become his enemies.

Thank you.

The Speaker (Hon. Kingi): Hon. Senators, we have heard three Senators from each side. This cannot be a House of lamentations. This is a House of action.

Pursuant to the point of order that has been raised by the Senate Majority Leader, I implore upon you, hon. Senators, to use or take full advantage of the Standing Orders, to bring sanity to some of these hearsays. You have the power under the law, more particularly under the Standing Orders, to deal with the kind of behaviour that you are complaining about.

Hon. Senators, if you feel, indeed, that the behaviour of the Cabinet Secretary is unbecoming, then invoke the relevant Standing Orders. If you listened to Sen. M. Kajwang' carefully, you may not be able to have the latitude to make a final resolution to send the hon. Cabinet Secretary home. However, your recommendation to the other House will have a lot of weight. So kindly take full advantage of our Standing Orders and stamp your authority.

Next Order.

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

The Speaker (Hon. Kingi): Hon. Senators and the parties to this matter, we concluded the case of the County Assembly yesterday. Today, we are going to begin hearing the case of the Governor. We have four hours within which to prosecute and hear the defence by the Governor. The four hours is minus the time given to Senators for questions and clarifications.

The Governor and his team, you will have a solid four hours to put forth your defence. If you are ready, you may proceed.

PRESENTATION OF THE CASE OF THE MERU COUNTY GOVERNOR

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir and hon. Members of the Senate. For record purposes, my name is Elias Mutuma, counsel appearing for the Governor in this matter.

Within the four hours that we have, we intend to call four witnesses in support of our case. All these witnesses have filed their respective affidavits, which also double as witness statements.

Without much ado, allow me to call our first witness, Mr. Nicholas Kinyua Josphat. His affidavit appears on our blue booklet, which is titled the "Governor's Response" on page 86 onwards.

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(The Witness for Meru County Governor (Hon. Nicholas Kinyua Josphat) was ushered into the Chamber)

The Speaker (Hon. Kingi): You have two booklets. One big and one, small.

Mr. Elias Mutuma: It is the smaller one.

The Speaker (Hon. Kingi): All right, so just refer to those two as small and big for ease of reference.

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Kindly swear the witness. Swear the witness, please.

(The Witness for Meru County Governor (Hon. Nicholas Kinyua Josphat) took the Oath)

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir. Mr. witness, kindly introduce yourself for record purposes.

Hon. Nicholas Kinyua Josphat: Thank you, Mr. Speaker, Sir. I am Nicholas Kinyua Josphat. Otherwise referred to as Kinyua Muna, an elected Member of the County Assembly representing Nyaki East.

Mr. Elias Mutuma: The County Assembly of which county?

Hon. Nicholas Kinyua Josphat: Meru County, Mr. Speaker Sir.

Mr. Elias Mutuma: Thank you. Mr. Nicholas Kinyua. Have you read the impeachment Motion that is before the Senate?

Hon. Nicholas Kinyua Josphat: Mr. Speaker, Sir, yes, I have.

Mr. Elias Mutuma: Have you also had a chance to look at the Governor's response that has been filed?

Hon. Nicholas Kinyua Josphat: I have also gone through it.

Mr. Elias Mutuma: Have you filed an affidavit in support of the response by the Governor?

Hon. Nicholas Kinyua Josphat: Mr. Speaker, Sir, yes, I have.

Mr. Elias Mutuma: Is it the affidavit contained in that response, appearing on page 86 to page 89?

Hon. Nicholas Kinyua Josphat: Yes, Mr. Speaker, Sir. It is.

Mr. Elias Mutuma: Do you wish to rely completely on the averments in that affidavit?

Hon. Nicholas Kinyua Josphat: Mr. Speaker, Sir, I wish to rely on it.

Mr. Elias Mutuma: Thank you. I will ask you very few targeted questions for the purposes of this Motion. Being an MCA of Meru, you are privy to the political opinions in Meru County. Am I right?

Hon. Nicholas Kinyua Josphat: Very right, Mr. Speaker, Sir.

Mr. Elias Mutuma: It has been said that the Governor of Meru has been unable to work with any of the elected leaders, specifically MCAs. Is that your position?

Hon. Nicholas Kinyua Josphat: Mr. Speaker, Sir, it is not my position.

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Mr. Elias Mutuma: Has the Governor been able to work with Members of the County Assembly of Meru?

Hon. Nicholas Kinyua Josphat: Exactly, Mr. Speaker, Sir. After the first impeachment, the Governor made peace with the majority, if not all, of the MCAs, and we have had a good working relationship.

Mr. Elias Mutuma: Yesterday, the counsel for the County Assembly said that that marriage lasted for a few weeks after the first impeachment. Is that the position? If it is not the position, how long did that harmonious working relationship last?

Hon. Nicholas Kinyua Josphat: Mr. Speaker, Sir, I can confirm that we have been having a good working relationship with the Governor after the first impeachment. It cannot be said that it lasted for a few weeks because it was so until mid-September when cracks and crises were introduced to the MCAs.

Mr. Elias Mutuma: You allude to cracks and---

Hon. Nicholas Kinyua Josphat: Cracks, wars, and incitements.

Mr. Elias Mutuma: Were these cracks to the MCAs?

Hon. Nicholas Kinyua Josphat: Exactly, Mr. Speaker, Sir.

Mr. Elias Mutuma: Who introduced these cracks to the MCAs to the best of your assessment and knowledge?

Hon. Nicholas Kinyua Josphat: Mr. Speaker, Sir, much of what happened and what has brought us here is incitement to MCAs, mostly by Members of Parliaments (MPs), that is Members of National Assembly as well as other political leaders in Meru who may not be elected at the moment.

Mr. Elias Mutuma: Thank you. Have you had a chance to look at the impeachment Motion?

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Elias Mutuma: Do you believe that the Governor is guilty of any of the charges that she is facing?

Hon. Nicholas Kinyua Josphat: I will say not guilty.

Mr. Elias Mutuma: Why do you say so?

Hon. Nicholas Kinyua Josphat: Simply because if you look at the allegations, many of them do not impute any wrong being on the Governor herself.

At the same time, I know the decision of the County Assembly of Meru through 59 Members to impeach the Governor cannot be termed as their own decision or free will. There was incitement and coercion, as will be demonstrated later.

Mr. Elias Mutuma: Thank you. Let us demonstrate that right now. You are saying that the County Assembly of Meru did not exercise their mind fully in the interrogation of these issues, that they were acting on intimidation and other forces. Kindly, explain that to the Senate.

Hon. Nicholas Kinyua Josphat: Mr. Speaker, Sir, I am saying that the Members were not exercising their decisions freely. This is because some were coerced by political parties that they serve through their leaders.

For others, it was a kind of a campaign. Some of the MCAs were promised that if the Governor goes and the Deputy Governor takes the seat, there would be the doubling

of Ward Development Fund from the current Kshs15 million that is given by the Governor to Kshs30 million. That one brought in excitement among the MCAs as well as pushing them to impeach the current Governor.

Mr. Elias Mutuma: Mr. Nicholas Kinyua?

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Elias Mutuma: Were you at any point approached and given an incentive to support the impeachment Motion? If so, what was the nature of that incentive?

Hon. Nicholas Kinyua Josphat: Mr. Speaker, Sir, one of the incentives to impeach the Governor was the promise that once she goes, the Ward Development Fund will be doubled from Kshs15 million to Kshs30 million.

Of course, there were other inducements, like some MCAs being promised that they will be CECM in the Executive once the Governor goes. Some of them were promised to be Chief Officers.

The Speaker (Hon. Kingi): Hon. witness, listen to your counsel and answer his question. The question was very specific; were you approached and given any kind of incentive? If so, what kind of incentive? That was the question from your counsel.

Hon. Nicholas Kinyua Josphat: Thank you, Mr. Speaker, Sir. Yes, I was.

Mr. Elias Mutuma: Who approached you and what kind of incentive were you given?

Hon. Nicholas Kinyua Josphat: Mr. Speaker, Sir, some of the incentives was monetary inducements.

Mr. Elias Mutuma: Who approached you?

Hon. Nicholas Kinyua Josphat: Mr. Speaker, Sir, one of the persons who was sent to offer monetary inducements was a friend of mine, known as Mr. Kimathi. He told me that he had been sent. If I accepted to send away the Governor, I could get an amount.

Mr. Elias Mutuma: Let us go to Paragraph Seven of your affidavit appearing at page 87. You make certain allegations there. Kindly substantiate what you mean.

Hon. Nicholas Kinyua Josphat: I can confirm that the Deputy Governor called me and several other Members of County Assembly (MCAs) where he sought my support in the impeachment of the Governor and in return, he would double our Ward Development Fund from Kshs15 million to Kshs30 million.

Mr. Elias Mutuma: Is it your evidence before this Senate that the Deputy Governor of Meru County actually called you in person to ask for your support in this impeachment Motion?

Hon. Nicholas Kinyua Josphat: Yes, it is.

Mr. Elias Mutuma: Is it also your evidence that the Deputy Governor of Meru County issued a specific incentive of increasing the Ward Development Fund from Kshs15 million to Kshs30 million as an exchange for your support in this impeachment motion?

Hon. Nicholas Kinyua Josphat: I can confirm the same not only to myself, but also to other MCAs. It was a promise.

Mr. Elias Mutuma: Did you accept the incentive?

Hon. Nicholas Kinyua Josphat: Personally, I did not accept it. I took it as a mere campaign promise that may not materialize knowing the kind of finance we are getting from the national Government as a county.

Mr. Elias Mutuma: Are you aware if any of your colleagues at the County Assembly accepted the incentive?

Hon. Nicholas Kinyua Josphat: Majority of them bought the idea. Within the conversation in our circles, you could hear that they are convinced if the Governor goes and the Deputy Governor assumes office, it will materialize to their benefit.

Mr. Elias Mutuma: You talk about ‘conversation in your circles.’ What ‘circles’ are these?

Hon. Nicholas Kinyua Josphat: Normally, we have formal and informal talks as MCAs. We are friends in some of them and that is what I mean by ‘circles.’

Mr. Elias Mutuma: Let us go to the issue of threats because that is about the incentives. Are you aware of any threats that were issued for people who were not in support of the impeachment?

Hon. Nicholas Kinyua Josphat: Once many MCAs resist the move to impeach the Governor, they were threatened to be de-whipped from their political parties and to be removed from the House committees. Indeed, we have two who were removed from those committees as a result of their stand not to impeach the Governor.

Mr. Elias Mutuma: Who are these two that were removed?

Hon. Nicholas Kinyua Josphat: One is Hon. Fridah Gitobu Naito who is a Nominated Member of United Democratic Alliance (UDA). The other one is Hon. Ruth Kananu who is a Nominated Member of Devolution Empowerment Party (DEP).

Mr. Elias Mutuma: Has Hon. Naito sworn an affidavit to support those allegations?

Hon. Nicholas Kinyua Josphat: Yes, she has.

Mr. Elias Mutuma: Have you seen that affidavit?

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Elias Mutuma: Is it the affidavit contained in the Governor’s response? The smaller booklet? Are you able to trace it from your booklet on page 90?

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Elias Mutuma: Does it confirm she was de whipped for lack of support of the impeachment Motion?

Hon. Nicholas Kinyua Josphat: Yes, she has confirmed via her affidavit.

Mr. Elias Mutuma: Who was the other Member that you are aware of that was de whipped?

Hon. Nicholas Kinyua Josphat: Hon. Ruth Kananu, Nominated Member of DEP.

Mr. Elias Mutuma: Do you have any document to show that happened? You have not attached any document, right?

Hon. Nicholas Kinyua Josphat: Right. No document attached.

Mr. Elias Mutuma: However, that was your testimony that, indeed, she was also de whipped?

Hon. Nicholas Kinyua Josphat: She was de-whipped.

Mr. Elias Mutuma: Let us go to my second last question. So, then you did not vote for the impeachment of the Governor?

Hon. Nicholas Kinyua Josphat: I abstained.

Mr. Elias Mutuma: Were you on the Floor of the House when this Motion was being discussed and voted?

Hon. Nicholas Kinyua Josphat: I was not present.

Mr. Elias Mutuma: Why were you not present on the Floor of the House?

Hon. Nicholas Kinyua Josphat: The moment it was well known that me and some other nine Members, making it a total of 10 would not impeach the Governor or vote for the impeachment Motion. The atmosphere was highly charged outside the precincts of the County Assembly.

There were some goons that were under instructions not to let us in. When one of us attempted to go there, that is Hon. John Muguna, he was seriously assaulted at the gate of the County Assembly of Meru. That instilled fear to the 10 of us not to get into the County Assembly of Meru on that particular day.

Mr. Elias Mutuma: Let us go to the last question. There was a ceremony that took place at Ncheru where MCAs were in attendance and were hosted by *Njuri Ncheke*. Do you know what transpired in that meeting and what dates those were?

Hon. Nicholas Kinyua Josphat: The meeting was first supposed to be a tree planting exercise where the whole County Assembly was invited, majority of the MCAs attended the meeting. However, it turned out to be an all-things ceremony where the MCAs were threatened with dire consequences in case they never accepted the impeach the Governor of Meru County.

Mr. Elias Mutuma: You talk of dire consequences. I believe you are fluent in the Meru dialect. That oath was administered in the Meru dialect?

Hon. Nicholas Kinyua Josphat: Yes, it was.

Mr. Elias Mutuma: What were the specific threats of dire consequences for those who withdraw support for the impeachment?

Hon. Nicholas Kinyua Josphat: The Members were summoned in front of that gathering. One of the *Njuri Ncheke* elders was heard telling them ‘*Úréa úkúmenya agachoka na nyuma, akeja kúnywa muma kana akeja kírí úntú búbú.*’ Meaning, if you know as a Member that you retreat from this course, then you should not be part of this. Then an oath was administered.

Majority of the MCAs are not members of *Njuri Ncheke*. Maybe they would fear the consequences because they do not know much about it. That was one of the elements of coercion in this impeachment process.

Mr. Elias Mutuma: In this moment, I would like you to look at one of the videos, KMV7. Kindly can we play it?

(A video clip was played)

Mr. Speaker, Sir, this video is not very clear. The one we supplied was quite audible.

(A video clip was played)

Mr. Elias Mutuma: Kindly, let us pause.

(The video clip was paused)

Mheshimiwa, you have seen certain people in the clip.

Hon. Nicholas Kinyua Josphat: Yes, I have.

Mr. Elias Mutuma: Who have you identified from the County Assembly, so far?

Hon. Nicholas Kinyua Josphat: There is the Speaker of Meru County Assembly, Hon. Ayub Bundi and some MCAs.

Mr. Elias Mutuma: There is a story one of the gentlemen is giving about a woman. Kindly explain what that story is about in two minutes.

Hon. Nicholas Kinyua Josphat: The elder is explaining to the MCAs that a long time ago, the circumciser of men was a woman and she would literally sit on the men. I think that was a language that was targeted at the Governor. They wanted the Members to understand that the Governor is literally sitting on men in Meru County.

Mr. Elias Mutuma: Let us proceed with watching the video.

(The video clip was played)

The Speaker (Hon. Kingi): We are not making progress with that video.

Mr. Elias Mutuma: Kindly proceed to tell us what is being said.

Hon. Nicholas Kinyua Josphat: After summoning the MCAs to the front, the elder tells them that---

Mr. Elias Mutuma: How many MCAs can you count from the group that is there?

Hon. Nicholas Kinyua Josphat: I can approximate over 40.

Mr. Elias Mutuma: Is that the Majority?

Hon. Nicholas Kinyua Josphat: It is.

Mr. Elias Mutuma: Thank you. So, what is the elder saying?

Hon. Nicholas Kinyua Josphat: They are being told that if you think you will retreat from this course, impeachment of the Governor, then you should not come for the oath simply because a curse will accompany you and your family; and you forget about the Meru leadership.

Mr. Elias Mutuma: Thank you. In your assessment, did that amount to instilling fear among MCAs to support the impeachment Motion?

Hon. Nicholas Kinyua Josphat: From what I know about *Njuri Ncheke* and its stature in the Meru Community as well as how the oath itself is respected and feared by

members of the Meru Community, that amounted to intimidation, coercion and instilling fear in the MCAs.

Mr. Elias Mutuma: Lastly, this event was conducted on the 14th October, 2023. Am I right?

Hon. Nicholas Kinyua Josphat: Very right.

Mr. Elias Mutuma: By this time, the Mover of the Motion had not introduced the Motion to the House.

Hon. Nicholas Kinyua Josphat: The Mover had not introduced the Motion and the Motion was not even known by its content to the MCAs.

