

PARLIAMENT OF KENYA**THE SENATE****THE HANSARD****Friday, 23rd May, 2014****Special Sitting**

*(Convened via Kenya Gazette Notice
No.3378 of 20th May, 2014)*

*The Senate met at the County Hall,
Parliament Buildings, at 2.30 p.m.*

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

PRAYERS**MESSAGE FROM KERICHO
COUNTY ASSEMBLY****APPROVAL OF MOTION BY THE COUNTY ASSEMBLY
TO REMOVE FROM OFFICE, BY IMPEACHMENT,
THE GOVERNOR OF KERICHO COUNTY**

The Speaker (Hon. Ethuro): Hon. Senators, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act No.17 of 2012, on 14th May 2014, the County Assembly of Kericho approved a Motion “to remove from office by impeachment”, the County Governor of Kericho County. By letter dated 15th May 2014, and received in the Office of the Speaker of the Senate on 16th May 2014, the Speaker of the County Assembly of Kericho informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate the following documents:-

1. The Order Paper of 14th May 2014.
2. The HANSARD Report of 14th May 2014.
3. Particulars of the allegations leveled against the Governor.

I have directed that these documents be made available to all Senators. The documents will be available in the Table Office which is located on the ground floor next to the Senators’ lounge in this building.

COMMUNICATION FROM THE CHAIR**CONVENING OF SPECIAL SITTING OF THE SENATE**

TO ESTABLISH A COMMITTEE TO HEAR CHARGES
AGAINST THE GOVERNOR FOR KERICHO COUNTY

Hon. Senators, in terms of Article 181 of the Constitution and Section 33 3(a) of the County Governments Act and our own Standing Order No.68 1(a) of the Senate Standing Orders, the Speaker of the Senate is required, within seven days after receiving notice of a resolution from the Speaker of a County Assembly, to convene a meeting of the Senate to hear charges against the Governor. It is in this respect that I convened this Special Sitting of the Senate by Gazette Notice No.3378 of 20th May 2014 which was carried in a special issue of the Gazette of the same date.

Section 33 3 (b) of the County Governments Act and Standing Order No.68 1(b) provides that at this sitting, the Senate by resolution may appoint a special committee comprising 11 of its Members to investigate the matter.

Hon. Senators will observe that at Order No.2 on today's Order Paper, pursuant to these provisions of the law, the Senate Majority Leader will be giving notice of a Motion for the establishment of a special committee. You will observe also that the Motion has been listed at Order No.3 of the Order Paper with the approval of the Speaker.

Hon. Senators, should the Motion for the establishment of the Special Committee pass, the Special Committee will be required under Section 33 (4) of the County Governments Act and Standing Order No.68 (2) to investigate the matter and to report to the Senate within 10 days on whether it finds the particulars of the allegations against the Governor to have been substantiated. If, however, the Motion for the establishment of a Special Committee does not pass, it should be known that the provisions set by law will then kick in and the Senate shall proceed to investigate and consider the matter in Plenary. The resolution of the Senate on the Motion by the Senate Majority Leader will therefore determine the manner in which this matter shall henceforth proceed.

I wish to emphasize to all Hon. Senators as I have done before that debate on the Motion shall be limited to the substance of the Motion namely; whether to establish a special consisting of the Senators listed to investigate the proposed removal from office of the Governor of Kericho County. It is not a Motion on the propriety, prudence or even constitutionality or legality of the processes that have preceded the submission of this matter to the Senate. It is not a debate of the facts of the matter or its merits. It is therefore not permissible, and I will not hesitate to immediately rule a Senator to be out of order if she or he digresses into any matters other than the Motion before the House. I should also indicate that this is a matter which in terms of Article 123 of the Constitution and Standing Order No.72 of our Standing Orders affects counties and, therefore, the vote on the Motion when we come to it shall be by delegations as provided for under Standing Order No.71.

Hon. Senators, as I have on earlier occasions stated, the hearing of the charges for the proposed removal of a Governor of a county is one of the most important and solemn duties of the Senate under the Constitution of Kenya. I would also hasten to reiterate that this is a process that calls for the highest level of responsibility and circumspection from all Senators not only in plenary, but also should the Motion by the Senate Majority Leader pass, by those Senators who shall be called upon to serve on the Special Committee. This is as much of a judicial process as it is a political one.

Thank you.

Next Order!

POINT OF ORDER

ADHERENCE TO PROVISIONS OF STANDING ORDER NO. 68 ON HEARING OF CHARGES AGAINST THE GOVERNOR

Sen. Khaniri: On a point of order. Mr. Speaker, Sir. I stand to seek your guidance if we are satisfying the provisions of Standing Order No.68 1(a). Standing Order No.68 (1) reads that within seven days after receiving notice of resolution from the Speaker of the County Assembly supporting the removal of a Governor of a county, pursuant to Article 181 of the Constitution:

- (a) The Speaker of the Senate shall convene a meeting of the Senate to hear charges against the Governor.

The provisions of Section 68 (1) (a) are very clear; that your were convening this sitting so that we can hear the charges. From the way we are proceeding, I see the only agenda on our Order Paper today is to pass a Motion to approve names of Committee Members and yet the Standing Order says that the House should hear the charges and then the Senate by resolution may – after hearing the charges – appoint a special committee comprising 11 of its Members to investigate this matter. I have a feeling that we are breaching our own Standing Orders because Section 68 (1) (a) is very explicit. I think we are not adhering to the provisions of that particular Standing Order. I seek your guidance.

Thank you.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. The importance of the point of order by Sen. Khaniri is such that we do not proceed in accordance with Section 68 (1) (a). It will then make it difficult for us or for those Senators who will not be in this Committee to be properly apprised of the charges. It is important that if we choose to form this Committee, the charges should be the property of the House, formally in the normal manner so that as they proceed, we also will be familiarizing ourselves with those charges with a view of contributing from the recommendations of that Committee and also from our own little research that we shall have done. Therefore, I request that you rule on Sen. Khaniri's point of order and probably find that he is in order.

The Speaker (Hon. Ethuro): As usual, I want to thank Sen. Khaniri for being keen in terms of pointing out some of these things, except he is not reading it in entirety. This House works in two ways and the Motion also proposes that you can exploit both options. First is to determine this matter at the plenary which is an option we are given but also says that we may, as a House, decide to go the Committee way. So, when we have the Motion before us – I thought I explained it in my communication – that the Motion is debating the special committee of 11 Members. If we defeat that Motion, then it means that the House has decided not to go the option of the Committee but the plenary. So, I think that is very clear. What I think you may be concerned a bit is part (b) in terms of hearing of the charges. Now my argument would be that the charges can be heard at the plenary, but those charges are also part of the documents that have already been submitted to you for your consideration for the reasons that Sen. (Dr.) Khalwale has suggested. So you are already seized of the matter.

Secondly, you remember whenever an issue comes to the Floor, we are always being petitioned or a Statement is being sought from a Chair of a Committee. We are basically referred to as a House. When it is referred to the Committee, the Committee is acting on behalf of the House. By the time it comes to the plenary, that is when all of us become again seized of the same matter. So, I do not see any violation of the Standing No.68 (1) because of the way we have proposed to proceed.

Senate Majority Leader!

NOTICE OF MOTION

ESTABLISHMENT OF SPECIAL COMMITTEE TO INVESTIGATE
THE PROPOSED REMOVAL FROM OFFICE BY IMPEACHMENT
OF THE GOVERNOR FOR KERICHO COUNTY

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Speaker, Sir, I rise to give Notice of the following Motion:-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 14th May, 2014, the County Assembly of Kericho approved a Motion “*to remove from office, by impeachment,*” the County Governor of Kericho County;

AND FURTHER, WHEREAS by letter dated 15th May, 2014 (Ref: KCA/GOV/Vol./1) and received in the Office of the Speaker of the Senate on 16th May, 2014, the Speaker of the County Assembly of Kericho informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b) of the Senate, the Senate by resolution may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to section 33(3) (b) of the County Governments Act, 2012 and standing order 68(1)(b), the Senate resolves to establish a special Committee comprising the following Senators -

1. Sen. Kiraitu Murungi
2. Sen. Stephen Sang’
3. Sen. Daniel Karaba
4. Sen. Fatuma Dullo
5. Sen. Beatrice Elachi
6. Sen. Billow Kerrow
7. Sen. Danson Mwazo Mwakulegwa
8. Sen. Christopher Mogere Obure
9. Sen. Abdirahman Ali Hassan
10. Sen. Catherine Mukiite Nabwala
11. Sen. Mutula Kilonzo Junior

to investigate the proposed removal from office of the Governor of Kericho County and to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated.

Thank you.

MOTION**ESTABLISHMENT OF SPECIAL COMMITTEE TO INVESTIGATE
THE PROPOSED REMOVAL FROM OFFICE BY IMPEACHMENT
OF THE GOVERNOR FOR KERICHO COUNTY**

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, whereas pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on 14th May, 2014, the County Assembly of Kericho approved a Motion “*to remove from office, by impeachment,*” the County Governor of Kericho County;

AND FURTHER, WHEREAS by letter dated 15th May, 2014 (Ref: KCA/GOV/Vol./1) and received in the Office of the Speaker of the Senate on 16th May, 2014, the Speaker of the County Assembly of Kericho informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, 2012 and Standing Order 68(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW ,THEREFORE, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 68(1)(b), the Senate resolves to establish a special committee comprising the following Senators -

1. Sen. Kiraitu Murungi
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9. Sen. Abdirahman Ali Hassan
10. Sen. Catherine Mukiite Nabwala
11. Sen. Mutula Kilonzo Junior

to investigate the proposed removal from office of the Governor of Kericho County and to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated.

