

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 16th 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 a quorum?

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

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

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Hon. Senators, please take your seats. I am informed that we do have quorum now. We will now proceed with our session.

Clerk, proceed to call the first Order.

*(Sen. Thang'wa and Sen Okiya Omtatah
stood in their places)*

Sen. Thang'wa and Sen. Okiya Omtatah, kindly take your seats.

*(Sen. Thang'wa and Sen Okiya Omtatah
sat in their seats)*

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

Hon. Senators, I have a Communication to make relating to the business of the Senate as scheduled for consideration during this very solemn Sitting.

You will recall that at the sitting of the Senate held on Wednesday, 9th October, 2024, I appointed today, Wednesday, 16th October, 2024 and tomorrow, Thursday, 17th October, 2024 as the days when the Senate will hear the charges and investigate the proposed removal from office by impeachment, of His Excellency Rigathi Gachagua, EGH, the Deputy President of the Republic of Kenya.

Hon. Senators, you will also recall that at a sitting of the Senate held on Wednesday, 9th October, 2024, a Procedural Motion for the alteration of the sitting time of the Senate for Wednesday, 16th and Thursday, 17th October, 2024 was moved and approved to facilitate the Impeachment hearing of the Deputy President of the Republic of Kenya.

Subsequently, vide a Gazette Notice No.13178, I notify the general public that pursuant to Article 145(3) of the Constitution and Standing Order No.78(1) of the Senate, the Senate resolved to investigate the Proposed Removal from Office by Impeachment of His Excellency, Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, in Plenary.

Hon. Senators, regarding the hearing and determination on the Proposed Removal from Office, by Impeachment, of the Deputy President of the Republic of Kenya, a programme has been prepared and appended to today's Order Paper.

As is the tradition and in line with the schedule of activities for an impeachment hearing in Plenary, the Senate will hold a closed-door preparatory session to deliberate on the management of the investigation. The objective of the preparatory session is to ensure that the process is conducted seamlessly, concluded timeously, and in line with the requirements set out under the Constitution and the Senate Standing Orders.

Hon. Senators, during the pre-hearing, the parties if present, all members of the public and the media will be expected to withdraw from the Chamber and the galleries, and any form of broadcasting from the Chamber shall cease forthwith.

In accordance with the programme for the impeachment hearing, the open session will commence at exactly 10.00 a.m. Consequently, I now direct all members of the public and the media to withdraw from the Chamber and the galleries, and any form of broadcast from the Chamber to cease forthwith. Kindly be guided accordingly.

I thank you.

(The House adjourned temporarily at 9.12 a.m.)

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

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(The House went into an in-camera session)

(End of in-camera session)

(The House resumed at 11.05 a.m.)

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

The Speaker (Hon. Kingi): Hon. Senators, please, take your seats. We need to get ready for the next session. Clerk indicate that we have all the parties within the precincts of Parliament. If they are here, they should be ushered into the Chamber. Ring the bell for 10 minutes so that you settle the parties to get this hearing ongoing.

Serjeant-at-Arms, ring the bell for 10 minutes.

(The bell was rung)

Hon. Senators, the ten minutes are over. Kindly take your seats. Members of the public are now allowed to take to the Gallery and the media is also allowed to start broadcasting.

Hon. Senators, please take your seats.

Clerk, can you confirm that all parties are in the Chamber?

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

So, we will give five more minutes for the parties to settle in.

Hon. Senators, two more minutes for the parties to settle in.

(Parties settled in the Chamber)

Hon. Senators, I am informed that the parties are now settled and ready for this hearing. Therefore, I will allow the Clerk to call the first Order.

Sen. Oketch Gicheru and Sen. Beth Syengo, why are you exchanging seats? Clerk, proceed.

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

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

The Speaker (Hon. Kingi): Hon. Senators, ladies and gentlemen, having dispensed with the Pre-Hearing meeting of Senators, which was a closed session, it is now time to commence the proceedings on the Proposed Removal From Office, By

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Impeachment, of His Excellency Rigathi Gachagua, EGH, the Deputy President of the Republic of Kenya.

You will recall that by a letter, Ref. No.NA/DLP/TBO/MTS/2024/ (025), dated 8th October, 2024, the Speaker of the National Assembly informed the Speaker of the Senate that at a sitting of the National Assembly held on Tuesday, 8th October, 2024; pursuant to Article 145(2) as read with Article 150 of the Constitution, the National Assembly approved a Motion for the Removal from Office, By Impeachment, of His Excellency Rigathi Gachagua, EGH, the Deputy President of the Republic of Kenya.

The Speaker of the National Assembly forwarded the following documents to the Senate, being the record of proceedings of the National Assembly and the evidence adduced in support of the impeachment Motion:

(i) Copy of the Notice of Special Motion and Affidavit of the Hon. Eckomas Mwangi Mutuse, OGW, MP dated 26th September, 2024 and received on 27th September 2024 running from page 40 to 42.

(ii) Electronic evidence relating to the Special Motion contained in a flash disk.

(iii) Order Papers for 1st October, 2024.

(iv) Communication from the Chair No.046 of 2024 issued on Tuesday, 1st October 2024.

(v) Communication from the Chair No.047 of 2024 issued on Tuesday, 1st October 2024.

(vi) Certified HANSARD and Votes and Proceedings for 1st October, 2024.

(vii) Communication from the Chair No.048 of 2024 issued on 2nd October, 2024.

(viii) Letters of Appointment of Advocates-

(a) Swanya & Company Advocates for His Excellency the Deputy President.

(b) Danstan Omari Advocates for Morani Manufacturers Limited.

(ix) Letter to His Excellency the Deputy President forwarding the Notice of Motion.

(x) Affidavit of Service on H.E. the Deputy President.

(xi) Order Paper for 2nd October, 2024.

(xii) Certified HANSARD and Votes and Proceedings for 2nd October, 2024.

(xiii) Public participation advertisements of 2nd October, 2024, being-

(a) *Daily Nation* newspaper.

(b) *The Standard* newspaper.

(c) *The Star* newspaper.

(xiv) Public participation advertisements of 3rd October, 2024, being-

(a) *Daily Nation* newspaper.

(b) *The Standard* newspaper.

(c) *The Star* newspaper.

(d) *Taifa Leo*.

(xv) Public Views Template (English & Kiswahili).

(xvi) Memo to Constituency/County Office Managers dated 4th October, 2024.

(xvii) Public participation advertisements of 4th October, 2024, being-

(a) *Daily Nation* newspaper.

(b) *The Standard* newspaper.

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(c) *The Star* newspaper.

(xviii) Order issued by the High Court sitting at Kerugoya on Friday, 4th October, 2024.

(xix) Press Statement by the Clerk of the National Assembly on Extension of Public Participation issued on 4th October, 2024.

This communication is long, bearing the situation of Sen. Orwoba I will allow her to take her seat.

(Sen. Orwoba took her seat)

(Applause)

(xx) Public participation advertisements of 5th October, 2024, being-

(a) *Saturday Nation* newspaper.

(b) *The Standard* newspaper.

(xxi) Public Participation Report tabled on 8th October, 2024.

(xxii) Response to the Notice of Special Motion from His Excellency the Deputy President received on 8th October, 2024 at 4.00pm.

(xxiii) Electronic evidence by H. E. the Deputy President relating to the Special Motion contained in a flash disk.

(xxiv) Order Paper for Tuesday, 8th October, 2024.

(xxv) Communication from the Chair No. 049 of 2024 issued on Tuesday, 8th October, 2024.

(xxvi) Certified HANSARD and Votes and Proceedings for 8th October, 2024.

Hon. Senators, pursuant to Article 145(3)(a) of the Constitution and Standing Order No.78(1) of the Senate, at the sitting of the Senate held on Wednesday, 9th October, 2024, the charges against His Excellency the Deputy President, as contained in the Motion of Impeachment by the National Assembly, were read to the assembled Senate.

Hon. Senators, ladies and gentlemen, at this juncture, allow me to remind you of the mandate of the Senate in relation to the proposed removal from office by impeachment, of the Deputy President as provided for under Articles 150 and 145 of the Constitution, as read together with Standing Order No.78 of the Senate.

In particular, Article 150 of the Constitution states as follows-

(1) The Deputy President may be removed from office-

a) on the ground of physical or mental incapacity to perform the functions of the office; or

b) on impeachment-

i) on the ground of a gross violation of a provision of this Constitution or any other law;

ii) where there are serious reasons to believe that the Deputy President has committed a crime under national or international law; or

iii) for gross misconduct.

(2) The provisions of Articles 144 and 145 relating to the removal of the President shall apply, with the necessary modifications, to the removal of the Deputy President.

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Article 145 of the Constitution, Standing Order 78 and Part I of the Second Schedule to the Standing Orders of the Senate provide for the procedure to be followed in the hearing and determination of the proposed removal from office, by impeachment, of the Deputy President. Specifically, Article 145(3)(b) of the Constitution and Standing Order 78(1) of the Senate provide that the Senate may, by resolution, appoint a Special Committee comprising eleven of its members to investigate the matter.

