

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 17th October, 2024

Special Sitting

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

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum? Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

Hon. Senators, we do have quorum now. Kindly take your seats.

Clerk, you may now call the first Order.

Now, during yesterday's session, there is a volume that had been made available by the Counsel for the National Assembly. I remember Senior Counsel Muite, you sought for time to look at it and confirm indeed that the photocopy did not introduce new material.

Can we now admit that document, Senior Counsel?

Hon. Paul Muite, SC: Mheshimiwa Spika, we looked at it and have no objection. It can now be introduced. Thank you.

The Speaker (Hon. Kingi): May the same be admitted and be made available to all Hon. Senators.

Next Order.

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**HEARING AND DETERMINATION ON THE PROPOSED REMOVAL FROM
OFFICE BY IMPEACHMENT OF H.E RIGATHI GACHAGUA,
E.G.H., DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA**

PRESENTATION OF THE CASE OF THE NATIONAL ASSEMBLY

The Speaker (Hon. Kingi): Hon. Senators, ladies and gentlemen, at the rise of the House last night, the National Assembly had called two witnesses. They had done the evidence-in-chief, pro-examined, re-examined, and it was the opportunity for the hon. Senators to seek for clarifications when the House adjourned.

The National Assembly has a balance of 20 minutes to conclude its case. The Deputy President has 45 minutes, having taken one hour from the three hours that had been indicated to the Deputy President, for today. Let us stick to the time so that we can conclude this matter in good time, today.

Hon. Senators, ladies and gentlemen, we will start with the clarifications sought from the first witness of the National Assembly, hon. Mutuse. Thereafter, we will move to the second witness and conclude and then we can now allow the National Assembly to call their third witness.

Is Hon. Mutuse present?

Hon. Mwangi Mutuse: I am present, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): You will be noting the questions and the clarifications sought from the hon. Senators.

The hon. Senator for Nandi County, please proceed.

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. I would like to seek some clarification. However, since yesterday we started with the word of the Lord, I would like to read to my brother, Eckomas Mutuse, Proverbs 12, verse 22. It says-

“The Lord detests lying lips, but he delights in those who is telling the truth.”

Hon. Mutuse Eckomas, I leave you with that. Please allow me to seek the clarification. One, by the time you were giving us that the wealth of the Deputy President was Kshs5.2 billion that you allege has been acquired for the last two years, did you access the wealth declaration form from the Ethics and Anti-Corruption Commission (EACC)?

Secondly, under the National Cohesion and Integration Commission (NCIC) Act and in Muthama's case that the courts ruled, is shareholding part of the definition of the word incitement?

Thirdly, in the matter of Kilifi-Malindi Road, do you have any evidence to prove whether it is a private or a public road? If it is either private or public, can you table the evidence before the House?

Fourthly, is the clarification on the issue of Justice Esther Maina. Are you telling us that since the Deputy President is the Deputy President of the Republic of Kenya, he does not have a right as a citizen of Kenya, not to bring any complaint against any officer, including judicial officers?

Finally, on 1st October 2024, Cabinet Secretary, Mutua---

The Speaker (Hon. Kingi): Sen. Kinyua,

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Sen. Kinyua: Thank you, Mr. Speaker, Sir. My question goes to hon. Mutuse. Was Treetops Hotel available for acquisition? If that is so, was there any law of procurement that was breached?

Secondly, what is the age of the Deputy President's sons?

Thank you.

The Speaker (Hon. Kingi): Sen. Fatuma Dullo.

Sen. Dullo: Thank you, Mr. Speaker, Sir. My question first goes to the Counsel on the side of the Deputy President, on attack on the national security. The National Intelligence Service is a critical organ of a Government. The attack by the Deputy President is serious.

I have seen the video being played that what the current President said when he was the Deputy President is equal. I also heard the Deputy President saying, "I have learned from my boss". Does that answer the question of gross misconduct on the part of attack on the security?

Secondly, on the issue of disinheriting the widow, we have been told a lot of stories here, but I would like to know because we are Africans. Matters of widows are very critical. Have you thought of looking for the family of the late Gachagua, just to clarify the many questions that are lingering around that particular family?

I thank you.

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

If you are in the first round, Hon. Senators, allow others to also get an opportunity to seek clarifications

Sen. Ogola: Thank you, Mr. Speaker, Sir. My clarification is to the DP's team. On a video that was played yesterday at a relocation point in Nairobi City County, I would like clarification from the DP's team on whether their client is aware that county governments have distinct governments? If so, did the DP consult with the county government of Nairobi City over the challenges of relocation at Kayole?

Two, there were one or two videos that were played, of speeches at rallies by His Excellency the President of the Republic of Kenya. My question is, what was the essence of those videos? Is it to show that two wrongs would make a right? Thank you.

The Speaker (Hon. Kingi): Proceed, Sen. Lelegwe.

Sen. (Dr.) Lelegwe Ltumbesi: Thank you, Mr. Speaker, Sir. My clarification is to the witness of the National Assembly. Yesterday during the cross-examination, the advocate of the Deputy President asserted that you have identified several companies with which he has no issues or cannot attribute any misconduct in their dealings. Given this context, could you inform the necessity of including these companies in the present impeachment Motion?

Thank you.

The Speaker (Hon. Kingi): Proceed, Sen. Eddy.

Sen. Oketch Gicheru: Mr. Speaker, Sir, thank you. I have one question for the witness-in-chief and one clarity question from the counsel for the Deputy President, particularly Counsel Tom Macharia.

I will start with hon. Mutuse. May you help this House understand whether all the companies that you indicated are for the sons and the spouse of the Deputy President and

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whether you established how old they are? Did you manage to estimate the net worth of those companies and how did you do that?

Senior counsel, Tom Macharia, in the explanation of ground number four, you led this House to look at the particulars of the coalition document and the coalition agreement. Help us understand how we should interpret Article 91 and Article 232 of the Constitution with regard to your response on the Government being a company equal to having shares and not a country.

The Speaker (Hon. Kingi): Proceed, Sen. Seki.

Sen. Seki: Thank you, Mr. Speaker, Sir. My question goes to hon. Mutuse. I want him to make a clarification on the issue of Peterson Njomo's affidavit on the Olive Gardens Hotel, on the appointment of Julianne Jahenda as the signatory agent. The letter to the Public Service Commission (PSC) through the Clerk of the National Assembly, in Volume 8(A), page 1, gives a different person by the name Makaa Juliana Jahenda. Why do we have different names here? You need to clarify because it has two different people altogether.

The second clarification is on the issue of the award of the tender on the proposed refurbishment of the Deputy President's residence in Karen. Hon. Mutuse, the Government through a State House Comptroller, signed that contract. I want to know the relationship of this contract with the Deputy President now that you are saying it has some issues. What is it about the contract and the company that did that refurbishment? We need to know the relationship and the malpractice that has---

The Speaker (Hon. Kingi): Proceed, Sen. Hamida Kibwana.

Sen. Kibwana: Mr. Speaker, Sir, sorry, my question was for Dr. Mulwa.

The Speaker (Hon. Kingi): Proceed, Sen. Wakili Sigei.

Sen. Wakili Sigei: Thank you, Mr. Speaker, Sir. I have two questions, for clarification by the counsel for the Deputy President.

Yesterday, in the course of your cross-examination, you took us to page 410 of Volume 3. This is with regard to the accusation where His Excellency the Deputy President accused the National Intelligence. Now, the clarification that I desire from you is on page 410.

The evidence that you sought to juxtapose what the President did then and what the Deputy President was accused of having done is with regard to one being in office and another alleging that he has not been able to attend sessions where that complaint came from. Give us the correlation between the two.

Secondly, I share the sentiments of all the Senators who have sought to get from you an understanding about the coalition agreements. You attempted to explain yesterday the relationship between company shares and coalition agreement shares. You asked about the place of this in terms of the regimes of the two kinds of agreements. What do you say regarding shares in a company registered under the Companies Act *vis-à-vis* post-election coalition agreements registered under the Political Parties Act and the governance of---

The Speaker (Hon. Kingi): Proceed, Sen. Batuli Betty Montet.

Sen. Montet Betty: Thank you, Mr. Speaker, Sir. Hon. Mutuse is there a minimum age for a client in a bank to get a loan of Kshs700 million?

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The Speaker (Hon. Kingi): Proceed, Sen. Essy Okenyuri.

Sen. Okenyuri: Sorry, Mr. Speaker, Sir. My question is awaiting Mr. Andrew Mulwa.

The Speaker (Hon. Kingi): Proceed, Sen. Cheruiyot Aaron.

The Senate Majority Leader (Sen. Cheruiyot): Two quick questions to you, Hon. Mutuse. Is there any crime that a Kenyan will have committed if they have 20, 30 or even 40 companies? I see you have listed 22 companies here. Is there any crime by just owning these companies you feel that the person you accuse has committed?

Secondly, on this issue of Vipingo Beach, what is the crime of the sons of the Deputy President being listed as directors? I have tried combing through your Motion to establish what you consider to be either an illegality or a crime on their part by simply being listed as directors.

Mr. Speaker, Sir, lastly is to the Counsel for the Deputy President, Wakili Macharia. The clips of the then Deputy President Ruto being played by your team, could we read that it is an admission on your part to say if it was done then by a sitting Deputy President, please allow the current one to commit the same at this point?

Lastly, how has the 30 per cent allocation to Ford Kenya in the coalition agreement and in Amani National Congress (ANC), been realised?

The Speaker (Hon. Kingi): Proceed, Sen. (Prof.) Kamar.

Sen. (Prof.) Kamar: Thank you, Mr. Speaker, Sir, for giving me the opportunity. I have one question for Hon. Mutuse, on the witness by the name Peterson Njomo Muchira, who swore an affidavit that touches on Olive Garden Hotel. He offered himself to appear and be cross-examined on the content of his affidavit. Was he invited?

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

Sen. Kathuri: Thank you, Mr. Speaker, Sir. Mine are straight clarifications. Number one goes to hon. Mutuse. In Ground 7, you have said that H.E. the Deputy President, has inexplicably amassed a humongous property portfolio, estimated at Kshs5.2 billion within two years. These are very strong words. I know for a fact that before an election, any eligible candidate clears him or herself with the Independent Electoral and Boundaries Commission (IEBC) before contesting.

For comparative analysis, do you have H.E. the Deputy President's property worth before the 2022 elections, so that as a jury, we compare whether for two years, for sure, he has been able to amass this wealth?

Number two, there is this property in Meru. Many people from Meru called me last night asking me whether there is evidence to show that this land is in Meru.

The last question is to the counsels of the Deputy President. A clip was played yesterday of the Deputy President's press conference in Mombasa. This was immediately after the President did his in Nairobi, two different cities. I did not get clarity from the counsels about the clip. I am requesting if one of them could expound on that controversy between the two pressers in two different cities by the Principal and the Deputy Principal of the Republic of Kenya.

I thank you.

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

Sen. Okiya Omtatah: Thank you, Mr. Speaker, Sir. I have a question for Hon. Mutuse. To whom does this Motion belong? In most of your answers, you keep on saying, 'we'?

The Speaker (Hon. Kingi): Sen. Okiya Omtatah, that question was asked by Sen. Wambua and it was responded to. Kindly ask for a different clarification.

Sen. Okiya Omtatah: Okay, Mr. Speaker, Sir. Other than that, does Hon. Mutuse know the difference between an Impeachment and a Censure Motion? If he does, where does he place his Motion? Is it a Censure or Impeachment Motion and what are the thresholds for each of those two motions, if he understands the difference? Thank you.

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

Sen. Chute: Asante, Bw. Spika. Mhe. Mutuse, ulileta ushahidi hapa mbele ya Seneti ukidai ya kuwa Naibu Rais ako na shilling bilioni 5.2. Wewe ni wakili na vile ulikuwa unaongea jana, unaonekana kuwa wakili shupavu. Ulileta ushahidi gani hapa kuonyesha *valuation* ya hii *property* katika *documents* zako imefika shilingi bilioni 5.2?

Swali la pili, ulileta mashtaka 11. Vile unasimama uko leo, unaona aibu kidogo kwamba ulileta porojo na mambo mengi kama wakili lakini haukufikiria vizuri? Watu wa Marsabit wananiuliza huyo mtu kweli ni wakili ama ni mtu amekombolewa kutoka huko? Hebu jibu hilo swali tafadhali.

The Speaker (Hon. Kingi): Hon. Senators, we will conduct ourselves in decorum. We are not in any way going to demean the witnesses. Ask your question, but stick to the rules of this House.

Proceed, Sen. Beth Syengo.

Sen. Beth Syengo: Thank you, Mr. Speaker, Sir, for giving me this chance. I have two questions. The first one is to hon. Mutuse. In your presentation, you touched on the inheritance and property of the late Nderitu Gachagua. Have you reached out to the widow and children of the late Gachagua to also give you facts?

The next question is to the Counsel for the Deputy President. Yesterday, you played a clip of the President speaking in Murang'a. What was the purpose of playing that clip and how does it relate to the saying popularly now used by Kenyans, '*kufa dereva, kufa makanga*'?

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

Sen. Chimera: Thank you, Mr. Speaker, Sir. My question goes to the Counsel for the Deputy President. I wish to seek clarity on the documents that they tabled yesterday, being the coalition agreement, which basically informed the basis as to which the Deputy President has been talking about shares. I want to know whether there is any document that secures shares in respect of the region where the Deputy President comes from.

Secondly, is the counsel aware that at the time those documents were being prepared, his client was a candidate for office and now he successfully became the Deputy President and that he needs to promote national unity? Is it still in order for him to continue championing for the interests of one region against the entire nation?

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

Sen. Onyonka: Thank you, Mr. Speaker, Sir. I have two questions to hon. Mutuse. I hold you highly and I do not think you are as idiotic as our colleagues will say.

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Between the time when the Deputy President was a Member of Parliament (MP) and the time when he became the Deputy President, were you able to see whether there was a deliberate variation in the amounts of money that he was handling?

Did you see whether the money that he was handling as an MP, for example, changed then to the money that you brought in, where you are saying that there is some money laundering taking place? Are you able to show that distinction in order for you to make your case?

The second question is on the same issue. When you were trying to find out whether there is money laundering on any transaction, I know chances are that you did not have the technical expertise and maybe you needed an investigative agency to help you. Did you by any chance find out money moving from anywhere, either through H.E. the Deputy President's private accounts or any money that was being borrowed?

You have mentioned that one property was acquired through a loan. What about all these other properties that you allege the Deputy President had purchased? Did you link that with money coming from some illicit place, like you say? I do not see that evidence on the table.

Finally, on the issue of the will of the late Governor Nderitu Gachagua, did you by any chance get a way to ask either the wife or the children; whether there was a meeting that took place, where they were involved or whether they were unhappy or happy with the transactions that took place? This is because there is no any evidence whatsoever of, for example, the wife complaining or the children complaining. Did you get anything like that which is substantive?

Sen. Tabitha Mutinda: Thank you, Mr. Speaker, Sir. My two questions go to hon. Mutuse. First, in regards to this company, by the name Crystal Kenya Limited, Ground 7, date of incorporation is 2009. The CR12 that you have submitted to this House is for this year. Would you tell this House who the initial director of this company was? If that was so, was there any change of directorship of this company?

Secondly, the one on trial is the Deputy President of this country and not his two sons. You have linked Crystal Kenya Limited to be a proxy for the Deputy President through his two sons. Would you tell this House if you have any evidence that shows that money was wired from Crystal Kenya Limited to the account or to any company linked to the Deputy President?

Sen. Shakila Abdallah: Thank you, Mr. Speaker, Sir. My question is to Hon. Mutuse. I would like to know if Judge Maina had filed any complaints regarding being harassed by the Deputy President.

Sen. Miraj: Thank you, Mr. Speaker, Sir. My question goes to hon. Mutuse. Is it your opinion that the Deputy President was talking about enforcing the Kenya Kwanza Coalition Agreement when he was speaking about the shareholding issue?

The second one goes to the Deputy President's side. We were reminded of the oath we took when we assumed this institution. Is it in your place to say that your client has breached his own oath even before we make a conclusion?

We were made to read the Third Schedule here on justice and directly or indirectly, revealing such matters and the oath of secrecy that His Excellency, the Deputy President took; in his utterances, he used to speak about the "Murima" not being touched.

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In the essence of national unity, do you not think that your client, the Deputy President, or you will clarify for us that he has already breached his own oath even before we make a decision as the jury of this House?

Sen. Kisang: Thank you, Mr. Speaker, Sir. My first question goes to hon. Mutuse. Out of the 22 companies that you have alleged that they are associated with the Deputy President, how many are really of interest to this particular impeachment?

Yesterday you talked about the one in Vipingo and we saw that 10,000 of the total shares are owned by the estate of the late Governor Nderitu Gachagua.

Another comment is on the clips that were played yesterday on shareholding. I want to ask the legal Counsel for the Deputy President: It looks like we did not stop campaigns after elections. It looks like we continued to propagate campaigns. We expected that immediately after campaigns the Deputy President would stop this issue of shareholding.

Sen. Maanzo: Thank you, Mr. Speaker, Sir. This question would have gone to Governor James Orendo. However, since he said that his client, the National Assembly had given him instructions, I would like them to tell me the relevance of the verse they read yesterday.

Also, on the Floor of the National Assembly, they read a verse that says: "When bad leaders rule, badness increases in a country and when good leaders rule, goodness increases in a country."

Finally, what is the maximum number of companies that an individual can participate in under the law?

The Speaker (Hon. Kingi): Hon. Mutuse, you may now proceed to respond. You have exactly 10 minutes to do that.