Mr. Speaker, Sir, we are here again, within a very short period of time on yet another impeachment, in particular, the impeachment of a county governor. Looking at the mood of my colleagues in this House, I note a feeling that perhaps in the coming months and years, this is one of the duties that this House may have to deal with, unpleasant and as disruptive as it is. My remarks about “disruptive” and “unpleasant” are deliberate. I am sure that every county in this country would want to see, from this House, deliberations that deal with development issues, empowerment of counties, strengthening of devolution and streamlining of relationships between the two levels of

government. Those are things that excite and encourage both the Senate and the county governments.

Mr. Speaker, Sir, the drafters of our Constitution four years ago had foreseen this matter that we are dealing with here today. It is for that reason that they found wisdom in providing that this House, as it does all other things including legislation, passing budgets and finances, representing and protecting counties, will have to exercise the power, in appropriate cases, to discuss the possibility of removing from office a governor of a county who has violated the law in any manner within the five grounds that are provided for under Article 181 of the Constitution. Let us not run away from our constitutional responsibilities. Let us not be cowed, as a House, from confronting the issues of governance, probity, accountability and due process that are required in the Constitution because it is only in doing that, that we can---

Sen. Boy Juma Boy: Hoja ya nidhamu Bw. Spika. Singependa kumkatiza Kiongozi wa Wengi lakini amesema kwamba jukumu la Seneti hii ni ku-*impeach* magavana. Hakuendelea kusema kwamba Katiba inaongea juu ya gavana na Rais. Ni sawa kwake kutaja magavana pekee bila kutaja Rais?

(Applause)

The Speaker (Hon. Ethuro): Kiongozi wa Wengi.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I want to appreciate the point of order from my brother, the Senator for Kwale County. In your Communication this afternoon, you have just said that we are focused on a very specific agenda today.

Hon. Members: No! No!

(Laughter)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I listened to you very carefully. I did not hear you say that today we are here to discuss on the role of the Senate and who the Senate has powers to impeach. Now that the matter has arisen and for the record – I am sure my brother has heard me, even outside this House – it is not secret, we are all aware that the President of this country is impeachable, very impeachable. Not only the President, even the Deputy President is impeachable and that this House has the last say in that process.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Kindiki. You had started well. I do not know why you decided to digress. In fact, you had listened very carefully and I was about to commend you for that and for applying what you heard. Those other things can find their place another time.

Proceed.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. Therefore, let us make it clear, at least in my perspective, that it should not be a question of how many governors we receive who have been recommended for impeachment. For me, that is not the question. The deeper question must be how meritorious and justified is whatever proposals we get in this House and how we determine those requests. Therefore, this Motion being in connection with the establishment of a special committee, I have seen in this list a very broad representation of the two major

political parties in this House. There is also consideration for gender and regional diversity. I have also seen that because this is the second committee of this nature, if formed, none of the Members who is proposed here has served in the previous committee. This is good practice. I know nothing prevents the same Senators from sitting in this committee again and again but it is only fair that we give as many Senators as possible a chance to participate in this very critical and solemn duty of accountability in our counties.

This afternoon, therefore, once again the proposed Senators are confronted with battling with the balances that must be created firstly with regard to the role of Members of County Assemblies (MCAs) in this process and with regard to protecting, entrenching and supporting the role of MCAs to oversight county executives. That is one pillar of the balances that these men and women; the hon. Senators; will be confronted with. That role is constitutional. The role of the MCAs is legitimate and it is so critical if devolution has to survive. As we have said many times, devolution is not just about pumping money, resources and authority to the grassroots. It is also about dispersing accountability to the lowest level of governance.

This Committee will be hoisted with the very critical responsibility of reflecting the maturity and objectivity of this House that has been established without question. Therefore, our approach and through our colleagues in terms of complying with the County Governments Act, the Constitution and our Standing Orders, discharging this duty will be very critical .

The proposed Committee will also help us, hopefully, when they do their report to try and help the Senate and this country to be able to understand how we can strengthen accountability and create the appropriate balances at the county level, so that no arm of government is subordinate to the other. I say this because if you look at Article 96 of the Constitution - and the Committee should really help us grapple with this matter - this Article talks about representing and protecting counties and county governments. The term "county governments" refers to the two arms of government that have been devolved at the county because at the national level, we have three arms of government. But in our devolution structure, one arm, which is the Judiciary, is not devolved.

Our role in the representation and protection of county governments, as the Senate, is to protect both arms of Government at the county level namely; the County Executive and also the County Legislature. Therefore, the balances must be brought out very well. I have no doubt that this Committee will do a good job. I see eminent lawyers, I see my brother Sen. Kiraitu Murungi, a very seasoned legal mind on this list. I see Sen. Billow Kerrow, a seasoned and consummate expert in finance and public affairs. I see in this list distinguished young minds like my brother, Sen. Mutula Kilonzo Jnr; usually very brief but to the point although sometimes I do not like some of his---

(Laughter)

He is a great lawyer. I see here Sen. Mwazo, who has had a great career in the corporate world before becoming a politician. Sometimes the practices in the private sector can help us strengthen the public sector governance. Therefore, his contribution, I am sure, will be welcome. My brother, the Senator for Kisii County, Christopher Mogere Obure,

former Minister for Finance is a Member of this Committee. What else would one need in a committee?

I see all manner of experts here. *Mwalimu* Karaba is proposed to be a Member. I am told he has taught a quarter of the Members of this House. He was a former principal.

(Applause)

I see Sen. Stephen Sang, one of the sharpest young lawyers we have in this county, one of the few persons who has created a legislative sensation in this country although we are still waiting for the finalization of the Sang Bill. I note everybody – who have I left out? Sen. Beatrice---

Hon. Senators: Catherine, a Banker!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Sorry, Catherine Mukiite. The problem is, on a light note, if you look at the list, the Jubilee Senators are using two names. The CORD names are three names. Sometimes we get mixed up.

(Laughter)

We need to be brief. Too many details sometimes can cause a bit of confusion.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Kindiki! How does that account for you reading Beatrice to Catherine?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I was just explaining that by the time you realize you are talking about my sister, Sen. Mukiite, you have to read a sentence of names and it is one person.

(Laughter)

So we urge our friends, let us have one name. We only use three names in extreme circumstances.

Hon. Members: When?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Like if it is a wedding, during a funeral, the final rites. But in ordinary times, we want to hear Agnes Zani, Kithure Kindiki, Moses Wetangula and so on.

I want to say that I have a lot of faith in all my colleagues in this list. Each one of them brings some background whether from the private or public sectors that will enrich the work of this Committee.

Mr. Speaker, Sir, in all this, I hope the Committee will go with an open mind. Of course, I do not expect that any Member of this honourable House will be prejudiced because our work is to ensure that in all these things, justice is done. As the third stanza of our National Anthem says, “Let justice be our shield and defender”. So, the Committee is not supposed to support the Governor, the MCAs or the Senate at the expense of other institutions. It is simply to help this Senate to do justice.

As I end my remarks, through this Committee and given the thoroughness of the work that we expect them to give us, this Senate will once again confirm that this is a House of refuge for those that feel that they have been oppressed or treated unfairly. I want to believe that this Committee will bring out this Senate as a House which is not shy

to bite when it must but a House which also, when matters are not substantiated, is not ashamed to say “no”. That is the open mindedness that we expect to see from this Committee.

Finally, on my behalf as the Mover of this Motion and as a Senator and Leader of the Majority, I want to send – and I believe I am talking, on behalf of my colleagues – a message to county governments, the Executive and the Legislature, that the Senate is not interested in anything else other than ensuring that the law is followed. All governors in this country who are doing a good job must be protected, respected and dignified to continue with the good job. But in the same vein, all governors who are looting and they think that the county coffers are private family resources, be warned that the Senate of the Republic of Kenya will hunt you down and make sure we send you not only out of your office, but to jail forever.

Mr. Speaker, Sir, with those remarks, I beg to move. In the tradition of this House, I want to request my great friend, brother and---

The Senate Minority Leader (Sen. Wetangula): And Senior in the legal profession!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Senior in the legal profession - I am not so sure whether he is still an active lawyer, because I still am. I call upon my junior in this House, Sen. Moses Masika Wetangula, to come and second the Motion.

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the man who did not want us to use three names suddenly pronounces my three names.

I beg to second this Motion. I enjoy my distinguished learned junior in what he has said about the Motion and what the role of this Senate is. I want to urge that at all times, this Senate must act without fear, favour or prejudice on each and every matter. By doing so, we shall be discharging a very important constitutional responsibility. The drafters of our Constitution were very conscious of the fact that while somebody can legitimately go into office, they can also run amok once they are in the office. It should not be lost on us that Adolf Hitler was popularly elected by a landslide. When he got into office, he embarked on a misadventure that burnt the whole world.

We have many small “Hitlers” all over, in the economic sense and in many other ways who get into office legitimately and embark on totally untenable things.