Mr. Elias Mutuma: So, it is your testimony that these Members were being asked to support an impeachment Motion that they had not seen.

Hon. Nicholas Kinyua Josphat: They were being mobilised so that by the time the Motion came, they would be ready to impeach the Governor.

Mr. Elias Mutuma: The oath was for them to take a stand even before the contents of the Motion were known.

Hon. Nicholas Kinyua Josphat: They were being mobilised in advance even before the content of the Motion was explained to them.

Mr. Elias Mutuma: Mr. Speaker, Sir, that is all for this witness. I leave him for cross-examination.

Mr. Eric Muriuki: Mr. Speaker, Sir and hon. Senators, for the record, my name is Eric Muriuki. I will be taking this witness through cross-examination.

Hon. Kinyua, let us start from where your Counsel has left off. You will confirm that from the video that was played, the captions are not part of the recording, but introduced by the Governor, or that it is her translation.

Hon. Nicholas Kinyua Josphat: Being conversant with the Meru language, I can confirm---

Mr. Eric Muriuki: That is not what I asked. You will confirm that the captions were not recorded with the video, but introduced later. Yes or no?

Hon. Nicholas Kinyua Josphat: No.

Mr. Eric Muriuki: So, are you testifying that the video was recorded together with the captions?

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: You will also confirm that there is nowhere in the video where impeachment is mentioned?

Hon. Nicholas Kinyua Josphat: Impeachment is being figuratively referred to as---

Mr. Eric Muriuki: Mentioned or not mentioned?

Hon. Nicholas Kinyua Josphat: Not expressively.

Mr. Eric Muriuki: Thank you. Let us look at paragraph three of your affidavit. Can you read?

Hon. Nicholas Kinyua Josphat: It says that-

“I am aware that we have been enjoying a very cordial working relationship with the Governor until mid-September this year, when it emerged from the leadership of the

House that Members of Parliament (MPs) from Meru County and a few other leaders had picked a war with the Governor.”

Mr. Eric Muriuki: So, your testimony before this Senate is that the impeachment and this entire process began mid-September?

Hon. Nicholas Kinyua Josphat: Or there about.

Mr. Eric Muriuki: Thank you. I will refer you to our volume two, pages 17 to 29. That is the IFMIS extract. I would like to get someone to help with showing him.

Hon. Nicholas Kinyua Josphat: I am there.

Mr. Eric Muriuki: Open any page between pages 17 and 29.

Hon. Nicholas Kinyua Josphat: I am there.

Mr. Eric Muriuki: Can you read the date of the first transaction on that page?

Hon. Nicholas Kinyua Josphat: I can see 1st July, 2022.

Mr. Eric Muriuki: You will confirm that is way before mid-September.

Hon. Nicholas Kinyua Josphat: Yes, it is.

Mr. Eric Muriuki: Thank you. I will also refer you to our volume two. Just before I go there, for all those other transactions that are on that volume, between Pages 17 to 29, all of them or a majority of them are printed way before the mid-September date.

Hon. Nicholas Kinyua Josphat: Exactly.

Mr. Eric Muriuki: Thank you. I will refer you now to Page 233 of our volume two.

Hon. Nicholas Kinyua Josphat: I am there.

Mr. Eric Muriuki: What is the date of that document?

Hon. Nicholas Kinyua Josphat: The letter is dated Friday, 1st September, 2023.

Mr. Eric Muriuki: Is that mid-September or the beginning of September or the end of September?

Hon. Nicholas Kinyua Josphat: It is not mid-September, but it is September.

Mr. Eric Muriuki: Thank you. When you say mid-September ordinarily you mean from around the 15th of the month going onward. Right?

Hon. Nicholas Kinyua Josphat: Exactly.

Mr. Eric Muriuki: I will also refer you to a document on page 232 of volume two.

Hon. Nicholas Kinyua Josphat: I am there.

Mr. Eric Muriuki: What is the date?

Hon. Nicholas Kinyua Josphat: It is dated Wednesday, August 30th 2023.

Mr. Eric Muriuki: You will confirm that is way before the mid-September you allege is when this entire thing started?

Hon. Nicholas Kinyua Josphat: Way before but thereabouts.

Mr. Eric Muriuki: Thank you. I will refer you to page 226 of our volume two.

Hon. Nicholas Kinyua Josphat: I am there.

Mr. Eric Muriuki: First of all, what is the date of that document?

Hon. Nicholas Kinyua Josphat: It is dated 25th August, 2023.

Mr. Eric Muriuki: In the body of the document, the second line---

Hon. Nicholas Kinyua Josphat: It reads “I hereby write to inquire if there have been any Meru County Cabinet meetings after the last one I attended on 29th May, 2023.”

Mr. Eric Muriuki: You will confirm that 29th May 2023 is way before mid-September?

Hon. Nicholas Kinyua Josphat: Exactly.

Mr. Eric Muriuki: Not to belabour the point, but the order on page 416 of our volume two---

Hon. Nicholas Kinyua Josphat: I am there.

Mr. Eric Muriuki: What is the date of that order, Sir? The date can be found on Page. 417; that is the next page.

Hon. Nicholas Kinyua Josphat: Yes, it is dated 7th October, 2022.

Mr. Eric Muriuki: You will confirm that is a whole year before the date you are alleging is when this thing was started?

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: Let us go to the ruling on pages 417 to 439. Before we go there. Let us go to Page 155 of volume two.

Hon. Nicholas Kinyua Josphat: I am there.

Mr. Eric Muriuki: Can you see the date that appears on that WhatsApp extract at the top?

Hon. Nicholas Kinyua Josphat: The date is May 27th, 2023.

Mr. Eric Muriuki: So, Hon. Josphat, you will agree with me that this narrative that this is a recent problem that has come up is completely false?

Hon. Nicholas Kinyua Josphat: From the perspective of a Member of a County Assembly (MCA), it was brought to us in September or thereabout.

Mr. Eric Muriuki: Hon. Josphat, we have looked at several documents dated way before; some of them a whole year before. You will agree with me that this narrative that this is something recent that came up from mid-September is completely false?

Hon. Nicholas Kinyua Josphat: What I mean is that a matter that came as an impeachment piece in September 2023 could have been brought way before but MCAs had hitherto had a good working relationship.

Mr. Eric Muriuki: No matter. Let us go to your allegation that this Motion is sponsored or to use your words “Is an incitement from the Members of Parliament.”

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: When you look at the ruling on Pages 417 and 439, the ruling is dated 29th September, 2023.

Hon. Nicholas Kinyua Josphat: Yes, I am there.

Mr. Eric Muriuki: You will agree with me that is not a document originating from any Member of the National Assembly. You will agree with me that this is a ruling of a court of law in Kenya.

Hon. Nicholas Kinyua Josphat: Exactly. But---

Mr. Eric Muriuki: Hon. Josphat, you are not a member of the United Democratic Party (UDA), are you?

Hon. Nicholas Kinyua Josphat: Mr. Speaker, Sir, I would plead with the counsel.

The Speaker (Hon. Kingi): Just answer the question. Are you a Member of UDA or not?

Hon. Nicholas Kinyua Josphat: I am not.

Mr. Eric Muriuki: So, your allegations in paragraph four of your affidavit that a meeting was called and deliberations were made, that is something you are not privy to, because you are not a member?

Hon. Nicholas Kinyua Josphat: After the meeting, all the Members addressed the media.

Mr. Eric Muriuki: Were you called to that meeting of the Members of UDA?

Hon. Nicholas Kinyua Josphat: Not called, but they read out their deliberations in public.

Mr. Eric Muriuki: You were not in the meeting.

Hon. Nicholas Kinyua Josphat: Exactly.

Mr. Eric Muriuki: You will also confirm that you are not a Member of the Mbus Party.

Hon. Nicholas Kinyua Josphat: I am not.

Mr. Eric Muriuki: And you do not ordinarily attend the meetings of the Members of the Mbus Party?

Hon. Nicholas Kinyua Josphat: Yes, but, again, they read out their deliberations in the public.

Mr. Eric Muriuki: In Paragraph 11 of your affidavit, you allege that you know the reasons why a party or parties that you are not a member to, chose to discipline their members. That is what you have alleged in paragraph 11.

Hon. Nicholas Kinyua Josphat: Exactly.

Mr. Eric Muriuki: You will agree with me that since you have confirmed you are not a member of UDA or Mbus; you do not know the deliberations that happened or the reasons why these parties chose to discipline their members?

Hon. Nicholas Kinyua Josphat: I have an affidavit from one of the members confirming it was the reason.

Mr. Eric Muriuki: I am asking you, were you there? Were you part of the deliberations?

Hon. Nicholas Kinyua Josphat: I was not there.

Mr. Eric Muriuki: Thank you. Hon. Josphat, there are your fellow MCAs and I will name two of them: Koome Faith Ananu, and another Member called Kiambi Ngaruni. Those Members do not support this Impeachment Motion.

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: You will agree with me that they were not de-whipped from their committees.

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: Thank you. So, Hon. Josphat, it must follow therefore that the de-whipping you talk about in Paragraph 11 had nothing to do with supporting or not supporting the Motion?

Hon. Nicholas Kinyua Josphat: I will leave that to the discretion of the Senators.

Mr. Eric Muriuki: You will agree with me that MPs have no supervisory role over MCAs.

Hon. Nicholas Kinyua Josphat: Agreed.

Mr. Eric Muriuki: You will agree with me that an MP cannot force an MCA to vote one way or another way on a matter before the Assembly?

Hon. Nicholas Kinyua Josphat: But can influence.

Mr. Eric Muriuki: Hon. Josephat, ultimately, every MCA is free to make their own choice in the Assembly. Right?

Hon. Nicholas Kinyua Josphat: True.

Mr. Eric Muriuki: Thank you. Have you identified the specific MPs that you say influenced or forced you or your fellow Members?

Hon. Nicholas Kinyua Josphat: Yes, I have.

Mr. Eric Muriuki: Which paragraph of your affidavit?

Hon. Nicholas Kinyua Josphat: Not in the affidavit but one of them was here yesterday as a witness.

Mr. Eric Muriuki: Which paragraph of your affidavit have you identified those Members?

Hon. Nicholas Kinyua Josphat: None.

Mr. Eric Muriuki: Which paragraph of your Affidavit have you identified those Members?

Hon. Nicholas Kinyua Josphat: None.

Mr. Eric Muriuki: Thank you. On paragraph eight of your Affidavit, are you there?

Hon. Nicholas Kinyua Josphat: Yes, I am.

Mr. Eric Muriuki: You say, you received calls from other leaders within Meru to support the impeachment Motion in order to restore dignity and respect of Meru as a county, right?

Hon. Nicholas Kinyua Josphat: Exactly.

Mr. Eric Muriuki: Have you adduced any evidence to show that you indeed received these calls?

Hon. Nicholas Kinyua Josphat: Not contained in these documents, but factual.

Mr. Eric Muriuki: Have you disclosed the make of the said calls in your Affidavit?

Hon. Nicholas Kinyua Josphat: Not in the Affidavit.

Mr. Eric Muriuki: Have you attached any call log or any screenshot to show that you indeed received these calls?

Hon. Nicholas Kinyua Josphat: Not attached.

Mr. Eric Muriuki: Thank you. You have talked about an incentive of Kshs15 million being increased to Kshs30 million.

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: Have you provided any evidence, that any Member was offered, let alone accepted this incentive?

Hon. Nicholas Kinyua Josphat: I have not provided.

Mr. Eric Muriuki: Thank you. Let us go to your allegation on a *WhatsApp* group being created.

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: What is the very last sentence on paragraph nine of your Affidavit?

Hon. Nicholas Kinyua Josphat: Yes. I am there.

Mr. Eric Muriuki: Can you read the very last sentence of paragraph nine?

Hon. Nicholas Kinyua Josphat: A *WhatsApp* group to organize and discuss the impeachment was formed in which we were left out.

Mr. Eric Muriuki: You were left out?

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: You are not members of that *WhatsApp* group?

Hon. Nicholas Kinyua Josphat: Exactly.

Mr. Eric Muriuki: How can you come to this House and say that it was established to discuss impeachment if you are not privy to whatever discussions that were happening there?

Hon. Nicholas Kinyua Josphat: We have friends who are members of the group, Members of the County Assembly (MCAs), who can tell you what is going on as friends.

Mr. Eric Muriuki: Have those friends produced any screenshots or any evidence?

Hon. Nicholas Kinyua Josphat: No.

Mr. Eric Muriuki: Thank you. On the paragraph 10 of your Affidavit, you talk about several meetings. Have you provided the dates, venues or minutes of those meetings?

Hon. Nicholas Kinyua Josphat: Not provided.

Mr. Eric Muriuki: Thank you. Let us go to paragraph 12 of your Affidavits.

Hon. Nicholas Kinyua Josphat: I am there.

Mr. Eric Muriuki: You will confirm that you are not present at the Assembly when this impeachment Motion was being discussed.

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: You also proceed to allege that you sent someone to test waters or something?

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: Have you called that person here to testify to that effect?

Hon. Nicholas Kinyua Josphat: He has not been called.

Mr. Eric Muriuki: Thank you.

Would that person have been the person to be called to confirm these allegations?

Hon. Nicholas Kinyua Josphat: We have the Occurrence Book (OB), through which he reported the matter.

Mr. Eric Muriuki: Has it been produced in your Affidavits, Sir?

Hon. Nicholas Kinyua Josphat: No.

Mr. Eric Muriuki: I find this paragraph 12 of your Affidavits very interesting.

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: How many Members of the Assembly are there in the Meru County Assembly?

Hon. Nicholas Kinyua Josphat: 69.

Mr. Eric Muriuki: How many Members were present during the discussion of the Motion?

Hon. Nicholas Kinyua Josphat: 59.

Mr. Eric Muriuki: In paragraph 12, the very last sentence of paragraph 12, can you read it for the Senate?

Hon. Nicholas Kinyua Josphat: We ended up staying away, the 10 Members, after the others had curved into intimidation and crossed over.

Mr. Eric Muriuki: It is your testimony that 10 Members stayed away. Is that correct?

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: And 59 Members were in the House?

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: This allegation that there was someone who sent them, got beaten and what not and other stories, is just a fabrication.

Hon. Nicholas Kinyua Josphat: It is not a story.

Mr. Eric Muriuki: Mr. Kinyua, mathematics tells me that 59 plus 10 makes 69.

Hon. Nicholas Kinyua Josphat: Exactly.

Mr. Eric Muriuki: If 10 stayed away and 59 were in the House, where is the extra 70th Member coming from that is being sent to test the waters?

Hon. Nicholas Kinyua Josphat: Mathematics also informs me that one out of the ten was beaten and he did not get in. That makes them 10. 59 plus 10 is 69.

Mr. Eric Muriuki: Mr. Kinyua, confirm that the functions of an MCA are legislation and oversight.

Hon. Nicholas Kinyua Josphat: They are.

Mr. Eric Muriuki: Confirm that impeachment is one of the oversight measures that the House can take.

Hon. Nicholas Kinyua Josphat: It is.

Mr. Eric Muriuki: Confirm that there is no Member of the National Assembly who has a vote at the County Assembly.

Hon. Nicholas Kinyua Josphat: Confirmed.

Mr. Eric Muriuki: My second last question to you, Mr. Kinyua. I want you to look at Page three of our volume four, are you there?

Hon. Nicholas Kinyua Josphat: Yes, I am.

Mr. Eric Muriuki: Confirm that your name appears on that page.

Hon. Nicholas Kinyua Josphat: It does.

Mr. Eric Muriuki: What number is your name?

Hon. Nicholas Kinyua Josphat: Number 59.

Mr. Eric Muriuki: And your signature?

Hon. Nicholas Kinyua Josphat: It is.

Mr. Eric Muriuki: And your identification number (ID)?

Hon. Nicholas Kinyua Josphat: Exactly.

Mr. Eric Muriuki: Mr. Kinyua, in accordance to your Standing Orders and specifically--- Are you conversant with your Standing Orders?

Hon. Nicholas Kinyua Josphat: Yes, I am.

Mr. Eric Muriuki: Specifically, Standing Order No.65 at pages 264 and 265 of our Volume 4?

Hon. Nicholas Kinyua Josphat: I am there.

Mr. Eric Muriuki: That is where Standing Order No. 65 starts.

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: I want us to go to Page 265.

Hon. Nicholas Kinyua Josphat: I am there.

Mr. Eric Muriuki: I want you to read for me Standing Order No.65 (4).