Hon. Mwangi Mutuse: Thank you, Mr. Speaker, Sir, and hon. Senators for this opportunity. From the questions that have come across, there are many that relate to the companies and with your indulgence, allow me to start from there.

Sen. Cheruiyot, the Senator from Elgeyo Marakwet County and several Senators have asked why I listed 21 companies and why I said I did not have an interest in some of them.

First, it is important for us to understand the context within which we are operating. I am not an investigator and the law under Article 94 and Article 95 does not make a Member of Parliament, be it from the National Assembly or Senate an investigator. What I am required to do is to establish a *prima facie* case; to establish that what is happening is outside the requirements of the law.

Having been in this country and with a lot of enthusiasm in matters governance, I also know that this Senate has had the opportunity to consider the impeachment of the late Governor Nderitu Gachagua.

In that impeachment - because this is a House of record - you will realize that most of the companies that I have listed were also complained about by the County Assembly of Nyeri during the impeachment of the late Governor Nderitu Gachagua.

The complaint was specifically that there was a brother to the late governor and the brother is one, Hon. Rigathi Gachagua, who was doing all the business in Nyeri County.

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From that basis, I needed to expound to find out what these companies that had been complained about during that impeachment, what these companies that had been complained about in the Esther Maina decision in terms of money laundering had to do with the Deputy President and the things that I am alleging against him. It is on that basis that I listed these companies.

I want to invite Members of the Senate to also know that in doing this, it is not just about the direct evidence. It is also about the circumstantial evidence. It is also about the circumstances that led to where we are.

There are companies that were complained about doing business in Nyeri County, it came to this Senate. The same companies were complained about, doing money laundering and a decision of the High Court by Justice Maina has been tabled before you. Today, we are complaining that the same companies are helping to do corruption and money laundering. That is the reason why we bring those companies.

Please, notice that in an impeachment - because I have been asked about threshold and I know you know about it - my work here is to not to prove criminal liability; it is not to prove beyond reasonable doubt. My work here is not to prove civil liability, but to show political responsibility. I have been able to do so.

In terms of Vipingo Ridge, the question I want to invite hon. Senators - I request that you listen to me - you heard yesterday that the two sons of His Excellency the Deputy President, are mere directors at Vipingo Ridge and that the shares are owned by the estate of the late Nderitu Gachagua.

All of you have children. Ask yourself, why would my brother's children own my estate and not my children? Why would my brother's children be the directors in my estate and not my own children? If you die today, will your children be the directors of your properties or it is your brother's children? Do you not see that this is suspicious? It is obviously suspicious.

Secondly, what is an estate in law? An estate is a totality of your belongings. Can an estate own an estate? It is administrators. We would have expected that the executors in the estate, who are named in the Will, are the ones who would have been named in the shareholding. We know the tricks and games that are being played around to hide ownership.

I talked about circumstantial evidence. That is to be compared with the affidavit of Mr. Njomo. On the question of how Mr. Njomo was approached to be proxy in buying the property and how Jahenda is the one operating the accounts, we have shown that the same lady who works at the Deputy President's office, is the manager at the hotel and the one operating the accounts.

I invite you to see the web of secrecy and conspiracy. It is a web. This is why I said these are white collar crimes. They are done by intelligent people. Sometimes it becomes very difficult to get direct evidence. However, in the totality of the circumstances, it points to money laundering and corruption.

Let me now go to the question by the Senator for Nandi County, my good friend Sen. Cherarkey. Thank you very much for the Bible verse. I will keep on reading it and every time I read it, I will remember you.

On whether I asked for the wealth declaration of the Kshs5.2 billion wealth, I have said here that I was not in an investigation journey. I was doing my role under the law to establish a prima facie case. The last I know on public declaration, because this has also been asked, the Deputy President during the Presidential Debate as a candidate for election declared that he was worth Kshs800 million. I have listed companies and suspicious transactions that lead me to the conclusion that he is now worth Kshs5.2 billion.

The law on unexplained assets is important. It requires one to explain how they acquired what they own. This is because as far as we know, his legitimate income cannot support this. That is what I have done. I have listed properties that have laid evidence that they are either directly or indirectly owned by the Deputy President. This law is established. It is upon him to tell us where he got the money to buy those properties because as far as we know, his legitimate sources of income do not support that income.

Sen. Kinyua, thank you for the question. Treetops Hotel is owned by Kenya Wildlife Service (KWS) and, therefore, it is a public institution. The expectation is that if it was to be leased, that needed to follow the Public Procurement and Disposal Act.

We expected to have an advertisement and a competitive process leading to its acquisition and leasing to a private person. There is no evidence that that was done. That is why I allege and I approved that the Deputy President used his office to influence the acquiring of Treetops Hotel, which is abuse of office.

On whether we have had the opportunity to discuss with the children and the widows of the late Nderitu Gachagua, please allow me not to comment on that. As I said yesterday, there are requests that we keep certain matters that come to our knowledge during this process in secrecy.

Senator for Samburu County's question on the necessity of including the companies, I have answered that. On the age of the children of Rigathi Gachagua; one is in his early 30s and the other one is in his late 20s. Whether there is a limit for somebody to obtain a loan of Kshs700 million; no, there is no age limit.

Mr. Speaker, Sir, your guess and mine, how many children of that age in the Republic of Kenya would have security enough to secure a loan of Kshs600 million? To secure a loan of Kshs600 million, the bankers tell us that you have to place property probably that is 10 times more in value than that. When did they acquire that property?

Secondly, it is not our evidence. This is important for me to clarify, that Aberdare Safari Lodges was acquired through a loan. It is an explanation that we have discounted. He said that they obtained a loan of Kshs600 million, but the only document that was produced is an offer letter for the loan. There is no evidence to show that the loan was granted. There is no evidence to show any charge on that loan.

It is our contention that that explanation is not conclusive and cannot suffice. It goes back to the Deputy President to tell us where he got the Kshs535 million and Kshs143 million to buy those properties because the loan is not substantiated.

On the question of Olive Gardens Hotel, we have been able to show Julian Jahenda, the one managing the hotel and the one working in the Deputy President's office, is one and the same person. On Mr. Njomo, he bought the hotel on a promise that

the Deputy President--- The truth of the matter is that Mr. Njomo bought the hotel as a proxy for the Deputy President.

The Speaker (Hon. Kingi): Conclude hon. Mutuse. You have two minutes.

Hon. Mwengi Mutuse: What problem do we have with refurbishment at the office of the Deputy President? We do not have a problem with the tender, we have a problem with the priorities. Kenyans today and the Deputy President has been talking about it, are crying about services. Is it a priority to renovate the office or to give water to the people of Kibwezi?

On Vipingo Beach Resort, I have explained that. Whether you would bequeath your wealth to your children or to the children of your brother.

Senator of Meru County, there is an admission from the response by the Deputy President that he owns a property in Meru so I do not need to belabour that point. He has already admitted he owns a property in Meru, but he says he got a loan from one of the local Savings and Credit Cooperative (SACCO). He has not produced evidence for that loan and, therefore, to my contention, that issue is already proved.

On the National Intelligence System (NIS) address in Mombasa and why we complain about it, imagine and I do not want to imagine, that somebody was a member of Al-Shabaab and none other than the Deputy President, stood up and said our intelligence system has collapsed. Would that not be the right time to strike? That is the risk that the country faced by that announcement.

I thank you.

The Speaker (Hon. Kingi): Thank you. Let us have the second witness. As the Counsel for the Deputy President responds or clarifies on the issues raised towards them, may we have the second witness available for purposes of clarifications.

Counsel, you may proceed.

Mr. Tom Macharia: Thank you very much, Hon. Speaker. Let me begin with the tortured question of the estate of the late Nderitu Gachagua. It is a shame that we will speak on Hon. Mutuse for the rest of his years on earth.

The Speaker (Hon. Kingi): Counsel for the Deputy President, there are very few clarifications that were directed towards you. I will give you five minutes. You are not responding to the clarifications by Hon. Mutuse, but as sought by the Hon. Senators.

Mr. Tom Macharia: Those are the ones I am in. Hon. Speaker, there are quite a number of clarifications, especially on the estate issue. Please allow me 10 minutes.

The Speaker (Hon. Kingi): Alright.

Mr. Tom Macharia: Thank you, Mr. Speaker, Sir. I began my cross examination of hon. Mutuse yesterday with asking him how long he has practiced law and what law he has practiced. The problems you have as a Senate and as a *quasi*-judicial body are borne out of inexperience of legal practice. If he had practiced any succession law---

(Loud consultations)

I am answering the question.

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The Speaker (Hon. Kingi): Order, hon. Senators. I am sorry, Sen. Kavindu, just have a seat, I could not take that.

What is the source of this discomfort?

Mr. Tom Macharia: I asked him, he answered the question.

The Speaker (Hon. Kingi): Counsel for DP, what exactly have you said?

Mr. Tom Macharia: Mr. Speaker, Sir, I just want to say that the National Assembly was provided with an affidavit by the executors of the will of the late Nderitu Gachagua. It is before you. It is Volume 4, called the further affidavit of Rigathi Gachagua.

It should be before you. In that affidavit, the two executors state in comprehensive detail, everything concerning that particular estate. They are as follows.

Firstly, the estate property was divided in accordance with the will. The probate matter commenced and went all the way to the end to the conclusion. All issues were resolved within the court case and in a sense are now *res judicata*. That is issue number one.

The second issue, you will find in that affidavit between pages 11 and 19.

The Speaker (Hon. Kingi): Who sought that clarification?

Mr. Tom Macharia: The question was asked by Sen. Dullo.

The Speaker (Hon. Kingi): Counsel for DP, do not respond to what hon. Mutuse said. Speak to Senator's issue and respond to it.

Mr. Tom Macharia: That is what I am responding to.

The Speaker (Hon. Kingi): Exactly. So, whose clarification are you responding to?

Mr. Tom Macharia: Sen. Dullo asked, can you please address the question of disinheriting the Will, if the HANSARD could confirm that? I believe she did. That is what I am answering.

The Will, as I am explaining, does not disinherit the children or the widows or anybody else. It is merely because in the Motion brought before you, there were properties listed in the Motion that were part of the estate. That is the only reason this estate has become the subject of proceedings before the Senate and the National Assembly.

When you look at the Will, as I have said, between pages 11 and 12, at page 13 - if you have Volume 4 before you - there is a long list of how this estate was divided and I will not go through it. You can read it yourself. Further, you will see an affidavit by the executors, except the Deputy President who did not sign this affidavit. These are the two remaining executors who have signed it, explaining between page four and page nine.

Everything that was done in accordance with the law and in accordance with law of succession and that no one's property was taken away.

The Speaker (Hon. Kingi): Sen. Dullo, you know our rules.

Proceed, Counsel.

Mr. Tom Macharia: I have been asked some questions about the issue of the Murang'a video and about the shareholder agreements and whether two wrongs make a right.

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Our position is the opposite. Our position was that the address by the President in Murang'a was, in fact, in confirmation of the agreements. The President was merely saying that they are implementing the agreements they agreed upon. It was incumbent upon his Deputy to assist his President in confirming that they were implementing the agreements. That is the purpose of the video and the purpose of those agreements.

It is not to say *kufa makanga, kufa dereva*. Sen. Beth asked that question. It is to say; *okoeni makanga na muokoe dereva*. That is what we are asking you to do this morning.

(Laughter)

Sen. Eddie, my good friend, has asked about the inter-relation between Article 91 and Article 232 and how those interact with the agreements. If I would call your attention, hon Senators to the contracts again. The contracts are in Volume No.3 and I am referring you to page 429.

On page 429, this is what the agreement said. I am reading this as the primary agreement that was signed between the United Democratic Alliance (UDA) and between Ford Kenya and the Amani National Congress (ANC).

This is what it said:

“Further terms, parameters and details of the sharing of positions of responsibility in the national Government pursuant to this article shall be contained in a separate schedule to this agreement, which schedule shall be negotiated and executed before the date of the general election scheduled on 9th August.”

So, there were subsequent agreements executed on how these shares were to be divided and to be implemented.

The other issue, the parties gave themselves some room and you will see this at page 430. This is article 22 (g):

“Notwithstanding, the content of this Article, the founding member parties hereby commit to make any adjustments that may be necessary to accommodate the development priorities of other parts of the country to ensure equitable distribution of Kenya's national resources and wealth, for the benefit of every citizen and every part of Kenya.”

When the Deputy President takes a stand, we will be demonstrating to you with videos where both he and his boss, the President, went out of their way to say that the voting did not matter to how they were going to implement the development agenda.

I was asked whether there were any contracts or agreements that were signed on behalf of Mount Kenya. I did not see any. We do not have any thus far. There were several parties from Mt. Kenya, but they did not negotiate anything.

There is an important question. The Deputy President did not say the Government is a company when you read the statements. He was making an example. It is like a company. It was a tool to explain a document. That is all he was doing.

I am pressed for time here. Sen. Cheruiyot asked a question about two wrongs making a right and whether the current DP is conceding that because he did what the former DP did, that then he is guilty. Again, far from the truth. We are asserting that

when you read the documents at page 412, this is the article where the former Deputy President spoke in Moyale. This is what he said.

The Deputy President reiterated that he used to ask tough questions when attending the National Security Council meeting about schemes of murder. It is something that has troubled me a lot. That is why we have put it in the Kenya Kwanza manifesto that extra-judicial killing must come to an end. It is illegal and constitutional and offends every principle of the right of life.

In law, there is no secrecy where crimes are committed or there is violation of the constitution. The Deputy President was merely following the mentorship of the man who occupied the office before him and was not releasing any secret that did not concern illegalities or unconstitutionality. So that deals with the question of oath of secrecy, which was asked.

Considering the shortage of time, I will allow my learned colleague, Mr. Elisha Ongoya to come and answer a few questions. Thank you very much, hon. Senators, for your time and your attention.

The Speaker (Hon. Kingi): How many minutes, clerk?

Mr. Elisha Ongoya: Mr. Speaker, Sir, three minutes will be enough for me.

The Speaker (Hon. Kingi): No, we need to know how much time you have.

You have two minutes.

Mr. Elisha Ongoya: Okay. Thank you, Mr. Speaker, Sir. Ongoya for the Deputy President.

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

Mr. Elisha Ongoya: To the question whether the Deputy President is aware that county governments are distinct, our answer is simple. Governments at national and county levels are distinct and interdependent. So, the constitutional architecture is not to create pigeonholes. It is to create cooperative and interdependent governments.

To botch that argument, you will notice that the allegation against the Deputy President on Nairobi River relocation, is not that he destabilized the Nairobi County government, he refused to support the implementation of a resolution of the Cabinet, a national Government institution. Meaning, at that level, that was the understanding that this was an inter-governmental approach to clean up Nairobi River.

On the question of Julian Jahenda, allow me to say this. The person who has brought Julian Jahenda in these proceedings is a deponent of an affidavit. Allow us to hold him to account on that affidavit when he comes to testify because we have questions for him around this witness too.

Finally, on the question of Treetops Hotel, there is a clear distinction.

Treetops Hotel was not acquired by the company in question of the Kenya Wildlife Service (KWS). Treetops Hotel was an assignment of lease. When the Kenya Government gives you a lease, say 99 years, you can sell that lease. It was an assignment of lease that KWS had already assigned to a third Party. The construction that a company associated with the Deputy President rightly or wrongly got this property from KWS is wrong. There was a different private property that had a lease. Then, the company holding the lease assigned that lease.

Thank you. My two minutes are over.

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The Speaker (Hon. Kingi): The second witness. Proceed.

*(The witness for the National Assembly (Mr. Andrew Mulwa)
was ushered into the Chamber)*

(Loud consultations)

Order, hon. Senators. Sen. Olekina, proceed.

Sen. Olekina: Thank you, Mr. Speaker, Sir. Dr. Mulwa, if you look at the response in volume six by the Deputy President. This is 4.2, volume six, which is on page 11. This is in response to the allegations that he called you to push for the bid bond in paragraph four of the witness affidavit of Andrew Mulwa.

He contradicts himself by claiming that on 11th July 2023, I pressured him to surrender the original bid bond. Yet by the letter dated 5th May, 2023, KEMSA had requested collections of the original bid; thus, there was no cause for pressure to be exerted on Dr. Mulwa or any other person.

In your affidavit on page 70, you put an excerpt of your WhatsApp communication with Dr. Rigathi. It states, “Dr. Ikunu Rigathi here. Kindly contact me when possible. There is a document for HE we are trying to collect.”

In the same affidavit, you have annexed three letters. One letter dated June 30th, I want you to keep in mind the 30th of May. June 30th which is a letter sent from KEMSA to EACC requesting for the bid bond. This is June 30th, a month after the date that the Deputy President alleges to have received information from KEMSA asking him to collect the bid bond.

Secondly, you have a letter dated 11th July, where you communicate to the company called Shobikaa Impex Private Limited, asking them to collect the bid bond. Yesterday, when you were being cross-examined, you said you were afraid; you felt pressured when the Deputy President called you, allegedly and asked you to surrender the bid bond. Could you give us the chronology of events? The letter you sent them is dated the 11th; you allege that the Deputy President called you on the 11th ---

The Speaker (Hon. Kingi): Sen. Okenyuri, proceed. The witness has gotten the question.

Sen. Okenyuri: Thank you, Mr. Speaker, Sir. I also wish to ask Mr. Andrew Mulwa about the following: Confirm whether the Deputy President called you. Kindly confirm if Shobikaa Impex Private Limited, whose agent in Kenya is Crystal Kenya Limited, had emerged as one of the winners of the Kshs3.7 billion mosquito net tender before tendering. Finally, what was the issue with the bid bond that you said you were trying to pick up from EACC yesterday?