As we do so, we want our brothers, the Governors, out there to rest assured and be advised by this Senate that no Governor will come to this House to be punished on behalf of other Governors. No Governor will come here carrying the collective guilt of other Governors. Governors who end up in a situation such as this come here as individuals, are heard on their merit and their issues are decided on merit. This Senate Chamber is not and shall not be a slaughterhouse for Governors. We want to assure Governors that they must work without fear and that they must not fear to work. This is simply because the law protects them. However, the law is also there to take care of excesses.

Mr. Speaker, Sir, there are many challenges facing devolution. As I said the other day – I want to repeat the quote where my good friend, Mumo Matemu of the Ethics and Anti-Corruption Commission (EACC) said; “there are no Governors who are thieves.

However, there are thieves who have found their way into the offices of the Governors.” When this happens, we must apply the law fairly and justly.

The whole country is looking at this Senate. Unlike the previous hearing, I want to urge that once we meet the timelines of what we have done this afternoon and the Committee brings the Report within ten days, when the matter comes for debate, we must fully ventilate and examine the procedures used, look at the facts placed before the County Assembly and see how the facts have been articulated before the Committee.

On that note, I want to refer to Standing Order No.68(1)(a) and (b) and encourage my distinguished colleagues - Sen. Khaniri, Sen. Boni Khalwale and Sen. Justice Madzayo - who were feeling restless as to whether we are doing the right thing. We are right because you cannot read Standing Order No.68(1)(a) and ignore (b). You must read both. If you want to table charges here, you should not go to “b.” If you want to go to committee, you leave “a” and go to “b.”

Mr. Speaker, Sir, I want to laud you for that very wise and just ruling on the issue of procedure. I know that you said that we should not go beyond approving the names. I want to say that the 11 names that were brought before you have been through very thorough consultations. We have no doubt that each and every distinguished Senator here can sit on any Committee. We have picked those names very carefully. If you look at all of them, you will see that they have distinguished records in public service and even in their debates in this House.

I have no doubt that we have lawyers, former Ministers, bankers and others who will deliver a verdict that we can all carry proudly out there and say that this is a House full of just men and women who hear people without fear and give a judgment that one can go home with and say; yes, they were heard. If they were charged guilty, they will still say that they were heard fairly.

Mr. Speaker, Sir, as we move in this direction, I want to encourage my colleagues that we should avoid carrying this debate beyond the Chamber so that we are not seen to prejudice what we are going to do. The Committee will be the agent of this House and each and every one of us should sit down and wait for our agents to go and bring back the product that we expect upon which we will vote.

Some of the challenges facing Governors today are of their own making. Sometimes, you hear things that border on the bizarre. When a Governor, without any curl of right in law and, in fact, elects his wife in the county as the first lady and opens an office for her and spends public money, that is wrong. There are many of them doing this. This message has to be sent to them. You will feel embarrassed going to a function and you hear a Governor standing up say; “the first lady is here.” The “first” lady then stands up and says; “my office has established and funded this and that and will work hand in hand with the office of the Governor--.” These kinds of excesses are irritating and amount to improper use of public funds. In fact, they amount to theft of public funds. The amount of time we spend here to fight for resources to go to counties makes us expect nothing less than accountability from our Governors. Wherever such situations arise, we must do our work fairly.

As I end, I want to encourage the Committee because they will sit immediately after this to elect a good Chairman, Vice Chairman and work as a team so that at the end of the day, the annals of history – I want to congratulate Lenny Kivuti for finding his

Speaker who had disappeared or vanished. We hope that his health is okay and that nothing dangerous will happen to him.

The Committee must work as a team. We have enough researchers who can help them in matters of law, facts and accountancy expertise. I heard the Senate Majority Leader heap praises on my brother, Billow Kerrow. We expect a lot of industry from his expertise. He should tell us yes, there was wrong doing or there was no wrong doing and we move on.

Finally, I want to encourage my brothers and sisters across the Floor, as we protect Governors, devolution and the entire system of devolution, please, gentlemen and gentlewomen in Jubilee, we want to urge you to stop derailing devolution through irrelevant activities like strengthening provincial administration. These are things that will cause Governors to feel jittery, undermined and under siege.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. Is the Senate Minority Leader in order to introduce unhealthy, unhelpful and dishonest political issues in a Motion to establish this Committee? In particular, is the Senate Minority Leader in order to talk about the Jubilee Coalition strengthening the provincial administration at the expense of county governments? He is aware that this matter has already been discussed by the President, by all Governors in their Council and they agreed that the issue was handled professionally, constitutionally and legitimately. So, is he in order to introduce politics in this Motion?

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

The Speaker (Hon. Ethuro): Do you have to flog a dead horse, really?

One, the Senate Majority Leader must appreciate that Senate Minority Leader is seconding his Motion. He should be the last person to challenge the person seconding. Two, the Senate Minority Leader is definitely a politician. So, he can introduce politics. That is not out of place. The only problem with that is that he should not introduce the topic during this particular Motion. I made it abundantly clear what this purpose should be. I determined the boundaries; they are that narrow. We are talking about the Committee. He had started very well. I do not know why when he said that he was concluding.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir. I know that everybody here watches news. I looked at those Governors agreeing to what the distinguished Senator said and they looked like captives. However, that is for another day.

The Speaker (Hon. Ethuro): Whatever they agreed does not stop you from expressing yourself, only that this is not the place.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I invite everybody to acquaint themselves with Schedule Six, Section 17 of the Constitution 2010 and they will understand what I am saying.

However, let me conclude what I was saying by thanking all Members whose names were read here for agreeing because we consulted them before they agreed to serve in this Committee. I want to thank them and to encourage them to be fair, fearless and honest to the law, honest to the facts and to bring an acceptable verdict to this House which we shall own, vote for and support. For the Governor who is watching out there, I want to encourage you that nobody is after you. It is your conduct that will hurt you.

I beg to second.

(Question proposed)

Sen. Orengo: Thank you, Mr. Speaker, Sir. I also rise to support this Motion. I agree with the comments made by the Senate Majority Leader in support of the Motion and the Senate Minority Leader. I want to repeat, particularly, what the Senate Majority Leader said about our constitutional responsibilities. This is something that we cannot run away from.

Unfortunately, these matters of impeachment, the origination of this process does not lie with the Senate. It lies somewhere else. Once that process has been undertaken in accordance with the law, Constitution and with the County Governments Act and in accordance with the Standing Orders of the County Assemblies, our competencies begin after the Speaker has received a resolution. Once the Speaker has received that resolution, there is a constitutional mandate and authority that must be exercised beginning with the Speaker. Within a number of days, the Speaker must convene the House, for example, if the House is in recess.

All I can say is that nobody out there should be worried about the Senate. I have listened to the Senate in previous proceedings, I have been in one Committee and I am of the fullest confidence that by the nature of those who represent the people of Kenya, we will not take it upon ourselves to punish any Governor for extraneous reasons irrespective of his loyalties politically or his persuasions in any other way. This applies to any Governor; whether he is from the CORD coalition or from the Jubilee Coalition. Once we set the standards, then we, as Senators, will make judgment upon these proceedings on the basis of the facts and the law.

I want to appreciate the fact that we have now set a precedence and threshold on the issue of impeachment. I think we have already set the bar where it belongs. I want to repeat the fact that this particular competency and constitutional authority, having been placed in the Senate is for a very good reason. I hope that we, as Senators, will not abuse that responsibility but will do justice to every case that comes before us. Even if they come in their myriads, that will not be the point. At the end of the day, we will want to see justice in every case. If a Governor is brought before us on frivolous grounds, then the Committee will have the responsibility to throw out that case even before the Senate can sit.

The only thing that I am worried about is the people's sense of justice. If you look at the cases that are being talked about out there and the one that has appeared here before, it is about the use of resources. It is all about resources; how we are using public resources. You remember this fundamental principle of "no taxation without representation". The people are concerned about the manner in which we use their resources. In law, there is also a question of symmetry and fairness globally. We cannot sit here and begin to take cases in relation to governors. Regardless of whatever we are trying governors for, there must be a sense of symmetry, a sense of fairness that is universal so that the people in the country will know that the institutions of Government including the National Assembly and the Senate are not particularly targeting governors.

Mr. Speaker, Sir, I want to say this without fear of contradiction and I want to invite everybody to share this with me that when a national government is paying Kshs1.4 billion and that is not a matter for impeachment and a governor is using seeds

worth Kshs3 million and he is impeached, people out there are beginning to ask if there is a sense of justice. Many people are asking why we are crucifying governors when the mess and the rot is more with the national Government. I am just saying that in order to allow us and enable us function well, the national Government should also lead by example.

With those few remarks, I beg to support.

Sen. Wamatangi: Mr. Speaker, Sir, I rise to support this Motion. I support firmly the names of distinguished Senators who have been proposed to sit in this Committee. I support them because I am one of the Senators who had the privilege of being appointed by this House to sit in the last Committee. I want to encourage my colleagues and tell them that indeed they are equal to the task. It is an onerous task because when I sat in that Committee, a lot of intimidation happens, a lot of gerrymandering, people looking for you so that they can compromise you but I am sure that this team that has been selected by this House will deliver.

I also support firmly the comments of my colleagues that indeed the intention and the purpose of this House is to ensure that justice is dispensed; no matter who is guilty or who is not. As we do that, it is also important as a House that we also pronounce ourselves firmly that we will not sit back although we want to see justice done to governors. We want to make sure that if charges are brought here and are not authenticated, we shall not confirm them. In the same breath, we must tell governors firmly that this House is not going to sit and watch them ridicule this House after a process has been undertaken here.