Hon. Senators will recall that at the sitting of the Senate held on Wednesday, 9th October, 2024, the Motion for the establishment of a Special Committee was deemed to have been withdrawn pursuant to Standing Order 70. This, therefore, paved the way for the investigation on the proposed removal from office, by impeachment of His Excellency the Deputy President of the Republic of Kenya to be held in Plenary.

Hon. Senators, ladies and gentlemen, by way of a status update, pursuant to Rules 4(a) and 6 of the Rules of Procedure when considering the proposed removal of the Deputy President in Plenary, the Senate invited the Deputy President to appear and be represented before the Senate during its investigation.

The Senate further invited the Deputy President, if he so chooses, to appear before the Senate, to file an answer to the Charges with the Office of the Clerk of the Senate by 5.00 p.m., on Monday, 14th October, 2024, setting out-

- (i) the Deputy President's response to the particulars of the allegations;
- (ii) the mode of appearance before the Senate; whether in person, by advocate or in person and by advocate;
- (iii) the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Senate; and
- (iv) any other evidence to be relied on.

Pursuant to Rules 4(b) and 7 of the Rules of Procedure when considering the proposed removal of the Deputy President in Plenary, the Senate notified the National Assembly of the date for the commencement of the investigation and invited the National Assembly to designate Members of the National Assembly, who shall appear and represent the National Assembly before the Senate during the investigation.

The National Assembly was further invited, if it so chooses to appear before the Senate, to file with the Office of the Clerk of the Senate by 5.00 p.m. on Monday, 14th October, 2024, setting out documentation of the following-

- (i) designating the Members of the National Assembly, if any, who shall attend and represent the National Assembly in the proceedings before the Senate;
- (ii) indicating the mode of appearance before the Senate; whether in person, by advocate, or in person and by advocate;
- (iii) indicating the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Senate; and
- (iv) specifying any other evidence to be relied on.

Hon. Senators, ladies and gentlemen, on 14th October, 2024, the Office of the Clerk of the Senate, received a response, Ref. No. SW/PET/153/VO/EN/01/2024, and dated 14th October, 2024, to the Invitation to Appear issued to the Deputy President, from

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M/s Swanya Company Advocates, who indicated that His Excellency the Deputy President had appointed the firm to represent him in the proceedings before the Senate and that the Deputy President would also appear in person and by advocates. The letter also indicated the list of Counsel representing His Excellency the Deputy President and the list of witnesses for the Deputy President.

Similarly, on 14th October, 2024, the Office of the Clerk of the Senate received a response, Ref. No. NA/CAN/CORR/2024(562), and dated 14th October, 2024, to the Invitation to Appear issued to the National Assembly, from the Clerk of the National Assembly, indicating that M/s G & A Advocates LLP, had been appointed to represent the National Assembly and that the National Assembly would appear in person and by advocates. The letter also indicated the Members of the National Assembly representing the National Assembly in these proceedings and the witnesses for the National Assembly.

Pursuant to Rule 8 of the Rules of Procedure when considering the proposed removal from office of the Deputy President in Plenary, on Monday, 14th October, 2024, the Clerk of the Senate furnished each party with the documentation filed by the other party in accordance with Rules 6 and 7 of the Rules of Procedure.

Hon. Senators, ladies and gentlemen, the Hearing Programme which has been appended to today's Order Paper, details the various activities in the hearing and determination of the matter and the time allocated to each activity. It will be crucial that all the parties comply with the time allocated. I will repeat, it will be crucial, that all parties comply with the time allocated. The parties will be notified of the balance of time on each activity through the Clerks at-the-Table.

In summary, the programme states that after we have dispensed with preliminary matters today, Wednesday, 16th October, 2024, the charges against the Deputy President, as submitted by the National Assembly, shall be read. Thereafter, His Excellency the Deputy President will be given an opportunity to take a plea on the charges. This will be followed by an opening statement by the National Assembly and by the Deputy President.

After the conclusion of the opening statements, the presentation of the case of the National Assembly shall commence. The National Assembly will have a maximum of three hours for presentation of the case and re-examination, while the Deputy President will be allocated two hours for cross examination of witnesses after presentation of the case by the National Assembly. Hon. Senators will be given an opportunity to ask questions or seek clarifications from the National Assembly. This should take us up to the end of today's sitting.

At the sitting scheduled for tomorrow, Thursday, 17th October, 2024, His Excellency the Deputy President will present his case before the Senate. The Deputy President will have a maximum of three hours for presentation of the case and re-examination while the National Assembly will be allocated two hours for cross examination of witnesses. Hon. Senators will also be given an opportunity to ask questions or seek clarifications from the Deputy President, following which the closing statements by the parties will be made for a period not exceeding one hour each.

As provided for under Rule 27 of the Rules of procedure for removal of Deputy President by impeachment, after the closing statements have been made, the hearing shall

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conclude and the Senate shall proceed into a camera session to deliberate on the issues raised.

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

In accordance with Article 145(7) of the Constitution and Standing Order No.78(8) of the Senate, the voting shall be by all Senators. The Deputy President shall cease to hold office if at least two-thirds of all Senators vote to uphold any impeachment charge. If, however, the vote in the Senate fails to result in the removal of the Deputy President, the Speaker of the Senate shall notify the Speaker of the National Assembly accordingly.

Hon. Senators, ladies and gentlemen, I now invite Counsel for the National Assembly to introduce the legal team of the National Assembly and the Members representing the National Assembly by stating the full name and designation of each person.

You may proceed, Counsel.

INTRODUCTION OF MEMBERS OF THE NATIONAL ASSEMBLY AND
THE COUNSEL REPRESENTING THE NATIONAL ASSEMBLY

Mr. Eric Gumbo: Mr. Speaker, Sir, for the National Assembly, the legal representation is as follows:

The Hon. James Orengo - Senior Counsel, leading the team.

Mr. Paul Nyamodi - Legal Counsel

Eric Gumbo - Legal Counsel

Dr. Muthomi Thiankolu - Legal Counsel

Mr. Moses Kipkogei - Legal Counsel

Mr. Peter Wanyama - Legal Counsel

Mr. Ken Meli - Legal Counsel.

Mr. Mwangi Kang'u - Legal Counsel.

Mr. Speaker, Sir, this team is further assisted by a team of our younger colleagues-

Mr. Alex Mbaya - Legal Counsel

Mr. Elias Ouma, Legal - Counsel

Mr. Eric Muriuki, Legal - Counsel

Mr. Boniface Mawira - Legal Counsel

Ms. Joan Jeruto - Legal Counsel

From the National Assembly, we have-

(1) Hon. Otiende Amollo, EBS, SC, MP

(2) Hon. George Murugara, CBS, MP

(3) Hon. Samuel Chepkong'a, CBS, MP

(4) Hon. John Makali, MP

(5) Hon. Zamzam Mohammed, MP

I submit, Mr. Speaker, Sir.

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The Speaker (Hon. Kingi): I similarly now invite the Counsel for His Excellency, Rigathi Gachagua, EGH, the Deputy President of the Republic of Kenya to introduce the legal team representing His Excellency the Deputy President by stating the full names and designation of each person.

Counsel, you may proceed.

INTRODUCTION OF HIS EXCELLENCY THE DEPUTY PRESIDENT
AND THE COUNSEL REPRESENTING THE DEPUTY PRESIDENT

Mr. Paul Muite, SC: Mr. Speaker, Sir and hon. Senators, the legal team representing His Excellency the Deputy President of the Republic of Kenya who is present in this august House are as follows:

- (1) Mr. Paul Muite, SC
- (2) Mr. Elisha Ongoya
- (3) Mr. Tom Macharia
- (4) Mr. Swanya Victor Ogeto
- (5) Mr. Ndegwa Njiru
- (6) Mr. John Njomo
- (7) Ms. Faith Waigwa
- (8) Mr. Amos Kisilu
- (9) Mr. George Wandati
- (10) Mr. George Sakimpa,
- (11) Mr. Andrew Muge
- (12) Mr. Eric Naibei
- (13) Ms. Juliah Omwamba
- (14) Mr. Willis Echesa.

Mr. Speaker, Sir, we will be raising a niche about one of the members of the legal team read out this morning as representing the National Assembly.

I thank you and hon. Members.

The Speaker (Hon. Kingi): Hon. Senators, ladies and gentlemen, on behalf of the Senate, I welcome the National Assembly and its team, His Excellency Rigathi Gachagua, EGH, the Deputy President of the Republic of Kenya and his team, members of the public and the media to the Senate and to these proceedings.

As you are aware, Article 118 of the Constitution mandates Parliament to conduct its business in an open manner; and that its sittings and those of its committees shall be open to the public.