Thank you.

The Speaker (Hon. Kingi): Sen. Kavindu Muthama, proceed.

Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir. My question is directed to the lawyers of hon. Mutuse.

(Sen. Olekina spoke off record)

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Sen. Kavindu Muthama: Yes, I am directing it to his lawyers. Please kindly give me my time. Sen. Olekina, I did not talk when you were.

The Speaker (Hon. Kingi): Sen. Kavindu Muthama, address yourself to the Chair.

Sen. Kavindu Muthama: One of my questions is about the speech that Hon. Mutuse said that the Deputy President addressed from Mombasa. My question is, is there any law preventing either the President or the Deputy President from intervening if they see any failures with the National Intelligence Service (NIS)? Is there any law preventing them from intervening or questioning the National Intelligence Service or is there any law directing them where they should ask these questions?

Number two, the lady Hon. Justice Esther Maina, has she ever made any complaints after the case was done?

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, proceed.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. My question is to Dr. Mulwa. I can attest that the number you have put here, through which His Excellency the Deputy President pressured you, relates well with me because in the days we used to talk with him, I used to use the same number.

Your evidence is so critical that we would like you to walk us through that conversation between the Deputy President and yourself, during which he was putting pressure on you.

Counsel Tom Macharia, you are a man with many years of experience and you know the hierarchy of laws. The Constitution is at the apex and all other laws are subservient. In your attempt to protect and secure the Deputy President from the accusation that he breached the Constitution, Article 27, which prohibits him from discrimination, you have chosen to justify by using an Act of Parliament called the Political Parties Act that provides for the agreement.

Are you telling me that by dint of that Act, which is subservient to the Constitution, which the Deputy President violated, therefore, the Act sets him free?

Finally, my younger brother Mr. Ongoya, you have told us for hon.. Mutuse to prove there was insubordination, he needed to bring something from the supervisor---

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

Sen. Kibwana: Thank you, Mr. Speaker, Sir. I raised this statement on the mosquito nets for investigation. I am aware of this investigation. Dr. Mulwa, apart from the loss that KEMSA incurred, did the alleged interference affect the relationship between the Global Fund and KEMSA? I remember, of course, the tender, which was about Kshs3.7 billion was terminated by Global Fund. So was there any relationship lost between the two?

Secondly, did the Principal Secretary (PS), Josephine Mburu and Chief Executive Officer (CEO) Terry Ramadhan, lose their jobs due to this tendering process of the mosquito net tender?

Thirdly, did you feel intimidated and coerced to act from the office of the Deputy President?

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The Speaker (Hon. Kingi): Sen. Wafula ?

Sen. Wafula: Asante, Bw. Spika. Daktari Mulwa, unadai kwamba ulipata simu kutoka kwa Naibu wa Rais kufuatilia jambo linalohusu mwanawe. Wewe kama mtumishi wa umma unapopata simu kutoka kwa kiongozi wako wa kitaifa akifuata yale yanayohusu mwanawe, unaona ni vyema kutekeleza jinsi anavyotaka ama kufuata Katiba ili kutetea yoyote aliyeomba nafasi ya kufanya kazi?

The Speaker (Hon. Kingi): Sen. Faki?

Sen. Faki: Swali langu kwa Daktari Mulwa ni hili. Hii zabuni ulisema ya kwamba ilifutiliwa mbali. Je, kuna hasara yoyote ilitokea kwa Serikali ama kwa KEMSA kutoka na kufutiliwa mbali kwa zabuni hiyo?

Pili, wewe kama Mkurugenzi wa KEMSA, ulichukua hatua gani ulipopata maelezo kutoka kwa Naibu wa Rais kuwa hiyo zabuni ipewe mtu fulani?

The Speaker (Hon. Kingi): Sen. Mumma?

Sen. Mumma: Dr. Mulwa, I have two related questions to you. One, is the return of bid bonds part of the procurement process? If it is part of the procurement process, would you say that a call from His Excellency Deputy President on this issue amounts to interfering with a procurement process?

Thank you.

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

Sen. Mariam Omar: Thank you, Mr. Speaker, Sir for giving me this opportunity. My question is to Dr. Muluwa. You said that the Deputy President called you. If he called you, was there any interference with the procurement process?

The Speaker (Hon. Kingi): Witness, you may now proceed to make the clarifications as sought by the hon. Senators. You have 10 minutes to do that.

Mr. Andrew Mulwa: Thank you very much, Mr. Speaker, Sir. I will try to answer the questions that have been put forth on the matter of the procurement of the long-lasting mosquito nets by the various Senators.

The Senator for Narok asked me to give a chronology of what happened to bring out the issue of the pressure that I got from His Excellency the Deputy President. He alluded to the letters that I have submitted in regard to the tenders.

Indeed, on around the end of April, the Global Fund wrote to the Kenya Global Fund Management Office, communicating a pre-award review decision to terminate the procurement of the Kshs3.7 billion mosquito nets tenders. This was after the procurement had been done earlier on in February by KEMSA.

It is a usual procedure during the procurement under the Global Fund. After the evaluation of the tenders, the evaluation report is shared with the Global Fund to authenticate if full procurement procedures and law have been followed. On review, the Global Fund realized that the tender, which the evaluation committee had recommended to be awarded to one Shobikaa Impex Limited had an issue.

I will refer to the bid bond, which I shared in the documents. In the Motion, I think it is page on 76 out of 85. If you look at the bid bond that I am referring to, down there has a stamp of the 21st of February, 2023, having been received by Monica at 9.37 a.m. This tender was running at the time this bid bond was received. The tender was supposed to close on 10th March. However, because of earlier closure, bid bond did not

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come as part of the tender document. Usually, bid bonds are annexed to the tender document and, therefore, this bid bond came as an ordinary mail.

Further, if you look on top of that page, it is written PD, which is Procurement Department, FY&F for your next necessary action. I can confirm the signature for the CEO who was there before me on the 23rd February while the tender was opening.

In other words, this bid bond already had issues even before the tender closed and opened. Therefore, the bid bond was submitted outside the tender document, which is already an irregularity in procurement.

After the cancellation of this tender, this issue brought an outcry. As a result, a Principal Secretary, the CEO and officials from the Ministry of Health and KEMSA were suspended. The PS was actually dismissed.

An investigation into the procurement anomalies was instituted by the Public Procurement Regulatory Authority (PPRA), the Ethics and Anticorruption Commission (EACC), both Houses of Parliament; that is, the National Assembly and the Senate.

One company wrote to us, I think around 12th June or thereabout, asking for return of the bid bond. This company was Shobikaa Impex Limited. We did not have the document because EACC and other investigating agencies had taken the original documents. Therefore, we wrote back and informed them of the state.

When July came, investigations were happening, officers were recording statements and that is when I got a call from the Deputy President asking me to surrender the bid bond to Dr. Ikinu Rigathi. On the same day, I called the EACC and informed them.

Mr. Speaker, Sir, for the record, I had never received a call from anyone above my Cabinet Secretary. This was the first time I received a call from a sitting Deputy President requesting for documents that were under investigations. In my 15 years of public service, I had never been asked to do so. Therefore, I felt coerced.

I had to leave the business I had for the day, go to the EACC, follow up the bid bond, so that I could retrieve it. Earlier I had written a letter to them and followed it up. I sat there for five hours and waiting for them to discharge the bid bond. On the same date, I wrote a letter and called for them to collect the bid bond.

Mr. Speaker, Sir, that explains the conversation and the pressure that I felt as an officer serving in public service. I have explained that the company that had been awarded this tender through the technical evaluation was Shobikaa Impex Limited, whose local sole agent is Crystal Limited.

Through the question asked by Sen. (Dr.) Khalwale, I have walked the Senate through the conversation on what transpired and how I was able to get the bid bond.

Yes, beyond the financial loss, we were supposed to buy 14 million nets under KEMSA procurement. As a result of purchasing these nets through the Global Fund Wambo.Org system, we could only purchase 10.2 million nets. The Global Fund could only supply 10.2 million nets. That means Kenyans lost three million or so nets as a result.

Secondly, there was a delay. We were supposed to implement the distribution of nets to the public from September, 2023. That was not possible as a result of the delays. We were only able to start distribution of the nets from January this year.

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In effect, there was a loss in terms of money, the number of nets and the citizens did not enjoy the protection that they would have gotten from the nets in the time that had been envisaged.

Indeed, I confirm and have already mentioned that PS, Josephine was dismissed. The acting Chief Executive Officer (CEO) and other officers were also suspended.

Mr. Speaker, Sir and hon. Senators, on following the law; when I got the call, I consulted the investigating authorities. Through correspondence, I was able to get the documents as per the law. Therefore, I did not, in any way, go out of the law as a result.

Is the return of bid bond---

Mr. Speaker, Sir, I am told my time is up. Can I wind up?

The Speaker (Hon. Kingi): Finish the remaining queries.

Mr. Andrew Mulwa: Thank you, Mr. Speaker, Sir. On whether return of bid bond is a part of procurement, indeed, return of bid bond is not part of the procurement process *per se*. However, after the procurement process, return of bid bond is a usual procedure because people had given commitments in banks, insurances and, therefore, returning bid bonds is a procedure.

The extraordinary circumstance in this matter is that the bid bond that had been submitted was not part of the tender document *per se*. Secondly, this was a matter that was under investigation. Therefore, for the Deputy President to push for the bid bond to be returned, it means that it was pushing for interference of an investigation that was ongoing. I already gave an account that I personally went to EACC to get the document.

Mr. Speaker, Sir, I submit. I thank you.

The Speaker (Hon. Kingi): There are some clarifications that were sought from Counsel Macharia.

Mr. Tom Macharia: Mr. Speaker, Sir, and hon. Members. Sen. (Dr.) Khalwale asked a question from the law. Indeed, there is a hierarchy of laws. It is the Constitution, the laws and subsidiary legislation. I cannot purport to be teaching lawmakers how this is done.

The Speaker (Hon. Kingi): Counsel, you have five minutes to conclude.

Mr. Tom Macharia: Yes, and I say this with tremendous respect. In the hierarchy and infrastructure of laws, there are self-executing provisions left in the Constitution. The Constitution then delegates to the Senate and the National Assembly the power to make laws to execute certain provisions. To that extent, that statute carries constitutional authority because it is made pursuant to a constitutional provision. That would be the case with the Political Parties Act.

At Articles 91 and 92, the Constitution prescribes what political parties and the regulation of political parties and coalitions must contain and do. If a statute is unconstitutional, then the High Court, as it has done many times, strikes down that statute as unconstitutional. The Political Parties Act, as currently framed and the basis upon which these coalition agreements were drawn and registered in a government formed on the basis of those agreements, have not been found to be unconstitutional.

So, we are not saying that any wrong was done. In fact, we are saying everything was done in accordance with the Constitution and the law. Secondly, when His Excellency the Deputy President stands to make his response before you, amongst the

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things he will be showing you in great detail, with documentation and videos, is the lengths to which not only he, but his ultimate appointing authority, his boss, the President, and the entire Government went to ensure that the development was spread across the country.

As I demonstrated a few minutes ago here, the contracts indicated that there would be need for flexibility to ensure that you are within the Constitution. That did not derogate from the requirement by the parties to implement, obey and to ensure the contracts were implemented. They were done constitutionally.

Finally, and I keep emphasizing, they talked about Government. They did not talk about tribes nor regions. They ensured that the constitutional requirements, as Sen. Oketch Gicheru had asked me, at Article 91 and 232 were complied with.

I thank you very much.

The Speaker (Hon. Kingi): Counsel for the National Assembly, there is a clarification sought by Sen. Kavindu Muthama. If you proceed to clarify, then we may close and move to the third witness.

Dr. Muthomi Thiankolu: Thank you, Mr. Speaker, Sir. The first question was whether there is any law preventing the Deputy President from intervening when they see any failures in the National Intelligence Service (NIS). The answer is that the oath of due execution of the office of the Deputy President is part of our Constitution. It prohibits the Deputy President from disclosing matters, especially those relating to national security, that are committed to a secrecy.

It was, therefore, a violation of his oath of office and the Constitution to discuss matters of that nature at a time and in the circumstances prevailing in a press conference, broadcast to the whole world. There is a constitutional forum to raise those issues.

Indeed, I believe the Deputy President, other officers, or even ordinary citizens, can write to the National Security Council, if they have genuine grievances about its operations, personnel or its capabilities and performance.

Mr. Speaker, Sir, when that oath of office, which is part of our Constitution, says matters committed to the secrecy of the Deputy President are not to be divulged, it is an acknowledgement by our Constitution that there are certain matters which by their nature, are not to be broadcast. *Waswahili husema usimwage mtama penye kuku wengi.*

Some things require discretion. They require that you be tempered and know the forum and the occasion to do it. Therefore, it is no answer. Even if we were to accept for argument's sake that all the grievances that the Deputy President had are factually correct, it will still be no answer to that charge.

The second question was whether Justice Maina has made any complaint after the case was done. We are not aware of any complaint lodged by the hon. Lady Justice Maina. However, that question also tells you why this is an impeachable offence.

Those who know our Constitutional theory say-
“Judges hold neither sword nor the purse.”

The reason our Constitution protects judges and puts them in a special place is because unlike politicians and the Executive, they have no way and forum of dealing with harassment from the political branches of Government. However, if we are wrong in that, and that is why I am happy with this question, let us accept for argument's sake that,

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indeed, hon. Justice Maina could have lodged a complaint, because it is possible she would have walked to a police station, met an Officer Commanding Station (OCS), recorded a complaint and a statement.

Dr. Mulwa has just been here as a junior officer. What are the practicalities of an OCS, a police constable, summoning the Deputy President of the Republic to respond to a complaint? The whole spectre of handcuffing, taking fingerprints, processing the Deputy President to take him to the Magistrate's Court to answer to a criminal offence, would subject that office to so much indignity.

The design of our Constitution is that people holding certain offices--- In fact, the constitutional text is that they should behave in a manner that brings honour and dignity to the office. It is to save the country the drama and spectacle of a junior police officer or prosecutor, harassing, arresting, prosecuting a Deputy President because we do not want to subject our democracy to this kind of showbiz.

That is why this Senate is vested with the power of impeachment. That is why our Supreme Court has said several times, as I pointed out yesterday, the test is not whether he is criminally or civilly liable, which is the business of the judiciary.

I so submit, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Counsel for the National Assembly, you may call your third witness.

Mr. Moses Kipkemoi: Hon. Speaker, Sir, and distinguished Senators, my name is Moses Kipkogei.

Our next witness is Abdi Mohamud from the EACC.

He is a formal witness who was called pursuant to the summons issued by this House at the request of the National Assembly. I request the Serjeant-at-Arms to call him from Room 4.

Mr. Elisha Ongoya: Mr. Speaker, Sir, may I just raise a concern? It is true that this witness was called pursuant to a summon of this Senate. However, normally, a witness is called to produce a particular document or item.

As we stand, none of us knows what this witness is coming to produce, so we cannot even pull it out from this massive document. We want it to go on record that this is trial by ambush. We will know for the first time what this witness has come here to do when he begins speaking.

I just want that to go on record. Before he starts, I want the Counsel to tell us what documents this witness wants to rely on, so that against all the unfairness that we have witnessed, at least we can have some semblance of looking at it. Thank you, Mr. Speaker.

The Speaker (Hon. Kingi): Counsel for the National Assembly, what do you say?

Mr. Moses Kipkemoi: Mr. Speaker, Sir, the documents to be identified by the witness are contained in Volume 8A of our bundle.

The Speaker (Hon. Kingi): Please call in the witness.

*(The witness for the National Assembly,
(Mr. Abdi Mohamud), took the stand)*

Have the witness on this side, where the others took the Oath.

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I would like to remind the Counsel for the National Assembly, you have 20 minutes to conclude on your case. The Counsel for the Deputy President, you still have your 45 minutes intact, for purposes of cross-examination.

Let us proceed.

Mr. Moses Kipkemoi: Thank you, Mr. Speaker, Sir. I intend to use 15 minutes to take the witness-in-chief, and reserve 5 minutes for any re-examination.

The Speaker (Hon. Kingi): Before the witness takes an Oath, Counsel for the Deputy President, you do confirm that you understand and know the documents that the witness will produce as contained in Volume 8A. I believe these are the documents in respect to which I made a ruling yesterday, to have them admitted.

Hon. Paul Muite, SC: We do, *Mheshimiwa Spika*.

The Speaker (Hon. Kingi): Thank you, Senior Counsel.

As the Chair, I cannot allow trial by ambush. Proceed. Thank you.

*(The witness for the National Assembly,
(Mr. Abdi Mohamud) took the oath)*

Mr. Moses Kipkemoi: Mr. Abdi, introduce yourself to the Senate, the place you work, your rank and how many years you have worked in that institution.

Mr. Abdi Mohamud: Thank you. My name is Mr. Abdi Mohamud. I am the Deputy Chief Executive Officer of the EACC.

I have worked at the commission since 2005. I started as a Senior Investigator. Right now, I am the Deputy Chief Executive Officer. My main responsibilities are to assist the Chief Executive Officer (CEO) of the Commission in the day-to-day running of the commission, among others.

Another key role and responsibility that I hold is to chair the Commission Management Committee on Investigation Evaluation. Basically, I have been an investigator since 2005 when I joined the commission.

Thank you.

Mr. Moses Kipkemoi: Thank you, Mr. Mohamud. You are before the Senate this morning following summonses, which were issued to your institution. In the summonses, the three areas were identified. Would you wish to apprise the Senate on those three areas, which you are to guide the Senate on?

Mr. Abdi Mohamud: If I may refer to my documents.