Hon. Nicholas Kinyua Josphat: Standing Order No, 65 (4), states that –

“When the order for demotion is read, the Speaker shall refuse to allow the Member to move the motion, unless the Speaker is satisfied that the Member is supported by at least a third of all the Members of the Assembly to move the motion, provided that within the seven days’ notice, the Clerk shall cause to be prepared and deposited in his office, a list of all Members of the Assembly, with an open space against each name for purposes of spreading signatures, which list shall be entitled signatures in support of a Motion for the removal of Meru County Governor by impeachment.”

Mr. Eric Muriuki: You confirm that it is pursuant to Order 65(4) that it was added to and that is where you have said you signed.

Hon. Nicholas Kinyua Josphat: Yes, Mr. Speaker, Sir.

Mr. Eric Muriuki: From the reading of Order 65(4), it is not possible for a Member to be coerced or forced to sign?

Hon. Nicholas Kinyua Josphat: It is possible.

Mr. Eric Muriuki: Were you coerced?

Hon. Nicholas Kinyua Josphat: Yes, I was.

Mr. Eric Muriuki: Have you produced any evidence that you were?

Hon. Nicholas Kinyua Josphat: In the affidavit, it is mentioned.

Mr. Eric Muriuki: Which paragraph?

Hon. Nicholas Kinyua Josphat: Paragraphs six and eight.

Mr. Eric Muriuki: You say that you received calls instructing you. Where does it say in this affidavit that you were forced to sign?

Hon. Nicholas Kinyua Josphat: Do you know the contents of the calls?

Mr. Eric Muriuki: Where does it say that you were forced?

Hon. Nicholas Kinyua Josphat: In the calls.

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Mr. Eric Muriuki: Can you read Standing Order No.65(5)?

Hon. Nicholas Kinyua Josphat: I will read-

“Any signature appended to the list as provided under paragraph four shall not be withdrawn.”

Mr. Eric Muriuki: Are you aware that in law, you cannot run away from a document you have signed?

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: Are you aware that a signature appended under Standing Order No.65 cannot be withdrawn just like you have read?

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Eric Muriuki: I put it to you that you signed in support of the impeachment Motion, a signature which is irrevocable no less and then when you were taken to Maasai Mara with the other nine Members, you decided to change your mind.

Hon. Nicholas Kinyua Josphat: I am hearing the Maasai Mara story from you.

Mr. Eric Muriuki: I will yield some of my time to my colleague, Mr. Boniface Mawira. I am done with my cross-examination.

Mr. Boniface Mawira: Mr. Speaker, Sir and hon. Senators. My name is Mawira. I have not more than three questions for the witness.

From the video that was played, you said that the captions on that video are part of it. Are the speakers in that video speaking in English or Kimeru language?

Hon. Nicholas Kinyua Josphat: Kimeru Language, Mr. Speaker, Sir.

Mr. Boniface Mawira: How then can English captions be part of the video?

Hon. Nicholas Kinyua Josphat: Any language can be translated.

Mr. Boniface Mawira: So, it is a translation and is not part of the video? Previously, you said it is part of the video and now you are saying it is a translation. Is it a translation or part of the video?

Hon. Nicholas Kinyua Josphat: Let me make it clear. For the Senate to understand the language, it had to be translated. I do not see anything wrong with that.

Mr. Boniface Mawira: Do the cameras capture captions? If you take a recording of the proceedings herein, will the camera include sub-titles?

Hon. Nicholas Kinyua Josphat: I am not a professional photographer, so, I do not know.

Mr. Boniface Mawira: You voluntarily went to the Clerk’s office to sign the verification form?

Hon. Nicholas Kinyua Josphat: Not voluntarily.

Mr. Boniface Mawira: Not voluntarily, but you went to the Clerk’s office. Who coerced you to go to the Clerk’s office to sign?

Hon. Nicholas Kinyua Josphat: I answered that in the previous questions.

Mr. Boniface Mawira: Were you pushed to the Clerk’s office? Were you carried there or did you walk to the Clerk’s office to sign?

Hon. Nicholas Kinyua Josphat: I walked.

Mr. Boniface Mawira: You walked voluntarily or you were pushed?

Hon. Nicholas Kinyua Josphat: Involuntarily.

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Mr. Boniface Mawira: Who coerced you then?

Hon. Nicholas Kinyua Josphat: I have said there were calls.

Mr. Boniface Mawira: You were coerced by a phone call to go and sign?

Hon. Nicholas Kinyua Josphat: You can.

Mr. Boniface Mawira: You say that you represent the people of Nyaki East? So, your people should believe when you say that you were coerced through a phone call and that independently, you cannot make a decision on your own, on whether to sign or not?

Hon. Nicholas Kinyua Josphat: Counsel, you have seen politicians dying in the course of duty. Do they die voluntarily out of politics? No.

Mr. Boniface Mawira: You will confirm that nonetheless, you signed.

Hon. Nicholas Kinyua Josphat: Nonetheless, I signed involuntarily.

Mr. Boniface Mawira: Your signature cannot be withdrawn?

Hon. Nicholas Kinyua Josphat: It cannot.

Mr. Boniface Mawira: You talked of inducements to Members and you mentioned a Mr. Kimathi who was sent to you. Is that anywhere in your affidavit?

Hon. Nicholas Kinyua Josphat: It is not.

Mr. Boniface Mawira: Is this Maasai Mara trip that you went to part with the inducement that was offered to you?

Hon. Nicholas Kinyua Josphat: I have heard it from you.

Mr. Boniface Mawira: That is all for the cross-examination, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Thank you, counsel. The counsel for the Governor, do you have any re-examination to do?

Mr. Elias Mutuma: Yes, I do, Mr. Speaker, Sir. I have few questions for this witness in re-exam.

I want you to confirm that you understand the Kimeru Language, being your mother-tongue.

Hon. Nicholas Kinyua Josphat: I understand it very well.

Mr. Elias Mutuma: Even without those sub-titles and the translations, you are able to tell the Senate what was said?

Hon. Nicholas Kinyua Josphat: Exactly, Mr. Speaker, Sir.

Mr. Elias Mutuma: What you confirm to have been said are the exact words that were uttered by the people we saw in the video?

Hon. Nicholas Kinyua Josphat: What is being said there is completely in the translation.

Mr. Elias Mutuma: Thank you. You have been given an Integrated Financial Management Information Systems (IFMIS) message that appears at page 17. Do you still have it? It is in volume two. You have been told that transaction confirms that the Governor conducted some violations before August.

I want you to look at the specific item that you were referred to on page 17.

Hon. Nicholas Kinyua Josphat: I am there.

Mr. Elias Mutuma: Read for us the date.

Hon. Nicholas Kinyua Josphat: It is dated 1st July, 2022.

Mr. Elias Mutuma: Was Governor Kawira the Governor on 1st July, 2022?

Hon. Nicholas Kinyua Josphat: No.

Mr. Elias Mutuma: Is that an issue that can be attributed to her?

Hon. Nicholas Kinyua Josphat: No, Mr. Speaker, Sir.

Mr. Elias Mutuma: What you are testifying is as to the good working relationship with the Governor. Was that your testimony?

Hon. Nicholas Kinyua Josphat: Yes.

Mr. Elias Mutuma: How long did that good working relationship last to the best of your assessment?

Hon. Nicholas Kinyua Josphat: It must have lasted between February this year up to September this year. That is a period of seven months.

Mr. Elias Mutuma: You are also not a member of Devolution Empowerment Party (MBUS) Party or the United Democratic Alliance (UDA).

Hon. Nicholas Kinyua Josphat: I am not.

Mr. Elias Mutuma: How did you come across information that Members of these two parties had been de-whipped?

Hon. Nicholas Kinyua Josphat: It was communicated in the County Assembly through the usual sittings.

Mr. Elias Mutuma: Were you present when that communication was done?

Hon. Nicholas Kinyua Josphat: I was not, but hon. Fridah Naito informed us that it had been communicated.

Mr. Elias Mutuma: Are the records of the House accessible to you? Once a communication is done, is it information you can access?

Hon. Nicholas Kinyua Josphat: Yes, they are and when this nominated member of the UDA was de-whipped, they refused to give her the official document to show that she had been de-whipped. She was removed from committees and replaced as the Vice-Chair of the Water Committee.

Mr. Elias Mutuma: Was that communication done to the County Assembly of Meru?

Hon. Nicholas Kinyua Josphat: It was done, but no official document was given to her for fear that it will be used as evidence in this Senate.

Mr. Elias Mutuma: It is also your testimony that you got instructions and coercion on phone compelling you to tender your signature to the impeachment Motion. Did you eventually exercise your freewill by withdrawing from the support by not voting or abstaining from voting for the Motion?

Hon. Nicholas Kinyua Josphat: I would have voted not supporting the impeachment on that day, but I and other nine Members could not access the County Assembly of Meru simply because the atmosphere was charged and goons were hired to harass us.

Mr. Elias Mutuma: You have been told about a Maasai Mara trip. Are you aware of any such trip?

Hon. Nicholas Kinyua Josphat: I have heard it from the counsel here.

Mr. Elias Mutuma: Did you go to Maasai Mara?

Hon. Nicholas Kinyua Josphat: Mr. Speaker, Sir, I did not.

Mr. Elias Mutuma: Thank you. Mr. Speaker, Sir, that is all for this witness unless hon. Members have a question. I will be glad to call my next witness with your guidance.

The Speaker (Hon. Kingi): Hon. Senators, we have about five minutes to seek clarifications or questions from this witness.

Hon. Thang'wa, proceed.

Sen. Thang'wa: Thank you, Mr. Speaker, Sir. Hon. Kinyua, I know that at the Meru County Assembly there are three modes of voting; yes, no and abstention just like the Senate and the National Assembly.

You mentioned that you abstained yet you were not able to access the Assembly because one of you was attacked. Does that mean you were able to access Meru County Assembly later before the voting was done or? Please, clarify on that.

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

[The Temporary Speaker (Sen. Abdul Haji) in the Chair]

Hon. Nicholas Kinyua Josphat: Mr. Temporary Speaker, Sir, my initial plan and that of other nine Members making it 10, was to be in the County Assembly to oppose the impeachment Motion. Once we could not get into the Assembly, it meant we were absent. Maybe I have mixed up the terms; being absent and abstention

The Temporary Speaker (Sen. Abdul Haji): Proceed, Sen. Wambua.

Sen. Wambua: Thank you, Mr. Temporary Speaker, Sir. I seek three quick clarifications. First, Hon. Josphat Nicholas Kinyua should clarify which political party he was elected on.

Secondly, according to the report of the resolution of the Meru County Assembly on impeachment, 59 Members of County Assembly (MCAs) voted to impeach the Governor and 10 did not vote. We would not know how they would have voted if they voted. So, all Members present voted against the Governor. Is it your testimony in this House that all the 59 MCAs in Meru County who voted to impeach the Governor were coerced or induced to take the vote that they did?

Thirdly, you make very serious allegations in your affidavit on paragraph seven that the Deputy Governor tried to induce you. What is the evidence? You make reference to several other Members. Who are these Members? People have names. You were called by the Deputy Governor with several others. Who are these people you were called with and where is the evidence that he tried to induce you? This is a serious matter we are dealing with.

I thank you.

Hon. Nicholas Kinyua Josphat: Mr. Speaker, Sir and Hon. Senators, I am a member of the Party of National Unity (PNU). Ten MCAs could not access the precincts of the Assembly. If they were there, I believe they would have voted otherwise.

I cannot say that all the 59 MCAs who were in the Assembly that day and voted yes, were coerced. I am drawing my conclusion from the talk that we had before the

voting day. I know the stance the majority of them had. Given the free will, they would not have impeached the Governor.

Finally, I said the Deputy Governor made calls. You are telling me to name specific MCAs who were called. I can ascertain that he called all of them in an effort to get support in a promise to increase Ward Fund from Kshs15 million to Kshs30 million.

The Temporary Speaker (Sen. Abdul Haji): Proceed, Sen. Cherarkey.

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. *Mheshimiwa*, just two quick clarifications. You have told this House that you were not able to access the County Assembly. Did you report to any police station or do you have evidence to that effect including the phone calls? If you can table them kindly.

Finally, I see your signature is number 59. The Meru County Assembly Standing Order No. 65(5), is specific on what you are signing. You have alluded that a number of people were induced to support this impeachment Motion. Is there possibility that you have also been induced to testify against the County Assembly?

I thank you.

Hon. Nicholas Kinyua Josphat: Thank you, Mr. Temporary Speaker, Sir and hon. Senators. I have an OB belonging to one Hon. John Muguna Thurania, MCA for Mbeu Ward, who was assaulted on his way to the Meru County Assembly. If allowed, I can give it to the Senate though it does not form part of my affidavit.

Secondly, when I talk about being induced to sign, I know exactly what I mean. Everybody who signed was induced to do so either through promises that the Ward Fund will be increased or by being given other sweet promises.

The Temporary Speaker (Sen. Abdul Haji): Proceed, Sen. Sifuna. Hon. Senators, we only had five minutes for clarification. Sen. Sifuna's question will probably be the last question we will take.

Sen. Sifuna: Thank you, Mr. Temporary Speaker, Sir. My question is to the counsel for the County Assembly, my good classmate. I have had to look up the meaning of coercion in the Merriam-Webster Dictionary. It speaks to the use of express or implied threats of violence or reprisal or other intimidating behavior that puts a person in immediate fear of the consequences in order to compel that person to act against his or her will.

Counsel, is it the case of the Assembly that coercion only means physical coercion, that somebody has to hold your hand to sign? Is that the case that is presented by the Assembly?

Dr. Muthomi Thiankolu: Mr. Temporary Speaker, Sir, coercion under the law is not limited to physical intimidation or threats. It is as broad as the Hon. Senator suggests. Our case as the Assembly is that there is no shred of evidence of coercion. For anyone who makes such a claim, the least they can do is to tell you who coerced them, what the specific threat was, how and why that threat induced them from behaving in a manner that is inconsistent with how they would have behaved.

As we speak on the record, we do not know who or when. There is no evidence. It is just chasing allegations. Alleging is the easier thing to do. I can allege anything.

The Temporary Speaker (Sen. Abdul Haji): Sen. Cheptumo, you seem to have a burning issue. Kindly be quick.

Sen. Cheptumo: Thank you, Mr. Temporary Speaker, Sir. My clarification from the witness is on paragraph three of this affidavit. It speaks about it emerging from the leadership of the House and that Members of Parliament from Meru County and a few leaders had picked a war with the Governor.

Paragraph eight states that we also received calls from other leaders in Meru County. Is it your evidence, Hon. Josphat Nicholas Kinyua, that the whole impeachment process is initiated by forces outside the County Assembly, as per paragraph three and eight of your affidavits? You need to clarify this for the House.

Hon. Nicholas Kinyua Josphat: Thank you, Mr. Temporary Speaker, Sir. This has been my assertion. If you look at yesterday's submission, we had a Member of Parliament who was a witness. There can be no other proof that Members of Parliament were involved. One of them was here was a witness. Secondly, there was a video of Hon. Mpuru Aburi, the Member of Parliament of Tigania East in meetings all over the county inciting residents against the Governor. How can we accept that they were in public meetings and not calling or influencing the Members of the County Assembly (MCAs)?

The Temporary Speaker (Sen. Abdul Haji): Thank you. Governor's counsel, do you have another witness?

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir. I have another witness; his name is Mr. Arayaru Adrian.

The Temporary Speaker (Sen. Abdul Haji): Serjeant-at-Arms, usher in the witness.

*(The Witness for Meru County Governor (Mr. Arayaru Adrian)
was ushered into the Chamber)*

Mr. Elias Mutuma: Mr. Speaker, Sir, as the witness is being ushered in, he has sworn an affidavit that appears in our small booklet. It appears on page 96.

The Temporary Speaker (Sen. Abdul Haji): I direct that the witness be sworn in.

*(The Witness for Meru County Governor (Mr. Arayaru
Adrian) took the Oath)*

Mr. Elias Mutuma: Thank you. Kindly introduce yourself for record purposes, your full name and what you do for a living.

Mr. Adrian Arayaru: Mr. Temporary Speaker, Sir, my name is Mr. Adrian Karicha Arayaru.

Mr. Elias Mutuma: Where do you come from?

Mr. Adrian Arayaru: I am a member of Meru Njuri Ncheke, therefore, I come from Meru County.

Mr. Elias Mutuma: Are you conversant with what happens in Meru County?

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Mr. Adrian Arayaru: Yes.

Mr. Elias Mutuma: The current affairs in Meru County?

Mr. Adrian Arayaru: Yes.