The hearing of the proposed removal from office of the Deputy President pursuant to Article 145 of the Constitution, Standing Order No.78 and the Second Schedule to the Standing Orders of the Senate is a matter that has generated immense public interest. The Senate, in this particular hearing, has facilitated members of the public who are interested in the proceedings to access its galleries. However, I draw the attention of the members of the public who are seated in the galleries to Rule 28 of the Speaker's Rules, which state as follows:

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“Visitors in the galleries shall remain seated, shall not applaud, comment audibly, make signs, eat, sleep, read books, newspapers, or other material, except the order paper for the day, or create any disturbance.”

I request the members of the public to observe the aforesaid rules. Any member of the public who contravenes the Speaker's Rules will be invited to stern action against them, which includes expulsion from the precincts of Parliament. The office of the Clerk of the Senate is directed to ensure compliance with the Speaker's Rules.

Hon. Senators, ladies and gentlemen, I now invite the Clerk to read the particulars of the allegations against His Excellency Rigathi Gachagua, EGH, the Deputy President of the Republic of Kenya.

Clerk, you may proceed.

PRELIMINARY MATTERS AND OBJECTIONS

OBJECTION TO THE APPEARANCE OF HON. JAMES ORENGO, SC AS COUNSEL FOR THE NATIONAL ASSEMBLY

Mr. Ndegwa Njiru: Mr. Speaker, Sir, my name is Ndegwa Njiru. Perhaps before we proceed to the next session, my Senior Counsel, Paul Muite, raised an issue that we have an objection to, in terms of the appearances of legal Counsel appearing for the National Assembly.

Mr. Speaker, Sir, our objection is in line with the conduct of this House and the records bear us witness. We will also be relying on an authority in our objection.

We are raising an objection to the appearance of my senior advocate, legal Counsel, James Orengo, to represent the National Assembly in these proceedings. This is the basis of our objection: That my learned friend, senior James Orengo, is a full-time serving State officer as per Article 260 of the Constitution, as read together with Section 26, subsection 2, of the Leadership and Integrity Act, which bars a full-time State officer from engaging in meaningful employment.

Mr. Speaker, Sir, it would be prejudicial to our client if this House were to allow my learned friend, James Orengo, SC, to represent the National Assembly in these proceedings.

Just recently, this House which is a House of record will bear us witness that during the impeachment of the Deputy Governor of Kisii County, the County Assembly attempted to appear by legal Counsel represented by one hon. Osoro. An objection was raised by my learned friend, Sen. Cherarkey, which objection was sustained by this House.

Mr. Speaker, Sir, our objection is further premised in the High Court decision, that is, the High Court Constitutional Petition 204 of 2019, where Justice Ogola barred His Excellency the Governor of Siaya County from representing the then Director-General of Kenya Ports Authority (KPA), Mr. Daniel Manduku.

The judgment is before this honourable House that a person who is engaged in full-time employment cannot then purport to appear and represent a party before this Assembly. It will raise a serious conflict of interest. The same will prejudice our client

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and it is also in violation of clear provisions of the law as cited. In that respect, we invite you to uphold our objection before the charges are read out to our client.

Mr. Speaker, Sir, in this ruling that I have just cited, the court was of the view that a person who is engaged in full-time engagement as a State officer cannot and is barred from representing a party in a private capacity. We so beseech you to uphold our objection.

I am most humbled.

The Speaker (Hon. Kingi): Counsel for His Excellency, if you look at our programme, the preliminary objections were to be raised after His Excellency has taken plea. Therefore, we will allow the Clerk to read the charges. Before anything else, I will allow the Counsel for the National Assembly to respond, and, then thereafter, I will make my ruling. We will then take it from there.

Mr. Ndegwa Njiru: I am most obliged, Mr. Speaker, Sir.

READING OF THE CHARGES

The Clerk of the Senate (Mr. Jeremiah Nyegenye): Your Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, please take the stand.

(Hon. Rigathi Gachagua took the stand)

Your Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, the grounds for your proposed removal from office, by impeachment, as received by the Senate from the National Assembly, are as follows-

PART A - GROSS VIOLATION OF THE CONSTITUTION OR ANY OTHER LAW PURSUANT TO ARTICLE 150(1)(B)(I) OF THE CONSTITUTION-

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

The Preamble of the Constitution provides among other things, that the people of Kenya adopted and enacted it-

(a) being proud of the ethnic, cultural, and religious diversity, and a determination to live in peace and unity as one indivisible sovereign nation; and,

(b) recognising the aspirations of all Kenyans for a Government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.

The Preamble of the Constitution is supplemented by Article 10(2)(a), (b) and (c) of the Constitution, which establishes the core national values and principles of governance that bind all State Officers, including the Deputy President. These values and principles include patriotism, human dignity, national unity, equity, social justice,

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inclusiveness, non-discrimination, equality, human rights, protection of the marginalised, democracy, and good governance.

Moreover, Articles 73(1)(a) and (2)(b) of the Constitution establish responsibilities of leadership. They provide that the authority assigned to a State Officer, such as the Deputy President, is a public trust to be exercised in a manner that is consistent with the purpose and objects of the Constitution, demonstrates respect for the people, brings honour to the nation and dignity to the office and promotes public confidence in the integrity of the office.

Also, Article 27(4) of the Constitution prohibits all forms of discrimination, including discrimination based on ethnic or social origin, conscience, belief, language and birth.

Further, Article 73(2)(b) of the Constitution provides that decision-making should be objective and impartial and should not be influenced by favouritism and improper motives.

Furthermore, Article 75(1)(c) of the Constitution provides that a State Officer should behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids demeaning the office he holds.

As a matter of constitutional compliance, the Deputy President of the Republic of Kenya, who is the principal assistant to the President of the Republic of Kenya, therefore, is required-

(a) to promote the constitutional core values such as peace and unity of all Kenyans in the context of ethnic, cultural, and religious diversity, patriotism, national unity, rule of law, democracy and participation of the people, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; and good governance;

(b) to respect and uphold representation of Kenya's multi-ethnic and culturally diverse society through the promotion of equality and affording equal opportunities to all Kenyans in appointments to the public service and allocation of public resources; and,

(c) to make, promote, and implement public policy decisions that do not discriminate against any Kenyan based on conscience, ethnic or social origin, language or birth.

However, on diverse dates throughout the last two years, His Excellency Rigathi Gachagua has persistently made utterances threatening to discriminate, exclude and unlawfully deny sections of the people of Kenya and regions of the Republic of Kenya equal opportunities for public service appointments and allocation of public resources.

Besides, the utterances are highly inflammatory and inciteful and significantly undermine national unity and the peaceful co-existence of Kenya's diverse communities.

To illustrate:

(a) Sometime in 2023, at a public forum in Kajiado County within the Republic of Kenya, His Excellency Rigathi Gachagua made highly inflammatory and inciteful public pronouncements to the effect that the Government of Kenya is a company and that the allocation of government development projects and public sector jobs are based on shares determined by how the populace of the various ethnic communities voted in the 2022 General Elections.

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Specifically, he stated as follows-

“A Government is like a company, there is shareholding. Kuna wale who have invested a lot of shares, kuna wale wameweka kidogo, kuna wale wamekataa, lakini wote ni Wakenya. So, ndio tukasema, kama wewe umeenda kupanda mahindi, ama wacha nipeane example ya ng’ombe kwa sababu niko Kajiado.

Wewe uko na ng’ombe yako ya maziwa. Hio ng’ombe imezaliwa ikiwa njau. Umeichunga vizuri, umepatia majani, umenunulia dairy meal, umepatia chumvi, umepeleka kwa malisho, umepatia maji, imezaa, imeanza kukamuliwa. Wewe unatakiwa kwanza ukuwe mtu ya kwanza kukamua hiyo ng’ombe na kunywa maziwa.”

His Excellency Rigathi Gachagua emphasized the divisive and inciteful narrative embodied in the above utterances as follows-

“Haiwezekani mtu ambaye alikuwa anakupigia kelele ukichunga hii ng’ombe, na kusema hii ng’ombe ni ile ya kienyeji hakuna haja ya kushughulika naye, hii ng’ombe ni bure haiwezi kutoa maziwa, hii ng’ombe ata ikipona jicho moja, wachana nayo unapoteza wakati.

Saa ile ng’ombe imezaa imetoa maziwa, amekuja na kikombe, amekuja na sufuria, anataka atolewe maziwa. Mimi nikasema hiyo haiwezekani. Nikasema yule mwenye hii ng’ombe na kuichunga na kuitunza, kwanza akamue maziwa, yeye na watoto wake wakunywe. Ile itabaki aitie majirani. Hata yule alikuwa anapiga kelele akisema hii ng’ombe ni bure na haiwezekani kama kunayo imebaki pia apewe, kama hakuna imebaki, atembe. Si namna hiyo?”