Mr. Moses Kipkemoi: Yes, you can.

Mr. Abdi Mohamud: Mr. Speaker, Sir, there are three areas that I was requested to comment on. The first one is an investigation that the commission conducted on procurement on the supply of long-lasting insecticide nets at the KEMSA.

The second issue that I was to comment on is the declaration of gifts and donations received by His Excellency Rigathi Gachagua, the Deputy President, during his tenure of the office to date, pursuant to Section 14(5) of the Leadership and Integrity Act.

The third issue that I was to comment on is the declaration of conflict of interest made to the EACC by His Excellency Rigathi Gachagua, the Deputy President of the Republic of Kenya to date.

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Mr. Moses Kipkemoi: Mr. Speaker, Sir, we will go to the first issue which you were asked to address yourself. I wish to refer the witness to bundle 8 of our documents. Can you identify the document on page three?

Mr. Abdi Mohamud: Yes, Mr. Speaker Sir, I can identify it. This is a letter that we did to the Clerk of the National Assembly on 23rd September, 2024. It was responding to a letter that we received from the National Assembly requesting us to furnish the National Assembly with information on the investigation that we conducted on the long-lasting insecticide nets and to indicate in our responses any outcome or status of the investigation that we did conduct.

Mr. Moses Kipkemoi: So, your letter in that volume relates to procurement of certain items at KEMSA. Am I right?

Mr. Abdi Mohamud: You are correct.

Mr. Moses Kipkemoi: You have apprised the National Assembly in that letter. Would you apprise the Senate on its contents?

Mr. Abdi Mohamud: The content is the procurement of long-lasting insecticide nets by KEMSA. This was in 2023 and the commission in its functions either conducts investigation on its own Motion or at the instigation of other parties.

For this particular investigation, we received a letter from the Cabinet Secretary who was then in charge of the Ministry of Health indicating that there were certain irregularities in procurement of insecticide nets by KEMSA. The Cabinet Secretary then wanted us to conduct investigation and find out whether certain procurement irregularities took place. From that, we did carry out investigation and the outcome of the investigation so far is reflected in the letter that we have provided.

Mr. Moses Kipkemoi: What was the outcome of the investigations, Mr Mohamud?

Mr. Abdi Mohamud: There were serious procurement challenges that affected that particular tender. The major one was change of specifications to suit a company called Shobikaa Impex Limited, which had a local agent by the name Crystal Kenya Limited that had the sole responsibility or rather the sole function to provide certain mosquito nets that had certain chemicals.

Basically, what the investigation concluded is that there are two types of chemicals that were used on these particular nets. If I may read one of them. One is called synergist Piperonyl Butoxide (PBO) long-lasting insecticide nets. While the other one is pyrethroid long-lasting insecticide nets.

This company had the sole distribution rights on this particular chemical called PBO. In totality, from the investigation, we realized that the Permanent Secretary, at that particular time, wrote to the CEO of KEMSA compelling him to change the specifications to fit the chemical that was to be provided by Shobikaa Impex Limited, whose local agent was Crystal Kenya Limited. That was the starting point.

The other problem was that when the tender was to close on 23rd, Shobikaa Impex Limited wanted to have a bid bond introduced into the tender documents at that particular time. We all know that in procurement, the bid bond is supposed to be part of the tender document. They are supposed to be delivered together.

In this circumstance, the bid bond was delivered by hand to the CEO's office on 23rd when the tender was supposed to close. They had to find a way of extending the period of closure up to 10th of the next month; March, so that the particular bid bond, which had issues, can now be factored in or regularized, so that this company called Shobikaa Impex Limited could benefit out of that particular extension. Of course, there are many other issues.

We also realize that when the tender was discontinued, a company called Tianjin Yorkool International Trading Company was among the bidders that had initially bid for this particular tender. They were disqualified on the fact that they were not authorized by a manufacturer yet this company had provided sufficient evidence and proved that they are manufacturers.

A company that is a manufacturer was disqualified on the ground that they did not provide authorization from a manufacturer yet they are manufacturers.

Those are some of the challenges that the tender had.

Mr. Moses Kipkemoi: At the end of it all, what became of this tender?

Mr. Abdi Mohamud: What happened is that the technical committee of the KEMSA recommended Shobikaa Impex Limited to be awarded the tender. This tender was being financed by Global Fund. The agreement was that after the tender evaluation committee's report is done, the report is to be handed over to Global Fund, the financiers. So, when that report was surrendered or handed over to the Global Fund, the Global Fund realized---

Mr. Moses Kipkemoi: You said that the evaluation committee of KEMSA made a recommendation that Shobikaa Impex Limited be awarded the tender?

Mr. Abdi Mohamud: Be awarded. That was the finding and the recommendation by the technical committee.

Mr. Moses Kipkemoi: What happened next?

Mr. Abdi Mohamud: What happened is Global Fund decided to terminate the tender and asked an internal firm or rather an internal organisation called Wombo.org, which is the procuring arm of Global Fund, to do the procurement. Eventually, one of the companies that were disqualified because they were not authorised by a manufacturer, ended up winning that tender, together with another firm called A to Z Textile Mills Limited.

Mr. Moses Kipkemoi: Therefore, those were the eventual winners, but that was after the termination of the recommendation by the technical committee of KEMSA. Just to clarify to the Senate, a company which had been disqualified by KEMSA ended up being the supplier following the process which was undertaken by Global Fund.

Mr. Abdi Mohamud: That is correct.

Mr. Moses Kipkemoi: What became of the bid bond?

Mr. Abdi Mohamud: Well, when the investigation was ongoing, we collected all the bid bonds of the firms that bid. This is not only the bid bonds, but all the documents that related to the tender, so that we could evaluate and record statements.

Now, the one that had issues was this one for Shobikaa. However, when the tender was terminated, ordinarily there would be no need to hold onto documents submitted by the tenderers and they are usually returned. Save for this particular one,

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because it was a questioned document, the Chief Executive Officer (CEO) of KEMSA wrote to the EACC requesting for that document to be handed over.

Mr. Speaker, Sir, eventually we did hand over the document to him, after recommending disciplinary action against all the officers who were involved in the tendering process, starting with the CEO, the technical committee members and the head of procurement entity. For this particular document, we have a certified copy, which we collected in case there would be a need to reopen the investigation, as there could have been other offences that could come out of the investigation.

Mr. Moses Kipkemoi: Did you hand over the bid bonds for the other companies, which had participated in this?

Mr. Abdi Mohamud: They were returned to KEMSA.

Mr. Moses Kipkemoi: Let us go to the second issue, which was identified in your invite. Probably, we should start with the third one, which relates to conflict of interest by state officers and public officers. You are a long-serving officer of the EACC and I suppose you are familiar with the conflict of interest in terms of the constitutional, statutory and regulatory procedures. Would you appraise the sentence on that aspect?

Mr. Abdi Mohamud: Thank you. Conflict of interest is addressed under section 16 of the Leadership and Integrity Act and it clearly states that -

“A state officer or a public officer shall use the best efforts to avoid being in a situation where personal interests conflict or appear to conflict with the state officer's or public officer's official duties.”

Now, when we talk of personal interests, we look at Section 16(6), which explains or rather indicates that-

“personal interest” includes interest of spouse, child, business associates, agents, or any other matter in which the state officer or public officer has a direct or indirect pecuniary or non-pecuniary interest.”

Basically, in practice, what happens is we also have the regulation, which is the subsidiary law of that particular Act. If you look at the conflict of interest, that particular part three of the Leadership and Integrity Regulations clearly specifies how conflict of interests are supposed to be dealt with by public officers.

Mr. Moses Kipkemoi: In summary, how are state officers to deal with questions of conflict?

Mr. Abdi Mohamud: All public institutions are required to maintain a conflict of interest register, which can be inspected by individuals upon application. That is the starting point. If, for example, a public officer or a state officer feels that he is conflicted, he is supposed to declare the conflict in that particular register. The EACC also has a role in that it is mandated to enforce and implement the Leadership and Integrity Act together with the regulations.

Mr. Moses Kipkemoi: Thank you, Mr. Mohamud. Earlier, you correctly said that conflict of interest extends to children, spouses and business associates? Did I hear you correctly?

Mr. Abdi Mohamud: That is correct. That is in sub-section (6), of Section 16.

Mr. Moses Kipkemoi: Let us go to the third issue in view of time, which is in relation to gifts.

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Mr. Abdi Mohamud: If you look at Section 14 of the Leadership and Integrity Act, together with Section 5 of the regulations of the same Act, it is clearly indicated that gifts received by a public officer is a donation to the State. That is what Regulation 5 indicates. If you go down there, you will also see that a state officer or public officer who receives a gift whose value exceeds Kshs20,000 shall, within 48 hours of reporting to the office, surrender it to the public entity in which the officer is employed.

It also goes further, in subsection (4), to indicate that a state officer or a public officer who receives a gift in terms of this regulation shall, irrespective of the monetary value of the gift, declare the gift received to the public entity, which the public officer presents.

Mr. Moses Kipkemoi: All gifts are supposed to be declared, regardless of its monetary value?

Mr. Abdi Mohamud: Yes, that is correct. Perhaps, what I should have mentioned is that public officers and state officers are barred to receive any monetary gift. Here we are dealing with gifts that are non-monetary. For monetary gifts, we are barred from receiving any monetary gift.

Mr. Moses Kipkemoi: In the same manner, with respect to conflict of interest, we have a register of conflict of interest. Do we have a register of gifts?

Mr. Abdi Mohamud: Yes, we have a register of benefits in each and every public agency, where officers who receive gifts are supposed to declare immediately and we have indicated in 48 hours. What I would also wish to mention is that the ---

Mr. Moses Kipkemoi: What is the role of the EACC in relation to gifts?

Mr. Abdi Mohamud: If you look at subsection (9) of the regulations, you will see that a public entity shall, at the close of every financial year, furnish the Commission with a report specifying all the gifts, any gift the entity intends to dispose of and all that. Sub-section (3), of course, talks about the report under paragraph (1) shall be submitted to the Commission within 30 days after the close of the financial year.

Mr. Moses Kipkemoi: So that we can close on that, every financial year, the Commission is supposed to receive the registers of gifts from all state entities?

Mr. Abdi Mohamud: That is correct.

Mr. Moses Kipkemoi: For your records?

Mr. Abdi Mohamud: Yes.

Mr. Moses Kipkemoi: Have you received the register of gifts from the Office of the Deputy President?

Mr. Abdi Mohamud: Not to our knowledge.

Mr. Moses Kipkemoi: That will be all, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Counsel for the Deputy President, you may now proceed to cross-examine the witness.

Mr. Ndegwa Njiru: Thank you, Mr. Speaker, Sir. I will be very brief with you. You did receive the summons this morning, yes?

Mr. Abdi Mohamud: I received the summons yesterday afternoon.

Mr. Ndegwa Njiru: And you had come and testify in respect to what aspect in the Motion of Impeachment?

Mr. Abdi Mohamud: Mr. Speaker, Sir, there were three items that I listed.

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Mr. Ndegwa Njiru: Kindly grab your Notice of Impeachment Motion.

Mr. Abdi Mohamud: The Motion?

Mr. Ndegwa Njiru: Yeah, the Notice of Motion of impeachment at Volume 1 of the National Assembly. As you do so, kindly again repeat or state the thematic areas you are supposed to testify in respect to---

Mr. Abdi Mohamud: Mr. Speaker, Sir, let me start by looking at the summons that I received yesterday. The first one is the investigation of the EACC of tender. The number is given there.

Mr. Ndegwa Njiru: Thank you. Now let us go to that particular tender. What is the agreement in the Notice of Motion with respect to that tender? What did the Mover of the Motion agree with in respect to this tender of KEMSA? It is a simple question and you do not need to refer.

Mr. Abdi Mohamud: Mr. Speaker, I need to refer to the exact document.

Mr. Ndegwa Njiru: Okay, you can be ready for---

The Speaker (Hon. Kingi): Counsel, you know the Impeachment Motion better than the witness who has been brought to testify on a particular aspect. You can take him there so that we save time.

Mr. Ndegwa Njiru: Thank you, Mr. Speaker, Sir. Let us go to page 24. You reckon that the Mover is aggrieved by indicating that the Deputy President bullied him and exerted unnecessary pressure with respect to this tender, correct?

Mr. Abdi Mohamud: As per the document, yes.

Mr. Ndegwa Njiru: Is that the position?

Mr. Abdi Mohamud: That is what is captured here, but that is not part of my evidence.

Mr. Ndegwa Njiru: That is not part of your evidence.

Mr. Abdi Mohamud: Yes.

Mr. Ndegwa Njiru: Does your evidence relate to the Notice of the Impeachment Motion that is before this Assembly?

Mr. Abdi Mohamud: It does.

Mr. Ndegwa Njiru: Is there a complaint in the Notice of Impeachment Motion that relates to conflict of interest that you know of?

Mr. Abdi Mohamud: Counsel, I request you that let us deal with my evidence. Do not take me to another evidence.

Mr. Ndegwa Njiru: We are dealing with it. Is there a complaint that relates to conflict of interest in the Notice of Motion? If yes, kindly point it out for the assembly to note.

Mr. Abdi Mohamud: I would not know because I have not gone through the whole---

Mr. Ndegwa Njiru: You have not gone through the whole Impeachment Motion? Okay, but, is there a complaint that relates to gifts and how gifts must be dealt with?

Mr. Abdi Mohamud: I want to---

Mr. Ndegwa Njiru: Do you know or you do not know, Mr. Witness?

Mr. Abdi Mohamud: I do not know.

Mr. Ndegwa Njiru: Now, in respect to this tender, are you aware that this Senate sat and conducted an independent investigation in that respect?

Mr. Abdi Mohamud: I am not even aware.

Mr. Ndegwa Njiru: You are not aware?

Mr. Abdi Mohamud: Mr. Speaker, Sir, I am only aware of the investigation that the EACC conducted.

Mr. Ndegwa Njiru: So, in respect to this Impeachment Motion that is before the Assembly, what investigation did you conduct that relates to the gift in this Assembly?

Mr. Abdi Mohamud: I was requested to talk about---

Mr. Ndegwa Njiru: We are talking about the Notice of the Impeachment Motion that is before the Assembly, Mr. Witness.

Mr. Abdi Mohamud: Mr. Speaker, Sir, I am referring to the summons that I was given by this House.

Mr. Ndegwa Njiru: Your summons must relate to the proceedings, correct?

Mr. Abdi Mohamud: I am not the originator of the summons, how would I know how it relates? I will confide myself to the summons. There are three issues I was to address and one of them is gifts.

Mr. Ndegwa Njiru: How many companies bided in that particular process?

Mr. Abdi Mohamud: I think there were about 17.

Mr. Ndegwa Njiru: There were about 17?

Mr. Abdi Mohamud: Yes.

Mr. Ndegwa Njiru: Did all the bids pass?

Mr. Abdi Mohamud: Pass in terms of award?

Mr. Ndegwa Njiru: Yes.

Mr. Abdi Mohamud: Finally, the award was given to two companies.

Mr. Ndegwa Njiru: Which companies were they?

Mr. Abdi Mohamud: Let me get the names. Yeah, the two companies that eventually won after the Global Fund conducted their own tender are Tianjin Yorkool International Trading Company Limited and the other one is A-Z Company.

Mr. Ndegwa Njiru: Do you know what led to the cancellation of the tender?

Mr. Abdi Mohamud: I know.

Mr. Ndegwa Njiru: What led to the cancellation of the tender?

Mr. Abdi Mohamud: It was direct favoritism to Shobikaa.

Mr. Ndegwa Njiru: It was direct favoritism to Shobikaa and you know. Please get hold of the Volume 3 of the documents by the Deputy President.

Mr. Abdi Mohamud: Sorry?

Mr. Ndegwa Njiru: Get hold of volume three of our bundle of documents, and as soon as you get it, you go to page 221. Volume 3, page 221, Mr. Witness.

Mr. Abdi Mohamud: Just a minute.

Mr. Ndegwa Njiru: As soon as you grab it, you go to paragraph 100. **Mr. Abdi Mohamud:** Just one minute.

Mr. Ndegwa Njiru: Let me assist you with my bundle because we want to save time. Page 221.

Mr. Abdi Mohamud: Paragraph 100?

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Mr. Ndegwa Njiru: Paragraph 100, yes.

Mr. Abdi Mohamud: I am there.

Mr. Ndegwa Njiru: Can you read what the report indicates?

Mr. Abdi Mohamud: It reads as follows:

“In its report, dated 25th April, 2023, the Global Fund noted that KEMSA had failed to apply the evaluation criteria consistently to all bidders and that none of the bidders met the minimum requirements.”

Mr. Ndegwa Njiru: So, what is indicated there? It is indicated that none of bidders met the minimum?

Let us go to page 222, at paragraph 106, and again, read it loudly.

Mr. Abdi Mohamud: It says:

“Notwithstanding KEMSA's reservations, in a letter dated 4th May, 2023, the Acting Director of Procurement recommended termination of the process. The CEO approved and on 5th May, 2023, the termination was communicated.”

Mr. Ndegwa Njiru: What was terminated?

Mr. Abdi Mohamud: Mr. Speaker, Sir, the process.

Mr. Ndegwa Njiru: The process of bidding, correct?

Mr. Abdi Mohamud: Yes.

Mr. Ndegwa Njiru: Why was it terminated?

Mr. Abdi Mohamud: Now---

Mr. Ndegwa Njiru: Paragraph 100, Mr. Witness.

Mr. Abdi Mohamud: Counsel look. I am---

Mr. Ndegwa Njiru: Mr. Witness, I am examining you.