Mr. Elias Mutuma: You have alluded to the fact that you are a Member of the Njuri Ncheke Council of Elders.

Mr. Adrian Arayaru: Yes.

Mr. Elias Mutuma: What position do you hold in the council?

Mr. Adrian Arayaru: I am the Chairman of three sub-counties; Tigania West, Tigania East, and Tigania Central sub-counties.

Mr. Elias Mutuma: Does that include where the Njuri-Ncheke shrine is?

Mr. Adrian Arayaru: Yes.

Mr. Elias Mutuma: Is that your area?

Mr. Adrian Arayaru: That is my area.

Mr. Elias Mutuma: I will be specific and short with your testimony. I want to refer you to the happenings of 14th October, 2022. Are you aware of anything that took place at Ncheru on 14th October, 2023?

Mr. Adrian Arayaru: Yes, I am aware.

Mr. Elias Mutuma: What happened there?

Mr. Adrian Arayaru: Njuri Ncheke members were called. They were few because not all of them were called to attend a tree planting ceremony. I was there briefly because I was committed. When we were there things turned out to be different because we were to plant trees, but the event turned into a political rally. Many things happened there which annoyed the Njuri Ncheke. There was an oath given to the leaders of the County Assembly of Meru. This annoyed us because this is a shrine and according to the Njuri Ncheke regulations and rules, in a shrine, you cannot administer any oath.

Mr. Elias Mutuma: You confirm that there was an oath administered at the Njuri Ncheke Shrine?

Mr. Adrian Arayaru: Yes, there was.

Mr. Elias Mutuma: Who administered the oath?

Mr. Adrian Arayaru: There was a section of leaders. We have Mr. Muragiri who is the Secretary General of Njuri Ncheke in Meru County and there was the Chairman of the region, Mr. Kathera, and many others.

Mr. Elias Mutuma: I want to refer you to the video marked as KMV7. Kindly, may we play this video.

We tested the video minutes ago. The sound was perfect. I do not know what is happening.

The Temporary Speaker (Sen. Abdul Haji): Broadcast team, what has happened to the sound?

(Technical hitch)

Mr. Elias Mutuma: Mr. Temporary Speaker, Sir, I seek your directions on this. This video has been tested minutes ago. The sound was perfect.

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The Temporary Speaker (Sen. Abdul Haji): Broadcast team, what seems to be the problem? Is it a video we can view? Counsel, send one of your colleagues upstairs to the broadcast unit to see if they can work on the video.

Mr. Elias Mutuma: Mr. Temporary Speaker, Sir, one of my colleagues has gone up there. Perhaps, we can play KMV17 as we wait for that video to be sorted.

(The video clip was played)

The Temporary Speaker (Sen. Abdul Haji): Information and Technology (IT) people, are we going to have a problem with all the videos?

(A video clip was played)

Mr. Elias Mutuma: Mr. Temporary Speaker, Sir, I am inclined to register my dissatisfaction with the technical team.

The Temporary Speaker (Sen. Abdul Haji): Sorry, Counsel, are you in a position to move to a different point as we wait for IT to handle the matter of the videos?

Mr. Elias Mutuma: Mr. Temporary Speaker, Sir, this witness is only supposed to testify on what transpired on 14th October and the only piece of evidence that we rely on is those two videos. Therefore, I will have no use for this witness if those videos are not effectively played.

The Temporary Speaker (Sen. Abdul Haji): Information Technology (IT) or somebody from broadcast, can you send somebody to give us an indication of what the problem is?

(A video clip was played)

[The Temporary Speaker (Sen. Abdul Haji) left the Chair]

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

(A video clip was played)

The Speaker (Hon. Kingi): Hon. Senators, kindly take your seats. Just pause the video first. Sorry for that, we had to ensure that the videos we are playing are of quality so that we can be able to follow through.

Counsel, you may now proceed.

Mr. Elias Mutuma: May we then have the video replayed from the beginning.

(A video clip was played)

Kindly pause the video. Can you identify the person making the speech?

Mr. Adrian Arayaru: Yes. He is the Speaker of Meru County Assembly.

Mr. Elias Mutuma: What has he just said in that video?

Mr. Adrian Arayaru: He has said that they want a leader who will be like Hon. Linturi, the Cabinet Secretary Agriculture and Livestock Development.

Mr. Elias Mutuma: Proceed with the video.

(A video clip was played)

Confirm that the Speaker is inviting Members of County Assembly (MCAs) into the podium.

Mr. Adrian Arayaru: Yes, he is inviting all the MCAs who were present.

Mr. Elias Mutuma: Thank you. Let us proceed.

(A video clip was played)

Thank you, kindly pause. There is a story the elder is giving of a woman. What is he saying about that woman?

Mr. Adrian Arayaru: He is saying that, a long time ago, there was a woman who was circumcising men. After circumcising men for a long time, she asked one of the men to bend so that she could sit on his back and circumcise men sitting on a man.

Mr. Elias Mutuma: That story is meant to talk about a woman who oppresses men. Do you understand it?

Mr. Adrian Arayaru: Yes.

Mr. Elias Mutuma: Kindly, let us proceed.

(A video clip was played)

Mr. Elias Mutuma: Can you pause the video and explain what that elder has told the MCAs?

Mr. Adrian Arayaru: Mr. Speaker, Sir, he has told the MCAs that if there is anybody who is going to go against what the elders will tell them to do, he will be cursed. Those words straightway make that one an oath.

Mr. Elias Mutuma: Thank you. Let us proceed with the video.

(A video clip was played)

Mr. Elias Mutuma: Kindly, pause. He is saying "*imochiethio*" What does that mean in Kimeru?

Mr. Adrian Arayaru: Mr. Speaker, Sir, it is an oath that you are taking.

Mr. Elias Mutuma: What is the Meru word for oath? Is it "*Mochiethio*"

Mr. Adrian Arayaru: Yes, Mr. Speaker, Sir.

Mr. Elias Mutuma: Is that what he has said?

Mr. Adrian Arayaru: Yes, Mr. Speaker, Sir.

Mr. Elias Mutuma: Kindly, let us proceed.

(A video clip was played)

Mr. Elias Mutuma: Thank you. Kindly pause the video. The elder is giving very specific threats on that curse that will befall upon MCAs.

Mr. Adrian Arayaru: Yes. Mr. Speaker, Sir.

Mr. Elias Mutuma: What is he saying that will happen to MCAs if they go against the declaration?

Mr. Adrian Arayaru: Mr. Speaker, Sir, he is saying that if they go against the oath that he is about to administer, that curse will follow them to their homes and also families.

Mr. Elias Mutuma: Thank you and let us proceed.

(A video clip was played)

Mr. Elias Mutuma: Is the elder spilling some--- I do not even know to call to them. You will tell us what that is. Is the elder seen spilling some stuff to the MCAs?

Mr. Adrian Arayaru: Yes, Mr. Speaker, Sir.

Mr. Elias Mutuma: What is that stuff?

Mr. Adrian Arayaru: Mr. Speaker, Sir, I cannot tell what the stuff is because I did not go near. There was some security there. Those who were allowed to go there were senior people. They were the ones who were near. So, I do not know whether it was honey mixed with something else; I cannot tell.

Mr. Elias Mutuma: What does *Njuri Ncheke* use for that kind of oath taking?

Mr. Adrian Arayaru: Mr. Speaker, Sir, in any oath taking, the *Njuri Ncheke* used blood. An animal has to be slaughtered so that they perform an oath.

In the special oath that we have in Meru, which is undertaken by the *Njuri Ncheke* is the *Kithiri* oath, where an animal is slaughtered. There are things that I cannot say because they are said to those people who have been initiated into the *Njuri Ncheke*.

Mr. Elias Mutuma: Thank you. Can we play video No. KMV17?

(A video clip was played)

Mr. Elias Mutuma: You can pause that video.

Mr. Adrian Arayaru?

Mr. Adrian Arayaru: Yes.

Mr. Elias Mutuma: First of all, confirm who is the young gentleman that has been introduced to the podium and sat on that stool?

Mr. Adrian Arayaru: Mr. Speaker, Sir, that is the Deputy Governor of Meru County.

Mr. Elias Mutuma: What is he told to do or why is he being invited in front?

Mr. Adrian Arayaru: Mr. Speaker, Sir, they are crowning him to take the position of the governor.

Mr. Elias Mutuma: So, they are installing him as the Governor of Meru County to take over leadership?

Mr. Adrian Arayaru: Yes, Mr. Speaker, Sir.

Mr. Elias Mutuma: In that meeting are you able to see other leaders in Meru?

Mr. Adrian Arayaru: Yes, Mr. Speaker, Sir.

Mr. Elias Mutuma: Is that the same function where the MCAs were present?

Mr. Adrian Arayaru: Yes.

Mr. Elias Mutuma: The same day?

Mr. Adrian Arayaru: Yes.

Mr. Elias Mutuma: Finally, Mr. Adrian Arayaru, did the elders who are presiding over that function have the blessing of the *Njuri Ncheke* council of elders to conduct that function?

Mr. Adrian Arayaru: No. This is because *Njuri Ncheke* members got annoyed. That was on a Saturday. On Monday, we went to Buuru, that is the headquarters of the three sub-counties; that is the whole Tigania. We denounced what happened at Ncheru. We said we will go to cleanse that shrine because what happened there was not what should happen in a shrine. A shrine is a holy place. You cannot even kill an animal there or initiate a person into *Njuri Ncheke*, it is not allowed.

Mr. Elias Mutuma: Lastly, is *Njuri Ncheke* Council of Elders opposed to Governor Mwangaza's leadership in any way?

Mr. Adrian Arayaru: No.

Mr. Elias Mutuma: Has it in any way advised her removal from office?

Mr. Adrian Arayaru: No.

Mr. Elias Mutuma: Mr. Speaker, Sir, that is all for this witness.

The Speaker (Hon. Kingi): Counsel for the County Assembly. Please proceed with your witness for cross-examination.

Mr. Maranya Domisiano Mari: Mr. Speaker, Sir, my name is Maranya, counsel for the County Assembly. I will take the witness through the cross-examination. Mr. Arayaru, for how long have you been the Chairman of the caucus of *Njuri Ncheke* Council of Elders of the Ameru community? In other words, when were you elected?

Mr. Adrian Arayaru: Two weeks ago.

Mr. Maranya Domisiano Mari: That is after or before that meeting?

Mr. Adrian Arayaru: That is after. However, I held other positions in *Njuri Ncheke*.

Mr. Maranya Domisiano Mari: Were you conveniently appointed for purposes of your evidence today?

Mr. Adrian Arayaru: No.

Mr. Maranya Domisiano Mari: You have also said that you have been holding other positions in *Njuri Ncheke*.

Mr. Adrian Arayaru: Yes.

Mr. Maranya Domisiano Mari: Just to confirm, were you elected after the Impeachment Motion was tabled in the County Assembly?

Mr. Adrian Arayaru: I believe so.

Mr. Maranya Domisiano Mari: Please be mindful of time because I am being timed. Will it be true for me to say that you were elected, therefore, for purposes of your statement today so that you come under capacity of Njuri Ncheke Chairman?

Mr. Adrian Arayaru: No. I could have come even as a mere member of *Njuri Ncheke*.

Mr. Maranya Domisiano Mari: Can any member of *Njuri Ncheke* communicate on behalf of the entire group?

Mr. Adrian Arayaru: Yes. In the olden days, there were no leaders of *Njuri Ncheke*; there were *Njuri* or the wise men who were the leaders. It is just recently when we started having---

Mr. Maranya Domisiano Mari: It is your evidence that nowadays you have to speak through your officials.

Mr. Adrian Arayaru: No.

Mr. Maranya Domisiano Mari: You said in the past there was no.

Mr. Adrian Arayaru: There was not and even now there is no. Nobody is senior than the other even though we use the titles. Even the title I am using cannot make me the spokesperson of *Njuri Ncheke*.

Mr. Maranya Domisiano Mari: Well noted. As you speak, you are under oath. You said you are a member of *Njuri Ncheke*. You have vowed to speak the truth.

Mr. Adrian Arayaru: Yes.

Mr. Maranya Domisiano Mari: Are you conflicted in this whole scenario? Does your son-in-law work for Meru County Government as the chief officer?

Mr. Adrian Arayaru: Yes.

Mr. Maranya Domisiano Mari: Could you state his name?

Mr. Adrian Arayaru: Victor Akwalo Mugambi.

Mr. Maranya Domisiano Mari: Could I be right to say that you are here to protect the impeachment of the Governor and by extension protect the loss of job of your son-in-law?

Mr. Adrian Arayaru: No, reason being that my son-in-law was vetted by a competent Assembly and he passed.

Mr. Maranya Domisiano Mari: That notwithstanding, I put it to you that you have a conflict of interest as far as the Meru County Government leadership is concerned. Will I be right to say so?

Mr. Adrian Arayaru: No, you are not right.

Mr. Maranya Domisiano Mari: You have produced a clip allegedly played at a *Njuri Ncheke* forum. Was that a formal *Njuri Ncheke* forum?

Mr. Adrian Arayaru: It was not.

Mr. Maranya Domisiano Mari: You have said you are a veteran member of the *Njuri Ncheke*. Is that so?

Mr. Adrian Arayaru: Yes.

Mr. Maranya Domisiano Mari: Can an oath, as you have alleged, be conducted in a forum other than a formal *Njuri Ncheke* forum?

Mr. Adrian Arayaru: It can, if you are misled. That is why we are saying as members of *Njuri Ncheke*, we are going to cleanse the shrine because it was not done at the right place.

Mr. Maranya Domisiano Mari: Therefore, a *Njuri Ncheke* oath has to be done with their formalities to be followed before you administer an oath. Is that your evidence?

Mr. Adrian Arayaru: Yes, it is.

Mr. Maranya Domisiano Mari: You also said that one of the formalities is to slaughter of an animal. Is that so?

Mr. Adrian Arayaru: No. I was specific---

Mr. Maranya Domisiano Mari: My question is simple. Please listen. Is it a prerequisite that for you to administer an oath, you have to play some things, including what you said you cannot say here because there are non-members? You said including slaughtering an animal.

Mr. Adrian Arayaru: I said the three oathing. That is not the three oathing.

Mr. Maranya Domisiano Mari: How many oaths does *Njuri Ncheke* have?

Mr. Adrian Arayaru: Three.

Mr. Maranya Domisiano Mari: Of the three, are members required to slaughter an animal?

Mr. Adrian Arayaru: Not all of them.

Mr. Maranya Domisiano Mari: Is there any that is conducted in presence of non-members?

Mr. Adrian Arayaru: No.

Mr. Maranya Domisiano Mari: Was the meeting composed of only the members of *Njuri Ncheke*?

Mr. Adrian Arayaru: No.

Mr. Maranya Domisiano Mari: It is your statement that an oath can never be conducted in the presence of non-members.

Mr. Adrian Arayaru: It is. By strict *Njuri Ncheke* elders. Those ones went against---

Mr. Maranya Domisiano Mari: Anything conducted with presence of non-members is not an oath.

Mr. Adrian Arayaru: It is an oath. The words that were used there---

Mr. Maranya Domisiano Mari: He is speaking from both sides of his mouth. It is your evidence that anything conducted in presence of non-members is not an oath. That is what you have just said. It is on record.

Mr. Adrian Arayaru: I did not say that. Maybe you got me wrong.

Mr. Maranya Domisiano Mari: It is on record. Therefore, you mean that a *Njuri Ncheke* oath can be conducted in presence of non-members?

Mr. Adrian Arayaru: Yes.

Mr. Maranya Domisiano Mari: You are qualifying your answer. I want an unqualified answer. Do not be evasive. You are here to tell the truth. My question is:

Can an oath of a *Njuri Ncheke* be conducted in presence of members not initiated into the group?

Mr. Adrian Arayaru: I have said no, but it happened that day.

Mr. Maranya Domisiano Mari: If it happens, it means the same is not an oath.

Mr. Adrian Arayaru: It is.

Mr. Maranya Domisiano Mari: Mr. Speaker, Sir, the conduct of the witness needs to be noted for the avoidance of---

As a seasoned member of *Njuri Ncheke*, have you participated in conducting oaths before?

Mr. Adrian Arayaru: Yes.

Mr. Maranya Domisiano Mari: Can an oath be taken in the absence of an accuser and the accused?

Mr. Adrian Arayaru: Yes, because that was---

Mr. Maranya Domisiano Mari: In other words, does an oath involve two parties?

Mr. Adrian Arayaru: *Kithiri* oathing involves two parties.