His Excellency Rigathi Gachagua made similar remarks at another public forum as follows-

“A Government is like a company. I did not say it is a company, I said it is like a company. In every company, there are shares; preferential shares and ordinary shares. When there is an Annual General Meeting (AGM), non-shareholders do not vote or attend the AGM. When there are dividends to be divided, they are divided according to the number of shares. That is the truth.”

His Excellency Rigathi Gachagua continued the inciteful and divisive utterances at yet another forum where he stated as follows-

“Sisi lazima tungeangalia nyinyi. Hii Serikali ni kampuni na ni ya shares. Si ndio? Ni ya shares. Kuna wenye kampuni, wale wako na shares mingi, wale wako na chache. Kuna wale hawana. Sasa nyinyi *mli-invest* kwa hii kampuni ya William Ruto na Rigathi Gachagua. Sasa lazima mvune. Yule ambaye alipanda atafanya nini? Si mlipanda? Si mliamuka mapema?”

At another forum in Nandi County, His Excellency Rigathi Gachagua continued the same divisive and inciteful narrative as follows:

“Raia ako pale, niko hapo. Huyu Felix ako hapo. Mimi mnanijua msimamo wangu; ya kwamba, watoto wakiwa wengi, kuna wale kwanza ya kuangaliwa. Si mnajua? Sasa huyu Felix ako pale, ndiye kuunganisha mawaya. Mambo yenu tumepanga. Mambo iko sawa. Chakula iko jikoni, karibu kuiva. Watoto ni wengi, chakula ni kidogo. Iko watoto ya nyumbani, iko wa jirani. Iko namna hio. Na nyinyi mtulie. Chakula ikiiva, sisi ndiyo wenye kupakua. Na watoto tunawajua kwa sura na kwa msimamo. Hatuwezi kuwa

confused. Kuna mtu hajui watoto wake? Na wiki inakuja, tutatangaza hatua kali ile tutachukua, na ile maneno tumepanga.”

In addition, in September, 2024, during a public rally in Nairobi, His Excellency Rigathi Gachagua made public utterances that incited other communities against the ethnic communities that live around the Mt Kenya region by stating as follows:

“Na mimi mkaniambia nimsaidie Rais kwa kazi. Lakini nikiwa hapo kwa serikari, nikue pia nikichunga mambo ya watu wa mulima. Niendeele kuchunga mambo ya mulima, ama nisichunge? Sasa hio kuchunga mambo ya mulima, inaniletea matatizo. Ati naambiwa mimi ni mkabila. Mimi ni mkabila kweli? Nikichunga mambo ya watu wa mlima, iko makosa? Iko makosa?”

His Excellency Rigathi Gachagua’s utterances throughout the past two years undermine the promotion of national unity in the context of Kenyan society’s multi-ethnic demography and multi-cultural diversity.

The Speaker (Hon. Kingi): Clerk, just pause for a minute.

Hon. Senator, just put your mobile phones on silent mode, please.

Proceed, Clerk.

The Clerk of the Senate (Mr. Jeremiah Nyegenye): His Excellency Rigathi Gachagua’s utterances throughout the past two years, undermine the promotion of national unity in the context of Kenyan society’s multi-ethnic demography and multi-cultural diversity.

In addition, they have the potential to alienate, isolate, and create disharmony among the various ethnic communities of Kenya.

In Summary, His Excellency Rigathi Gachagua’s above mentioned utterances over the last two years, are impeachable offences to the extent that they grossly violate Articles 10(2)(a), (b) and (c); 27(4), 73(1)(a) and (2)(b); 75(1)(c), and 129(2) of the Constitution and Article 147(1), as read with Article 131(2)(c) and (d) of the Constitution.

Specifically, His Excellency Rigathi Gachagua’s divisive and insightful public utterances over the last two years:

a) Are incompatible with the high calling and dignified status of the Office of the Deputy President of the Republic of Kenya.

b) Can stir ethnic hatred and promote ethnic balkanization of the Republic of Kenya.

c) Falsely alluded to a non-existent Government policy to discriminate and marginalize the populace of the regions and tribes that did not vote for the current administration in the 2022 general elections.

Your Excellency Rigathi Gachagua, how do you plead to Ground 1; guilty or not guilty?

The Deputy President of the Republic of Kenya (Hon. Rigathi Gachagua, EGH): Not guilty.

Ground 2: Gross Violation of Articles 147 (1) and 152 (1) of the Constitution

Article 147(1) of the Constitution provides that the Deputy President; “shall be the principal assistant of the President and shall deputize for the President in the execution of the President’s functions.”

In addition, Article 152(1) the Constitution states that the Deputy President is a member of the Cabinet.

On various dates throughout the last two years, His Excellency Rigathi Gachagua undermined the President and the Cabinet and the effective discharge of the national government's executive mandate by making unilateral public statements that were inconsistent with policy positions collectively adopted by the Government.

To illustrate-

(a) On or around 30th April, 2024, the Cabinet passed a resolution for the evacuation of people residing along the Nairobi River.

(b) Shortly after that, His Excellency Rigathi Gachagua made a public statement opposing the Nairobi River Riparian Evacuation Orders, which the Cabinet had sanctioned for public safety and climate change mitigation. His Excellency Rigathi Gachagua made contradictory public statements despite being a Member of the Cabinet and being assigned the function of superintending the Nairobi River Riparian Evacuation Order.

In addition, His Excellency Rigathi Gachagua has on several occasions throughout the last two years, made public statements contradicting the President on critical matters of governance and the exercise of the President's function as a symbol of national unity.

To Illustrate-

a) In March, 2023, at a public forum in the Nyanza region, the President said Kenya belongs to all, notwithstanding how people voted in the 2022 general elections, and that he would ensure the Government does not discriminate against anyone. However, His Excellency Rigathi Gachagua, speaking after the President at another public forum, contradicted him by saying that Kenya is a company in which the provision of Government services is based on shares.

b) His Excellency Rigathi Gachagua has made numerous other utterances at public forums where he publicly restates the divisive narrative that Kenya is a company in which the rights of citizens are based on shares determined by how various ethnic communities voted in the 2022 general elections.

His Excellency Rigathi Gachagua’s unilateral, divisive and inciteful public statements are impeachable offences to the extent that-

a) They undermine the effective discharge of the national Government's executive mandate.

b) They violate the doctrine of collective responsibility.

c) They are equivalent to insubordination of the President, which is incompatible with his constitutional status as the Principal Assistant to the President of the Republic of Kenya.

Your Excellency, Rigathi Gachagua, how do you plead to Ground 2; guilty or not guilty?

The Deputy President of the Republic of Kenya (Hon. Rigathi Gachagua, EGH): Not guilty.

Ground 3: Gross Violation of Articles 6 (2), 10 (2) (a), 174, 186 (1), 189 (1) and the Fourth Schedule to the Constitution (Undermining Devolution)

Article 10(2)(a) of the Constitution provides that devolution is a fundamental national value and principle of governance. In addition, Article 6(2) of the Constitution provides that governments at the county and national levels are distinct and interdependent and shall conduct their mutual relations based on consultation and cooperation.

These provisions are supplemented by Article 189(1) of the Constitution, which provides that governments at each level shall perform and exercise their powers “in a manner that respects the functional and institutional integrity of Government at the other level---”

Under paragraph 7(a) of Part 2 of the Fourth Schedule to the Constitution, county governments are responsible for trade development and markets as an exclusive function. Moreover, the Deputy President chairs the Intergovernmental Budget and Economic Council, an essential organ for consultation between the two levels of Government.

On or around 20th September, 2024, His Excellency Rigathi Gachagua, recklessly unmindful of the high calling and dignified status of the Office of the Deputy President of the Republic, unlawfully interfered with the running of Nairobi City County Government by holding a public rally in which he incited citizens against lawful directives of the Nairobi City County Government on the planning and relocation of markets.

Further, His Excellency Rigathi Gachagua publicly disparaged the leadership of the Nairobi City County Government and its decisions.

Moreover, His Excellency Rigathi Gachagua has interfered with the proper discharge of county governments' constitutional functions regarding alcohol control and regulation.

His Excellency, Rigathi Gachagua's inciteful and demeaning public statements and conduct are impeachable offences to the extent that—

- (a) They undermine devolution.
- (b) They undercut the functional and institutional integrity of county governments.
- (c) They unjustifiably vilify and ridicule the leadership of county governments, especially the Nairobi City County government.

The Speaker (Hon. Kingi): Clerk, just a minute. I realised what you are reading is fairly long. His Excellency, Deputy President of the Republic of Kenya, if you may so wish, you may sit and when taking the plea, you may stand.

The Deputy President of the Republic of Kenya (Hon. Rigathi Gachagua, EGH): No, Mr. Speaker, Sir. Let me stand.

The Speaker (Hon. Kingi): You may proceed, Clerk.