Mr. Abdi Mohamud: I will not deal with the evidence of other institutions. The Senate is an independent institution. The EACC conducted its investigation. Please ask me questions related to the investigation.

Mr. Ndegwa Njiru: Now, after making your statement, please read the reason why the termination was actuated in paragraph 100.

Mr. Abdi Mohamud: If you want me just to read for the sake of it, I will, but I do not own this evidence. I only own the evidence by EACC.

Mr. Ndegwa Njiru: I did not ask you to own it.

The Speaker (Hon. Kingi): Mr. Witness, the Counsel is asking you to read a certain paragraph. Just read it.

Mr. Abdi Mohamud: Okay, Mr. Speaker, Sir, I am guided. So which paragraph should I read?

Mr. Ndegwa Njiru: I have asked you to read paragraph 106, about the terminations, correct?

Mr. Abdi Mohamud: Yes.

Mr. Ndegwa Njiru: I have asked you to state for the Assembly the reasons why the termination is being recommended, correct?

Mr. Abdi Mohamud: Yes.

Mr. Ndegwa Njiru: And I have told you that you will find the answers on page 221, paragraph 100, correct?

Mr. Abdi Mohamud: Correct.

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Mr. Ndegwa Njiru: And that the bidding was terminated because the bids failed to meet the minimum requirements, correct?

Mr. Abdi Mohamud: Correct.

Mr. Ndegwa Njiru: And therefore, the cancellation was not as a result of your alleged favoritism, correct?

Mr. Abdi Mohamud: That is not my evidence. My evidence is that there was clear favouritism.

Mr. Ndegwa Njiru: Clear favouritism. Look at paragraph 226.

Mr. Abdi Mohamud: I am there.

Mr. Ndegwa Njiru: Yes. Look at paragraph 136.

Mr. Abdi Mohamud: I am there.

Mr. Ndegwa Njiru: Read paragraph 136.

Mr. Abdi Mohamud: In late April, 2023, he learned from the Global Fund.

Mr. Ndegwa Njiru: Who is this learning from the Global Funds?

Mr. Abdi Mohamud: You just took me there---

Mr. Ndegwa Njiru: Yeah. Look at paragraph 225, so that you can get to know who is learning. That is the evidence by Mr. Andrew Mulwa, acting CEO KEMSA, correct? That is paragraph 225, up here.

Mr. Abdi Mohamud: They are the submissions by Mr. Andrew Mulwa, acting CEO of KEMSA.

Mr. Ndegwa Njiru: Yes. So, what is he saying now in paragraph 136?

Mr. Abdi Mohamud: It says-

“In April, 2023, he learnt from the Global Fund Pre-award review report that the Long-Lasting Insecticide Nets (LLINs) tender was to be cancelled on account of inconsistencies in the bid evaluation.”

Mr. Ndegwa Njiru: Yes?

Mr. Abdi Mohamud: Yes.

Mr. Ndegwa Njiru: Why was it cancelled?

Mr. Abdi Mohamud: The issue would be, who caused the bid---

Mr. Ndegwa Njiru: No, it is not who caused, we are looking at the report. What does it indicate at that paragraph on the issues of the cancellation?

Mr. Abdi Mohamud: Paragraph 136?

Mr. Ndegwa Njiru: Yes.

Mr. Abdi Mohamud: On account of inconsistencies.

Mr. Ndegwa Njiru: It speaks to the fact that the bid or the tender was cancelled, correct?

Mr. Abdi Mohamud: It does, yes.

Mr. Ndegwa Njiru: It speaks to the reason that it was cancelled on the basis of inconsistency, correct?

Mr. Abdi Mohamud: Correct.

Mr. Ndegwa Njiru: Therefore, your testimony that it was as a result of favouritism does not sit well with the evidence contained at paragraph 106 of the bundle, correct?

Mr. Abdi Mohamud: My evidence---

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Mr. Ndegwa Njiru: I want you to limit yourself to that paragraph, vis-à-vis what you stated; that the reason for the cancellation was the inconsistency, Mr. Witness, yes?

Mr. Abdi Mohamud: Yes, but how is the inconsistency----

Mr. Ndegwa Njiru: Thank you. Let us move on. That, you shall explain in another forum, not here. Let us go to Page 230.

Mr. Abdi Mohamud: Which paragraph?

Mr. Ndegwa Njiru: Paragraph (g). Can you read it out?

Mr. Abdi Mohamud: It says:

“At the evaluation stage, the audit team established that only two bidders passed the preliminary evaluation and proceeded to the technical evaluation that is bidder number three, Tiajin Yancoal International.”

Mr. Ndegwa Njiru: Which two companies passed?

Mr. Abdi Mohamud: As per this one, Tiajin Yancoal International, bidder number seven, Premier Movers Limited contrary to evaluation committee.

Mr. Ndegwa Njiru: Is Shobikaa Impex part of those bidders?

Mr. Abdi Mohamud: No, it is not.

Mr. Ndegwa Njiru: Look at page 231 again, paragraph (j). Read it.

Mr. Abdi Mohamud: It says:

“The termination of the tender complied with Section 62 of the Act and Global Fund Guidelines.”

Mr. Ndegwa Njiru: So, the termination was lawful, correct? That it complied with the Procurement Act, correct or not correct, Mr. Witness?

Mr. Abdi Mohamud: Correct.

Mr. Ndegwa Njiru: Let us look at page 246, paragraph 213. What is the report indicating?

Mr. Abdi Mohamud: It says:

“Following the cancellation of the tender at KEMSA, TNT placed an order of 10.2 million nets on .org website and procurement was subsequently done in line with the technical specifications provided by the Ministry of Health.”

Mr. Ndegwa Njiru: So, the nets were eventually procured, correct or not correct?

Mr. Abdi Mohamud: They were eventually procured.

Mr. Ndegwa Njiru: It took the interventions of Global Fund to procure them, correct?

Mr. Abdi Mohamud: Correct.

Mr. Ndegwa Njiru: Look at paragraph 215.

Mr. Abdi Mohamud: Yes, I am there.

Mr. Ndegwa Njiru: Read it out.

Mr. Abdi Mohamud: It reads as follows:

“Further, prior to the cancellation of the tender, differences arose between Global Fund team and the immediate former Principal Secretary, State Department of Public Health and Professional Standards with regard to the operations and ongoing at the DNPM, Ministry of Health, it was noted that these difference---”

Mr. Ndegwa Njiru: It was noted that these differences may have played a role in the final decision by Global Fund to terminate the tender processes, correct?

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Mr. Abdi Mohamud: Correct.

Mr. Ndegwa Njiru: Did that have anything to do with the Deputy President according to the statement you have just read?

Mr. Abdi Mohamud: It has nothing to do with the Deputy President.

Mr. Ndegwa Njiru: Let us now finally answer your issues on page 271. Read loudly paragraph 24 and 25.

Mr. Abdi Mohamud: It says:

“The committee observed that following the termination of the tender, while there was no apparent loss of public funds--”

Mr. Ndegwa Njiru: Just read it loudly.

Mr. Abdi Mohamud: The committee observed that following the termination of the tender, while there was no apparent loss of public funds---

Mr. Ndegwa Njiru: There was no apparent loss of---

Mr. Abdi Mohamud: “KEMSA lost US\$ 455,589.4, approximately Kshs70 million in procurement fees.”

Mr. Ndegwa Njiru: The report from the Senate indicates there was no loss of public funds, correct?

Mr. Abdi Mohamud: Let me read this paragraph again, so that we are all together.

Mr. Ndegwa Njiru: Yes, proceed.

Mr. Abdi Mohamud: It reads as follows:

“The Committee observed that following the termination of the tender, while there was no apparent loss of public funds, KEMSA lost---”

Mr. Ndegwa Njiru: Put a pause there. What has the committee observed?

Mr. Abdi Mohamud: You do not want me to finish the sentence?

Mr. Ndegwa Njiru: Yes, I will lead you to that other part.

Mr. Abdi Mohamud: Okay.

Mr. Ndegwa Njiru: What has the committee observed?

Mr. Abdi Mohamud: No public funds lost.

Mr. Ndegwa Njiru: In your separate investigations that you conducted, did you arrive at the same conclusion? Did you or not?

Mr. Abdi Mohamud: There was no public funds lost because the tender was terminated.

Mr. Ndegwa Njiru: Thank you. Let us look at paragraph 25. Read it out.

Mr. Abdi Mohamud: It reads as follows:

“The committee observed that the cancellation of the tender appeared to have been influenced by Global Funds' apparent effort to exert significant control over the procurement process from the beginning to the end.”

Mr. Ndegwa Njiru: Thank you. What occasioned the cancellation?

Mr. Abdi Mohamud: The cancellation of the tender appeared to have been influenced by Global Funds' apparent effort to exert significant control over the procurement process---

Mr. Ndegwa Njiru: Is there any evidence indicating that the Deputy President was involved in that processes?

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- Mr. Abdi Mohamud:** No.
- Mr. Ndegwa Njiru:** Were his companies involved?
- Mr. Abdi Mohamud:** No.
- Mr. Ndegwa Njiru:** Was his family involved?
- Mr. Abdi Mohamud:** No.
- Mr. Ndegwa Njiru:** Is there any evidence before this Senate to that effect?
- Mr. Abdi Mohamud:** The evidence I have---
- Mr. Ndegwa Njiru:** No, is there any evidence that any of them were involved in this report?
- Mr. Abdi Mohamud:** In this report, no; but in my evidence, yes.
- Mr. Ndegwa Njiru:** Let us go to the next paragraph. “This included Global Funds' team based in Geneva, Switzerland making multiple trips to Nairobi, Kenya, at least three times during the relevant period, raising concerns about the autonomy of the local government---” Just read it out.
- Mr. Abdi Mohamud:** It says:
“The Committee observed that the cancellation of the tender appeared to have been influenced by Global Funds' apparent effort to exert significant control over the procurement process from the beginning to the end. This included Global Funds' team based in Geneva, Switzerland making multiple trips to Nairobi, Kenya, at least three times during the relevant period, raising concerns about the autonomy and ability of local government agencies---”
- Mr. Ndegwa Njiru:** The autonomy of the organisation, correct? Let us look at page 222, Mr. Witness. While you get there, you look at paragraph 107.
Would you kindly read it out? 107.
- Mr. Abdi Mohamud:** “It is further her testimony that---” I do not know whose testimony this is.
- Mr. Ndegwa Njiru:** That is a testimony of the submissions of Terry Ramathani, the immediate CEO. You will find that at page 219. However, I am interested in paragraph 107.
- Mr. Abdi Mohamud:** It reads as follows:
“It was further her testimony that the Authority had struggled to maintain its autonomy---”
- Mr. Ndegwa Njiru:** The Authority has struggled to maintain its autonomy---
- Mr. Abdi Mohamud:** It says: “Owing to the undue interference by the Cabinet Secretary for Health---”
- Mr. Ndegwa Njiru:** Pause, who was the Cabinet Secretary for health at the time in issue?
- Mr. Abdi Mohamud:** We can check that.
- Mr. Ndegwa Njiru:** Who was the Cabinet Secretary? This regime has only had two Cabinet Secretaries.
- Mr. Abdi Mohamud:** Let me confirm from my records. She did a letter to us, so---
- The Speaker (Hon. Kingi):** Counsel Njiru.
- Mr. Abdi Mohamud:** The name is---

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The Speaker (Hon. Kingi): Just hold on, witness. Counsel Njiru.

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

The Speaker (Hon. Kingi): I thought when you are cross-examining a witness, you cross-examine on the evidence they have given. You have completely abandoned his evidence.

Mr. Ndegwa Njiru: No, those are not the rules of cross-examination, Mr. Speaker. Sir. I respectfully beg to differ.

The Speaker (Hon. Kingi): The reason the witness has difficulties---

Mr. Ndegwa Njiru: He does not have difficulties, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): No, he has.

Mr. Ndegwa Njiru: No, I am asking him to read. I will be guided.

The Speaker (Hon. Kingi): If that is your line of argument, proceed.

Mr. Ndegwa Njiru: Thank you for giving me the latitude. Who was the Cabinet Secretary at the time the bid was being cancelled?

Mr. Abdi Mohamud: Madam Nakhumicha S. Wafula.

Mr. Ndegwa Njiru: Has this Senate found what occasioned all these cancellations of these tenders was the loss of the autonomy of KEMSA?

Mr. Abdi Mohamud: I would want to confine myself to my evidence.

Mr. Ndegwa Njiru: I know, but this time---

Mr. Abdi Mohamud: I would not want to talk about the evidence---

Mr. Ndegwa Njiru: Okay. Then, read that paragraph for me.

Mr. Abdi Mohamud: Which paragraph?

Mr. Ndegwa Njiru: Paragraph 107. I want to finish up with you.

Mr. Abdi Mohamud: It was further her testimony that the authority had struggled to maintain its autonomy owing to the undue interference from the Cabinet Secretary for Health. For instance, she stated that on 22nd March, 2023, she received a note from the Cabinet Secretary asking her to assist a certain Mr. Ken Ogola.

Mr. Ndegwa Njiru: She received a note from the CS asking the CEO to assist one Ken Ogola, correct?

Mr. Abdi Mohamud: As per this statement, yes.

Mr. Ndegwa Njiru: Have you seen any company associated with the Deputy President being accused of these interferences?

Mr. Abdi Mohamud: No.

Mr. Ndegwa Njiru: Let us go to your bundle, Volume 8A. Any evidence from volume 8A that you have brought that links the Deputy President's company to the cancellation of the tender?

Mr. Abdi Mohamud: Yes.

Mr. Ndegwa Njiru: Look at your letter dated 23rd September and look at the recommendations. What are you recommending?

Mr. Abdi Mohamud: We are recommending for administrative action against the KEMSA officials and the Ministry of Health officials. There is a pending issue.

Mr. Ndegwa Njiru: Okay. I want you to limit yourself to what I am asking in that respect. You are recommending administrative action to KEMSA officials, correct?

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In that particular paragraph, any recommendation for the prosecution of the company in issue?

Mr. Abdi Mohamud: The file is still open. As per these recommendations.

Mr. Ndegwa Njiru: You brought the documents here. We are dealing with what you have brought, not what you have in the office.

Any recommendation in respect of that company?

Mr. Abdi Mohamud: No.

Mr. Ndegwa Njiru: Thank you. Let us go to a letter dated 21st August of your bundles, the EACC bundles, the one that you are looking at. Do not leave volume 8A. You can see the letter dated 21st August.

Mr. Abdi Mohamud: Just a minute, I get the letter.

Mr. Ndegwa Njiru: Can you see the recommendation at page 7? What are you recommending?

Mr. Abdi Mohamud: We are recommending for the investigation established that the Chief Executive Officer at KEMSA, Terry Ramadhani, failed to ensure compliance with the procurement processes and the law, contrary to Section 44 of the PPDA.

Mr. Ndegwa Njiru: That Ramadhani was in breach of the law, correct?

Mr. Abdi Mohamud: Correct.

Mr. Ndegwa Njiru: A person who is in breach of the law, what happens to him or her?

Mr. Abdi Mohamud: There are many ways of dealing with that.

Mr. Ndegwa Njiru: The law sanctions that act, correct?

Mr. Abdi Mohamud: Exactly.

Mr. Ndegwa Njiru: Do you know what sanction was given to Terry?

Mr. Abdi Mohamud: I would not know.

Mr. Ndegwa Njiru: Do you know that she is now currently the Ambassador to New Delhi?

Mr. Abdi Mohamud: That was not our expectation. We were looking at administration of action taken against the lady.

Mr. Ndegwa Njiru: I know. So, did any person, either the CEO report to you that she has received any intimidation, harassment, bullying from the Office of the Deputy President?

Mr. Abdi Mohamud: No.

Mr. Ndegwa Njiru: Did you receive any complaint?

Mr. Abdi Mohamud: Not to the EACC.

Mr. Ndegwa Njiru: Mr. Witness, finally, where do you place your evidence in these proceedings?

Mr. Abdi Mohamud: In these proceedings, I place my evidence on the conflict of interest bit, which I said, personal interest.

Mr. Ndegwa Njiru: That you said and I understand the law.

Mr. Abdi Mohamud: Allow me to finish, please.

Mr. Ndegwa Njiru: I put it to you, that in the Notice of Motion, there is no charge against the Deputy President for conflict of interest. Does that surprise you, that there is no such a charge?

Mr. Abdi Mohamud: It does not.

Mr. Ndegwa Njiru: Thank you. No further questions.

The Speaker (Hon. Kingi): Counsel for the National Assembly, you may re-examine the witness.

Mr. Ndegwa Njiru: Mr. Speaker, Sir, only one more question. Between the statement that you have made and the Senate's report, which one do you want us to rely on? There are only two options. It is either your report or the report by the Senate. Do not give me an explanation.

Mr. Abdi Mohamud: I can stand by my report.

Mr. Ndegwa Njiru: So, we disregard the report by the Senate, correct?

Mr. Abdi Mohamud: I did not tell you that. I did not say that.

Mr. Ndegwa Njiru: Do we disregard the report by the Senate. Is that the contempt that you have for this House?

Mr. Abdi Mohamud: I can only stand by my evidence, which I can prove in any forum.

Mr. Ndegwa Njiru: Has that report by the Senate indicated any investigations on the ground of favouritism, conflict of interest and gifts?

Mr. Abdi Mohamud: No, I have not gone through the report, so I would not want to comment.

The Speaker (Hon. Kingi): Counsel, are you done?

Mr. Ndegwa Njiru: Yes, Mr. Speaker, Sir, but you are addressing me.

The Speaker (Hon. Kingi): Take your seat.

Mr. Ndegwa Njiru: Most obliged, Mr. Speaker, Sir.