I am saying that because in the last process, I sat as a Member of the Committee and this House announced the resolution of the House about the impeachment of the Governor for Embu; but since that time, the Governor has engaged in an endless campaign to ridicule this House. The following day, he was in the press saying that he is not going to be bound by an illegal process. As much as we want to be seen to be fair, it is not going to be at the expense of the jurisdiction and the mandate of this House. How do we impeach a governor after a full hearing of 11 distinguished Senators and the resolution is adopted by a full House and then the following day, he says that he is still the Governor of Embu and he does not recognize the process in the Senate? He also said that he was impeached illegally. We want to be fair and balanced in all the matters that will be brought here about impeachment. We want to dispense justice as it should be. If governors expect this House to be rational, they should also respect us, either singularly or in plural.

This message must go to them very clearly. We have not heard a single voice of any governor including from the Council of Governors, saying that the impeachment of Governor Wambora was a legitimate, legal process undertaken by the Senate. They should pronounce themselves on this matter but up to today, we have not heard a single voice from any of them. Does that silence mean that they also conform or agree to what the Governor of Embu is doing? I just want to take it a little further: How can we let that process bend towards intimidation? We will not go towards speculation but every news channel in this country has been airing the kidnapping or disappearance of the Speaker of Embu County. We do not want to speculate, but we cannot say for sure what happened. I hear that he was found but how can we rule out the fact that the reasons for his disappearance are political? How can we comprehend even for a moment that after such a

legal process, it is possible for a legislator to disappear in a country like this one for three or four days without being found? That is not a matter that can be taken lightly. It amounts to intimidation.

Mr. Speaker, Sir, how then can we guarantee and justify ourselves that after you, Mr. speaker, pronounce yourself on this matter, God forbid, that we shall not be told that you have disappeared? So, as a House, we have to be firm if we do not want people to play politics or even to ridicule this House.

The Speaker: Order, Sen. Wamatangi! I want to give you the assurance that nobody has the capacity to make me disappear.

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. That assurance is necessary because that trend is very worrying. All in all, I support the eleven Members who have been appointed by this House to do the honourable duty of ensuring that justice prevails as far as charges concerning the Governor of Kericho County are concerned.

With those few remarks, I beg to support.

Sen. Okong'o: On a point of order, Mr. Speaker, Sir. I may be revisiting where you ruled on the procedure in this House. We need to set a precedence on how we rule. As far as my reading of our Standing Orders is concerned, Standing Order No.68(1) talks of "shall" which is mandatory and then it qualifies with "and". So, we are skipping Standing Order No.68(1) which is mandatory and going to (2) which is a "may". I find this to be out of order and with all the legal minds in this House, I need some guidance on this before we proceed.

The Speaker (Hon. Ethuro): Order. This is on a procedural matter. The Speaker made the ruling on this matter and even the two Members who had raised that point of order have conceded, from the body language and some even vocalized it; they were very satisfied. If you are making reference to the legal minds, the Minority Leader who might be a junior to the Majority Leader in the House but he is senior in practice. So, I think that matter is settled.

Let us proceed.

Sen. Okong'o: Mr. Speaker, Sir, if I may, we are putting the cart before the horse. I need to be on record in this House that if we go on with these proceedings the way we are doing, we might be giving the former Governor of Embu room in another court. We must set standards in the way we are dealing with issues of impeachment in this House. I want to be on record.

The Speaker (Hon. Ethuro): Order, Sen. Mong'are. You can be on record through your contribution. That is your entitlement but I think the way you are moving, you may not only be on record but you may be out of the House for that record to be entered.

Sen. Okong'o: Most obliged, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order! I have not allowed on the second intervention. That is your own interpretation. There are differing interpretations in this House but unfortunately for you, the Speaker has the final word. That is something you may wish to live with. On this one, I am convinced. It is not just a matter of finality but a proper reading of the law.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise to support the formation of this particular Committee. Before I debate it, allow me to use this opportunity to send my sympathies to members of the family and friends of the Speaker of the County Assembly

of Embu and regret that up to now, I have not been able to visit him at the hospital, not because of my own choice but because my lawyer of many years of standing advised me that having chaired that Committee, if I were to go there, it is possible to give an impression that there was an element of connivance between the Chair of the Committee that led to the impeachment of Wambora and the Speaker who led the County Assembly.

Having said that, my fear is that we might be witnessing a response from the merchants of corruption against the Speaker of the County Assembly of Embu. Since we are talking about public resources, we would like the merchants of corruption to know that we have no other home. Our home is called Kenya. In fact, some of us only got a passport after we became professionals. The children of some of those merchants have passports immediately they hit 18 years old. Some of them travel on their parents passports even before they hit 18 years old. They should give us a break because we want to put our house in order and our house is Kenya.

Mr. Speaker, Sir, these are exciting times in Kenya. Those who voted for the new Constitution did not know that this is a living text book. It is speaking and therefore, I want to pay special tribute to the Members of the County Assembly of Kericho and other county assemblies that have been threatening their Chief Executive Officers (CEOs) with impeachment. They are not doing it using the Bible or story books. They are using the Constitution of Kenya. The poor MCAs are damned if they impeach their governors and they are also damned if they do not impeach them. What do you expect the young people to do? When they move on impeachment, people say that they are coercing the governor to give them money or special treatment. When they do not, the same public says that these MCAs have been bought by the governor.

Poor MCAs! I would like them to count on me and I believe oversight requires men and women of integrity. They should continue in that path and even if they are not experienced in oversight the way some of us are, Kenyans should rest assured that that is the court of first incidence. The court that will convict is the Senate. Therefore, it is up to us to stand up and be counted that we are guided by nothing else other than the law.

Mr. Speaker, Sir, without offending the Standing Orders or anybody else in the Lower House, I want to appeal to Members of Parliament from the National Assembly to emulate the indomitable spirit of our MCAs. I have watched through the public domain an attempt to impeach Anne Waiguru. How I wish they could think slightly more; the person to impeach now is not Anne Waiguru, it is the Attorney-General for allowing the payment of Kshs1.4 billion; it is the President for okaying, through a roadside declaration, that public funds be paid to some shadow individuals called Anura Pereira and---

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

The Speaker (Hon. Ethuro): What is your point of order, Sen. (Prof.) Kindiki?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Is Sen. (Dr.) Khalwale in order to repeat and regurgitate a message he has already given in a political rally last week in a *baraza* and waste the precious time of this Senate by diverting us from the core objects of today to discuss about Anglo Leasing and Kshs1.4 billion? Is he in order to say that the President of Kenya stood by a road, which he has not named and declared that money should be paid?

Sen. Muthama: On a point of order, Mr. Speaker, Sir. I think the Senate Leader of Majority is out of order because what is being raised are issues that concern the people he represents here. The same thieves who were paid Kshs1.4 billion are now asking for Kshs3.1 billion. So, what is being said here is that those who have given those instructions, whether they live in heaven, in the sky or inside the water, they must face the law and the law is the Constitution. Is he in order to protect an individual who is a Kenyan who is supposed to protect the Constitution which he is dismantling?

Sen. Lesuuda: On a point of order, Sen. Lesuuda. Is it in order for the hon. Senator to introduce new matters? If I followed your ruling earlier on, you said that we should stick to the Motion. I can see that our colleagues on the other side are very keen to introduce other matters when they reach the conclusion. Are they in order?

Sen. Orengo: On a point of order, Mr. Speaker, Sir. I really respect the Leader of Majority but I thought he would be the last person to take us 20 years back. When Sen. (Dr.) Khalwale was talking about the Attorney-General, he was quiet, when he was talking about Anne Waiguru, he was quiet but as soon as the name "President" came in, he stood up and he did not say which President. He just assumed it is the President of the Republic of Kenya. There were people in the Eighth Parliament whom if you stood up and mentioned the word President, they would stand up and think that you have committed an act of treason. Is he in order to take us to this dark past where mentioning the word "President" will be like missing a meal for a week?

(Several hon. Senators stood up in their places)

The Speaker (Hon. Ethuro): We are going to have the last brief interventions from Sen. Wamatangi, Sen. Mugo and finally the Senate Majority Leader.

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir. Is it in order for the Senator for Kakamega, this being a House of records and being a House that debates above board, we do not speculate in this House---

(Applause)

He has the right to say anything he may want to say as long as it is something he can stand by. He said clearly that the President gave instructions on phone, but he was not there to hear that telephone call and he cannot substantiate that. So, it is not right for him to make those kinds of allegations in a House that is dignified. He is out of order.

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

The Speaker (Hon. Ethuro): You cannot rise on a point of order; there is nobody on the Floor.

What is it, Sen. Beth Mugo?

Sen. Mugo: Thank you, Mr. Speaker, Sir. Is it in order for the Senators from that side to mislead the public about the payment of Kshs1.4 billion and to utter things they cannot prove and have no proof, other than what was in the newspapers, yet this House does not follow newspaper articles? Is it in order for a House that makes laws to insinuate that when a court of law in another land gives orders, that a country cannot follow, yet we claim that we follow the rule of law? Do we follow the rule of the jungle, or are we going

to respect courts, especially even when the Constitution is very clear about international laws? Is it in order? Can we stop this---

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

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. Very briefly, I want to say that all I said is that there is the business that has brought us here today. At no time, as my Senior learned friend, Senator Orengo, would want to purport, have I said that you cannot discuss Anglo Leasing or Kshs1.4 billion.