Mr. Maranya Domisiano Mari: Now, in that particular oath, who were the two parties involved? Would I be right to say that the two parties involved, according to you, were Meru County Assembly and the Meru County Governor? Those are the two parties involved.

Mr. Adrian Arayaru: No. I am not saying that.

Mr. Maranya Domisiano Mari: I am asking if the two parties involved in this scenario of impeachment are two. One, who does the impeachment? Confirm if it is Meru County Assembly.

Mr. Adrian Arayaru: Yes, it is Meru County Assembly.

Mr. Maranya Domisiano Mari: To impeach who? Confirm it is the County Governor of Meru.

Mr. Adrian Arayaru: Yes.

Mr. Maranya Domisiano Mari: Was the County Governor of Meru present in that oathing ceremony?

Mr. Adrian Arayaru: She was not present.

Mr. Maranya Domisiano Mari: From the video that you played, I saw the presence of the Deputy Governor. Is the Deputy Governor a member of *Njuri Ncheke*?

Mr. Adrian Arayaru: No, he is not.

Mr. Maranya Domisiano Mari: I also saw a couple of children and ladies in that quorum. Is that true?

Mr. Adrian Arayaru: Yes.

Mr. Maranya Domisiano Mari: Are they members of *Njuri Ncheke*?

Mr. Adrian Arayaru: They are not.

Mr. Maranya Domisiano Mari: Are they allowed to participate in an oathing ceremony?

Mr. Adrian Arayaru: No.

Mr. Maranya Domisiano Mari: There is a translation to that video that is appearing on the screen. Was that translation part of the video?

Mr. Adrian Arayaru: Which one in particular?

Mr. Maranya Domisiano Mari: The English translation that you read as indicated on the video. Was it part of the video or it was translated thereafter?

Mr. Adrian Arayaru: It was part.

Mr. Maranya Domisiano Mari: In which language is the translation?

Mr. Adrian Arayaru: English language.

Mr. Maranya Domisiano Mari: Were the elders speaking in English?

Mr. Adrian Arayaru: That day?

Mr. Maranya Domisiano Mari: Yes, that day.

Mr. Adrian Arayaru: There were those who were speaking in English---

Mr. Maranya Domisiano Mari: From their voices.

Mr. Adrian Arayaru: No, they were speaking in Kimeru.

Mr. Maranya Domisiano Mari: Therefore, you had to get someone to input the translation. Is that so?

Mr. Adrian Arayaru: I am sure you are “Meruan” and you---

Mr. Maranya Domisiano Mari: I am asking a question. That was not part of the original video.

Mr. Adrian Arayaru: It was the correct translation.

Mr. Maranya Domisiano Mari: Please be mindful of time.

Mr. Adrian Arayaru: Yes.

Mr. Maranya Domisiano Mari: Was that translation part of the video?

Mr. Adrian Arayaru: It was because those are the words that were used, only that it is in a different language.

Mr. Maranya Domisiano Mari: Did they speak in two languages?

Mr. Adrian Arayaru: Who?

Mr. Maranya Domisiano Mari: The statements on the video are in Kimeru. The translation is in English language.

Mr. Adrian Arayaru: Yes.

Mr. Maranya Domisiano Mari: Would I be right to say the translation was done after the video was taken?

Mr. Adrian Arayaru: Maybe.

Mr. Maranya Domisiano Mari: I have heard the Hon. Speaker of the County Assembly speak of one Jacob Linturi---

Mr. Speaker, Sir, if we could get to that first clip where the County Assembly Speaker is making a statement. The Speaker spoke of Jacob Linturi as the kingpin while your translation spoke of Mithika Linturi as the kingpin. Did you have a verbatim translation of---?

The Speaker (Hon. Kingi): Counsel, which video are you referring to so that we pick it up and play for you?

Mr. Maranya Domisiano Mari: It is the first video that was played. I am told it is KM7.

Please confirm that the name you can see is Mithika Linturi.
You can pause.

(The video clip was paused)

What did the Speaker say?

Mr. Adrian Arayaru: That they will be led by Mithika M'Linturi.

Mr. Maranya Domisiano Mari: What is the name of the kingpin, the leader?

Mr. Adrian Arayaru: Mithika Linturi.

Mr. Maranya Domisiano Mari: Confirm that the same is not Mithika M'Linturi.
In fact, those are two different names.

Mr. Adrian Arayaru: I cannot confirm because I know him.

Mr. Maranya Domisiano Mari: This is an interpreter who was interpreting verbatim.

Mr. Adrian Arayaru: I cannot confirm that I know him the way I know you.

Mr. Maranya Domisiano Mari: Confirm that what is written there is Mithika Linturi and not Mithika M'Linturi

Mr. Adrian Arayaru: It is.

Mr. Maranya Domisiano Mari: Therefore, that translation does not capture the actual words stated by the Speaker. It is different.

Mr. Adrian Arayaru: According to you.

Mr. Maranya Domisiano Mari: Even according to yourself.

Mr. Adrian Arayaru: According to me, Mithika Linturi is the same as Mithika M'Linturi.

Mr. Maranya Domisiano Mari: That is not a verbatim translation of what is being stated. Is it so?

Mr. Adrian Arayaru: Yes.

Mr. Maranya Domisiano Mari: Very well. You said you were not allowed anywhere close to the gathering of *Njuri Ncheke*. Is that so?

Mr. Adrian Arayaru: Not *Njuri Ncheke* gathering. There was a podium where the leaders were, *akina* Mithika M'Linturi. That is what you want to hear.

Mr. Maranya Domisiano Mari: You did not go closer to them despite you being the chairman or an official for quite a long time.

Mr. Adrian Arayaru: If I am right, you saw those people in uniform. Anybody who had no uniform, could not reach where they were performing what they were doing.

Mr. Maranya Domisiano Mari: Now, of all that conversation you have heard from Hon. Kiraitu Murungi and other members, is there any word that you can point out to me referring to the removal or impeachment of the Governor? You can refer to the technical persons to do it.

Mr. Adrian Arayaru: They have not mentioned---

Mr. Maranya Domisiano Mari: I will take that.

Mr. Adrian Arayaru: Do not be quick to take because I should also add what I want to.

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Mr. Maranya Domisiano Mari: You have answered my question successfully. Now, what was the purpose of that function?

Mr. Adrian Arayaru: It was announced through---

Mr. Maranya Domisiano Mari: What was the purpose of that function? Leave alone the announcement.

Mr. Adrian Arayaru: I am coming to the point.

Mr. Maranya Domisiano Mari: No, I am mindful of time. We are here on a time constraint.

The Speaker (Hon. Kingi): Hon. Witness, please answer the question.

Mr. Adrian Arayaru: Sorry, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Proceed, Counsel.

Mr. Maranya Domisiano Mari: Very well and thank you, Mr. Speaker, Sir. What was the purpose of that meeting?

Mr. Adrian Arayaru: The purpose was to plant trees.

Mr. Maranya Domisiano Mari: To plant trees and not a formal meeting of *Njuri Ncheke*. Can you transact a *Njuri Ncheke* meeting in a tree planting forum?

Mr. Adrian Arayaru: It happened that day.

Mr. Maranya Domisiano Mari: Should it happen ideally?

Mr. Adrian Arayaru: No, it should not.

Mr. Maranya Domisiano Mari: You said that you were there briefly. How brief?

Mr. Adrian Arayaru: I think an hour and a half or two hours. I cannot be specific.

Mr. Maranya Domisiano Mari: You cannot be specific?

Mr. Adrian Arayaru: Yes.

Mr. Maranya Domisiano Mari: How long did the meeting take?

Mr. Adrian Arayaru: It took long because---

Mr. Maranya Domisiano Mari: How long did it take?

Mr. Adrian Arayaru: Very many hours because I---

Mr. Maranya Domisiano Mari: How many hours? A whole day or two days?

Mr. Adrian Arayaru: It took around seven hours.

Mr. Maranya Domisiano Mari: So, you only attended just a third of that meeting.

Mr. Adrian Arayaru: Yes, but I followed everything because it was live.

Mr. Maranya Damisiano Mari: That means much of what you are saying or insinuating you were not presently there when it occurred.

Mr. Adrian Arayaru: What is now much?

Mr. Maranya Damisiano Mari: You were not there. You left after one and a half hours or two and a half hours and it took over seven hours. You were not there.

Mr. Adrian Arayaru: Yes.

Mr. Maranya Damisiano Mari: You have produced a clip where the former Governor of Meru Kiraitu Murungi says that you will be our governor. Is that so? He actually says in Kiswahili "*Wewe ni tegemeo.*"

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Mr. Adrian Arayaru: “Wewe ni tegemeo. We are seeing you becoming the Governor of Meru.”

Mr. Maranya Damisiano Mari: Did he say when you will become the Governor of Meru? Did he say whether it is now or in the future?

Mr. Adrian Arayaru: He did not.

Mr. Maranya Damisiano Mari: There is a statement that *wewe ni tegemeo* which you have translated loosely to mean you are our leader. According to you, is that translation correct or incorrect?

Mr. Adrian Arayaru: It is correct.

Mr. Maranya Damisiano Mari: What is a leader in Kiswahili?

Mr. Adrian Arayaru: *Kiongozi*

Mr. Maranya Damisiano Mari: And it is not tegemeo. What is *tegemeo* in Kiswahili?

Mr. Adrian Arayaru: It is tegemeo.

Mr. Maranya Damisiano Mari: Sorry. What is *tegemeo* in English language?

Mr. Adrian Arayaru: You can be depended on or being reliable.

Mr. Maranya Damisiano Mari: Please confirm according to your just ended translation that the word “tegemeo” in Kiswahili does not mean leader in English.

Mr. Adrian Arayaru: Actually it does not.

Mr. Maranya Damisiano Mari: Please now confirm that was a wrong interpretation of the translation. Be mindful of time.

Mr. Adrian Arayaru: Yes.

Mr. Maranya Damisiano Mari: In that video, you have spoken of sour milk. The very last video that was played. In video No.17, there is a reference to sour milk if the clip can be played for the interest of the hon. Senators.

There is an interpretation. The clip can be played so that I yield some minutes to my colleague.

(A video clip was played)

In other words, for avoidance of wasting time, there was reference to milk, which was interpreted to be sour milk. Is there a difference between milk and sour milk?

Mr. Adrian Arayaru: Yes, there is.

Mr. Maranya Damisiano Mari: In the clip did they refer to it as sour milk or milk?

Mr. Adrian Arayaru: I have not seen that unless the clip is played again.

Mr. Maranya Damisiano Mari: Anyway, among my parting shot, when did the conversation of impeachment of the Governor begin?

Mr. Adrian Arayaru: It began after the function that was---

Mr. Maranya Damisiano Mari: That function was on the 14th of October.

Mr. Adrian Arayaru: Then what is your question?

Mr. Maranya Damisiano Mari: I am asking that you confirm that the function was on the 14th of October.

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Mr. Adrian Arayaru: Yes, it was.

Mr. Maranya Damisiano Mari: Confirm that the conversation of impeachment began way back in August or September.

Mr. Adrian Arayaru: No.

Mr. Maranya Damisiano Mari: Do you know when the Motion was tabled in the County Assembly?

Mr. Adrian Arayaru: No.

Mr. Maranya Damisiano Mari: Have you read the Impeachment Motion against the Governor?

Mr. Adrian Arayaru: No.

Mr. Maranya Damisiano Mari: I want to put it to you that one of the grounds of impeachment includes misappropriation of public funds and usurpation of county powers of the statutory bodies. Does your evidence today answer to any of those charges that the governor has been charged to have committed?

Mr. Adrian Arayaru: No.

Mr. Maranya Damisiano Mari: It does not address those questions.

Mr. Adrian Arayaru: Yes, because my affidavit is different from that.

Mr. Maranya Damisiano Mari: It does not address the question of---

The Speaker (Hon. Kingi): I think counsel that is for the Senators to decide.

Mr. Maranya Damisiano Mari: I am well guided, Mr. Speaker, Sir. You have stated that *Njuri Ncheke* elders are responsible for shaping the leadership of Meru.

Mr. Adrian Arayaru: Yes.

Mr. Maranya Damisiano Mari: And they have indeed shaped all the leadership of Meru, including the election of leaders, they have informed and advised. Is that so?

Mr. Adrian Arayaru: Actually that one has not happened to this case that we have now.

Mr. Maranya Damisiano Mari: Not the case. I am asking because, in the past, they have shaped the leadership of Meru. They have influenced the leadership of Meru.

Mr. Adrian Arayaru: Not influencing.

Mr. Maranya Damisiano Mari: They have shaped it.

Mr. Adrian Arayaru: Yes.

Mr. Maranya Damisiano Mari: Including the election of the governor who is being impeached?

Mr. Adrian Arayaru: No. The reason why I am saying no is because there is no time that we have sat down as *Njuri Ncheke* either to advise the Governor and her deputy--

Mr. Maranya Damisiano Mari: Hon. Speaker, for the sake of time, I yield a few minutes to my colleague Mr. Muriuki to conclude.

The Speaker (Hon. Kingi): Counsel, cross-examine on different areas. There is a notice to the other witness. You actually cross-examined areas that your colleague had covered. So, if an area has been covered, please, do not return there.

Mr. Eric Muriuki: Thank you, Mr. Speaker, Sir. Mr. Adrian, you indicated while standing there that when an oath is administered, things are said that you cannot even speak in this Senate Chamber. Is that correct?

Mr. Adrian Arayaru: I did not say that. I said that there are things which are used which I cannot say in this Chamber.

Mr. Eric Muriuki: Exactly. In that video that you have seen, can you point us to any of those things in the video?

Mr. Adrian Arayaru: Which ones?

Mr. Eric Muriuki: The videos that have been played, can you point us to any of those things that you have referred to?

Mr. Adrian Arayaru: No.

Mr. Eric Muriuki: Bwana Adrian, you will agree with me that the words used there *musyetyo* means to swear, right?

Mr. Adrian Arayaru: Yes.

Mr. Eric Muriuki: And the proper Kimeru word for oath is *muuma*. Right?

Mr. Adrian Arayaru: *Musyetyo* and *muuma* are the same.

The Speaker (Hon. Kingi): Counsel, you know, the Senator for Meru and I think Sen. Mo Fire are the ones who understand Kimeru here. If you start exchanging with witnesses on Meru words, you are basically leaving the Senate behind.

Mr. Eric Muriuki: Mr. Speaker, Sir, I am well guided. Mr. Adrian, are you a registered voter?

Mr. Adrian Arayaru: Yes, I am.

Mr. Eric Muriuki: Did you vote in the last election?

Mr. Adrian Arayaru: Yes, I voted.

Mr. Eric Muriuki: To the best of your knowledge, is a governor installed by the council of elders or is a governor voted in by the voters?

Mr. Adrian Arayaru: The governor is voted in by the voters.

Mr. Eric Muriuki: So, your testimony is that the council of elders installed a governor is just hearsay and information that cannot be relied on?

Mr. Adrian Arayaru: That is why I am here to say that was wrong.

Mr. Eric Muriuki: When you look at the video that you have played, what is the title of the video that you have provided by your counsel? Does it say tree planting?

Mr. Adrian Arayaru: Yes.

Mr. Eric Muriuki: Where did you say that event took place?

Mr. Adrian Arayaru: At Chiru.

Mr. Eric Muriuki: You will agree with me that, the place where the events took place is the main shrine of the *Njuri Ncheke* Council of Elders.

Mr. Adrian Arayaru: Yes, it is.

Mr. Eric Muriuki: It is in fact the headquarters.

Mr. Adrian Arayaru: Yes.

Mr. Eric Muriuki: You will agree with me, that you said by yourself, that an animal cannot be killed at the shrine.

Mr. Adrian Arayaru: Yes.

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Mr. Eric Muriuki: It was also your testimony that oaths are administered when animals are killed or animals have to be killed for an oath to be administered.

Mr. Adrian Arayaru: I cited one oath, that is *Kithiri* in Meru.

Mr. Eric Muriuki: You have testified that no elder, even the chairman speaks on behalf of the council, right? No elder speaks on behalf of *Njuri Ncheke*, that is what you said?

Mr. Adrian Arayaru: I said, you can speak as a leader, and then I said, in the old days there were no leaders, there were *Njuris'* or the wisemen who were the leaders of *Njuri Ncheke*.

Mr. Eric Muriuki: You have said while standing there, that even someone with a position like chairman does not speak on behalf of *Njuri Ncheke*. That is what you said.

Mr. Adrian Arayaru: I think you got me wrong.

The Speaker (Hon. Kingi): Counsel, I am getting a bit uncomfortable. I wish you could cross-examine on areas that your colleague has not cross examined on. Otherwise, you are starting as if your colleague has not done any work. This is because all those questions that you are asking are exactly what your colleague has asked.