Mr. Moses Kipkemoi: Mr. Speaker, Sir, I had around four or five minutes.

The Speaker (Hon. Kingi): Counsel, I am afraid that your time is up. However, you have two hours to cross-examine the Deputy President. That is where you can borrow from.

Mr. Moses Kipkemoi: I wish to borrow 10 minutes in respect of this witness.

The Speaker (Hon. Kingi): Proceed.

Mr. Moses Kipkemoi: Mr. Mahmoud, do you still have the bundle of Volume No.3? It is a bigger volume than that. Let me take you to page 236 of that bundle, sorry. Go to paragraph 188 and inform the Senate what the Senate stated in that report, in that paragraph.

Mr. Abdi Mohamud: On page 188, at the financial evaluation, the evaluation committee - there is a word missing - the following bidders for award. Item 001, that is mosquito nets treated. Rectangular, polythene. Number one is Shobikaa Impex Private Limited.

Mr. Moses Kipkemoi: Bidder number two, Shobikaa Impex Private Limited was recommended for award at a price of US\$ 9 million. So, there was indeed a recommendation by the evaluation committee for an award to Shobikaa Impex?

Mr. Abdi Mohamud: Correct.

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Mr. Moses Kipkemoi: It is contained in the report of the Senate.

Mr. Abdi Mohamud: Correct.

Mr. Moses Kipkemoi: Confirm also that what you have been taken through by my learned friend are the various testimonies of the witnesses who appeared before the Senate and those testimonies ran from page 202 all the way to page 265.

Is that correct?

Mr. Abdi Mohamud: That is correct, from page 202.

Mr. Moses Kipkemoi: So, what Counsel has done is to give you the various contestations by the witnesses who came before the Senate.

Mr. Abdi Mohamud: That is correct.

Mr. Moses Kipkemoi: What is important is the recommendations and observations of the Senate, which is contained in pages 266 to 274.

Mr. Abdi Mohamud: That is correct.

Mr. Moses Kipkemoi: Allow me to just highlight three of the observations which were taken out by the Senate. Look at page 267, Title B in regard to the tender specifications. The Senate picked out the tender specifications as an issue, which I marked, correct?

Mr. Abdi Mohamud: That is correct.

Mr. Moses Kipkemoi: Go to page 268. They also picked out the issue of extension of the tender. Read to the Senate, paragraph 16(1).

Mr. Abdi Mohamud: It reads as follows:

“The sequence of events leading to the extension appear solicited and mischievous as evidenced by the following---

Mr. Moses Kipkemoi: The Senate is saying that the extension appears solicited and mischievous and they then go ahead and give six reasons. Under (d), they pick out the manner in which KEMSA evaluated the tender. Is that correct?

Mr. Abdi Mohamud: Correct.

Mr. Moses Kipkemoi: This report of the Senate rhymes with your observation in all material respects. Is that not so?

Mr. Abdi Mohamud: Correct.

Mr. Moses Kipkemoi: In paragraph (e), the Senate discusses the process which led to cancellation. It is titled ‘Cancellation of the Tender.’ Is that correct?

Mr. Abdi Mohamud: Correct.

Mr. Moses Kipkemoi: They say that, though there was no loss of funds, KEMSA lost Kshs60 million in procurement fees.

Mr. Abdi Mohamud: Yes, on paragraph 24.

Mr. Moses Kipkemoi: So, in all material respect. This report rhymes with the EACC report.

Mr. Abdi Mohamud: That is correct.

Mr. Moses Kipkemoi: There is no reason for you to disown it. You have also been told that conflict of interest is not an issue which has been raised by the Mover of the Motion.

Mr. Abdi Mohamud: Correct.

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Mr. Moses Kipkemoi: To the best of your knowledge, does the Anticorruption and Economic Crimes Act have a clause on conflict of interest and makes it an offence?

Mr. Abdi Mohamud: It does. The Leadership and Integrity Act also does.

Mr. Moses Kipkemoi: I will identify to the Senate during my submissions the relevant Sections of the Motion.

Thank you, Mr. Mohamud. We wish to close with this witness, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Thank you. We will now move to allow hon. Senators to ask questions or seek clarifications, starting with the Senator for Nairobi City County.

Okay, Sen. Oketch Gicheru, proceed.

Sen. Oketch Gicheru: Mr. Speaker, Sir, I have two quick clarification questions; one, for the witness and one from the Counsel who cross-examined the witness.

Mr. Abdi, you have indicated to the Senate that eventually, of all the 17 companies that bid for this tender, all of them got their bid bonds and documents back. However, the witness that appeared before we called, Dr. Mulwa, indicated that on the 11th July, 2023, he received a phone call from the Deputy President to collect the bid bond for Shobikaa, specifically from EACC.

I want to know when the other 16 companies get their bid bonds from EACC. Did they get them on the same date that the former witness indicated that he waited for five hours from EACC, or did they get it from EACC at a later date?

Lastly, the Counsel for the Deputy President has heavily relied on the Senate report. If you look at page 218 all the way to page 230. It is submitted to the Senate by different individuals. Counsel, do submissions itemized by individuals before the Senate, in your understanding, amount to the Senate findings and resolutions?

What do you make of page 275 of the Senate recommendations and not the findings? You indicated to this House that those were the Senate findings. Are they findings or submissions of individuals to the Senate of Kenya?

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

Sen. Mungatana, MGH: Asante sana, Bw. Spika. Swali langu kwa mshahidi; umeelezea Bunge la Seneti kwamba, wafanyikazi wa Serikali hawakubaliwi kuchukua pesa kama zawadi. Lakini wafanyikazi wa Serikali wanakubaliwa kuchukua zawadi ya aina nyingine. Tena, ukasema katika EACC kuna orodha ya kuorodhesha kila kitu ambacho kinachukuliwa na mfanyikazi yoyote wa Serikali.

Tunajua ya kwamba, Naibu wa Rais amekuwa mbele ya Kenya nzima akasema amepata ng'ombe kutoka kwa marafiki zake wa Bonde la Ufa kama zawadi. Elezea Bunge la Seneti ikiwa uko na orodha yoyote ya ng'ombe za maziwa ambazo anasema alipewa? Aliziorodhesha?

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

Sen. Chesang: Thank you, Mr. Speaker, Sir. I have two questions that I would like to ask the Counsel of His Excellency the Deputy President to tell the House. First, why it was the Deputy President calling the CEO of KEMSA, asking for a release of the bid bond and not the CEO of Crystal company, yet he is not an employee or a director of the said company?

Number two, I equally want to ask the Counsel of the Deputy President to enlighten me and prove to this House on how the call by Deputy President to the CEO of KEMSA pertaining a bid bond that was in process of contract not a conflict of interest.

Lastly, I would like to ask the Counsel if the Deputy President knows that he is not a regional leader, but a national leader.

Thank you, Mr. Speaker, Sir.

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

Sen. Dullo: Thank you, Mr. Speaker, Sir. My question is to the Deputy President's counsel. I saw you trying to cross-examine the witness before us on a report of the Senate, which I believe he has not interacted with, and also the Motion before the House and the National Assembly. What are you trying to drive out of that?

Thank you.

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

Sen. Korir: Thank you, Mr. Speaker, Sir. I want to know what informed the extension of time during the procurement process.

The Speaker (Hon. Kingi): Sen. Thang'wa, proceed.

Sen. Thang'wa: Thank you, Mr. Speaker, Sir. My question to Mr. Abdi is: You received a letter from the Ministry of Health on 11th May, 2023. In your wisdom, you replied it 16 months later when the Cabinet Secretary has left the office. This was five months after the Senate looks into the issue and comes with a report. Are you part of the conspiracy? Do not answer me. Answer your children.

The Speaker (Hon. Kingi): Sen. Sigei?

Sen. Wakili Sigei: Mr. Speaker, Sir, the question I intended to ask has already been asked by my colleague, Sen. Mungatana. So, I do not need to waste the time.

The Speaker (Hon. Kingi): Sen. Kibwana?

Hon. Senators, when you are given an opportunity to seek clarification or ask a question, it is not a moment to get a *TikTok* clip.

(Laughter)

Please, this is a very serious matter. Let us not embarrass this House.

Proceed, Sen. Hamida.

Sen. Kibwana: Thank you, Mr. Speaker, Sir. Mr. Abdi, when EACC conducts investigation, are they guided by other investigations? Through the cross-examination, I think it was *vis-a-vis* the Parliament investigation. I think these are two different investigations. I just want clarification on whether you are guided by Parliament because the parliamentarians are not experts. That is why we always bring or loop in EACC to assist us with the investigation.

Secondly, would you call it a bribe if a gift is not declared? I mean, would you call a gift or gifts in a public office a bribe?

Just one last one to the Counsel. How do you cross-examine what someone said, but not exactly specific findings of the Senate? I found it a bit contradicting. The resolutions of the Senate are based on committee's observations and recommendations, but not investigations.

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

Sen. Kathuri: Thank you, Mr. Speaker. Mine is neither to the Counsel nor the witness. It is about the remarks by Sen. Thang'wa. I do not know whether you heard what he said. As an hon. Senator, I would not associate myself with those remarks to a witness appearing before the Senate. He said, "Please, do not answer me, answer your children." That should be expunged from the records of the Senate and from the HANSARD.

The Speaker (Hon. Kingi): Order, hon. Senators. Sen. Karungo, that is unparliamentary and totally out of order. Proceed to retract that statement, failure to which the Chair will rule.

Sen. Thang'wa: Mr. Speaker, Sir, as I withdraw, this session is viewed by everybody at home; our children too.

The Speaker (Hon. Kingi): Sen. Karungo, I never gave you an opportunity to make a speech. Retract or allow me to rule.

Sen. Thang'wa: Okay, Mr. Speaker, Sir, I retract. I withdraw and please, answer me.

The Speaker (Hon. Kingi): Take your seat, Sen. Karungo, please.

Sen. Tabitha Keroche?

Sen. Tabitha Keroche: Thank you, Mr. Speaker, Sir. As a mother, I have also been hurt by Sen. Karungo. Thank you for the ruling, but we should never ever--- We had a closed-door meeting before we started this and we all agreed to behave.

The Speaker (Hon. Kingi): Sen. Tabitha, proceed to seek your clarification.

Sen. Tabitha Keroche: Thank you, Mr. Speaker, Sir. My question is to Mr. Abdi. What are you trying to do on the procurement irregularities? My question is whether you are also doing the same to others because there have been many complaints about procurement departments in all ministries. I hope this continues everywhere.

Thank you.

The Speaker (Hon. Kingi): Sen. Richard Onyonka.

Sen. Onyonka: Thank you, Mr. Speaker, Sir. I have a question for Mr. Abdi. In your observation – maybe in just a paragraph – what do you interpret happened about this tender from its inception in terms of the procurement, the management of the exercise and the conclusion?

As an officer whose responsibility is to actually investigate if the law was broken and make recommendations to the DPP if necessary, what conclusion did you reach when you are analyzing this matter?

Thank you.

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

Sen. Nyamu: Thank you, Mr. Speaker, Sir. Dr. Mulwa, before this House implicated the Deputy President in the Kshs3.7 billion KEMSA scandal, in your own investigation, can you corroborate what Dr. Mulwa has claimed before this House?

Thank you.

The Speaker (Hon. Kingi): Sen. Ojienda?

Sen. Tom Odhiambo Ojienda, SC: Thank you, Mr. Speaker, Sir. My question is different. It goes to the advocate who presented the Kenya Kwanza agreement. My learned friend, please, clarify a few issues.

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Counsel, can you clarify from the Kenya Kwanza agreement, whether there are any shares for Kisumu, Siaya, Migori, Homa Bay, Kitui, Mombasa, Vihiga, Mandera, Marsabit, Trans Nzoia, West Pokot, Lamu and Nairobi City counties? Please, note this because it is important.

I just want to know because this is important. The legal *crinkum crankum* – the twists and turns – in this, is that you will then interpret, Counsel, whether the agreement violates Article 210(2)(b) of the Constitution on inclusivity, diversity, discrimination and the obligation of the President under Article 131.

Lastly Counsel, please just tell us whether in your view, the relationship between the Deputy President and the President under Kenya Kwanza – because you played the two clips – has broken down irretrievably. That will help us.

Thank you.

The Speaker (Hon. Kingi): Sen. Okenyuri?

Sen. Okenyuri: Thank you, Mr. Speaker, Sir. I wish to seek more information from Mr. Abdi. Was it in order for the bid bond document to be released while there was an ongoing investigation?

Secondly, did EACC clear Madam Terry Ramadhan to be Ambassador?

Thank you.

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

Sen. Wambua: Mr. Speaker, Sir, I have a few things to clarify from EACC. One, did you find it necessary to record a statement from Crystal Kenya and Shobikaa Impex Limited in that probe? This is because they had been mentioned? Were they entities in the investigation?

Secondly, has Shobikaa Limited ever done any business with KEMSA or with Global Fund before the case on record? In your own investigations, did you find that?

In your letter, I see you have recommended administrative action against the Chief Executive Officer (CEO), the Acting Director of Procurement and two procurement officers. I see no recommendation of any action, not necessarily by KEMSA, against Crystal or Shobikaa Limited.

I think it is in line with your own recommendation that in this case on record, there were no public funds lost and eventually, the bid was returned. In your own investigation, what is the issue here?

I thank you.

Sen. Gataya Mo Fire: Mr. Speaker, Sir, I have listened to the evidence of the witness from EACC. I would like to know, on behalf of the whole House, whether the contract for mosquito nets, which was drawn out of interference, because I have captured those confessions from him. So, my question is this: Can he connect the company associated with the Deputy Governor with the withdrawal of that contract?

Secondly, I have also listened to Dr. Mulwa. Is it normal for an ordinary CEO to come and camp in your office for five hours?

Sen. Mumma: Thank you, Mr. Speaker, Sir. My question to the witness is that we have been told by Dr. Mulwa that the people of Kenya lost money, time, the number of nets they were going to get and services.

Now, does EACC end at just saying you recommend administrative action? Who takes responsibility for the loss of all the people of Kenya? What responsibility is taken in respect of tinkering with the procurement in order to give it to the wrong person, only for it to be found to be incorrect?

One more question to Counsel, now that Sen. (Prof.) Tom Ojienda Odhiambo, SC has asked. I want to take the opportunity to ask Counsel Macharia, you referred to the Political Parties Act Schedule 3 as the instrument with which you allege that the shareholding, in your view, that was being spoken about, is contained in the coalition Government of Kenya Kwanza.

Can you give us the exact provisions of Schedule 3 of the Political Parties Act that says that shareholding can be done on development projects in Kenya?

Sen. Murgor: Thank you, Mr. Speaker, Sir. I have a question for His Excellency the Deputy President's Counsel as to whether the Deputy President, in his own conscience, realized that this shareholding narrative was really going negative and what he did about it? Did he just go all the way up to where things are now without realizing that it was going the wrong way?

Sen. Joe Nyutu: Thank you, Mr. Speaker, Sir. Very briefly, I just want to ask the witness, Mr. Abdi a question. He has stated that as per the investigation of the EACC, the closing date for this particular tender was moved from 23rd February, 2023, to 10th March, in order for the process to favour Shobikaa Impex, whose local agent was Crystal Limited.

Mr. Abdi, can you clarify whether this extension of the tender period was due to the late delivery of the bid bond? You said that the tender was also attached to a bid bond that was late. Was the reason the late delivery of the bid bond or the specifications of the long-lasting mosquito nets from Synergist Perone? What was the exact reason? Was it late delivery of bid bond or the specification?

Secondly, you have indicated that the authority did not prefer any charges against the officers of KEMSA and the PS herself. Was that the right thing that the EACC was supposed to do or should it have preferred charges against these “errant” officers?

Finally, the companies that were eventually awarded the tender by Global Fund, why had they initially been disqualified by KEMSA?

I thank you.

Sen. (Dr.) Lelegwe Ltumbesi: Thank you, Mr. Speaker, Sir. I would like to seek clarifications from the advocates of the National Assembly in reference to Ground 11, which pertains to gross misconduct; bullying.

You have alleged that His Excellency, the Deputy President, exerted undue pressure on officials of KEMSA in order to secure a tender for supply of mosquito nets to Crystal Limited, a company purportedly associated with him.

Now, upon reviewing the documentation provided, I have noted that 17 companies submitted bids for this tender, yet it was ultimately not awarded to any of them.

Given these findings, may I inquire from you whether it would be correct to assert that this particular ground lacks sufficient substantiation, considering that no award was made in respect to the tender in question?

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I thank you.

Sen. Chimera: Thank you, Mr. Speaker, Sir. Three quick issues to the witness. I wish to refer the witness to page 17 of his own document. I know he is a very serious investigator, but the document on page 17, dated 16th July, 2014 as tabled here, is so naked and so casual and it is purportedly coming from the Pest Control and Products Board (PCPB). There is no letterhead as to confirm the authenticity of this document. I do not know how the witness intends to allow the Senate to authenticate this document.

Second is on his allegation on the conflict of interest on the part of the Deputy President in so far as this tender is concerned. Is it your contention that the mere fact that Crystal Kenya Limited is the local agent of one of the bidders in this tender, then that would suffice to be conflict of interest enough on the part of the Deputy President because the owners of that company are sons of the Deputy President?

Lastly, the witness has been cross-examined by my learned colleague, Counsel for the Deputy President, largely on contents of the Senate Standing Committee on Health Report, as opposed to his own documents.

Do you want it to go on record that you want to rely on that report as your evidence-in-chief, or should the Senate rely on your documents as tabled under Volume 8A of your own documents?

I thank you.