Secondly, Mr. Speaker, Sir, all I have said is that Sen. (Dr.) Khalwale mentioned a roadside declaration which I am not aware of. I said that he has not told us the road by which the President stood – whichever President it was – to give a declaration about Kshs1.4 billion. So, let us not mix issues. If it is politics, because what is happening here – we can now see – is that our colleagues want to take advantage of the airtime they have here to introduce small politics. We have answered them; we have told them to bring it on. If it is politics, we will defeat them early in the morning---

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

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): But neither will you take advantage of this airtime to also do your politics!

(Laughter)

Order, Senators! I am afraid that on this one, I will have to agree with the Senate Majority Leader.

(Applause)

The restriction is here provided in paragraph eight of my communication. We were so elaborate because we knew that these temptations will be there. I said and I quote:-

“I wish to emphasize to all Hon. Senators, as I have done before, that debate on the Motion shall be limited to the substance of the Motion, namely; whether to establish a special Committee consisting of the Senators listed to investigate the proposed removal from office of the Governor of Kericho County. It is not a Motion on the propriety, prudence or even constitutionality or legality of the processes that have preceded the submission of this matter to the Senate. It is not a debate of the facts of the matter or its merits. It is therefore not permissible, and I will not hesitate to immediately rule a Senator to be out of order if she or he digresses into any matters other than the Motion before the House.”

If all of us can restrict ourselves to that for now, but making inferences on the basis of whether you can impeach; in fact, the Senate Majority Leader was very clear that even the President is very impeachable. So, he is not discounting that, but we are saying that this is a special sitting for a special Motion, and the Motion is the formation of a special Committee in the matter of removing from office by impeachment the Governor of Kericho County.

So, let us restrict our arguments to that. Of course, the only problem is that I will not demand an apology from Sen. (Dr.) Khalwale because all of you are guilty as charged from what you have actually demonstrated – and I think Sen. Orengo has cautioned us properly so. You know, this is the 21st Century and if you do not come to this Parliament with the ideas on how you want to take this country to the next level, you have no business being here!

(Applause)

So, neither should we be deliberately aggressive or too supportive because opportunities will arise when you can make the necessary arguments. So, from today henceforth, I will rule anybody – after repeating that paragraph – who persists along those lines, to be completely out of order.

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

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

Sen. Muthama: Mr. Speaker, Sir, my colleague, the Chief Whip, Sen. Elachi, walked in when you were on your feet giving a very serious ruling; and she walked in majestically without bowing and waiting to be cleared by you!

The Speaker (Hon. Ethuro): Order! Order! Sen. Elachi, did you do so?

(Loud consultations)

Order! Now it is getting even worse!

(Laughter)

I know Sen. Murkomen is a lawyer, but he is not yet a lawyer for this purpose!

(Laughter)

So, go back and do the needful, Sen. Elachi!

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

The Speaker (Hon. Ethuro): We are dealing with a stranger; so, let us---

(Sen. Elachi went to the Bar and bowed to the Chair)

(Applause)

What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir, before I go back to my debate. It has come to my notice – and that of many Senators who sit here throughout – that there are three Members of this Senate who do not seem to have come to terms with the weight of the position of the Speaker as the Chair of this House. The casual way that these three Senators – who I do not wish to name because we are in full view of the Republic – it is important that they should go and rethink, even if they are your friends or even if they come from the same political persuasion with you by way of parties---

(Several hon. Senators stood up in their places)

The Speaker (Hon. Ethuro): Order! Order, all of you! Sen. (Dr.) Khalwale is on a point of order. Let us hear him. Once again, I will defend the right of every Senator to be heard; trust me on that one!

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, when some of us see the casual manner in which you are approached by these three Senators, we either feel that they are special, or that they do not understand the weight of the House that they call Senate. Therefore---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! I think you are also becoming irrelevant.

(Applause)

The only Senators who have approached me are actually two; one from your side and one from the other side; and you are talking of three. The two Senators did not approach me in any disrespectful manner.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, if you heard me clearly – and I am very serious---

The Speaker (Hon. Ethuro): And they were all on issues dealing with the business of this House.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. My reference---

The Speaker (Hon. Ethuro): Do not speak for me; I think I have the capacity to do it for myself!

(Laughter)

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, my reference is not for today; my reference is to what we have observed over time; but let that one rest.

The Speaker (Hon. Ethuro): Then you are completely even more irrelevant on your own admission that it has nothing to do with today! Today is a special sitting; so, do not bring other issues.

(Applause)

Proceed with your contribution.

Sen. (Dr.) Khalwale: I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): The only point that I think, Sen. (Dr.) Khalwale would have wished, if I were to represent him the way he purports to represent me, is that, you know, there are some basic things called honesty. A Senator cannot come here and tell me she does not know how she entered the Chamber. So, it is just important to just own up when you are caught; it is the only honorable thing to do. So, let us not play these extras, including people offering their legal services---

(Laughter)

I want to warn Sen. Murkomen that your legal services, I am sure, are needed elsewhere and not on the Floor of the House.

Proceed, Sen. (Dr.) Khalwale.

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

Therefore, Mr. Speaker, Sir, in support of this Committee – having sat in the other Committee – I would like to give my special thanks to the Office of the Clerk. The Office of the Clerk, sometimes in our previous sittings, was sitting beyond 18 hours in a day to have our work done. I hope that the Clerk is going to move with the same spirit and now that we have put the rules of procedure, they will find it slightly easier to proceed.

Mr. Speaker, Sir, given that this is the second time this kind of Motion is coming before us, I hope that the way we will proceed will give Governors and courts a reason to find confidence in this particular House.

(Applause)

Mr. Speaker, Sir, I am delighted to note that I have keenly kept my eyes wide and my ears open; I have not heard that in this particular case of Kericho, the Governor is trying to side step the constitutional provision through which this matter is supposed to be settled. I think this is an area we should give credit, whatever the finding will be by this particular Committee.

Mr. Speaker, Sir, I want to finish by bringing to the attention of Members a remark that was made in a workshop I believe by one of the presenters on accountability of institutions, which I forgot; and you were in that workshop. The presenter said that corruption is not a devolved function.

(Laughter)

Mr. Speaker, Sir, under the Sixth Schedule, the functions that are devolved are clearly delineated and, therefore, if we do not stand firm, then we are going to teach the new governments – 47 of them – the bad manners of the national Government, which is the custodian of all the corruption that we have in this country. We would like it to remain there so that we do not waste time dealing with corruption at the county governments when we want to save that time for dealing with corruption with the national Government.

I beg to support, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, thank you. I also stand to support this Motion. I would also like to appreciate the composition of the Members of this Senate that have been set aside to go and investigate the proposed removal from office of the Governor of Kericho County; and further as indicated here:-

“to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated.”

So, Mr. Speaker, Sir, whatever has been tabled, coming from the Members of County Assembly (MCAs) of Kericho, are just allegations. It is our duty, as the Senate, to

dispense justice; and as indicated in the County Governments Act, we must be diligent and do it within the days that have been shown here – ten days.

Mr. Speaker, Sir, this now brings to the fore the role of the Senate as it is clearly indicated in Article 96 of the Constitution. Other than being able to divide the funds, we are also supposed to look at the way the county officers work. We have 47 counties and we recently dealt with the Embu case; it is unfortunate that this one has just come too quickly. We are noting with a lot of concern that a lot of misbehavior is unfolding in the counties. For example, some MCAs are holding some governors hostage to the extent that we need to bring sanity in either way so that each arm should work independently and appropriately. Yet, at the same time, we also want to look at what the Governors are doing; some of them have stooped too low to the extent that they want to misuse funds to bring the MCAs on their side to sing praises, and it will eventually boil down to misuse of public funds.

Mr. Speaker, Sir, I am mentioning this because the number of trips – I do not know whether you have noted – that the MCAs have been entertained to go out of the country; some of them going just for leisure. It looks like there are some CEOs---

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

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

Sen. Sang: Mr. Speaker, Sir, is Sen. (Prof.) Lonyangapuo in order, instead of discussing the Motion before this House, to discuss the conduct of some MCAs, when we do not know who they are and yet you have given this ruling over and over in this sitting? Is he in order?

The Speaker (Hon. Ethuro): He is completely out of order.

(Laughter)

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I was saying that we are discussing this Motion because MCAs of a county called Kericho brought this issue here. But I was using this opportunity to also send a signal outside---

The Speaker (Hon. Ethuro): Order! Order, Sen. (Prof.) Lonyangapuo! I have repeated that; in fact, I was very clear that you should not discuss things that preceded before the Motion came to the Floor. So, it is the things that you are saying that are out of order. If you do not have anything to say, you can conclude.

What is it, Sen. Muthama?

Sen. Muthama: Mr. Speaker, Sir, this debate is becoming next to impossible because you cannot debate without giving illustrations on certain things, otherwise the debate will be too dry. If that is the way we are going, let us just say the names are in front of us; we have read them, we just approve them and go!

The Speaker (Hon. Ethuro): In fact, that is the point of the debate! That is the Motion!

(Laughter)

Sen. Muthama: So, Mr. Speaker, Sir, the 10 or 15 minutes that someone stands here to debate, will I be in order to say that it should be extremely difficult just to say “his

name qualifies; his name qualifies; we are going this way; we are going that way; the names are correct---“

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. Muthama! Speak for yourself! If you have such difficulties, the contributors who have gone ahead of you have been contributing very well. It is just one or two people; those ones who are sending signals. We are just saying that this is not a place to send signals!