The answers have been provided. Pick on areas that have not been covered by colleague so that we make progress.

Mr. Eric Muriuki: Thank you, Mr. Speaker, Sir. I am well guided. I request that the first video be played, so that we point some inconsistencies between the translations and the words that are spoken.

(A video clip was played)

Kindly, pause the video. Did you hear that speaker ask a question?

Mr. Adrian Arayaru: Yes.

Mr. Eric Muriuki: Can you see any questions on those translations?

Mr. Adrian Arayaru: The question mark is not there, but the statement is there.

Mr. Eric Muriuki: Can you see any question there?

Mr. Adrian Arayaru: That is why I am saying, it is only the question mark which is not there, but the statement is there.

Mr. Eric Muriuki: The speaker talks about Meru progressing. Is that correct?

Mr. Adrian Arayaru: Yes.

Mr. Eric Muriuki: Is that appearing anywhere on those captions?

Mr. Adrian Arayaru: I think it appears in the first one if I am not wrong.

Mr. Eric Muriuki: Can we proceed with the video, please?

(A video clip was played)

Kindly, pause the video.

Mr. Witness, does the speaker ask some people to come so that a hand of blessing may be laid on them?

Mr. Adrian Arayaru: Yes.

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Mr. Eric Muriuki: Does that appear anywhere in the translations? The translation that you have provided.

Mr. Adrian Arayaru: That is not the translation.

Mr. Eric Muriuki: Thank you. That is not the translation.

Mr. Adrian Arayaru: I am not saying that is not the translation which you asked unless if the video is replayed.

Mr. Eric Muriuki: Mr. Adrian Arayaru, the story that is being told by the speaker who is currently holding the microphone right now, is it part of the Meru folklore or the general collection of the Meru culture, stories and whatever view?

Mr. Adrian Arayaru: It is.

Mr. Eric Muriuki: Thank you.

Mr. Adrian Arayaru: It is referring to someone.

Mr. Eric Muriuki: Mr. Witness, you will agree with me that Article 11 of our Constitution, recognizes culture as the foundation of our nation.

Mr. Adrian Arayaru: Yes.

Mr. Eric Muriuki: You will agree with me, that there is not a single illegal activity that has been shown in those videos.

Mr. Adrian Arayaru: No.

Mr. Eric Muriuki: Thank you.

Mr. Eric Muriuki: You will, therefore, agree with me that trying to paint the words of those speakers as anything other than what they were; a blessing and a cultural folklore being told, it is an attempt to disparage the culture of the Meru people.

Mr. Adrian Arayaru: No, because I have not done that.

Mr. Eric Muriuki: Mr. Speaker, Sir, that is all from me. I discharge the witness.

The Speaker (Hon. Kingi): Thank you.

Hon. Senators, we have five minutes to seek any clarification or questions.

Mr. Elias Mutuma: Apologies, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sorry, it is time for re-examination?

Mr. Elias Mutuma: Yes.

The Speaker (Hon. Kingi): Sorry, counsel.

Mr. Elias Mutuma: I will take less than four minutes in re-examination. You have been told that several of those translations are inaccurate.

Mr. Adrian Arayaru: Yes.

Mr. Elias Mutuma: Were you relying on the translations or on your own understanding of the Meru language?

Mr. Adrian Arayaru: I was relying on my own understanding of the Meru language.

Mr. Elias Mutuma: Did you correctly translate what was being said?

Mr. Adrian Arayaru: Yes.

Mr. Elias Mutuma: We have also been told that, that was a tree planting ceremony, is that your testimony?

Mr. Adrian Arayaru: Actually, it was not because in that clip we have not seen anywhere where we planted trees.

Mr. Elias Mutuma: Thank you, very much. You have also been told that, that could not have been an oath taking ceremony because, all elders were not present and that non-members of *Njuri Ncheke* were also present in that ceremony. Did you witness an oath being administered?

Mr. Adrian Arayaru: Yes.

Mr. Elias Mutuma: Lastly, did you witness the Deputy Governor, being installed as the Governor of Meru?

Mr. Adrian Arayaru: Yes.

Mr. Elias Mutuma: Did the elders in that clip have the blessing of the wider *Njuri Ncheke* to administer the oath?

Mr. Adrian Arayaru: They did not because *Njuri Ncheke* cannot crown a governor. A governor is voted for. If the *Njuri Ncheke* has that power, we would not have an electoral commission.

The Speaker (Hon. Kingi): Hon. Witness answer the question as asked by the counsel. Did they have blessings of the *Njuri Ncheke*?

Mr. Adrian Arayaru: No, they did not have.

Mr. Elias Mutuma: That is all for this witness, Mr. Speaker, Sir. Thank you.

The Speaker (Hon. Kingi): Thank you. Hon. Senators, we have five minutes to ask questions or clarifications. Sen. Cherarkey.

Sen. Cherarkey: Mr. Speaker, Sir, mine is to the witness. The witness has told us that the Meru County Assembly was competent when they vetted his son-in-law who happens to be a chief officer. Is it competent now that it carried out the impeachment proceedings?

Secondly, in that meeting, were the words ‘impeachment of a governor’ used? Thirdly, when was the witness appointed as an official of the *Njuri Ncheke*? My final question is whether this witness has the authority to speak on behalf of the *Njuri Ncheke* and whether the Cabinet Secretary in-charge of Environment, Climate Change and Forestry was present in that meeting?

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Proceed to respond to that question.

Mr. Adrian Arayaru: Mr. Speaker, Sir, I will start with the first one where I talked about the competence of the county assembly. It vetted my son-in-law and he passed that vetting.

With regard to the impeachment, those are two different things. There rules and regulations on impeachment and vetting are not the same. Therefore, one cannot compare the vetting of my son-in-law to the impeachment of a governor.

On the second question, I was elected, not handpicked. I said this about two weeks ago that I had other positions. I am the organising secretary of *Rwathene-Njuri Ncheke* House. Therefore, I was a leader even before being given the position of the chairman of three sub-counties.

I request the hon. Senator to come again with the other question.

The Speaker (Hon. Kingi): Was the Cabinet Secretary in-charge of Environment, Climate Change and Forestry present in that tree-planting exercise?

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Mr. Adrian Arayaru: Yes, Mr. Speaker, Sir. She was there. What surprised us is that an event attended by a senior person like the honourable Cabinet Secretary turning into a political one yet it was a tree-planting exercise.

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

Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir. My question is to the witness. What does it exactly mean when the *Njuri Ncheke* sits someone on a seat and announces them? Does it mean that they have removed the current Governor of Meru and sat another one on the seat of Meru and what impact does it have?

Mr. Adrian Arayaru: Mr. Speaker, Sir, it means that *Njuri Ncheke* is powerful in our community and anything that they say is taken seriously. However, they have no mandate whatsoever to do that even though it happened on that day. It is not the stand of *Njuri Ncheke*.

Even if you do that, you cannot remove the incumbent governor from her seat. You only make people think that that thing will happen.

The Speaker (Hon. Kingi): Hon. Senators, we need to move to the next witness. You can now stand down.

Counsel for the Governor, kindly call your third witness.

*(The Witness for Meru County Governor (Mr. Dickson Munene)
was ushered into the Chamber)*

Mr. Elias Mutuma: Mr. Speaker, Sir, our next witness is Mr. Dickson Munene. The witness shall be led by Ms. Bridah Kimathi.

The Speaker (Hon. Kingi): Proceed to take your oath.

*((The Witness for Meru County Governor (Mr. Dickson
Munene) took the Oath)*

Mr. Duncan Okubasu: Mr. Speaker, Sir, my colleague, Ms. Kimathi will take on the witness for about 10 minutes to address a certain aspect of the claim and then I will continue with the exam in chief. We expect to take around an hour.

The Speaker (Hon. Kingi): You had four hours. You have done two, you remain with two hours. If this witness takes two, the other witness will take the other hour.

Ms. Bridah Kimathi: Thank you, Mr. Speaker, Sir. For record purposes, my name is Bridah Kimathi. Mr. Dickson Munene, kindly introduce yourself.

Mr. Dickson Munene: Mr. Speaker, Sir, my name is Dickson Munene Nkanata. I am the CECM Legal Affairs, Public Service Management and Administration at the County Government of Meru.

Ms. Bridah Kimathi: Do you confirm that you swore an affidavit in support of the response to the Governor?

Mr. Dickson Munene: Yes, I confirm.

Ms. Bridah Kimathi: Is this the affidavit on page 46 of the response by the Governor?

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Mr. Dickson Munene: Yes, it is.

Ms. Bridah Kimathi: Do you confirm that the signature at page 72 is yours?

Mr. Dickson Munene: I confirm, Mr. Speaker, Sir.

Ms. Bridah Kimathi: Have you heard the opportunity to read the Motion?

Mr. Dickson Munene: Yes, I have.

Ms. Bridah Kimathi: Kindly read for us Count No.1(a)?

Mr. Dickson Munene: Count No.1 is misappropriation and misuse of county resources. It is alleged that the Governor has grossly violated those provisions of the law in the following way:

“(a) The embezzlement of county funds through the Governor’s sisters (Rose Kinya Guantai and Miriam Guantai), brother (Kenneth Guantai Murangiri), brother-in-law (Nephath 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”;

Ms. Bridah Kimathi: It was claimed yesterday that Kshs78 million was misappropriated by the people named in that claim. Is that true?

Mr. Dickson Munene: Mr. Speaker, Sir, that was the allegation, but it was not true.

Ms. Bridah Kimathi: It was also claimed that the Kshs78million has been met by an account of Kshs2 million. Is that true?

Mr. Dickson Munene: Again, that was the allegation, but the position is that the chance and particulars of this count was directed towards particular individuals who are Ms. Rose Kinya Guantai, Ms. Mirriam Guantai, Mr. Kenneth Guantai Murangiri, and Mr. Nephath Kinyua and Mr. Edwin Mutuma Murangiri.

In the process, we sought to get information as it appears on the record of the Integrated Financial Management Information System (IFMIS) for these particular individuals. The payments that were made and would have been attributed to these particular individuals.

Ms. Bridah Kimathi: Are you referring to the IFMIS report they have presented?

Mr. Dickson Munene: Yes, it is based on the IFMIS record that appears on Pages 17 to 29 of their documents.

Ms. Bridah Kimathi: Is there any allegation that has been made for failure to account for the Kshs78 million that was alluded to yesterday?

Mr. Dickson Munene: Mr. Speaker, Sir, there is no such allegation in this particular count. It is not actually an allegation of the amount that the Governor is said to have failed to account.

Ms. Bridah Kimathi: Mr. Nkanata, in your understanding, the payments that you have just explained and alluded to in the IFMIS extract are the payments made subject to a specific budget or budgeted allocation?

Mr. Dickson Munene: Yes Mr. Speaker, Sir. The payments were made pursuant to the budget of Meru County Government for Financial Year 2022/2023 when they voted for the office of the Governor.

Ms. Bridah Kimathi: What is the nature of that budget item?

Mr. Dickson Munene: It is basically a recurrent expenditure. The office of the Governor does not have a budget for development.

Ms. Bridah Kimathi: You can confirm that there is no allegation against the Governor for failure to account for this amount?

Mr. Dickson Munene Nkanata: There is no such allegations.

Ms. Bridah Kimathi: An issue was raised around the entries in the said IFMIS extract supplied by the County Assembly. The issue raised describes the prepayments. Is there any complaint in the Motion that you read about the prepayments?

Mr. Dickson Munene: Mr. Speaker, Sir, there is no such complaint in the Motion.

Ms. Bridah Kimathi: In any event, what do you understand generally on the term 'prepayment' as presented in the IFMIS extract?

Mr. Dickson Munene: My understanding on the term 'prepayment' as used is that these were funds or money paid before a certain activity would happen. For instance, you are supposed to travel and you get paid in arrangement to that travel or there is supposed to be an organised event and there is payment in preparation of that event. Those are prepayments.

Ms. Bridah Kimathi: What happens to these prepayments after they have been paid? Is there an accountability for the same?

Mr. Dickson Munene: They are supposed to be accounted by the person whom the money is deposited to in the account.

Ms. Bridah Kimathi: You confirm that prepayments is actually an accepted practice, so to say?

Mr. Dickson Munene: Yes, it is. In fact, if you look at that IFMIS extract, from Page 17 to 29--- I would like to take you through it and give an example on the same; the prepayments that appear on the Page 17. There are a number of entries of 1st July, 2022--

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Ms. Bridah Kimathi: Mr. Speaker, Sir, that is Page 17 of Volume two of the County Assembly's documents. Proceed.

Mr. Dickson Munene: On 1st July, 2022, there are nine payments whose item description is prepayments. I would like to confirm that those are payments that were made in the previous regime of the former Governor of Meru County, Kiraitu Murungi.

Ms. Bridah Kimathi: In any case, is there any charge that the Governor is facing for failure to account for these prepayments?

Mr. Dickson Munene: Mr. Speaker, Sir, there is no such charge.

Ms. Bridah Kimathi: Kindly proceed to Count 1(b). If you could read it for us.

Mr. Dickson Munene: Count 1(b) is the withdrawal of county funds under the guise of payments for various supplies by the Governor's relatives, yet they are ineligible to tender for or supply any goods or services to the county governments.

Ms. Bridah Kimathi: What is the charge based on?

Mr. Dickson Munene: The charge is still based on the complaint that was alluded to and appears in the Volume---

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Ms. Bridah Kimathi: Is this the complaint on Page one of Volume two?

Mr. Dickson Munene: Yes, Page one to 29 of volume two. It is the complaint on Kshs1 million for Mr. Thurania Salesio Mutuma.

Ms. Bridah Kimathi: In this charge, it has been alleged that the Governor's relatives supplied the county government; rather, funds were misappropriated through the Governor's relatives where they provided the county government with supplies. What is the nature of those supplies? Are you aware of any supplies that were made?

Mr. Dickson Munene: Mr. Speaker, Sir, I am not aware of any supplies that were made by the alleged Governor's relatives. However, from the face of the complaint, you can see the item description code, 'hospital supplies.'

Ms. Bridah Kimathi: Can I take you to Page six of volume two; specifically, Voucher No.65735?

Mr. Dickson Munene: Yes, I am there. It reads 'hospital supplies and others.'

Ms. Bridah Kimathi: Can you confirm that the Mover of the Motion alluded to the fact that the supply of this specific voucher was for hospital supplies?

Mr. Dickson Munene: Yes, that was what was alluded by the Mover of the Motion. The reason we did not belabour to explain this further is because the charge was against the governor's relatives who had been previously listed.

Under this particular complaint, on Pages four to six that you have taken me through is a transaction history between Ms. Kathure Rukaria Catherine, who has not been listed among the alleged Governors relatives.

Ms. Bridah Kimathi: Regardless, but in relation to that charge, I would like you to read Page 19 on volume two of the bundle of documents of the county assembly.

Mr. Dickson Munene: I am there.

Ms. Bridah Kimathi: On that page, can you see the voucher number 65735 that is alleged on Page six as hospital supplies?

Mr. Dickson Munene: Yes, I can see it.

Ms. Bridah Kimathi: Can you confirm that this is the same voucher number?

Mr. Dickson Munene: Yes, it is.

Ms. Bridah Kimathi: What was the payment for this specific voucher number made for?

Mr. Dickson Munene: Hospitality supplies.

Ms. Bridah Kimathi: Would you say this is a deliberate attempt to misrepresent facts by the Mover of the Motion?

Mr. Dickson Munene: This was a deliberate attempt by the complainant and the Mover of the Motion fell into this, by concluding that this was the hospital supplies, as opposed to hospitality supplies.

Ms. Bridah Kimathi: Let us go back to the Integrated Financial Management Information Systems (IFMIS) report that is from Pages 17 to 29 of Volume II. Was this report formally requested for and supplied?

Mr. Dickson Munene: It was not.

Ms. Bridah Kimathi: Is the report presented before this House certified?

Mr. Dickson Munene: It is not certified.

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Ms. Bridah Kimathi: It has been alleged that some vouchers lack one or two signatures. I refer you to the vouchers that were produced on Pages 19 to 342 of our index of exhibits. Are you aware that the governor produced vouchers on Pages 19 to 342?

Mr. Dickson Munene: I am aware.

Ms. Bridah Kimathi: It has been alleged that these vouchers lack one or two signatures. In your knowledge and understanding, could you explain this?