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The Clerk of the Senate (Mr. Jeremiah Nyegenye): Consequently, His Excellency Rigathi Gachagua has grossly violated Articles 6 (2), 10 (2) (a), 174, 186 (1) and 189 (1) of the Constitution as read with the Fourth Schedule to the Constitution.

Your Excellency Rigathi Gachagua, how do you plead to Ground 3; guilty or not guilty?

The Deputy President of the Republic of Kenya (Hon. Rigathi Gachagua, EGH): Not guilty.

Ground 4: Gross Violation of 160 (1) of the Constitution (Undermining the Institutional and Decisional Independence of Judges)

The Clerk of the Senate (Mr. Jeremiah Nyegenye): Article 160 (1) of the Constitution provides that the Judiciary shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority. Many international law instruments, treaties and principles require the guarantee of the judiciary's independence and require all government officers and institutions to respect and observe it.

In 2023, His Excellency Rigathi Gachagua recklessly unmindful of the high calling and dignified status of the Office of the Deputy President of the Republic of Kenya and the need to respect, protect and uphold the independence of the Judiciary, made a scathing public attack against the Hon. Lady Justice Esther Maina, Judge of the High Court of Kenya, and falsely threatened to file a Petition for the removal of the said Judge in gross violation of Article 160 (5) of the Constitution.

The hon. Judge had presided over a case in which His Excellency Rigathi Gachagua was a party and had, in the lawful performance of her judicial function, ordered His Excellency Rigathi Gachagua to forfeit to the State the sum of KShs200 million, which she had found to be proceeds of corruption and money laundering.

His Excellency Rigathi Gachagua's public attacks against the Judge are impeachable offences to the extent that they undermine the functional and decisional independence of judges.

Your Excellency Rigathi Gachagua, how do you plead to Ground 4; guilty or not guilty?

The Deputy President of the Republic of Kenya (Hon. Rigathi Gachagua, EGH): Not guilty.

Ground 5: Gross Violation of Articles 3 (1) and 148 (5) (a) of the Constitution (Breach of the Oaths of Office and Allegiance)

The Clerk of the Senate (Mr. Jeremiah Nyegenye): His Excellency Rigathi Gachagua's actions and utterances outlined in Grounds 1, 2, 3 and 4 of this Motion constitute a gross violation of Article 3(1) of the Constitution, which requires every person to respect, uphold and defend the Constitution.

Further, the actions and utterances of His Excellency Rigathi Gachagua grossly violate Article 148 (5) (a) of the Constitution, which prescribes the Oath of Allegiance of

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the Office of the Deputy President that obligates the Deputy President to obey, preserve, protect and defend the Constitution and all other laws.

Your Excellency Rigathi Gachagua, how do you plead to Ground 5; guilty or not guilty?

The Deputy President of the Republic of Kenya (Hon. Rigathi Gachagua): Not guilty.

PART B: SERIOUS REASONS TO BELIEVE THAT THE DEPUTY PRESIDENT HAS COMMITTED A CRIME UNDER NATIONAL LAW PURSUANT TO ARTICLE 150 (1) (B) (II) OF THE CONSTITUTION

Ground 6: Serious reasons to believe that His Excellency Rigathi Gachagua has committed crimes under sections 13(1) (a) and 62 of the National Cohesion and Integration Act

The Clerk of the Senate (Mr. Jeremiah Nyegenye): Section 13 of the National Cohesion and Integration Act provides that it is an offence for any person to use threatening, abusive or insulting words or behaviour where the person intends to stir up feelings of ethnic contempt, hatred, hostility, violence or discrimination. The section also makes it an offence to use such words or engage in such behaviour when, having regard to all the circumstances, ethnic hatred is likely to be stirred up.

Besides, Section 62 of the National Cohesion and Integration Act states that a person commits an offence when the person makes statements that are intended or are likely to stir up feelings of ethnic contempt, hatred, hostility, violence or discrimination.

His Excellency Rigathi Gachagua's persistent inflammatory, reckless, inciteful public utterances over the last two years, the details of which are set out in Grounds 1, 2, 3 and 4 of this Motion, establish serious reasons to believe that he has committed crimes under Section 13 (1) and 62 of the National Cohesion and Integration Act.

Your Excellency Rigathi Gachagua, how do you plead to Ground 6; guilty or not guilty?

The Deputy President of the Republic of Kenya (Hon. Rigathi Gachagua): Not guilty.

Ground 7: Serious reasons to believe that His Excellency Rigathi Gachagua has committed crimes under sections 45(1), 46, 47 (a) (3), and 48 (1) of the Anti-Corruption and Economic Crimes Act and sections 2, 3, 4, and 7 of Proceeds of Crime and Anti-Money Laundering Act

The Clerk of the Senate (Mr. Jeremiah Nyegenye): For the past two years, His Excellency Rigathi Gachagua has inexplicably amassed a humongous property portfolio estimated at KShs5.2 billion, primarily from proceeds of corruption and money laundering.

The value of the property and wealth that His Excellency Rigathi Gachagua has acquired over the last two years is incompatible with his known legitimate income i.e., Kshs12 million per annum or thereabouts.

His Excellency Rigathi Gachagua has acquired the above mentioned property and wealth using his two sons, Kevin Rigathi Gachagua “Kevin Gachagua” and Keith Ikinu Rigathi “Keith Ikinu” and other close family members and associates as proxies.

His Excellency Rigathi Gachagua and his proxies, especially the two sons, have used the following companies to massively launder money, conceal proceeds of crime, corruption and benefit from influence peddling—

S/No.	Company	Date of Incorporation	Shareholders
1.	Spirit Way Limited (PVT-Y2ULDMKY)	14/11/2023	Dorcas Wanjiku Rigathi– Director/Shareholder/Beneficial Owner–100 Shares
2.	Fortis Vis Group Limited (PVT-MKUMAKEE)	14/02/2023	Kevin Rigathi Gachagua–50 Shares Keith Ikinu Rigathi–50 Shares
3.	Grand Bypass Apartments Limited (PVT-5JUZEKL8)	11/01/2024	Rigathi Gachagua–Director John Mwai Mathenge (7676931)– Director Peter Njoroge Regeru (4686103)– Director Vipingo Beach Resort Limited (C.159289)–Shareholder–1 Share
4.	Kuruwitu Properties Limited (PVT-EYUBKG83)	26/04/2023	Vipingo Beach Resort Limited (C.159289)–Shareholder–1000 Shares John Mwai Mathenge
5.	The Anansi Collective (BN-JRCG76AG)	29/03/2021	Keith Ikuni Rigathi
6.	Biovet (K) Limited (CPR/2009/4880)	10/06/2009	Rigathi Gachagua–200 Shares Dorcas Wanjiku Rigathi–200 Shares
7.	Calvary Creed International Limited (CPR/2015/186154)	16/04/2015	Rigathi Gachagua–50 Shares Dorcas Wanjiku Rigathi–950 Shares
8.	Cosmere Venture Limited (PVT-Q7ULE6Z)	26/02/2018	Herman Thuita Maina–200 Shares James Mwangi Kagotho–50 Shares Kevin Rigathi Gachagua–250 Shares Keith Ikinu Rigathi–50 Shares Irene Nyanjau Wachira–250 Shares David Kipkemboi Muthamia–200 Shares

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9.	Crystal Kenya Limited (CPR/2009/4898)	12/06/2009	Kevin Rigathi Gachagua–200 Shares Keith Ikinu Rigathi–200 Shares
10.	Delta Merchants Limited (CPR/2009/4874)	09/06/2009	Rigathi Gachagua–200 Shares Dorcas Wanjiku Rigathi–200 Shares
11.	Vipingo Beach Resort Limited (C.159289)	05/08/2008	Kevin Rigathi Gachagua–Director Keith Ikinu Rigathi–Director Estate of the deceased James Nderitu Gachagua–Shareholder 10,000 Shares
12.	Rigathi Gachagua Foundation (CLG-XXFXRG)	11/11/2022	Rigathi Gachagua
13.	Dorcas Rigathi Foundation (CLG-G9FV2G)	19/10/2022	Kevin Rigathi Gachagua Keith Ikinu Rigathi Dorcas Wanjiku Rigathi Nancy Wambui Kangethe
14.	Heartland Supplies Limited (CPR/2009/4881)	11/06/2009	Rigathi Gachagua– Director/Shareholder–200 Shares Dorcas Wanjiku Rigathi– Director/Shareholder–200 Shares
15.	Karandi Farm Limited (C.94303)	25/06/2001	Rigathi Gachagua – Director/Shareholder–700 Shares Dorcas Wanjiku Rigathi– Director/Shareholder–100 Shares
16.	Morani Manufacturers Limited (PVT-8LU7Q8GD)	13/10/2021	Dorcas Wanjiku Rigathi– Director/Shareholder–200 Shares Keith Ikinu Rigathi– Director/Shareholder–200 Shares Joshua Karianjahi Waiganjo– Director/Shareholder -600 Shares Grace Wachuka Mwangi–Beneficial Owner
17.	Mothers of the Land Limited (CLG-55FD3B)	01/12/2021	Louiza Njeri Wanjiru– Director/Member Caroline Jepkemboi Waiyaki– Director/Member Lucy Njuguni Mutegi– Director/Member Dorcas Wanjiku Rigathi– Director/Member