(Laughter)

Proceed, Sen. (Prof.) Lonyangapuo.

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

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

Sen. Orenge: Mr. Speaker, Sir, I am finding the distinguished Senator in a lot of difficulties, because he is not saying that he is saying anything. He is just saying that he is sending a signal! I think a signal sometimes can be appropriate, especially when you are forgotten!

(Laughter)

The Speaker (Hon. Ethuro): Proceed, Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, you can see the situation I am in. What I am trying to say is that it is essential that we also mention that we do not know how many are maliciously planning to bring some impeachments which may not be based on anything. So, it is important to mention so that the---

The Speaker (Hon. Ethuro): Will it help you, Sen. (Prof.) Lonyangapuo, to know that when the Committee has now considered the matter, because the Committee is going to look into the allegations and substantiate them, then they will bring them to you? Then that is the time you will have realized the kind of allegations that were being brought and you can even try to infer the possible reasons why that allegation may have been brought and you fail to substantiate. That will be perfectly in order. So, you will have another opportunity. It is that this is not the opportunity.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. The Senator for West “P” is stating in the Senate and he wants---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale. Which county is that one?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, it is West Pokot. He is stating on the Floor of this House and he wants it to be part of our record, that our Members of the County Assemblies (MCAs) proceed maliciously. Is he in order to impute such bad motives against our MCAs? Could he withdraw and apologize for that very bad remark against the MCAs? If he wants he can substantiate.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I think Sen. (Dr.) Khalwale is now putting words in my mouth. I said that some of them and we cannot rule out that because it is only the Committee that will exonerate them.

The Speaker (Hon. Ethuro): Order. Sen. (Prof.) Lonyangapuo, I thought you would seek refuge in my declaration of you out of order. So that matter should not be entertained any further.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I will conclude by saying that I support the formation of this Committee and I also send my sympathies to the people of Embu with regard to the scenario that unfolded. I would like to say that the process that the Senate and the County Assemblies are doing is not meant to harm anybody at all. All of us must support this process.

I support.

Sen. Ong'era: Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Motion. First, I would like to congratulate the Senate Majority Leader and the Senate Minority Leader for proposing to establish such an able Committee. The men and women who have been proposed in this list are able and competent. They are professionals and I believe that they will carry the day for this House.

Mr. Speaker, Sir, as we have in many days requested, such committees must rise above reproach and they must be like Caesar's wife.

I thought Sen. Murkomen was standing on a point of order, but he cannot intimidate me.

As I was speaking on this issue, I wanted to make some two comments. The one I---

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. Is it in order for Sen. Ong'era, even though she could have missed me for long, to try to infer that I was intimidating her by looking at her? How does intimidating look like?

(Laughter)

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is it in order for Sen. Murkomen to continuously stare at Sen. Ong'era with a very mischievous smile? I have been---

The Speaker (Hon. Ethuro): Order Sen. Wetangula! You know you are the cause of all these altercation because you are the one who incited Sen. Ong'era and Sen. Ong'era in trying to affirm her position which is harmless, because there is no Senator who has the capacity to intimidate another one and that is a statement of fact. In the process, Sen. Murkomen seemed to have gained more strength to actually rise on a point of order which he had not done and then Sen. Wetangula again comes and says that Sen. Murkomen was staring with a smile whereas nobody can stare with a smile. Staring is using one organ known as the eyes and smiling is the mouth. So, let us stop it there.

Proceed, Sen. Ong'era!

Sen. Ong'era: Thank you Mr. Speaker, Sir, for coming to my aid. I would like to advise this Committee that there is no big or small corruption and that there is no big or small misuse of the law. We must note that if a Governor is going to steal a chicken and he says that he has bought it for Kshs2, 000 when we know that the price is Kshs500, the national Government will also flout the law and tell us that a court has ruled in England when we know that it has been done by consent and that they can pay Kshs1.4 billion, the threshold is the same---

The Speaker (Hon. Ethuro): Order, Sen. Ong'era. That matter has been dispensed with. This Motion is narrow and there is nothing stopping you from coming up with a Motion on your favourite topic. For now, just deal with the matter before the House.

Sen. Ong'era: Mr. Speaker, Sir, I stand guided. I was advising the Committee that the threshold for corruption is the same and therefore, ---

The Speaker (Hon. Ethuro) But that matter is not before the House.

Sen. Ong'era: Mr. Speaker, Sir, I stand guided by your ruling. I would like this Committee to come with a report that will put this House where we want to go. This is a House which is the guardian of devolution. We cannot speak about this issue without looking at other issues, for example, coming up with legislation that sets a threshold with which we look at how a Governor has behaved and another official in the national Government has behaved. Therefore, it behooves this Senate to come up with legislation or amendments to legislations that can set a threshold with which we can debate these matters. I would like to assure our brothers in the Jubilee Coalition Government---, until the issue of Kshs1.6 billion is clarified to us.

I support.

Sen. Kajwang: Thank you very much, Mr. Speaker, Sir. I have been quiet and I want to start by saying that when I heard that the Speaker of the Embu County Assembly had been kidnapped and was lost, for the first time, I got frightened for my own safety because I believed that it is very unsafe to travel alone because somebody could very well just grab you and put you in their boot and deposit you wherever they want.

Mr. Speaker, Sir, when it came to light that this particular Speaker had asked for security from the Government and that the Government ignored him even after he wrote several letters, then it shows that sometimes we ignore things which eventually can embarrass the State because it is bad enough that he was kidnapped and dumped or hidden somewhere and he has been dumped back. What if he had died? This would have been a terrible scar for the Government of the Republic of Kenya for failing to protect its own citizens. However, a bad story has ended well and I want to thank whoever it was that did this for bringing him back alive. He would have brought us so much trouble for no reason.

Mr. Speaker, Sir, let me now come back to Kericho County and say the following. We are actually debating here and setting up a committee to investigate allegations which we do not know about other than what we have read in the press. I do not want to go back to the ruling of the Chair but I would have been happier if I knew what it is that we are giving this Committee to go and deal with so that as they deal with it, if I have an interest in any matter, any one charge or I have information, I could go there and give it. But a ruling has been made and I hope the Committee will take the charges and deal with them.

Looking at the Committee as formed, I can see all the sectors of this House inside; I can see the youth, experience, gender, different professions and the face of Kenya. So when a decision is finally made by the Committee, it will not be because it was my tribe against everybody else or my profession against other professions but a composite resolution made on the facts and the law and that is why I am comfortable that this Committee will do a good job.

Mr. Speaker, Sir, what about our responsibility in this House which we are discharging this afternoon? Some people have been writing a lot of articles in the newspapers intimidating us. They have been telling us that we cannot be dismissing

Governors every other day and that we are undermining devolution. They have been reminding us that it is our duty to protect devolution as if this is not protecting devolution. In fact, what we are doing now is protecting devolution, the counties and the county government against itself because we do not want them to be destroyed because of the misbehavior of one officer or one institution against the other. So it is our responsibility and obligation to do what we are doing. As at now, we are deciding to take it to a committee but we could as well sit as the entire Senate and become a tribunal and take evidence and ask questions. But we have decided that a Committee acts much more efficiently and can spend more hours and deal with more facts better and advise us accordingly. So, we are doing our job. We are exhibiting our fidelity to the Constitution.

If there is any reason I came to this Senate – when I was campaigning many people asked me why I wanted to go to the Senate. It is because I came here to protect the Constitution. I told them that wherever I went, and they wondered what it is like to protect the Constitution. This is what I am doing. I did not see the name of the Governor here but I read from the newspapers that he is a professor and he understands that we are just doing our job and he is doing his and the County Assembly is doing theirs. The only institution that I think is interfering with every other institution which I will bring a Motion here so that we debate it is the courts. After the County Assembly of Embu did its job and the Senate did its job and the Speaker gazetted what we had done, then some villagers went to court and said that they also wanted to be heard and yet they are already been represented in all these institutions.

Every institution must be left to do its job. If the courts were to find that there was something unconstitutional about what we did, anybody could have appealed. But, really, to claim to want to listen to the villagers, what if another group of 45 villagers and another 70 villagers come forward? We will be hearing matters on a daily basis from different groups of villagers from every part of this country and yet they are just busybodies. So, the courts must make us feel that they are doing their job, but they should also leave everybody else to do their job. That is how this country will move forward.

Mr. Speaker, Sir, I have seen from the Press that most of the charges are about procurement. I can tell you, when you talk of procurement, you are talking about corruption. They are almost the same words. When you use the word “procurement”, the Kenyan who listens to you sees “corruption”. This is because most of the corruption in this country has arisen from procurement. That is why I want to warn the governors to be very particular with procurement issues. They should leave this to the professionals to do it well. But they should also supervise to make sure that the rules are followed because when the professionals mess, the governors might end up here for no reason. I heard the other governor say: “It was not me, it was my officers and the procurement department.” Eventually, it ends up with an individual. I hope that we will train the governors before we bring too many of them here. They should look at their procurement departments keenly.

Sen. Sang: Mr. Speaker, Sir, Sen. (Prof.) Lonyangapuo was ruled to be out of order for sending one signal only. Sen. Kajwang has sent out several signals in different directions to governors, MCAs and procurement officers. Is he in order?

Sen. Kajwang: Mr. Speaker, Sir, I have not sent any signal to anybody.