Mr. Dickson Munene: I can explain. We were given three days to respond to this Motion. The external auditors are at Meru County and some of the documents we would have wanted to rely on are with the external auditors. We brought copies of documents from the chief of staff. It appears that some of these copies of the documents that the chief of staff made are not final vouchers signed at the time of making the payments. These are copies of vouchers signed and forwarded to the Department of Finance, so that they can effect payment. Some of the copies of vouchers are attached, and the director of accounts is indicated to have not signed. This is a copy made from the copies that were with the chief of staff.

Ms. Bridah Kimathi: Are you confirming that the original copies are with the external auditors?

Mr. Dickson Munene: Yes. The original copies are with the external auditors. If we had been given more time to get the original copies, they would have been supplied. I am sure all of them have been signed.

Ms. Bridah Kimathi: Is it your testimony that this impeachment Motion is immature?

Mr. Dickson Munene: In my opinion, it was premature. If they wanted to insist on bringing a charge against the misappropriation and misuse of county resources, then, it would have worked better to have a report of the external auditor who is carrying out audit at the moment. That is even further emphasized by a letter from the CECM, Finance. The letter appears in the bundle of documents on Page 31 of Volume II.

The Public Finance Management (PFM) Act under Section 164 makes provision for the county treasury of the County Government to prepare and submit to the Auditor General the annual finance statements in respect of the county government in format to be prescribed by the Accounting Standards Board.

She further indicates the document that usually accompany this. The statement would include the services for which the appropriated money was spent, the amount actually spent on each service, the status of each vote compared with the appropriation for the vote, a statement explaining any variations between the actual expenditure and the sums vote head and any other information specified by the county treasury.

All this would have helped to explain those entries in the IFMS. If at all there was any issue, it would have been flagged.

Ms. Bridah Kimathi: Thank you. From your understanding then, is there any impeachable offence on these two on the account of the Governor?

Mr. Dickson Munene: I do not see any impeachable offence in my opinion.

Ms. Bridah Kimathi: Thank you, Mr. Munene.

Mr. Temporary Speaker, Sir, I yield the witness to Mr. Okubasu.

Mr. Duncan Okubasu: Mr. Speaker, Sir, my name is Okubasu. I will take on to the witness for the remainder of the questions. I start by a claim that was made about employment of traffic marshals. For this, I will refer you to Page 394 of Volume II.

Is it true that the Governor established and recruited traffic marshals?

Mr. Dickson Munene: It is not true.

Mr. Duncan Okubasu: What is your response?

Mr. Dickson Munene: My response is; the Governor flagged a pilot test for traffic marshals. This explanation is found from Page 394 of the letter of the County Secretary to the County Public Service Board.

The County Secretary indicates that Meru Town has been overwhelmed with traffic jams making its special services such as ambulance and fire fighting get inconvenienced and with repercussions. The existing enforcement officers who are in charge of cleaning the town or ensuring that there is no traffic jam are few.

The Temporary Speaker (Sen. Wakili Sigei): Counsel, kindly direct the House on which document you are referring to.

Mr. Duncan Okubasu: We are referring to Volume II of the County Assembly's documents at Page 394 to be precise.

The Temporary Speaker (Sen. Wakili Sigei): Very well, proceed.

[The Temporary Speaker (Sen. Wakili Sigei) left the Chair]

[The Speaker (Hon. Kingi) resumed Chair]

Mr. Dickson Munene: In that letter, the County Secretary confirms that they have pilot-tested the initiative using the cleaners by training them and having them do this work. They found that the initiative was highly successful. So, it is a letter requesting the CPSB to create the positions of the traffic marshals.

Mr. Duncan Okubasu: So, it is your position that those positions for traffic marshals are yet to be established.

Mr. Dickson Munene: Mr. Speaker, Sir, they are yet to be established. They are in the process of being established subject to meeting the requirements that the CPSB had indicated.

Mr. Duncan Okubasu: Okay. We will leave that issue and then go to an issue that is raised on cleaners who have been designated as senior support staff.

I want to lead you to Page 373 of volume two. Do you have any explanation as to the designation of a cleaner as a senior support staff?

Mr. Dickson Munene: Mr. Speaker, Sir, I indicated that as the CECM of Public Service, I do not have any information as to a designation of a cleaner into a senior support staff. I cannot tell the authenticity of the copies of the payslips that have been attached here.

All I have noticed is that the purported senior support staff are being paid the same amount that a cleaner is paid, which is Kshs15,000 per month. That is the basic

salary for a cleaner. So, I would highly suspect that this is something that has been edited from a cleaner to a senior support staff.

Mr. Duncan Okubasu: Okay, away from that, there is this allegation about Mr. Nephath Kinyua being assigned the position of the Director of External Linkages without a competitive recruitment process. It is an issue that arose here.

Mr. Dickson Munene: Yes. Mr. Speaker, Sir.

Mr. Duncan Okubasu: What is your position about it?

Mr. Dickson Munene: My position about this is that Mr. Nephath Kinyua, who is an administrator in the Office of the Deputy Governor, was deployed to perform the functions of a Director of External Linkages.

This was done after the substantive person who had been appointed for that position, Mr. Vincent Mutui's, academic qualifications and degrees were verified by the CPSB and found to be forged. For that particular reason, his appointment was revoked. So, this deployment was made awaiting substantive appointment of another Director for External Linkages.

Mr. Duncan Okubasu: Okay. Has that happened already or not yet?

Mr. Dickson Munene: Mr. Speaker, Sir, it has happened.

Mr. Duncan Okubasu: It has happened?

Mr. Dickson Munene: Yes.

Mr. Duncan Okubasu: Okay. How about the other claim that was made of Mr. Kenneth Mwitiri Riungu being appointed without the approval of the County Assembly?

Mr. Dickson Munene: Mr. Speaker, Sir, I also confirm that Mr. Kenneth Mwitiri Riungu was not appointed as a Chief Officer. However, he was deployed to perform the functions of that particular office. Deployment is something that is allowed in law by the County Governments Act, where a public officer, in this case, the County Secretary, can make deployment awaiting substantive appointment.

Mr. Duncan Okubasu: Okay.

Mr. Dickson Munene: On the same note, Mr. Speaker, Sir, if such a deployment has been made irregularly, the CPSB as the authority in law, under Section 64(5) of the County Governments Act to take corrective measures, which include nullifying that particular deployment or delegation.

Mr. Duncan Okubasu: Okay. I will ask you one final question on this issue. Look at Page 295 of volume two. I request you to confirm that the appointment or deployment of Edwin Muuma, Kenneth Riungu and Gitobu Nkanata was done by, one, the County Secretary. Is that correct?

Mr. Dickson Munene: Yes, it is correct.

Mr. Duncan Okubasu: Second is that it did not affect only those three employees.

Mr. Dickson Munene: Yes, it did not only affect those three employees.

Mr. Duncan Okubasu: How many employees were affected, if you may tell this House?

Mr. Dickson Munene: 17.

Mr. Duncan Okubasu: Is there any complaint in respect of the 17 employees?

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Mr. Dickson Munene: There is no complaint, but there was a Petition that was filed in court by the same Salesyo Thurania on alleged illegal appointment and deployment by the County Secretary, while he sues the County Secretary. That matter is still pending in court.

Mr. Duncan Okubasu: Fair enough. I am about to finish. I will ask you questions about the appointment of Monica Kagwiria, Dr. Koome Muthuri, Francis Muigai and Silas Mbaabu. That these people were appointed in an acting capacity for more than six months. Is that a correct allegation or not?

Mr. Dickson Munene: It is not correct.

Mr. Duncan Okubasu: What is your explanation to that?

Mr. Dickson Munene: Monica Kagwiria was appointed in acting capacity on 17th May, 2023. Six months are yet to lapse. The other two, Dr. Koome Muthuri was appointed on 23rd August, 2023 still in acting capacity. It is also still not six months yet.

Mr. Duncan Okubasu: So, your position is that the position these people are acting for six months has not substantially ended for most of them?

Mr. Dickson Munene: It has not and there is no evidence that has been put in place to substantiate that allegation.

Mr. Duncan Okubasu: There is a question about 100 staff that have been employed by the Governor in her office. Is that a correct position?

Mr. Dickson Munene: It is not a correct position.

Mr. Duncan Okubasu: What is the correct position?

Mr. Dickson Munene: To my knowledge, I have not seen any letters of appointment signed by the Governor appointing these particular employees under the Office of the Governor. These particular employees are usually appointed by the County Public Service Board.

Two, it is not true that the number that is alleged there is that of the employees that have been appointed under the Office of the Governor. Some of them are casual cleaners who have been designated to clean the offices of the Governor and the residences of both the Governor and the Deputy Governor. These are employees that essentially are under public service.

Mr. Duncan Okubasu: I will ask you two questions about the grievances of the Deputy Governor in relation to employees. One of them is it has been claimed that the Deputy Governor has been frustrated by taking away of some of his employees. Question one is, to the best of your knowledge, and I saw this in the affidavit of the driver, how many drivers does the Deputy Governor have?

Mr. Dickson Munene: He had four drivers.

Mr. Duncan Okubasu: Your testimony is that the Deputy Governor had four drivers?

Mr. Dickson Munene: Yes.

Mr. Duncan Okubasu: One of the drivers has complained that the county wrote a letter acknowledging non-existent resignation letters. I take you to pages 366 and 367 of the Volume of the Governors' response, the blue document. Please, confirm to this House whether or not there were existent or non-existent resignation letters?

Mr. Dickson Munene: They were resignation letters.

Mr. Duncan Okubasu: Is that found anywhere on the record?

Mr. Dickson Munene: Yes. There is a letter of resignation on Page 366 and another on Page 367.

Mr. Duncan Okubasu: So, they are actually resignation letters. Is that correct?

Mr. Dickson Munene: From the face of it, they are resignation letters.

Mr. Duncan Okubasu: Has any of those employees taken the County Government to court in respect of those resignation letters?

Mr. Dickson Munene: None of the employees has taken the County Government to court.

Mr. Duncan Okubasu: To the best of your knowledge, has anyone been charged in the County Government for forgery of the resignation letters?

Mr. Dickson Munene: I am not aware of any person.

Mr. Duncan Okubasu: Okay. I will finish with just one question on IFMIS. I will go back there. I want you to confirm one thing to this House, on the charge of misappropriation of funds. Please, confirm the date when the Governor assumed office.

Mr. Dickson Munene: On 25th August, 2022.

Mr. Duncan Okubasu: Now, the IFMIS document that we have been given predates the date when the Governor got into office. Is that correct?

Mr. Dickson Munene: That is correct.

Mr. Duncan Okubasu: Are there entries that are similar in nature as to when this Governor was not in office and what happened after she got into office?

Mr. Dickson Munene: Yes, there are entries as I have pointed out.

Mr. Duncan Okubasu: Can you flag out two or three of them? That will be the last question from me.

Mr. Dickson Munene: On Page 17 of volume two by the County Assembly. The first two entries are on prepayment and the third is on hospitality supplies.

Mr. Duncan Okubasu: So, all those correspond to what happens after the Governor comes into office.

Mr. Dickson Munene: Yes.

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

[The Temporary Speaker (Sen. Wakili Sigei) in the Chair]

Mr. Duncan Okubasu: Mr. Temporary Speaker, Sir, that is all in examining chief for the witness. I hand him over for cross-examination.

The Temporary Speaker (Sen. Wakili Sigei): Counsel for the County Assembly, proceed to cross-examine the witness.

Dr. Muthomi Thiankolu: My learned friend, Mr. Dickson Munene, good afternoon.

Mr. Dickson Munene: Good afternoon.

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Dr. Muthomi Thiankolu: Please, confirm to the Senate your professional background.

Mr. Dickson Munene: I am a lawyer by profession and an Advocate of the High Court.

Dr. Muthomi Thiankolu: Practicing with which firm?

Mr. Dickson Munene: I stopped practicing when I joined the County Government.

Dr. Muthomi Thiankolu: In which firm were you practicing before you stopped?

Mr. Dickson Munene: OMK Advocates

Dr. Muthomi Thiankolu: Who was your partner in that law firm?

Mr. Dickson Munene: There was Isaac Kazungu and Dr. Okubasu.

Dr. Muthomi Thiankolu: That was our colleague who just examined you a while ago. Right?

Mr. Dickson Munene: Yes.

Dr. Muthomi Thiankolu: As a learned man, we can take it that you are fairly familiar with the laws of Kenya. Right?

Mr. Dickson Munene: Yes.

Dr. Muthomi Thiankolu: Before we go to those laws, who is the accounting officer in the office of the Governor?

Mr. Dickson Munene: Either the chief officer in the office of the Governor or the chief of staff.

Dr. Muthomi Thiankolu: As a matter of fact, who is the designated accounting officer?

Mr. Dickson Munene: It is the Chief Officer (CO).

Dr. Muthomi Thiankolu: His name?

Mr. Dickson Munene: Her name is Naomi.

Dr. Muthomi Thiankolu: You will agree with me that would ordinarily be the person testifying to accusations of embezzlement of funds, not you who heads a different department. Would you not agree to that?

Mr. Dickson Munene: It depends.

Dr. Muthomi Thiankolu: Who ordinarily, Sir? You are a lawyer; let us make it easy. Who as a matter of law and fact ideally should be responding to the allegations about embezzlement of funds? Is it you or the accounting officer?

Mr. Dickson Munene: The accounting officer.

Dr. Muthomi Thiankolu: Good. Does the County Government of Meru have a CECM for Finance?

Mr. Dickson Munene: It does.

Dr. Muthomi Thiankolu: What is her name?

Mr. Dickson Munene: CPA Monica Kathono.

Dr. Muthomi Thiankolu: You will agree with me, even if we were to take it that there is no accounting officer, that, that would be the next person in line who would be better placed to tell the Senate about the misappropriation of funds. Correct or incorrect?

Mr. Dickson Munene: Correct.

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Dr. Muthomi Thiankolu: I put it to you that the reason none of these officers have been called as a witness is because they know from their professional background that they cannot defend the allegations before the Senate.

Mr. Dickson Munene: That is not true. The reason is that many of the allegations that have been made here are on employment and we could not bring every employee of the county to answer to these questions.

Dr. Muthomi Thiankolu: We are on the allegations of embezzlement of funds. I put it to you that the reason the Governor has not called either of these two officers to defend the irregularities on this IFMIS is because those officers cannot as professionals in that line defend the content of this IFMIS; the irregularities on it.

Mr. Dickson Munene: That is not true.

Dr. Muthomi Thiankolu: You just told the Senate that---

The Temporary Speaker (Sen. Wakili Sigei): Dr. Muthomi, a little housekeeping. How much time do you need for cross-examination?

Dr. Muthomi Thiankolu: Mr. Temporary Speaker, Sir, I see myself taking at least an hour with this witness, which I will be sharing with my learned friend, Mr. Boniface Mawira, and if time allows, with Mr. Maranya.

The Temporary Speaker (Sen. Wakili Sigei): One hour might be too much.

Dr. Muthomi Thiankolu: My challenge is that you take note of all the affidavits filed by the Governor, the bulk of the Governor's defence is in this witness's affidavit. He speaks to many things. The length of his affidavit clearly confirms it. That is the only reason we beseech you to grant us at least an hour.

The Temporary Speaker (Sen. Wakili Sigei): Very well. We are going to give you 30 minutes and we take a break for lunch then we resume and work within that time.

Dr. Muthomi Thiankolu: Much obliged, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Wakili Sigei): Proceed.

Dr. Muthomi Thiankolu: Mr. Dickson Munene, it is your testimony before the Senate that the transactions on the IFMIS report on Page 17 to 29 relate to the period when Governor Kiraitu was the Governor. Right?

Mr. Dickson Munene: That is not true. I have said that it transcends between the two regimes when the former Governor was in place and when the current Governor is.

Dr. Muthomi Thiankolu: It transcends the two regimes.

Mr. Dickson Munene: Yes.

Dr. Muthomi Thiankolu: Would you agree with me that these documents have hundreds upon hundreds of transactions?

Mr. Dickson Munene: Yes.

Dr. Muthomi Thiankolu: Would you also agree with me that out of these hundreds upon hundreds of transactions, only 12 cover the period when Hon. Kiraitu Murungi was the Governor?

Mr. Dickson Munene: I will have to confirm that.

Dr. Muthomi Thiankolu: Okay, we will confirm with you. Go to Page 17. What is the date at Page 17 of the first transaction?

Mr. Dickson Munene: Sorry, 1st July, 2022.

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Dr. Muthomi Thiankolu: When did the Governor assume office?

Mr. Dickson Munene: On 25th August, 2022.