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18.	Pioneer Medical (K) Limited (CPR/2009/4910)	09/06/2009	Rigathi Gachagua– Director/Shareholder–200 Shares Dorcas Wanjiku Rigathi– Director/Shareholder–200 Shares
19.	Ridor Furniture Mart Limited (C.141876)	18/07/2007	Rigathi Gachagua– Director/Shareholder–500 Shares Dorcas Wanjiku Rigathi– Director/Shareholder–500 Shares
20.	Royal Crimson Ventures Limited (PVT-LRU2QZL)	26/02/2018	Kevin Rigathi Gachagua– Director/Shareholder -400 Shares Keith Ikinu Rigathi– Director/Shareholder -400 Shares Peter Kangangi Githaiga– Director/Shareholder–200 Shares
21.	Technical Supplies and Services (K) Limited (CPR/2009/4895)	06/06/2009	Rigathi Gachagua– Director/Shareholder–400 Shares Francis Muchiri Wanguo–Director
22.	Wamunyoro Investments Limited (C.93670)	23/04/2001	Kevin Rigathi Gachagua– Director/Shareholder–1 share Keith Ikinu Rigathi– Director/Shareholder–1 share

To illustrate,

(a) In November 2023, Crystal Kenya Limited, No. 9 in the above table, a proxy company of His Excellency Rigathi Gachagua, purchased Outspan Hotel situated at Nyeri Municipality Block 1/1669 from Aberdare Safari Hotels for Kshs535,000,000. The Directors of Crystal Kenya Limited are the sons of His Excellency Rigathi Gachagua, namely Kevin Gachagua and Keith Ikinu. Sometime in August, 2024, His Excellency Rigathi Gachagua publicly admitted that his family had acquired this property.

(b) In November, 2023, Kevin Gachagua and Keith Ikinu, the proxies of His Excellency Rigathi Gachagua, acquired Treetops Lodge, a high-end hotel situated in Nyeri County. Sometime in August, 2024, His Excellency Rigathi Gachagua publicly admitted that his family had acquired this property.

(c) His Excellency Rigathi Gachagua and his proxies also acquired Olive Gardens Hotel and Queens Gate Serviced Apartments in Nairobi.

(d) His Excellency Rigathi Gachagua acquired Vipingo Beach Resort in Kilifi County.

(e) His Excellency Rigathi Gachagua acquired a parcel of land known as *Ruguru/Kiamariga/1223* in Mathira East Constituency, where he constructed a helicopter landing facility.

(f) His Excellency Rigathi Gachagua acquired approximately 40 acres of land in Kakuret in Kamburaini in Nyeri County.

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(g) His Excellency Rigathi Gachagua acquired 80 acres of land in Meru County.

(h) His Excellency Rigathi Gachagua acquired a dairy farm in Nyandarua County.

(i) Additionally, His Excellency Rigathi Gachagua used his office of Deputy President to exert influence and connive with unscrupulous Ministry of Lands officials to issue an allotment letter to Wamunyoro Investments Limited, a company that he owns to acquire LR.209/12077 and LR.90923, situated at Embakasi in Nairobi whose value is estimated at KShs1.5 billion or thereabouts.

After that, this company used the fraudulently acquired documents to support a court case at the expense of the legitimate owner of the property.

(j) Moreover, companies associated with His Excellency Rigathi Gachagua and his proxies were involved in the KEMSA KShs.3.7 billion irregular procurement of Malaria nets that put the lives of millions of Kenyans at risk.

(k) In addition, His Excellency Rigathi Gachagua has used the office of Deputy President to corruptly influence unnecessary and expensive renovation of his official residence in Karen and Mombasa running into millions of shillings.

In essence, His Excellency Rigathi Gachagua has chosen personal comfort, extreme luxury, and pomposity at the expense of service delivery to the people of Kenya.

(l) Images of some of the properties that His Excellency Rigathi Gachagua has acquired from proceeds of corruption, influence peddling, and money laundering have been provided and relate to the following—

(1) Treetops Hotel in Nyeri County.

(2) Outspan Hotel located in Aberdare Ranges.

(3) Olive Gardens hotel Argwings Kodhek Road.

(4) Vipingo Beach Resort.

Additionally, His Excellency Rigathi Gachagua has the following proxy companies to trade with the office he holds –

(a) AgroBriq Investment Limited

It is a private limited company incorporated in Kenya on 28th May, 2017 under certificate number PVT-RXUP6E. The company deals in building and construction.

The company's directors/shareholders are—

(i) Rudani Mayurkumar Mahendrabhai.

(ii) Patel Ankitkumar Hasmukhbhai, a non-Kenyan national.

The company operates a bank account (number withheld for data protection reasons) at Sidian Bank, opened on 19th February, 2022, with the company directors as the account signatories.

On 18th October, 2022, Bhavika Nathalal Hirani was added as an account signatory and given full mandate to operate the account. Bhavika Nathalal Hirani is a proxy of His Excellency Rigathi Gachagua.

On 23rd January, 2023, the company account received a transfer of KShs47,015,367.75 from the Executive Office of the Deputy President. The payment was supported by—

(a) Notification of Award Letter Ref ODP/ADM.1/57 Vo.IV (70) dated 16th December, 2022 from the Office of the Deputy President to *Agrobriq Investment Limited*

for the proposed Refurbishment of the Deputy President's official residence at Karen, at a cost of KShs55,559,520.00.

(b) Payment Voucher of KShs55,133,265.92 was received on 10/01/2023 as the 1st Interim payment in respect of the contract ODP/RT/001/2022-2023.

(c) An agreement letter dated 22nd December 2022 between the Office of Deputy President and Agrobriq Investment Limited for the proposed renovation of the Deputy President's official residence in Karen. Bhavika Nathalal Hirani signed the document as a Director of Agrobriq Investment Limited.

On 23rd January, 2023, the funds were suspiciously transferred through a transfer of Kshs45,000,000.00 to a related entity (i.e. Vaghjiyani Enterprises Limited).

Shockingly, the account had been dormant for around nine months before it received the payment from the office of the Deputy President, adding to the reasonable suspicion that it was a special-purpose vehicle to siphon funds for His Excellency Rigathi Gachagua.

(b) Lusona Events Limited

This is an events management company that was registered on 30th October, 2012 under certificate number CPR/2012/87037. The company directors are—

(i) Esther Wanjiru Njenga.

(ii) Cecilia Muthoni Njenga.

The company operates two bank accounts at the SBM Bank, which it opened in 2015. The company's directors are account signatories. Ian Njuguna Gitata was also introduced as an account signatory and is the sole account operator, pointing to the likelihood that he is the beneficial owner.

Between 1st January, 2024 and 11th July, 2024, the account at SBM Bank received a total of Kshs100,262,821.43 from the Office of the Deputy President, characterised by the receipt of multiple transfers.

On 2nd July 2024, the Deputy President's Office paid Lusona Events Limited part of the abovementioned proceeds of corruption and money laundering in eight transactions in a single day as follows—

S/No	Date	Amount
	2-JULY-2024	2,946,900.00
	2-JULY-2024	4,806,639.00
	2-JULY-2024	4,679,130.00
	2-JULY-2024	2,955,450.00
	2-JULY-2024	3,374,400.00
	2-JULY-2024	5,451,912.40
	2-JULY-2024	3,582,536.50
	2-JULY-2024	3,840,625.60

A substantial portion of the Kshs100,262,821.43 was used for luxurious largesse and unnecessary expenditure for carpets, *et cetera* laid down for the Deputy President's functions.

Some of the funds were utilized as follows-

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(a) Ian Gitata made Kshs22,800,000 in cash withdrawals. Some of the withdrawals were declared as cash to pay undisclosed beneficiaries. It was suspicious why they preferred cash payments as opposed to bank transfers.

(b) A sum of Kshs 4 million transferred to a law firm.

(c) A sum of Kshs26,993,350 - Investment in fixed term deposits as follows-

(i) On 27th May, 2024, Kshs9,993,350

(ii) On 11th July, 2024, Kshs17 million

The utilization of funds was reasonably believed to be an act of corruption and money laundering as most of the money was withdrawn in cash rather than bank transfers, which is the custom for huge payments. His Excellency Rigathi Gachagua is reasonably suspected to be the principal beneficiary of these dubious transactions.