Sen. Shakilla Abdalla: Thank you, Mr. Speaker, Sir. My question is to Mr. Abdi. How many more charges against the Deputy President are before the EACC apart from the KEMSA one?

I thank you.

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

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I would like to direct my question to Abdi of the EACC.

In reference to this issue of the bid bond, listening to the former Acting CEO, there is something curious about it, which I would like Abdi to either confirm or help us understand. There was something peculiar about it.

Mr. Speaker, Sir, when you hear about pagination, if you know anything about tenders, you know that if there is an issue on pagination, it is not just an issue of forgetting to page or number the pages, but that document may either have been added later on after the tendering process was concluded, or, it was defective. What was the real issue, according to their investigation, with regard to the bid bond that was submitted by this specific company?

Secondly, what in his assessment, would he say is a reading of the donor community, when you have such important programmes interfered with, such that the donor communities themselves end up cancelling such important programmes and what are they recommending?

Finally, Mr. Speaker, Sir, Advocate Ndegwa Njiru asked the witness earlier which of the reports would he prefer that this House believes; that of the Senate or of the EACC. I would wish to pose the same question to him.

I thank you.

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

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Sen. (Dr.) Murango: Asante, Mhe Spika. Swali langu litaeenda kwa Bw. Abdi. Kwa sababu anayehukumiwa hapa ni Naibu wa Rais, tungetaka kujua ya kwamba kwa sababu mlifanya uchunguzi, ni kesi ngapi ama kuna kesi yeyote ambayo EACC imepeleka mahakami ili Naibu wa Rais ahukumiwe?

Jambo la pili, wakati Naibu wa Rais alikua anachunguzwa katika Bunge la Kitaifa, kuna ushaidi wowote ambao wewe uliwasilisha? Kama hukuwasilisha, kwa nini umeamua kuwasilisha hapa Bunge la Seneti na sio Bunge la Kitaifa?

Swali la mwisho, katita zabuni ambayo ilikuwa ni ya vyandarua vya mbu ambayo inasemekana Naibu wa Rais alihusika nayo, ile zabuni ilikuwa imeghairiwa na KEMSA, *bid bond* kwa lugha ya kingereza na ilifaa kurudushwa. Je, hio dhamana ya zabuni ilirudishwa ama iliitishwa? Ingekuwa inasiadia Naibu wa Raisi na nini ama kungekuwa na manufaa gani ya kurudisha thamana ya zabuni kama ulivyorudisha zingine 17? Ningependa kujua hayo.

Asante.

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

Sen. Omogeni: Bw. Abdi, on this issue of irregular procurement of malaria nets with KEMSA, you have given us documents that basically point to some recommendation for administrative action to be taken against a number of officers. However, what is of our concern today is companies associated with the DP. Can you tell us anything that you found irregular around the subject matter that concerns us this afternoon, that is, the companies associated with the Deputy President?

Thank you.

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

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker. We are lucky that the EACC is here with us. There are serious allegations that have been raised that require investigations.

Could the Deputy Chief Executive Officer (CEO) confirm if indeed there are investigations taking place on your own motion on the following issues:

(i) on the activities of this intricate web of companies by the Deputy President;

(ii) on the issue of the disinheritance of the orphans and wife of his late brother, His Excellency Nderitu Gachagua;

(iii) on the alleged insubordination of the President; and,

(iv) if there are investigations on the role that His Excellency the Deputy President played in the infamous Gen Z uprising that occurred in June?

Thank you, Mr. Speaker.

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

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. I have three questions. One, I need clarification on Section 14 on cultural gifts. For instance, some of us in our community when we respect you, we give you cows. Does it qualify within the meaning of Section 14?

Number two, I have seen administration action against KEMSA and Ministry officials. Since you recommended administrative action, have you gotten feedback from KEMSA? Did you also recommend any action against companies?

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Finally, are there any active investigations by the EACC against the person of Rigathi Gachagua or the Deputy President of the Republic of Kenya?

I thank you.

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

Sen. Tabitha Mutinda: Thank you, Mr. Speaker, Sir. Mine is to the Counsel for the National Assembly. You have presented before this House two witnesses, Mr. Abdi and Dr. Mulwa.

Dr. Mulwa, before this House, stated that there was no loss in regards to this procurement process. Mr. Abdi's report indicates clearly that there was no loss of public funds. Would you tell this House, between your two witnesses, who is telling the truth and who is not?

Secondly, as far as Crystal Limited is concerned, has the EACC established any evidence that shows that the Deputy President of the Republic of Kenya benefits directly or indirectly from this particular company?

Lastly, my colleague asked about the former CEO, Ramadhani. You had recommended action to be taken. In your report also, you indicate that she violated Article 10. Does it end there, Mr. Abdi? She is now working in a different capacity. What action are you supposed or do you intend to take? Do you do recommendations and not adhere to them? What is the conclusion as far as these kinds of reports are concerned from your office?

Mr. Speaker, Sir, I ask this because sometimes, Kenyans says that the Senate does not do oversight. We do not really take action. However, we recommend. This is now the situation that we find ourselves in. That your recommendations---

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

Sen. Montet Betty: Thank you, Mr. Speaker, Sir. I would wish to ask the Deputy CEO; is the EACC planning to press charges on any of these companies that you say you have investigated and found that they had interfered, either through their agents with this particular tender? If not, are you planning to do it and when?

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

Sen. Veronica Maina: I would like to seek a clarification. Can you confirm or clarify whether these investigations have been closed by the EACC in respect of this procurement at KEMSA, and whether there are any further persons of interest whom you have sanctioned or issued any notices of prosecution or anything of that sort beyond the letters that are attached to the affidavit?

In the course of your investigation, did you bother to find out what was the content of the phone calls that the acting CEO of KEMSA said was used to intimidate or cause pressure to him? Did you investigate the contents of that phone call?

The Speaker (Hon. Kingi): Witness, you may now proceed to respond.

(Sen. Seki spoke off record)

Hon. Seki, this hearing will terminate beyond midnight today.

An Hon Senator: Then we can get another day.

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The Speaker (Hon. Kingi): Let the witness respond to the queries that have been sought. Thereafter, we will go for another round. Is there any problem?

(Sen. Seki spoke off record)

Hon. Seki, you are out of order. I am asking you to leave the Chamber immediately. You cannot direct the Chair on what to do. Unless you apologise, I will throw you out of the Chamber. You cannot say the Chair is biased. If you have noticed, we have been going on lots. One lot, the witness answers, then I go for another lot. Proceed to apologise or I throw you out.

Sen. Seki: Mr. Speaker, Sir, you know I have come to your desk. I have a representation of Kajiado people. I have a right to speak in this Assembly. You seem to be biased.

The Speaker (Hon. Kingi): Hon. Seki, you either apologise or I rule you out of order and throw you out.

Sen. Seki: You know I have never stood on this---

(Loud consultations)

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

Sen. Seki: Let me just apologise.

The Speaker (Hon. Kingi): Hon. Seki, I have not heard the apology. You either proceed to apologise to the Chair or exit the Chamber. Proceed, the Floor is yours.

Sen. Seki: I apologise.

The Speaker (Hon. Kingi): Take your seat. Now, hon. Seki, hon. Chute and hon. Omtata, you are totally out of order, pursuant to Standing Order No.121 and I am cautioning you. The first caution for the day.

Hon. Chute, every Senator here is elected to represent their people. If you noticed from yesterday, we are going with lots. No Senator who is more important than the other. Proceed, witness.

Mr. Abdi Mohamud: Thank you, Mr. Speaker, Sir. I may not have captured the exact names of the hon. Senators, but I will deal with the questions as they were asked. The first question was to do with when did the other companies get back their documents and the dates the companies got their documents.

I am not sure of the exact date when these documents were returned, but procedurally we only focus mainly on the company that we are investigating, either for procurement irregularities or certain issues. For example, in this particular case, Shobikaa Impex Limited was the special company that we were looking at, the reason why that particular one was identified. The bid document had challenges as I had indicated in my evidence-in-chief.

Then we come to hon. Mungatana issue of gifts and cows. As I indicated, gifts whose value is more than Kshs20,000 are supposed to be handed in and declared by all public officers, including state officers.

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For this specific matter, we have not investigated the existence of the cows that are in this particular issue. If indeed cows have been donated to any public officer, those donations are supposed to be donated to the state. The officer is supposed to hand over that donation within 48 hours to the institution that employs him. That is my take on that.

Then we have the issue of extension of time for the bid bond. As I indicated previously, the closing date for this particular tender was supposed to be on 23rd February.

Bid bonds are supposed to be attached or be part of the tender document. In this particular case, the bid bond was hand-delivered to the Office of the Chief Executive Officer (CEO) when the tender documents were already inserted in the respective tender boxes. For that reason, extension had to be found in order to have that document be part of the tender document of that particular company, which is Shobikaa Impex Limited .

That led to the extension and that was instigated by the Permanent Secretary. He wrote a letter which is in our documents, directing the CEO of the KEMSA to extend the date of closure of the tender from 23rd February to 10th March. Now, that is the issue that led to the date of closure be extended.

Now, let me come to investigations by various bodies created by the Constitution. Each institution has its own mandate, as far as the Constitution or the legislation or the statute that created it is concerned.

When it comes to criminal investigation and specific issues to do with leadership and integrity and corruption; the responsibility lies with the EACC.

Other constitutional bodies can do their own investigation. However, if they are recommending for criminal charges, those recommendations have to be made to the respective institution mandated to charge people or to investigate criminal cases, such as the DCI or the EACC.

It depends on the mandate of the institution and the focus of that particular investigation. For example, the Public Procurement and Disposal Authority (PPDA) does not have powers to charge people in court or rather to recommend to the Director of Public Prosecutions (DPP) to have people charged in court.

What do they do? They have to do a recommendation to either the DCI or to the EACC to investigate the criminality of that particular issue.

I just want to indicate that it depends on the institution and the mandate of that institution. However, when it comes to criminal investigations, there are specific institutions that are mandated to conduct criminal investigations.

I addressed in my earlier submission that gifts that are more than Kshs20,000 are declarable and have to be entered in the gift register.

At the end of every financial year, the institution has to declare to the EACC of the existence of that gift.

The issue of what was our finding or conclusion when we look at the whole matter is that when you look at this particular tender, first, it is an international tender that was floated as an open tender to international companies. Companies bid, but there is a specific company that has a local agent which is Shobikaa Impex Limited that did not conform to certain procurement requirements as per the tender document.

When tenders are floated, they have specific instructions or directions to the people who are bidding. If, for example, you are supposed to do pagination or in ink it has to be indicated there. Therefore, anything that goes outside what was provided for in the tender document is actually considered as irregular and, of course, the disqualification should apply.

Thus, this tender was badly handled. I would not want to indicate why it was handled that way but from the look of it, there must have been some pressure somewhere. That is my own view as an investigator. This is because procurement officers know the law. There are only two conclusions that you can make. One, they were bribed.

Two, there was an influence that was coming from other quarters. Mainly those are the two reasons from our experience. So, that is my conclusion. I would not want to delve into the conclusion of Dr. Mulwa because he gave evidence before this august House and his evidence is there.

On the issue of Terry Ramadhan, her status and whether we actually received feedback as seen in our documents, we did a letter to the Chairperson of the Board of Directors of KEMSA. We gave him the reasons why we think or it was our view that disciplinary action should be taken against this particular officer.

As to why she is still in the public service, I would not want to go there because our responsibility when it comes to administrative action is to tell the institution to take disciplinary action.

(Sen. Joe Nyutu consulted loudly)

The Speaker (Hon. Kingi) Order, Sen. Joe Nyutu.

(Sen. Cherarkey stood in his place)

The Senator for Nandi, take your seat.

Mr. Abdi Mohamud: We do not have the powers to compel, for example, the Principal Secretary (PS).

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

Mr. Abdi Mohamud: Thank you. We do not have the powers to compel as far as administrative action is concerned. I leave that for the hon. Members to decide on what to do with that.

The other issue is reading of the donor community and what our view is. If you may allow me, the health sector has faced serious corruption challenges throughout the period that I remember working at the EACC. It is an area where many donors are almost giving up in supporting our programmes and that has a serious repercussion.

First, let us understand---

Hon. Paul Muite, SC: *Mheshimiwa* Speaker, in the past with tremendous respect with all the other witnesses, you have been indicating how much time they have to respond. Five minutes, 10 minutes and so on. However, for my good friend here, the witness, you did not indicate how much time this honourable House is giving him to respond.

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The Speaker (Hon. Kingi): Thank you so much, Senior Counsel. That was courtesy of my good friend, Sen. Seki. Ordinarily, we have been giving witnesses 10 minutes to respond to clarifications and questions sought. So far, you have done four minutes and 13 seconds. You have five minutes and 47 seconds to conclude.

Mr. Abdi Mohamud: Thank you, Mr. Speaker, Sir. I have dealt with that.

The issue that was also raised is which report do we stand by? As EACC, we did an investigation and we submitted the findings of the report to this honourable House. That is the report we will always stand by and defend.

The other issue that was raised was whether we had any case that we have investigated against the Deputy President and whether we have proposed charges or anything like that. We have not investigated the Deputy President, H.E. Rigathi Gachagua, for any criminal matter in the past and that is our position.

There was also the National Assembly hearing and a question of why we did not attend the National Assembly hearing and now we are attending the Senate. We were not invited to the first hearing. Yesterday, I was served with a summon of this House and we are simply responding to that summon. As to why we were not invited in the other one, I do not know. We only respond to summons that are issued.

Sen. Omogeni asked if the companies are associated with the Deputy President. We have not investigated any company that is associated with the Deputy President, so far, and that is our position.

The Senator for Kakamega County asked about the activities that are intricate web of suspected corruption. Hon. Senator, on all the five items that you have asked us whether we have investigated, we have not because a report has not been made to us.

We should not only wait for a report, but we also have the powers to investigate on our own motion. However, it is only after we analyse the reports as to whether they fit in within our mandate. Like, for example, if you deal with issues of inheritance, unless there is a criminal aspect on the inheritance bit, it will usually be handled as a civil matter.

On issues to do with intimidation, if the CEO of KEMSA had reported to us that he was intimidated by a state officer, we would go into it. Of course, all of us understand how difficult it would be to open an investigation of that magnitude. However, no complaint has been made to us.

On the Gen Zs uprising, we have no report. We know it happened, but as to the corruption bit of it, we do not have facts.

The Speaker (Hon. Kingi): Two minutes to go.

Mr. Abdi Mohamud: Thank you. I talked about gifts very clearly. Issues to do with whether we want to press charges against companies associated with the Deputy President, we have not investigated. We can only recommend charges after investigation to the DPP as that is our mandate.

The other question is intimidation by the CEO of KEMSA. I think I had addressed that.

Finally, Mr. Speaker, Sir, there was a question on whether we want to prefer more charges or more sanctions against the persons involved on this matter, especially on criminal culpability. The issue of criminal culpability is still open, and we will be inviting

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some people in the near future. As of now, we dealt with the issues of administrative action against the individuals involved.

Thank you, Hon. Speaker, Sir. If I may have not addressed one or two questions, it is---

The Speaker (Hon. Kingi): Very well. Now we move to the second round.

Sen. Okiya omtatah, you have the Floor.

Mr. Tom Macharia: Mr. Speaker, Sir, was there any clarification for us to respond on some questions that were put to us? The sugar is running a bit low and there are many questions---

The Speaker (Hon. Kingi): It is running low for everybody.

Sen. Okiya Omtatah: Thank you, Mr. Speaker, Sir. I have a question to the witness from the EACC. I would want to know if the Kenya Kwanza Coalition document is unconstitutional thus null and void to the extent that its formula for sharing executive power violates Articles 10, 27, 129, 130 and 131 of the Constitution.

Secondly, if that is the case, then who is to blame for approving the unconstitutional coalition agreement that resulted in forming a Government?

Thirdly, can you point this Senate to any hard evidence of criminal conduct, which you have unearthed in your investigations against the Deputy President? As a Senator, can I walk into a place and be given a gift that I do not have to declare, irrespective of the amount of the gift since I engage both officially and privately? Is there is a situation where I can be given a gift of whatever magnitude that I do not have to declare?

The Speaker (Hon. Kingi): Proceed, Sen. Chute.

Sen. Chute: Thank you very much, Mr. Speaker, Sir. Let me, first, thank Mr. Abdi for his many years of service to this country. We highly respect him.

I want to refer Mr. Abdi to Ground No.11 on page seven of his documents. Ground No.11 says:

“His Excellency Rigathi Gachagua bullied Kenya Medical Supplies Authority (KEMSA) officials into awarding a tender for supply of mosquito nets to Crystal Kenya Limited.”

In his letter on page 7, he says and I read:

“The Commission is of the opinion that the conduct of the Chief Executive Officer (CEO), Terry Ramadhan, amounts to variation of the Leadership and Integrity Act, particularly Section 10 and 11.”

Mr. Abdi, as we speak today, Ms. Terry Ramadhan is a Deputy Ambassador in India and hon. Mutuse wants this House to get rid of the Deputy President on the account of bullying somebody. Can you tell 50 million Kenyans, as you stand here today, that you want this House to impeach the Deputy President yet you recommended some culprits to be given administrative action and that did not happen.

The Speaker (Hon. Kingi): Sen. Githuku. You may proceed.

Sen. Githuku: Thank you very much, Mr. Speaker, Sir. I want to ask a question to the Deputy Chief Executive Officer.

In the course of your investigation, is there anywhere that you have identified that the Deputy President of the Republic of Kenya who you want impeached, influenced any tender award?