Dr. Muthomi Thiankolu: You will agree with me after the first 12 transactions, all the other transactions on Page 17 cover the period when the Gov. Hon. Kawira Mwangaza was the one in charge. Right?

Mr. Dickson Munene: Right.

Dr. Muthomi Thiankolu: That applies to all the transactions of the next page, right?

Mr. Dickson Munene: Right.

Dr. Muthomi Thiankolu: And the next page?

Mr. Dickson Munene: Yes.

Dr. Muthomi Thiankolu: All the way to the end?

Mr. Dickson Munene: Yes, until the end of the financial year.

Dr. Muthomi Thiankolu: Good. Therefore, you will agree with me, Sir, that more than 99 per cent of this Integrated Financial Management Information System (IFMIS), relates to a period when Hon. Kawira Mwangaza was the Governor for Meru County. True or untrue? It is there on the document.

Mr. Dickson Munene: I have not necessarily said more than 99 per cent, but the majority.

Dr. Muthomi Thiankolu: Would you agree more than 90 per cent?

Mr. Dickson Munene: Yes, I would.

Dr. Muthomi Thiankolu: Good. It is, therefore, not correct or even fair to suggest that it is someone else other than the Gov. Hon. Kawira Mwangaza who should be questioned about the irregularities in this IFMIS?

Mr. Dickson Munene: That was never the suggestion.

Dr. Muthomi Thiankolu: Okay, that was not a suggestion. We will deal with it later. Is there anywhere in the impeachment motion we mentioned hospitality?

Mr. Dickson Munene: Yes.

Dr. Muthomi Thiankolu: In which paragraph and what page? Is there anywhere we have mentioned hospitality supplies?

Mr. Dickson Munene: No, various supplies.

Dr. Muthomi Thiankolu: Yes, but everywhere was made of the phrase ‘hospital supplies’ *vis-à-vis* ‘hospitality supplies.’

Mr. Dickson Munene: That is in your annexure.

Dr. Muthomi Thiankolu: I am talking about the Motion, Sir.

Mr. Dickson Munene: It is not in the motion.

Dr. Muthomi Thiankolu: Good. I would assume, Sir, as the Head of Legal Services in Meru County, you are familiar with the County Governments Act. Is that a fair assumption for me to make?

Mr. Dickson Munene: Yes, it is.

Dr. Muthomi Thiankolu: Let us go to volume three of the Meru County Assembly’s bundle. Sir, go to Page 19 of that volume. You will see their Section 30 of the County Governments Act. Right?

Mr. Dickson Munene: I am not there yet. Which page did you say?

Dr. Muthomi Thiankolu: Page 19 of our volume three.

Mr. Dickson Munene: Yes.

Dr. Muthomi Thiankolu: Mr. Dickson Munene, what is the title of that Section 30 as per the statute?

Mr. Dickson Munene: Functions and Responsibilities of a County Governor.

Dr. Muthomi Thiankolu: It talks of two things. One is functions, right?

Mr. Dickson Munene: Yes.

Dr. Muthomi Thiankolu: The other one is responsibilities, right?

Mr. Dickson Munene: Yes.

Dr. Muthomi Thiankolu: You will agree the word ‘responsibility’ connotes accepting the consequences of words, actions and omissions even as a matter of ordinary grammar. When we say ‘the responsibility of so-and-so,’ are we not using another derivative the word ‘they are responsible for the things listed there?’

Mr. Dickson Munene: Yes.

Dr. Muthomi Thiankolu: You would agree, therefore, that the Governor is responsible as per this Section, paragraph (a) for diligently executing the functions of the office? ‘Diligence’ is the word used, right?

Mr. Dickson Munene: Yes, Mr. Speaker, Sir.

Dr. Muthomi Thiankolu: The requirement here is one of diligence in paragraph 2(a).

Mr. Dickson Munene: Yes.

Dr. Muthomi Thiankolu: You will also agree with me, as a matter of ordinary grammar, that diligence connotes active engagement and not the idea of saying, ‘it was not me or it was the work of someone else.’ Does it not connote exercising close supervision and paying attention to detail? Does it connote detachment from the matter at hand, so that I am detached – it was not me, it was the County Secretary, the Chief of Staff or other officials?

Does this Section permit a detached Governor, one who is detached from what is happening in her own office? Mr. Munene, either it does or it does not, and you are also a lawyer.

Mr. Dickson Munene: It connotes that the Governor should diligently execute the functions and exercise the authority provided for in the Constitution and legislation; the Governor’s authority.

Dr. Muthomi Thiankolu: So, it means that the Governor’s authority is to be exercised diligently and not in a nonchalant or careless or I do-not-care type of approach?

Mr. Dickson Munene: ‘Diligently’ is the word.

Dr. Muthomi Thiankolu: Let us go to paragraph three. Before we go there, above there is (i). Does it require the Governor to ensure the discharge of any function within the County and within the provision of any services? Does it not mean that the Governor is responsible for ensuring the proper discharge of all the functions of the County Executive? This is Section 30(2)(i).

Mr. Dickson Munene: What I have here says that-

“By a decision notified in the County Gazette, the Governor shall assign to every member of the County Executive Committee responsibility to ensure the discharge of any function within the County and the provision of the latent services to the people.”

Dr. Muthomi Thiankolu: So, the Governor does not just assign responsibilities to the CECMs or any other officer, but they have to ensure the discharge of the relevant function and going to the previous section, diligently. Is it not?

Mr. Dickson Munene: Mr. Speaker, Sir, my understanding is that the Governor shall assign every member a responsibility and this responsibility is to ensure the discharge of any function within the County and the provision of related services to the people.

Dr. Muthomi Thiankolu: Fair enough. Read the opening line (3).

Mr. Dickson Munene: It says-

“In performing the functions under (2), the Governor shall---”

Dr. Muthomi Thiankolu: It says that ‘the Governor shall.’ This Section is speaking to an obligation of the Governor. Correct?

Mr. Dickson Munene: Yes, it is.

Dr. Muthomi Thiankolu: As the eminent lawyer you are, this is a mandatory obligation under the canons of interpreting the law? Does the word ‘shall’ connote an obligation in the nature of a mandatory duty?

Mr. Dickson Munene: It is, but I do not think it is mandatory.

Dr. Muthomi Thiankolu: Okay, we shall live with that. However, what does it say the Governor shall do as per paragraph (a)?

Mr. Dickson Munene: Mr. Temporary Speaker, Sir, the Governor shall provide leadership in the county’s governance and development.

Dr. Muthomi Thiankolu: The Governor shall provide leadership in the county’s governance.

Mr. Dickson Munene: Yes, and development.

Dr. Muthomi Thiankolu: The Governor is the leader when it comes to issues of governance in the county. Is it not?

Mr. Dickson Munene: Yes.

Dr. Muthomi Thiankolu: Mr. Munene you will agree with me that the question of embezzlement of public funds is an issue in the realm of governance. Is it or is it not?

Mr. Dickson Munene: It is, Mr. Temporary Speaker, Sir,

Dr. Muthomi Thiankolu: If it is and the statute says that the Governor shall provide leadership, therefore, it is not open to the Governor to throw junior officers under the bus when the statute states it is her responsibility. Correct or incorrect?

Mr. Dickson Munene: I have not said that the Governor has thrown junior officers under the bus.

Dr. Muthomi Thiankolu: If you have read her defence, it states that it was not her but someone else. To be precise, if you want me to quote her defence, she says “if this embezzlement occurred, it did so under the care of other officials who are independently answerable to the County Assembly and who independently bear responsibility”.

That is the defence I am interrogating, my learned friend. Is that defence consistent with paragraph (a), which says the Governor shall provide leadership on matters of governance?

Mr. Dickson Munene: I would like to see the paragraph that you have just quoted on the Governor's defence.

Dr. Muthomi Thiankolu: I will of course show it to you, Sir.

Mr. Dickson Munene: Thank you.

Dr. Muthomi Thiankolu: Mr. Temporary Speaker, Sir, just a minute I open my---

The Temporary Speaker (Sen. Wakili Sigei): As you do that, Dr. Muthomi Thiankolu, be mindful of the time. If it is taking longer, you can move on to the next line of questioning.

Dr. Muthomi Thiankolu: Mr. Temporary Speaker, Sir, I am about to. It is just that my computer is playing games with me, but I will find it. It is on Paragraph 12. Pardon me for losing time on this because my learned friend should not be denying something that is in black and white.

Mr. Munene, can you read Paragraph 12 of the Governor's response? It is in the smaller bundle of the Governor's documents.

Mr. Dickson Munene: Do you mean the paragraph appearing on Page 3?

Dr. Muthomi Thiankolu: Yes. Can you read it for us?

Mr. Dickson Munene: 'The impeachment Motion is therefore a means to a selfish end by the Deputy Governor, who is the ultimate beneficiary if the Governor is removed from office. Indeed, the bulk of allegations against Her Excellency the Governor largely constitute matters that this Senate found the Governor not be in wrong doing during the first impeachment by the County Assembly.'

In any view, many of the said allegations are essentially matters within the docket of other county officials, who bear responsibility and who in law are subject to oversight by the Assembly.

Dr. Muthomi Thiankolu: Sir, the last sentence is one I am interested in because it is one of the many defences of the governor saying it was not her, but other officials.

Is that defence consistent with the responsibility of the Governor under Section 30(3) to provide leadership on matter of governance?

Mr. Dickson Munene: Yes, it is consistent.

Dr. Muthomi Thiankolu: Proceed to Section 30(3) (c) of the County Government's Act. What does it state the governor shall do? This is in volume three.

Mr. Dickson Munene: "(3) In performing the functions under subsection (2), the governor shall -

(c) promote democracy, good governance, unity and cohesion within the county."

Dr. Muthomi Thiankolu: You agree that one of the responsibilities of the governor is governance. This Section states the governor is responsible for it.

Mr. Dickson Munene: This is correct.

Dr. Muthomi Thiankolu: It also talks of the governor bearing responsibility to promote unity and cohesion.

Mr. Dickson Munene: Yes, which in my opinion she has done.

Dr. Muthomi Thiankolu: Yes, but you also agree that if by law this is the governor's responsibility, if there are serious questions about governance, cohesion and national unity the governor cannot say that it was not her, that we crucify someone else. True or untrue, Mr. Munene?

Mr. Dickson Munene: This is a collective responsibility because---

Dr. Muthomi Thiankolu: Does the Section state that this is a collective responsibility or does it say it is the governor's responsibility?

Mr. Dickson Munene: The Section states that it is the responsibility of the governor, but in other Sections, there are other---

Dr. Muthomi Thiankolu: Let us stick to this one. We will come to the other Sections.

Mr. Dickson Munene: There are provisions for other leaders to promote the same.

Dr. Muthomi Thiankolu: You are a lawyer; you know the rules. I did not ask about other Sections we are talking about the governor. Let us proceed to the most beautiful Sub-Section, that is (f). Read to the Senate one of the things this Section of the law says the governor bears responsibility.

What does the Act state?

Mr. Dickson Munene: It states-

“(3) In performing the functions under subsection (2), the governor shall -
(f) be accountable for the management and use of the county resources.”

Dr. Muthomi Thiankolu: The Act already states that the governor shall be accountable. Initially, we began with the title of the Section saying that it is the responsibility of the governor. Now, we are being told the governor is accountable. Correct or incorrect?

Mr. Dickson Munene: That is correct.

Dr. Muthomi Thiankolu: I put it to you that based on all these legal provisions, it is not legally open to the governor to say that ‘it was not me’.

Mr. Dickson Munene: My response to that is I have not seen any provision where the governor is saying that it was not her.

Dr. Muthomi Thiankolu: Even after you read for us statements to indicate that it was other officials who were independently responsible?

Mr. Temporary Speaker, Sir, I am told it is time to proceed for lunch. Can we leave it at that point?

The Temporary Speaker (Sen. Wakili Sigei): You still have seven minutes to go before we take a break.

Dr. Muthomi Thiankolu: Mr. Temporary Speaker, Sir, I apologise. I read the signal wrongly. Mr. Munene, as a lawyer, to the best of your knowledge, is the Government allowed to pay for goods not supplied and services not rendered? I will refer you to Volume III, Page 51. Have you reached there?

Mr. Dickson Munene: Yes, I have.

Dr. Muthomi Thiankolu: Section 45(2) of the Anti-Corruption and Economic Crimes Act. You will agree that is a Chapter Six law. Am I right or wrong? It is law that breathes life into Chapter Six of our Constitution. Correct or incorrect?

Mr. Dickson Munene: Sorry.

Dr. Muthomi Thiankolu: Is this Anti-Corruption and Economic Crimes Act founded on Chapter Six of our Constitution?

Mr. Dickson Munene: It is a law that was enacted even before the Chapter Six of the Constitution.

Dr. Muthomi Thiankolu: Yes, but is it one of the laws that give effect to Chapter Six of our Constitution? Either it is or it is not.

Mr. Dickson Munene: Yes, it does.

Dr. Muthomi Thiankolu: Good, it does. Now, at Section 45, what does it tell us a public agency should not do at Subsection 2 (ii) and (iii)? Does it say public agencies cannot pay for goods not supplied or supplied in full?

Mr. Dickson Munene: Sorry,

Dr. Muthomi Thiankolu: Mr. Munene, at Page 51, does it forbid the County Government of Meru from paying for goods not supplied or supplied in full?

Mr. Dickson Munene: It says-

“An officer or person whose functions concern the administration, custody, management, receipt or use of any part of the public revenue or public property is guilty of an offence if the person;

(a) fraudulently makes payment or excessive payment from public revenues for;

(i) sub-standard or defective goods;

(ii) goods not supplied or not supplied in full; or

(iii) services not rendered or not adequately rendered”

Dr. Muthomi Thiankolu: I am interested in payment for goods not supplied.

Mr. Dickson Munene: Fraudulent payment.

Dr. Muthomi Thiankolu: Of course, the Assembly’s case is that these were fraudulent payments. We will come there, Sir. However, you agree that this Section forbids advance payments for goods not supplied and service is not yet rendered.

Mr. Dickson Munene: For goods not supplied or not supplied in full.

Dr. Muthomi Thiankolu: On its face, does that prohibit prepayment? Either it does or it does not.

Mr. Dickson Munene: My understanding is that it prohibits payment for goods not supplied or not supplied in full.

Dr. Muthomi Thiankolu: On the IFMIS extract, when the IFMIS says there are 107 prepayments, is the prepayment not a payment for goods not supplied or services not rendered?

Mr. Dickson Munene: The prepayments are for the imprests.

Dr. Muthomi Thiankolu: Yes, but we have only adduced a few imprests. Out of the 107 transactions, we have only adduced imprest for less than 10.

Mr. Dickson Munene: This is because that was your particulars of the charge, which we responded to.

Dr. Muthomi Thiankolu: Let us go back to the Public Procurement and Asset Disposal Act. If you can read it for the Senate.

Mr. Dickson Munene: Sorry, is it in volume three?

Dr. Muthomi Thiankolu: Mr. Speaker, Sir, I do not believe that one was printed. It is Section 146 of the Public Procurement and Asset Disposal Act.

The Temporary Speaker (Sen. Wakili Sigei): Do you want the witness to read the provisions of that particular section?

Dr. Muthomi Thiankolu: Yes, the witness is a lawyer, there should be no hardship in speaking to these issues. It is a legal issue.

The Temporary Speaker (Sen. Wakili Sigei): Counsel, if it is an Act of Parliament, it is law. Whether you read it or not that is what the law provides, so it is better you just go ahead and read.

Dr. Muthomi Thiankolu: Fair enough. Mr. Munene, you again confirm that law forbids advance payments. What is the title of that law, Section 146.

Mr. Dickson Munene: A minute. It is on advance payment.

Dr. Muthomi Thiankolu: What does it say?

Mr. Dickson Munene: It says-

“No works, goods or services contract shall be paid for before they are executed or delivered and accepted by the accounting officer of a procuring entity or an officer authorized by him or her in writing except where so specified in the tender documents and contract agreement. Such an advance payment shall not be paid before the contract is signed”

Dr. Muthomi Thiankolu: There is an exemption. Many laws of an exemption---

The Temporary Speaker (Sen. Wakili Sigei): We need to stop on that note.

It is time to adjourn the House. You will pick it up from there in the afternoon. You will have a balance of 30 minutes when the session resumes in the afternoon to continue with your cross-examination.

Dr. Muthomi Thiankolu: Much obliged, Mr. Temporary Speaker, Sir.

ADJOURNMENT

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, it is now 1.15 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until today, Wednesday, 8th November, 2023, at 2:30 p.m.

The Senate rose at 1.15 p.m.