(Laughter)

Lastly, let me say that I have also heard that governors are now complaining that when we do our job, we expose them to blackmail, harassment and all sorts of things by the MCAs; that they must take MCAs to Singapore, China and America with our money. We will deal with that later because we must make sure that we pass some statutes that will protect our money from being used to visit Bangladesh and such other places for no good reason other than to tour around.

It is important for me to say this, that the charges must be grounded on two serious things. I hope the Committee will look at this. The charges are a serious breach of the law and a violation to the Constitution. That is what the Constitution talks about. Of course, other grounds such as gross misconduct are sometimes difficult to define. But the courts have now narrowed it down to something we can look at. But the Committee should make sure that they are satisfied that the Governor of Kericho County breached the law substantively or violated the Constitution. If the Committee is not satisfied, they should come here and tell us: "We were not satisfied." We will agree with you. But if the Committee is satisfied, come here and tell us: "We were satisfied on this and on this basis." The country is listening. If we make a ruling that looks like we are biased or it is a turf war or we want to discipline governors or *nyoa* them, we might be told that we are irrelevant. But we must protect this House; that when we act, we do so with fidelity to the law and national interest.

Mr. Speaker, Sir, with those many remarks, I beg to support.

Sen. Ong'oro: Mr. Speaker, Sir, I rise to support this Motion. My conscience is very clear that we are moving in the right direction because if you consider Standing Order No.68(1)(a) as read together with Standing Order No.68(1)(b), we are within our mandate to constitute this Committee. The 11 names that have been proposed have got the skills, experience, discipline and qualifications to objectively execute the mandate that is before them.

Elsewhere, the Senate has been accused of impeaching governors. I find this very ridiculous because this Senate does not impeach governors. Governors are impeached by their own county assembly MCAs. The Senate only executes its constitutional mandate when the matter of impeachment is brought before it and to interrogate the charges brought against the governor and to sustain or exonerate the governor.

I want to state that collectively as a Senate and individually as Senators, we have nothing against governors. As a matter of fact, when you look at any committee that is constituted like in this case, only one Senator comes from that county. So, for people, especially in the Press to accuse the Senate of fighting political battles by impeaching governors is really a misrepresentation of facts. We have nothing against any governor or county assembly. Of course, as the Senate, we have everything against the mismanagement of public funds and the excesses as exhibited by the spending culture of various governors and county assemblies. As a Senate, we have everything against the violation and breaching of any constitutional provisions, whether by an individual, state organ, county assembly or any other level of government, even the national Government.

Mr. Speaker, Sir, in conclusion, I want to state that even as we execute this mandate very passionately, because we are protecting public funds, we cannot excuse ourselves from making reference to the two levels of government because we know very well that at the promulgation of the new Constitution, the system of governance in this

country shifted from a centralized system of governance to a devolved system. But there is an interrelated platform about which the Senate stands as the bridge between the national Government and the county governments. Even as we interrogate the excesses of the county governments, it cannot escape our attention to, once in a while, relate the excesses of the county governments to the excesses or breaches of the Constitution by the national Government.

For example, when we consider the issue of the standard gauge railway line where we have been presented with a figure that is double what was originally presented in a period of just a few months---. If you have anybody interrogate this matter, that a private company will come here and present to us a bill of Kshs200 billion and then about three or four months later, present to us a bill of Kshs427 billion, you ask yourself, as a citizen, what extreme factors were considered to change this figure from Kshs200 billion to Kshs427 billion?

With those remarks, I support the Motion before us.

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir, for the opportunity to contribute to this Motion. Our constitutional responsibility includes impeachment. It is something we cannot run away from, it is a responsibility that we have to take. As the Senate, we have taken this responsibility seriously. We also want to have the public understand what this role really entails. It is about protecting counties to ensure that they are able to reap the fruits of devolution.

When the public blames us for impeachment without realizing that this is a process that starts from the MCAs who are closer to their counties and the goings on in those counties--- A total of 32 MCAs from Kericho County Assembly all voted for the impeachment of the Governor of Kericho County and the charges were presented to the Senate. You have made it very clear that these charges are availed to us in the documents that we can pick, so that we can actually go through those charges.

It is important for us, as the Senate, to make sure that we look at those charges and in that Special Committee, the Governor should present himself before the Committee to defend himself from those charges so that those charges are substantiated. If the Committee finds those charges substantiated, the Senate will then impeach the governor. It is, therefore, important for governors, when knowing they are facing specific charges, to have ways, means and evidence of finding out how to use that opportunity to make a case for themselves and to show that their hands are clean. From the Senate perspective, it is very clear that if there is any governor who has engaged in any sort of malpractices, if these matters get to the Senate, we must deal with them.

I am happy that in this matter, we have set precedents with the first Committee that did us proud. The Committee was led by Sen. (Dr.) Khalwale. Even as we go to this second Committee, we do so with a lot of confidence. The new Members that are coming to this Committee will bring in the values of integrity and responsibility. So, we are proud about this. We also have very good gender and regional representation. We have a good example from the first committee. The commitment and hard work that was put into the committee is what we expect to continue not only in this Committee, but in other future committees that are going to be established by the Senate. More importantly, the Special Committees enable us to delve into details, to get into the facts of these charges and discuss these facts at length, so that we can get to the bottom of the matter. This further allows us to take evidence where that evidence is necessary and to deliberate so

that we come up with a conclusion that we are confident about. If the decision is to impeach a governor, it is not done lightly, but with a lot of time spent and the process done in a prudent manner.

Mr. Speaker, Sir, the charges that have been leveled and the ones we can get from the documents that have been given will also help us, as a Senate, even as we come to the deliberations, to be very clear about the issues that we are discussing. We, as the Senate, stand to show that counties and county governments are protected. We need the Kenyan public to appreciate this role. They should support us, as we perform this important function of ensuring that devolution succeeds in this country.

With those remarks, I beg to support.

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

Sen. Murkomen: Thank you, Mr. Speaker, Sir. First of all, I would like to start by saying that I support the Motion. I would like to congratulate those whose names have been enlisted in this Motion to perform this every onerous, difficult and very honourable task. I had the privilege and honour to serve in the first Committee of this House that looked into the matter of Embu. This is not an easy task and as Sen. Khalwale said, we benefited immensely from the support of the Clerk's Office and the legal teams who worked meticulously to ensure that this House assists us to make a Report that can set a proper precedence.

My advice to our Members is that they should hit the road running. You will not sleep when the hearings start because of the time, energy and the processes. I am proud to say that this House, if it goes by what it did during the Governor of Embu situation, then we will serve justice to the Governor of Kericho. There have been misconceptions on whether – I have heard Members of this House going public and saying that there is deficiency of law in the impeachment of Governors. Nothing can be further far from the truth.

I want to speak as a person who served in the taskforce on devolved Governments. This was a copy of Article 145 of the Constitution; word by word. Article 145 is about the impeachment of the President. As a lawyer and a former law lecturer, I am worried about the caliber of judges that we have in the country who are giving orders against plain reading of provisions of the law. If you read Article 145, you will see that there is nowhere it says that when you are impeaching the President of the Republic of Kenya who is elected by people living in 47 counties, you must subject them to public participation.

The Constitution already says that the Members of Parliament and county Assemblies are serving as representatives. They are elected to serve people. If you were a judge, this would be a plain reading of the Constitution. If you read Article 145 and 181, you will see that this House can make laws to assist in the impeachment of Governors. This Senate, sitting in the last House, as both National Assembly and Senate, made a legislation that was very clear. They said that they wanted to copy that of the President to serve the Governors. Therefore, trying to attempt to dissuade the public or mislead them that there is deficiency in law; that is wrong.

This House has acted within the law and we do not need a law to look, again, at the process of impeaching Governors. What we need is to amend the County Governments Act to add a section that says; once a public officer has been impeached by Parliament, Parliament must vote again as to whether that person can ever hold the office

forever. That is what happens in the United States. Once they have voted to impeach, they vote again to decide whether one can hold office. At times, they bar someone from holding office for 20 years. The Senate sits again after 20 years to review the decision. The Senate is successive and it does not matter who sat in the House 20 years ago. They can say that they have reviewed their decision that was made 20 years ago to say that a person should not have been blocked from holding office. I do not believe that there is any deficiency of the law. The law is sufficient enough. It is for us to act within the law.

There is another misconception that his House is a lynch mob and that we sit here, make decisions and impeach anyone who is brought here. Nothing is further from the truth. This Committee that was formed for the first time in this House looked at the charges that came against the Deputy Governor of Embu and this House released her because we did not find anything that was sufficient against her. The facts are not being reported out there. They are just saying that this House has been lynching people. I do not believe that a process that is so meticulous, that involves two-thirds of a county assembly and more than half of the delegations of this House can be said to be illegal or reduced to a lynch mob.

I want to tell the Committee Members, in the language that is going on, that they are the surgeons and not the morticians. They must do this surgical work with a lot of respect to the people of Kenya. They must ensure that Governor Chepkwony gets a fair hearing. If they find that he is not culpable, they can make a decision. If the Committee finds that the charges are not substantiated, there will be no need to gazette that this House sits again because there will be no report to receive. It is clear, in the law that it will not come to this House. However, if they find that the charges can be substantiated, they will bring the Report to this House and we will go through the trial process. People need to understand out there that what we are doing is borrowed from the Constitution and is what we have to do.