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

(Applause)

Sen. Seki: Thank you, Mr. Speaker, Sir. My question goes to Mr. Abdi Mohamed Ahmed. We have realized that there is a report from the EACC and a report from the Senate Standing Committee on Health with regards to this issue of mosquito nets.

I want to confirm that the contract was cancelled and the funds were not lost. I want you to demonstrate the role of this agent by the name Crystal Kenya Limited in relations to the Deputy President's Office and more so Hon. Rigathi Gachagua.

The Speaker (Hon. Kingi): Sen. Miraj, you may proceed.

(Sen. Miraj spoke off record)

Sen. Miraj, if you do not have any question, then log out.

You may now proceed. Thereafter, we will have an opportunity for the counsel for the Deputy President to respond to the clarification sought. You have five minutes.

Mr. Abdi Mohamud: Thank you, Mr. Speaker, Sir. I will take less than five minutes.

Sen. Okiya Omtatah raised the issue of whether the agreement of the Kenya Kwanza Coalition Government document is unconstitutional. It is only the courts that can actually find whether that document is unconstitutional or not. It is not within my ability or power to comment about the constitutionality or otherwise and neither can I state whether the document is null and void or whether it contravenes certain Articles of the Constitution.

Secondly, he asked of who is to blame for drawing unconstitutional agreements or documents. That is also something that can be tried in court in my view. If anybody wants to know if a document is constitutional or not, then the best thing to do is to try it in our courts. The courts will give directions on what can be done.

The other question was on whether we have investigated any criminal conduct against the Deputy President. I have indicated clearly that we have not investigated the Deputy President for any criminal culpability or any criminal case as far as EACC is concerned.

Sen. Chute, thank you very much for the compliment. I appreciate. Now, the issue of bullying of KEMSA officers or staff came from the CEO, himself. He gave evidence in this House. It is this House to consider if it is something that can stand the test or not.

As for Ms. Terry Ramadhan, we did our bit in terms of recommending for disciplinary action to be taken against her for her role in this particular procurement.

I indicated we do not have the compellence powers to enforce disciplinary or administrative action, I leave it at that. On whether our recommendation is for the

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Impeachment of the Deputy President, ours was to respond to the summons that was given to us by this honourable House. It is for the House to do their job. I would not want to go there. We never recommended. I do not want to go there.

On whether there was anywhere where the Deputy President influenced any tender, no, we do not have that and we never submitted that. All that we said is what I will say in the next response which was raised by the hon. Senator for Kajiado County, about the role of Crystal Kenya Limited and the connection between that company and the His Excellency Deputy President of the Republic of Kenya.

From the documents that we have, which we supplied, it is clear that the directors of this company are two sons of the Deputy President. Each one of them owns 200 shares. They are the only directors of that company and that is the nexus between the Deputy President, Hon. Rigathi Gachagua and that particular company. That is our response as of now.

Hon. Speaker, thank you very much.

The Speaker (Hon. Kingi): Counsel for the Deputy President, we will give you 10 minutes starting now.

Mr. Tom Macharia: Thank you very much, hon. Speaker. I will share my minutes with my colleague, Mr. Ndegwa Njiru. My questions are limited to the issue of the shareholder agreements. I will be quick. The questions were asked by my learned senior, colleague and friend, Sen. (Prof.) Tom Odhiambo Ojienda, Sen. Mumma and Sen. Okiya Omtatah.

I will begin with the questions by my learned Senior, Sen. (Prof.) Tom Odhiambo Ojienda. I will begin with the second question he asked. He asked, is the relationship between the President and the Deputy President irretrievably broken? That is not a legal question, but in my experience as a Kenyan, there is no such thing as an irretrievably broken political relationship.

Members of the Jubilee Party, which I served as an advocate for, woke up in March 2018 to find their leader shaking hands with his opponent at Harambee House and they subsequently found a way to work.

A few months ago, the President and the Hon. former Prime Minister have found a way to work. There is no such thing as an irretrievable political relationship.

Secondly, leadership constitutionally is not so much about how you feel. It is about your duty and your responsibility constitutionally. Your feelings must take a back seat to your duty to the people of Kenya.

I was asked about the counties. When you look at these shareholder agreements, and again, if Members will go with me to page 418, where you find the shareholder agreement between ANC, Ford Kenya and UNDA.

(An Hon. Member spoke off record)

Sorry? I do not know how to increase the volume.

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

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[The Deputy Speaker (Sen. Kathuri) in the Chair]

The Deputy Speaker (Sen. Kathuri): Counsel, Members are getting a bit lost when you say UNDA. The spelling of UNDA in Swahili is U-N-D-A.

Mr. Tom Macharia: No, Sorry, I come from Mount Kenya.

The Deputy Speaker (Sen. Kathuri): Make it clear that it is United Democratic Alliance (UDA).

Mr. Tom Macharia: I am sorry. We used acronyms. It is the United Democratic Alliance (UDA) Party. The full name of ANC is Amani National Congress Party. The full name for FORD-Kenya is Forum for the Restoration of Democracy-(Kenya) Party.

Their agreement on page 429, you will note, Sen. (Prof.) Tom Odhiambo Ojienda, it does not talk about counties. The agreements seem to have been structured in regions. It talked about regions. I do not know what they meant by those regions, but at paragraph 20---

The Deputy Speaker (Sen. Kathuri): I will allow Mr. Abdi Ahmed to have a seat as you conclude.

Mr. Tom Macharia: As I said, hon. Senator for Kisumu County, at page 429, which would be paragraph 20, subparagraph (o), that is the first proviso there was. It states:

“Further terms, parameters and details of the sharing of positions of responsibility in the National Government pursuant to this Article shall be contained in a separate Schedule to this agreement, which shall be negotiated and executed before the date of the general election scheduled on 9th August 2022.”

So, this was not a final agreement. My understanding is that there were further schedules. I do not know what those schedules said. They are not available at the Registrar of Political Parties. They may very well have included all the counties you asked for. Maybe Kisumu was in the subsequent schedule. I do not know.

Secondly, the drafters of this schedule, as I have said, were careful to stay within the confines of the Constitution because at paragraph 22, subparagraph (g), this is what they said.

“Notwithstanding the content of this Article, the founding member parties hereby commit to make any adjustments that may be necessary to accommodate the development priorities of other parts of the country to ensure equitable distribution of Kenya's national resources and wealth for the benefit of every citizen and every part of Kenya.”

So, those are proviso to ensure that the document was constitutional.

Perhaps, while I am on that issue, I might as well answer my good friend, Sen. Okiya Omtatah's question. I am not yet masterfully a judge. I cannot say whether the Kenya-Kwanza Coalition is unconstitutional. Somebody will have to move to court for that determination to be made. However, I said that in 2005, I had the privilege in participating in a case involving the Memorandum of Understanding (MoU) for the National Rainbow Coalition- Kenya (NARC- Kenya). That was struck down because the law had no underpinning making room for it.

That brings me to the question raised by Sen. Mumma, which is the political parties section. There is not one, there are several. If you go to Schedule 3(b) (c), (d) and

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(e). Let me read them out for you. (b) deals with the policies and objectives of the coalition. It deals with organisational structure and management of the coalition, including county structures and systems and county government bodies, which you will also find in these agreements. Then (c) is the overall structure of the coalition and (e) is the criteria or formula for sharing of positions in the coalition. That is what it says.

(Sen. Mumma spoke off record)

[The Deputy Speaker (Sen. Kathuri) left the Chair]

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

The Speaker (Hon. Kingi): Order, Sen. Mumma.

Mr. Tom Macharia: It talks about positions in the coalition, structure, roles and responsibilities within the coalition. That is what it says. Most political coalitions have interpreted that to mean and it is been healthy thus far in my view, this country become a bit more stable and united. I have answered all those questions that had to do with the question of the shareholder agreements unless members had any clarification.

I rest my case.

The Speaker (Hon. Kingi): Thank you, Counsel for the Deputy President. Counsel Ndegwa, you have something to pick or do we conclude it at that?

Mr. Ndegwa Njiru: I have specific questions and clarifications. Noting the mood of the House, perhaps I can indulge the House, I respond the same after lunchtime.

The Speaker (Hon. Kingi): No, after lunch, we will go straight to your main witness.

Mr. Ndegwa Njiru: Very well, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Counsel Ndegwa, allow me to invoke Standing Order No.34 (2)(a) for the convenience of the House to add five minutes. The House will rise at 1.05 p.m. instead of 1.00 p.m.

Mr. Ndegwa Njiru: I am well-guided.

Mr. Peter Wanyama: Mr. Speaker, Sir, there were two questions for the National Assembly side to respond.

The Speaker (Hon. Kingi): Let us do this, instead of the House rising at 1.05 p.m., we will rise at 1.15 p.m. So, Counsel Ndegwa, you will take your five minutes and then the rest shall be given to the Counsel for the National Assembly.

Mr. Ndegwa Njiru: I am well guided, Mr. Speaker, Sir.

Mr. Peter Wanyama: Mr. Speaker, Sir, the witness is asking if he can leave.

The Speaker (Hon. Kingi): He is discharged.

*(The witness for the National Assembly (Mr. Abdi Mohamud)
was ushered out of the Chamber)*

Mr. Ndegwa Njiru: Mr. Speaker, Sir, I was asked to clarify by Sen. Joyce Korir why I am dealing with the report from the Senate and what I am driving at.

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The report to the Senate is intended to indicate that none of the participants in that tendering process ever benefited from that particular process or none of the 17 companies benefited. As a consequence of the failure to proceed to the next levels, the country did not lose even a single cent.

A question was put to me as to why I am looking at the submissions by various parties and not going to the observations and the recommendations by the Senate. Just like a skilful legal surgeon, I have been able to point out various findings or submissions. For example, the submissions finding themselves at page 222, paragraph 106, 107 and 109 find themselves at the observation of the Senate at page 271.

So, there is serious correlation between my findings as submitted by various parties who appeared before the Senate and the observations made by the Senate. Therefore, I dealt largely on what the Senate found as opposed to what the Senate heard during the proceedings.

Secondly, Mr. Speaker, Sir, a clarification was sought as to why the bid failed and although that will be dealt with at length, permit me to draw the attention of the Senate to page 108 of the Volume No. 3 of the Deputy President's bundle of documents. You will find a letter from KEMSA dated 5th May, 2023 being a notification to Shobikaa Impex Private Limited.

It reads:

“The reference is made to the above tender and advise that, the tender was unsuccessful due to the following reasons.

1. Tender security was not paginated.
2. Please plan to collect your bid security from the procurement office immediately.”

It may be of interest to note the date when this letter is being generated is the 5th May. It may also be of interest to note when the alleged bullying and intimidation occurred. This letter precedes the alleged bullying and intimidation.

Further, this letter is voluntarily being issued and being generated by KEMSA themselves at their own intuition as opposed to being triggered by any external officer, in this case, the person of the Deputy President. In their own volition, KEMSA triggers and invites Shobikaa Impex Limited to come and collect their bids and the witness confirmed, that this is always the end of a failed bid.

Finally, Mr. Speaker, Sir, I will draw the attention of the Senate to the matter in issue. That is page 36 of the Volume No.1 of the Impeachment Motion. The matter in issue that is subject for interrogation as a pen-off is not whether the tenders were responsive, whether the country lost any money, whether investigations were done, whether there was conflict of interest and whether there were gifts that accrued therefrom.

The question in issue is; did the person of the Deputy President bully the officer and was there evidence? So let us not lose ground or focus on the ground on the matter in issue, so that we focus and we put the train on the rail.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): The Counsel for the National Assembly will take us to the rise of the House. You have nine minutes.

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Mr. Peter Wanyama: Mr. Speaker, Sir, I am here to respond on behalf of the National Assembly on only two questions. Listening to the Deputy President's side, I believe they have misunderstood the nature and context of Ground No.11 and there was a question by a Senator on whether we have substantiated Ground No.11 on bullying of KEMSA officials.

Secondly, there was a question also on whether there was loss of public funds in this tendering process. I will answer the first question by mentioning that the Deputy President of the Republic of Kenya is a high-ranking state official. The quality of the Republic of Kenya is based on certain fundamental national values and principles of governance.

In addition, there are provisions on leadership and integrity. If you look at the provisions of Article 75, starting with 73 and conclude with 75, there is an express prohibition on conflict of interest when it comes to all state offices.

To contextualize that question, you have to look at the purpose of the impeachment. The Deputy President being a high-ranking state officer means that there is a constitutional process for bringing him into account to question his conduct. That is why you have this process of impeachment. Impeachment is about political responsibility. It is about governance.

It is not about criminal culpability. It is not about gathering evidence for purpose of taking him to court. It is about bringing him to account on what he has done from a political standpoint and that issue of the distinction of criminal processes from impeachment has been clarified by the Supreme Court of Kenya.

The Supreme Court of Kenya in the case of hon. Mike Sonko was expressed clearly and unequivocal, that impeachment is about those values and ethos in Article 10 and the provisions of leadership and integrity in Chapter 6.

If you look at the way Ground No.11 has been coached, it talks about gross misconduct. Now, the Supreme Court of Kenya has interpreted what amounts to gross violation; which in context then means gross misconduct. The conclusion is that when you violate these core values in Article 10 and the provisions of leadership and integrity, then you are guilty of gross misconduct. You are also guilty of gross violation of the Constitution.

Sometimes, you are guilty of abuse of office. To put it in context, if you look at that charge that we have put in Ground No.11, it talks about bullying of KEMSA officials. That fact of bullying, we have been more specific. If you look at the charge, we have mentioned the specific clause of legislation, where the act of bullying has been prohibited.

If you look at the provisions of the Leadership and Integrity Act, it specifically prohibits bullying by state officials. In that context, you can see in terms of the allegation that we are making and the evidence which has been submitted before this House, especially that call which was made by the Deputy President. The call was made by the Deputy President to a KEMSA official. Why would the Deputy President be pushing the commercial interests of a private company?

That is crystal clear when you look at his own admission in his response to this allegation. The Deputy President has admitted that he lent Kshs200 million to Crystal

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Company to acquire a hotel in Nyeri. This is the same company that the Deputy President is calling KEMSA to consider. A senior KEMSA official, in this case, the managing director, went to the EACC in a tender process.

Mr. Elisha Ongoya: Mr. Speaker, Sir, I am wondering which clarification my learned colleague is responding to because the time for submissions is in the evening.

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

Mr. Peter Wanyama: Mr. Speaker, Sir, I am concluding that it is an impeachable offence to make the link.

The Speaker (Hon. Kingi): Very well. Now conclude.

Mr. Peter Wanyama: Mr. Speaker, Sir, if you look at the evidence that Mr. Mulwa has submitted, that he received a call from the Deputy President, who is a high-ranking state official. Then, he went to the EACC to collect evidence, which the EACC had gathered for the purpose of submitting that tender to the Deputy President or his contact, in this case, his son.

What we are saying is that the act by the Deputy President constitutes a violation of the provisions of the Leadership and Integrity Act, specifically Section 34. That amounts to bullying and, to that extent, we are submitting that the charge has been substantiated in all its four corners.

On the second question, it appears there is a misnomer. To prove an economic crime, you do not have to prove that there was a loss of funds. An economic crime occurs when a sitting Deputy President in a tendering process makes a call which the recipient interprets in a different way perhaps to influence the tendering process or for certain decisions to be made in favour of that person. The person who is making the call is a sitting Deputy President.

This is why the provisions of the Constitution prohibit conflict of interest.

Mr. Ndegwa Njiru: Mr. Speaker, Sir, if you may, my learned friend has enjoyed a lot of latitude with respect to responding to issues that were not sought for clarification. I was taking note of all the issues that were sought. The issue that the counsel is responding to are not among those that were sought. If they were, then he needs to indicate from which particular Senator.

The Speaker (Hon. Kingi): Counsel for National Assembly, reserve other matters for submission.

Mr. Peter Wanyama: Mr. Speaker, Sir, I am responding to the question of whether there was loss of funds.

Mr. Ndegwa Njiru: That was not sought for clarification.

Mr. Peter Wanyama: It was sought by a Senator.

The Speaker (Hon. Kingi): It was sought. You have one minute.

Mr. Peter Wanyama: Mr. Speaker, Sir, in this case, evidence has been let. If you look at it from one perspective, evidence has been provided by Dr. Mulwa that there was a delay in this procurement. Secondly, fewer nets were supplied. Thirdly, there was a question concerning the cost incurred in this tendering process. The evidence was that Kshs55 million was incurred in this process. It came from the mouth of Dr. Mulwa.

To that extent, you can see there was some loss. Whereas the tender was financed by the Global Fund. From our perspective, we lost a lot. Not only from a monetary

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perspective, but also from the other factors. What about Kenyans who did not access these mosquito nets and were exposed to malaria? Is that not a non-monetary loss? To that extent, one can conclude that the conduct of the Deputy President in this regard violates the provisions of Section 34 of the Leadership and Integrity Act.

I end by stating that we have fully substantiated Ground No.11. It is one of those grounds where the evidence is clear and conspicuous. There is a nexus to the Deputy President through a phone call he made to Dr. Mulwa. He has admitted to making that phone call.

The Speaker (Hon. Kingi): Thank you. Hon. Senators, if you keep time, we will start with the Deputy President at exactly 2.30 p.m. We will save time so that we do not have to ring the bell for a quorum. If we can start taking the evidence from the Deputy President at 2.30 p.m., then we will manage our time going forward.

You may now rise.

ADJOURNMENT

Hon. Senators, it is now 1.15 p.m., and having concluded the business for which I extended the hours of the sitting pursuant to Standing Order No.34(2)(a), the Senate stands adjourned until today, 17th October 2024, at 2.30 p.m.

The Senate rose at 1.15 p.m.