St. Nicholas Rehabilitation and Industrial Training Institute Limited. The company was incorporated on 8th April, 2021 under registration number PVT-AAACMO4. It deals with student rehabilitation and industrial training, trading as St Nicholas Rehabilitation Centre and Psychiatric Hospital. The sole company director is Nicholas Mugambi Maingi. The company operates an account at Equity Bank, opened on 18th August, 2017 with the company director as the sole account signatory.

Between 1st March, 2024 and 5th June, 2024, the account received a total of Kshs21,060,000 from office from the Office of the Deputy President. The funds were suspiciously utilized as follows-

(a) A sum of Kshs2 million was allegedly used to purchase a white Toyota Prado from Umarali Motors Limited for Kshs8.5 million.

(b) Another Kshs4 million was suspiciously transferred to Nicholas Maingi's account. A cash trail in the personal account revealed that upon receipt of the funds, Nicholas made a transfer Kshs4,660,000 to Umarali Motors Limited on 21st March, 2024. The purported payment to Umarali Motors Limited using two routes raises reasonable suspicion of corruption and money laundering.

Further, prior to receipt of the two payments from the Office of the Deputy President, the account was transacting in minimal accounts, raising suspicions that the entire transaction was a conduit used by His Excellency Rigathi Gachagua to siphon public funds. The payment scheme used typifies money laundering transactions.

From the matters outlined in the preceding parts, it is patently clear that there are serious reasons to believe that His Excellency Rigathi Gachagua, the Deputy President of the Republic of Kenya, using his State office has committed gross economic crimes, namely conflict of interest, abuse of office, conspiracy to commit crimes under-

(a) Sections 45(1)(a), 46, 47A(3) and 48(1) of the Anti-Corruption and Economics Crimes Act.

(b) Sections 2, 3, 4 and 7 of the Proceeds of Crime and Anti-Money Laundering Act.

Your Excellency Rigathi Gachagua, how do you plead to Ground 7, guilty or not guilty?

The Deputy President of the Republic of Kenya (Hon. Rigathi Gachagua): Not guilty.

Ground 8: Serious Reasons to believe that His Excellency Rigathi Gachagua Committed Crimes under Section 132 of the Penal Code and Section 29 of the Leadership and Integrity Act

The Clerk of the Senate (Mr. Jeremiah Nyegenye): His Excellency Rigathi Gachagua has continuously misled members of the public through false, malicious, divisive and inciteful remarks that are contrary to the provisions of Section 132 of the Penal Code and Section 29 of the Leadership and Integrity Act.

(a) To illustrate, sometime in January, 2024, His Excellency Rigathi Gachagua made a sensational, but false accusation that Hon. Justice Esther Maina, Judge of the High Court of Kenya, had engaged in corruption. He publicly said he would present a petition for the removal of the said judge (which he has not done to date), leading to the inevitable conclusion that he knew his allegations were false.

(b) On or about 26th June, 2024, His Excellency Rigathi Gachagua recklessly and unmindful of the high calling and dignified status of the Office of the Deputy President of the Republic and his membership to the National Security Council, both being positions that require one to be a discrete and tempered leader, especially during moments of national crisis, addressed Kenyans on live television in Mombasa County and publicly made sensational statements against the National Intelligence Service (an essential national security organ), its Director General and officers. The following is an excerpt of part of his speech:

“The Director General of the National Intelligence Service, Noordin Haji, was a junior officer in the National Intelligence Service before he was appointed as DPP. When he was appointed to the office of the Director General, because of his inferiority complex, he chased away all the people who were senior to him when he was in the Service, therefore, crippling the capacity of that service and making it dysfunctional.

Three Directors were chased away and re-assigned to desk jobs in Ministries across Government. Thirteen Assistant Directors, men and women with proven track record of intelligence collection and analysis, were removed from the National Intelligence Service, leaving a shell under a clueless Director General who has no capacity to run the organization.

That is why the security sector was caught off guard by the intensity, the anger of the Kenyan people, the agitation of the Kenyan people, the resilience of the Kenyan people.”

Your Excellency Rigathi Gachagua, how do you plead to Ground 8, guilty or not guilty?

The Deputy President of the Republic of Kenya (Hon. Rigathi Gachagua): Not guilty.

PART C: GROSS MISCONDUCT PURSUANT TO ARTICLE 150(1)(b)(iii) OF THE CONSTITUTION**Ground 9: Gross Misconduct (Public Attacks on the National Intelligence Service and its officers)**

The Clerk of the Senate (Mr. Jeremiah Nyegenye): The phrase “gross misconduct” generally refers to behavior that is “very unpleasant, disgusting or very rude.” This is from the Oxford Advanced learner’s dictionary.

Therefore, public attacks against an essential national security organ in circumstances that require one to be discreet and tempered constitute gross misconduct.

On or around 26th June, 2024, His Excellency Rigathi Gachagua, the Deputy President of the Republic of Kenya, unmindful of the high calling and dignified status of the office of the Deputy President of the Republic of Kenya and his membership to the National Security Council, both being positions that require a leader to be discreet and tempered, especially during moments of national crisis, addressed Kenyans on live television in Mombasa County and made a scathing attack on the National Intelligence Service, an essential national security organ.

His Excellency Rigathi Gachagua extended extremely reckless personal attacks to the Director General of the institution.

With the unprecedented acts, His Excellency Rigathi Gachagua acted in a manner that is incompatible with the high calling and dignified status of the office of the Deputy President and member of the Cabinet and the National Security Council.

The attacks against the National Intelligence Service and its Director General, constitute gross misconduct and an impeachable offence to the extent that-

(a) They are incompatible with the high calling and dignified status of the Office of the Deputy President of the Republic of Kenya.

(b) They undermine national security from both internal and external points of view.

(c) They are incompatible with the effective discharge of the delicate and sensitive mandate of the National Intelligence Service (NIS).

(d) They had the potential, given the circumstances prevailing in the country at the time, to significantly diminish public confidence in their viability of the Kenyan state and its ability to protect the lives and properties of its citizens.

(e) They go against the constitutionally prescribed oath of allegiance of the office of the Deputy President under Article 148(5)(a) of the Constitution, which requires the Deputy President to obey, preserve, protect, and defend the Constitution and all other laws.

Your Excellency, how do you plead to Ground 9; guilty or not guilty?

The Deputy President of the Republic of Kenya (Hon. Rigathi Gachagua): Not guilty.

10. Gross misconduct, that is, Insubordination

The Clerk of the Senate (Mr. Jeremiah Nyegenye): As stated in Ground 9, the phrase gross misconduct generally refers to behavior that is very unpleasant, disgusting, very rude. This is from the Oxford Advanced Learner's Dictionary.

Therefore, open or public insubordination of the President, who is the head of State and Government under our constitutional framework, is gross misconduct.

As stated in the preceding parts, Article 147(1) of the Constitution designates the Deputy President as a principal assistant of the President, who shall deputize for the President in the execution of the President's functions. His Excellency Rigathi Gachagua has persistently undermined, demeaned, and committed insubordination instead of assisting the President in executing the state executive mandate.

Instead, he has opted to run a smear campaign against the Presidency for political expediency. Further, whereas Article 147(2) of the Constitution requires the Deputy President to perform the functions conferred by the Constitution and any other functions that the President may assign, His Excellency, Rigathi Gachagua, is openly sabotaging the state's efforts in agriculture, including the coffee, tea, sugar, and milk sectors, which the President tasked him to oversee.

To illustrate-

(a) His Excellency, Rigathi Gachagua, has connived with cartels in the tea sector to block the Kenya Tea Development Agency (KTDA) from implementing guaranteed minimum returns that would benefit smallholder tea farmers.

(b) His Excellency Rigathi Gachagua has influenced his family members, allies, associates and proxies to take control of a local cooperative society - name withheld - in Mathira, which they are financially hemorrhaging.

Your Excellency, Rigathi Gachagua, how do you plead to Ground 10; guilty or not guilty?

The Deputy President of the Republic of Kenya (Hon. Rigathi Gachagua): Not guilty.

11. Gross Misconduct, that is, Bullying

The Clerk of the Senate (Mr. Jeremiah Nyegenye): As stated in Ground 9, the phrase gross misconduct generally refers to behavior that is very unpleasant, disgusting, or very rude. This is from the Oxford Advanced Learner's Dictionary. Section 34 of the Leadership and Integrity Act provides that a State officer shall not bully any person. Bullying includes repeated offensive behavior that is vindictive, cruel, malicious or humiliating, and is intended to undermine a person.

For the past two years, His Excellency Rigathi Gachagua has persistently bullied state and public officers. To illustrate-

(a) His Excellency, Rigathi Gachagua bullied Kenya Medical Supplies Agency (KEMSA) officials into awarding a tender for the supply of mosquito nets to Crystal

Limited, his proxy company. Crystal Limited has submitted a fake billboard with the sole intention of fraudulently acquiring public property.

(b) His Excellency Rigathi Gachagua, routinely bullies public officers in national security organs, whom he subjects to public attacks and humiliation.