Finally, I want to tell the Committee that the task they will carry out threatens the political interests, not only of the Governor alone but of those who supply goods to a particular county. It drives the political interest of people who are interested in getting positions in those counties and, therefore, they must act like Caesar's wife, and be above board. Aside from that, they must ensure that they are not taken hostage by brokers. There will be people running around saying that if you make a decision in this direction; I will take care of you in this direction. They must continue upholding the high standards of this House and bring clear positions of law to this House.

Finally, I want to speak to the situation of Embu. This House made a decision at one 1.30 p.m. on 13th May. That decision was in accordance with the Constitution. Article 145 which deals with the impeachment of the President says—

145. (1) A member of the National Assembly, supported by at least a third of all the members, may move a motion for the impeachment of the President—

- (a) on the ground of a gross violation of a provision of this Constitution or of any other law;
- (b) where there are serious reasons for believing that the President has committed a crime under national or international law; or
- (c) for gross misconduct.

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

- (a) the Speaker shall inform the Speaker of the Senate of that resolution within two days; and
- (b) the President shall continue to perform the functions of the office pending the outcome of the proceedings required by this Article.

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

- (a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the President; and
- (b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.

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

- (a) investigate the matter; and
- (b) report to the Senate within ten days whether it finds the particulars of the allegations against the President to have been substantiated.

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

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

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

(7) If at least two-thirds of all the members of the Senate vote to uphold any impeachment charge, the President shall cease to hold office.

This one does not say that the President shall cease to hold office unless gazetted. It does not say that he shall cease to hold office unless the decision is announced in a newspaper.

I have read that section because a judge of a High Court of the Republic of Kenya, which has purportedly reformed, cannot use interim orders to quash a decision that has already been made. I do not know what Constitution some people read. If he was giving interim orders to preserve the swearing-in of the Deputy Governor, we would understand. If he was giving interim orders to stop anyone else from taking office, we would understand. However, for him to use interim orders to issue orders of certiorari to quash a decision that has been made by this House--- I think we need retraining of our Judiciary. I want to say this with utmost respect because the things I am seeing being decided by judges are things we learnt in first year. It should be obvious in law, on the face of it, that you cannot make decisions on interim orders and say that someone can continue to work in an office. This message must be made very clear. There is clear conflict here. If the Governor of Embu continues to expend public resources, this House

will be faced with a decision of relooking at the issue and making a proper declaration. We cannot operate like this. I agree with Sen. Kajwang that we need to bring a substantial Motion so that the Judicial Training Institute can work a little bit harder to ensure that our judges are in consonance with the new constitutional order.

I was out of this country and was saddened to receive news alerts on 411 saying that the Speaker of Embu had disappeared. How can someone disappear during the day? Coincidentally, it is the Speaker who has been facing the challenges of impeachment and so forth. I hope that his disappearance had nothing to do with his role in the matter of the impeachment of the Governor of Embu. If it had, then I am worried. I am worried because the message being sent to the Movers of Motions in county assemblies is not correct. We are telling them that if they move a Motion against a Governor, they will disappear. We are telling the Speaker of a County Assembly that if they preside over such a Motion, they will disappear. The Speaker assists in conducting the affairs of this House and ensures that there is civility of the House. You, Mr. Speaker, do not vote in this House. You assist in conducting the affairs of this House and ensure that there is civility in the debate of the House. Why should you be sacrificed for decisions that have been made by elected Senators in this House?

We need to give proper protection to officers who are fighting for accountability. Disappearances in the 21st Century are unacceptable. I am sending this message both to the Minister for Interior and Coordination of National Government and to all who may have been involved in the disappearance of that man. That means that you can go drink tea and after that, you are told that Sen. Orenge has disappeared only for him to reappear somewhere in Limuru on the road. That is not acceptable.

Sen. Orenge: On a point of order, Mr. Speaker, Sir. I am so much concerned about the reference the Senator has made to me. I hope that he is not giving somebody an idea; lo and behold!

Sen. Murkomen: Mr. Speaker, Sir, I like giving examples about my mentor. If he disappears, that will be very serious. I was saying that for that reason, this House needs to pronounce itself properly on this matter. We were told that JM Kariuki disappeared and somebody else told the House that he was in Zambia having fun. However, he was found dead in Ngong. We were told that Ouko had travelled from somewhere in Koru to co-host a function in Gambia as a Minister for Foreign Affairs, however, his remains were found in Got Alila. We cannot allow a situation where a public officer or any citizen of this country is allowed to disappear like that, for whatever reason. That issue must be taken up by this House. I believe that your office can lead this House to ensure that this Senate addresses that matter substantively at a given time.

Finally, I want to give a message, clearly, to the Governor of Kericho. If you are innocent, you have nothing to fear. You have already shown humility and we support you for deciding that you will not run to the courts. We want to support him for what he has done right. If he is innocent, of course, we have to make a decision. We have to do what we must do, however, painful it is. That is the position of the law.

For all those reasons, I stand to say that I support counties. I am not one of the people who bash county assemblies. County Assemblies have done their job. Any Senator who will be quoted by the press bashing any County Assembly Member for performing a function over which we have an appellate jurisdiction; telling them that they

are a lynch mob will not be correct. We have a second chance to correct the decisions they will have made.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is it in order for the distinguished Senator for Elgeyo-Marakwet to say what he has just said when I have seen him on television with his colleagues bashing Members of County Assemblies (MCAs)?

The Speaker (Hon. Ethuro): He is in order because he was talking about any Senator. He did not excuse himself. Maybe this is his Damascus point.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. For the record, I have never, ever bashed Members of County Assemblies. I have always given them, as the Chair of Devolution, advice so that any time they exercise a certain function, they ensure that it is not used for intimidation, blackmail, or so forth. However, I have never told them that it is wrong for them to use an oversight function to impeach any person who has violated the law.

My responsibility as the Chair of Devolution Committee is to give advisory services to the county governments. We tell them, county assemblies, continue doing what you are doing but do not use it for intimidation or blackmail.

Sen. Keter: On a point of order, Mr. Speaker, Sir. Would I be in order to call the Mover to reply? The issues being articulated are the same.

Sen. Kajwang: On a point of order, Mr. Speaker, Sir. I do not have a problem with what hon. Keter has said. However, coming as a person who comes from Kericho, could he be having a personal interest on this matter?

Sen. Keter: Mr. Speaker, Sir, for the sake of clarity, I have no personal interest.

The Speaker (Hon. Ethuro): Order, Sen. Keter. Do not feel any compulsion, to any Senator, to respond to issues that the Speaker has not declared that you should respond. I made it clear, earlier in the day, that Sen. Janet Ong'era had made a statement of facts and should not be intimidated. Therefore, neither should you be intimidated by the Senator from Homa Bay County. The matter you raised has nothing to do with you declaring interests. That was a matter of closure of debate. What interest is there, Sen. Kajwang?

In fact, from my own observation, there was no other Senator who was interested in contributing. So, Sen. Keter was just being more than enthusiastic to inform the Speaker that there is no other Senator interested in contributing. I will put the question. This is Motion affecting counties. I will call upon the Mover to reply, then we go to roll call voting.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, seeing the mood of the House, I beg to move.

The Speaker (Hon. Ethuro): Ring the division bell for eight minutes; then we will go to roll call voting.

(The Division Bell was rung)

The Speaker (Hon. Ethuro): Order, Senators! The eight minutes are over. Close the door and draw the bar. The following are the names of the Tellers: For Ayes, Sen. Murkomen and for the Noes, Sen. Kanainza. We shall now proceed with the voting.

ROLL CALL VOTING**DIVISION****ROLL CALL VOTING**

*(Question put and the Senate proceeded
to vote by County Delegations)*

AYES: Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Elachi, Nairobi County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Nabwala, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Murkomen.

NOES: Nil

Teller of the Noes: Sen. Kanainza.

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division are as follows. First, we have disallowed one vote---

An hon. Senator: What?

The Speaker (Hon. Ethuro): Just leave it there. So, the results are as follows:-

AYES: 26

NOES: Nil

ABSENTIONS: Nil

(Applause)

(Question carried by 26 votes to nil)

Order, Senators! I have a communication to make.

COMMUNICATION FROM THE CHAIR

DATE OF FIRST MEETING OF THE SPECIAL
COMMITTEE ON THE IMPEACHMENT OF THE
GOVERNOR FOR KERICHO COUNTY

As you are aware, Standing Order No.183 (1) of the Senate Standing Orders provides that the Clerk shall appoint a place, date and time for the first meeting of a Select Committee within seven days of its constitution by the Senate or such further period that the Speaker may approve and as soon as a majority of the Committee is present, the Clerk shall, by a secret ballot, conduct the election of the Chairperson and Vice Chairperson of the Committee.

Pursuant to this Standing Order, I will, therefore, direct the Clerk to appoint today, 23rd May, 2014, as the date of the first meeting of the Special Committee. This meeting is to be held here in County Hall in the Committee Room on Ground Floor immediately after the rise of the House. As required under the provisions of Section 33 of the County Governments Act and Standing Order No.68(2)(b), the Special Committee should report to the Senate within ten days on whether it finds the particulars of the allegations against the Governor to have been substantiated.

As I have ruled earlier, today is not counted. So, the ten days start running from tomorrow. The Report will be brought to the Senate on 3rd of June, 2014, which is the normal day according to our calendar.

ADJOURNMENT

The Speaker (Hon. Ethuro): Hon. Senators, now that brings us to the close of our business. The House, therefore, stands adjourned until 3rd June, 2014, at 2.30 p.m.

The Senate rose at 5.22 p.m.