(c) His Excellency Rigathi Gachagua routinely summons procurement officers in ministries and state institutions and instructs them to direct the procurement of goods and services in a particular manner.

(d) In the presidency, His Excellency Rigathi Gachagua, identified public officers who he thinks stand in his way of creating dominance within government and political kingship, and he has severely threatened, intimidated, and harassed them.

(e) In 2023, His Excellency Rigathi Gachagua used his position as a Deputy President to intimidate public officers and a contractor to divert materials meant for the construction of the Kilifi-Malindi Road to tarmac a private road to Vipingo Beach Resort, a hotel associated with him.

(f) His Excellency Rigathi Gachagua uses his constitutional power as Deputy President solely to implement sectarian, parochial, and personal interests that seek to profit him.

Your Excellency Rigathi Gachagua, how do you plead to Ground 11; guilty or not guilty?

The Deputy President of the Republic of Kenya (Hon. Rigathi Gachagua): Not guilty.

The Speaker (Hon. Kingi): Your Excellency, the Deputy President, you may take your seat.

Counsel for the National Assembly, you may proceed to respond to the objection that has been raised by Counsel for the Deputy President.

Mr. Ndegwa Njiru: Perhaps, Mr. Speaker, Sir, just before Counsel responds to my application for efficiency and expediency, permit me also to bring to your attention one more application in respect to the documents that were served upon the Deputy President.

Mr. Speaker, Sir, by a letter that you referred to, sent from the Speaker of the National Assembly to the Speaker of the Senate, the Speaker of the National Assembly submitted the documents that emanated from the National Assembly.

The Speaker (Hon. Kingi): Counsel for the Deputy President, take your seat first. You will have your moment.

(The Clerk-At-The-Table consulted with the Speaker)

PRELIMINARY MATTERS AND OBJECTIONS

OBJECTION TO THE APPEARANCE OF HON. JAMES ORENGO, SC AS COUNSEL FOR THE NATIONAL ASSEMBLY

Mr. Eric Gumbo: Mr. Speaker, Sir, if I could take a few moments this afternoon to respond to the preliminary objection that has been raised. I have three quick issues in

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response to that objection. One, the Constitution of Kenya at Article 77 is the primary law that then speaks to restrictions on activities of state officers. In particular, Article 77(1) reads-

“A full-time state officer shall not participate in any other gainful employment”.

Mr. Speaker, Sir, that Article introduces one critical variable, “gainful employment”. Gainful employment has been defined within our laws. Specifically Section 26 of the Leadership and Integrity Act has defined what would amount to gainful employment. If I may, Section 26.1 reads-

“Subject to subsection (2), a State Officer who is serving on a full-time basis shall not participate in any other gainful employment”.

It then proceeds at (2) to say-

“In this section, ‘gainful employment’ means work that a person can pursue and perform for money or other form of compensation or remuneration, which is inherently incompatible with the responsibilities of the state office or which results in the impairment of a judgment of a state officer in the execution of the functions of a state office or results in a conflict of interest in terms of Section 16”.

Our response; there has been no assertion that the learned Senior Counsel, James Orenge, by representing a party before this House, has participated in gainful employment. In any case, what evidence has been tendered before this honourable House to speak to that fact?

Mr. Speaker, Sir, that is a question that has also received judicial interpretation. If I may, in the Election Petition No.3/2013 filed in the High Court in Busia, a similar application was made, objecting to the participation of the Hon. James Orenge, SC, in the proceedings in that matter.

The judge handling that case interpreted both Article 77 as read with Section 26 of the Leadership and Integrity Act and had this to say, at Paragraph 28-

“It had been argued that by representing a party in an election petition, the hon. Senator would be compromising the political neutrality of his office. I would not agree. Section 23 of this Act is a provision on political neutrality expected of appointed state officers. Hon. Orenge holds an elective position. Elected Members of the Senate are politicians. The provisions of Section 23 do not apply to them. So, even if it was to be assumed that by representing the third respondent, Hon. Orenge, SC, is pursuing a political agenda, that would not be inimical to his office as a member of the Senate.”

Mr. Speaker, Sir, I, therefore, submit that unless there is material that will be tabled before this House that by appearing for a party before this House, then the Hon. Mr. James Orenge, SC, would have engaged in gainful employment, that objection does not stand any merit.

Secondly, the second test that has been applied by courts is the test around conflict of interest. Our courts have also had occasion to interpret what amounts to conflict of interest.

In a case determined by a five-judge bench, a case reported in our laws, that is, EKLR 2018, the case of Philomena Mbeti Mwilu *versus* the Director of Public Prosecutions (DPP) and two others; the Bench, in determining and dismissing a similar

application, defined conflict of interest as a situation where one is confronted by two different interests, so that serving one interest would be against the other.

Mr. Speaker, Sir, there has not been any conflict of interest that has been, even in the least, mentioned by the objector to the participation of Hon. James Orengo, SC.

Finally, has there been an indication as to any prejudice that could be occasioned by the participation of the Hon. James Orengo, SC, before this House this afternoon? To the best of my recollection, none has been mentioned. Is Counsel, for instance, saying that the participation of the Hon. James Orengo, SC, before the proceedings in this House would be such that it would fundamentally impair their defense when they get the opportunity to present the case? I am just asking myself. That has not been said. In any case, if that was to be the case and the fear that has been presented, then as advocates, as Counsel, we operate within clear and defined rules.

Those rules are meant to ensure that a party before this House, just like would be a party before any court or any other forum, does not suffer or does not have a compromise to their rights to fair hearing under Article 50. In the absence of any prejudice that has been mentioned before you, we urge that that objection be dismissed.

I have also had occasion to look at the case that was referred to by my learned friend, Mr. Njiru. With respect, that case turned on two critical points. The first one being, that the participation of the Hon. James Orengo, SC, as a Senator in that matter was said to have the potential of compromising his participation in the Senate proceedings because then he was a Senator. However, he is not a Senator as we speak. That marks a significant difference or departure between what led to the finding in that position and what we have before you.

The judge in that specific matter also went on to add that there must also be established a question or a fact of benefit. Again, I reiterate that no indication, evidence or even assertion has been presented before this House to suggest that the Hon. James Orengo, SC, has in any way benefited by being in this House participating as Counsel.

With that, Mr. Speaker, Sir, we urge that that objection be dismissed.

I am most obliged.

The Speaker (Hon. Kingi): Thank you.

Counsel, for His Excellency, the Deputy President, you may proceed.

Mr. Ndegwa Njiru: Thank you, Mr. Speaker, Sir.

In brief response to the submissions by my learned friend, there is no denial that has come from Counsel's defense that, Hon. James Orengo, SC, is here on pro bono basis. That evidence has not been brought. That claim has not been denied. He is, therefore, here as Counsel earning a fee. That is what Section 26---

The Speaker (Hon. Kingi): Senior Counsel, do not go to that line of argument if the evidence of him acting pro bono has not been laid on the Table. Has the evidence of him earning been put on the table?

Mr. Ndegwa Njiru: Mr. Speaker, Sir, the only presumption---

The Speaker (Hon. Kingi): No, we are not going to presume facts. We are not.

Mr. Ndegwa Njiru: Mr. Speaker, Sir, I am well guided, but may be noted and may go on record that the grounds laid by Section 26(2), have not been rebutted by the

submissions made by Counsel in as far as the gainful employment in these proceedings is concerned.

Secondly, he is here as the Governor of Siaya County, not as a Senator. As such, the Petition No.3 of 2013 is distinguishable from the fact that he is here as a serving governor. That is what Section 26, subsection (2), speaks to. It is also equally the provisions of Article 77 of the Constitution.

Further to that, Mr. Speaker, Sir, the test of prejudice is a creation by Counsel. It is not the one that Section 26(2), and Article 77 speaks to. The only test is gainful employment. Unless that one is rebutted, the legal presumption unless it is rebutted, is that he is here for a main purpose, to earn a living. I leave that to the House to make a determination.

Permit me once more to move the House with my last and final application, as far as these proceedings are in issue.

Mr. Speaker, Sir, on the 8th of October, 2024, this House was served with a resolution from the National Assembly by the Speaker of the National Assembly, via the letter that the Speaker of the Senate referred to. That letter appears at page 547 to 548 of volume five of the National Assembly's bundle of documents.

Mr. Speaker, Sir, we were then served with two sets of documents, an affidavit, dated the 11th of October, deposed by one Peterson Jomo Muchira. Our objection is that the affidavit did not form part of the documents that were submitted by the Speaker of the National Assembly to the Speaker of the Senate.

It is our argument that this is new evidence. Further to that, we were equally served with a bundle of documents from the National Assembly, which is labeled as volume 8A, also indicated as responses from various Government agencies. Again, this is new evidence that does not find itself at pages 547 to 548 of the bundle of documents submitted to you or to this honourable House by the Speaker.

The prejudice is that our response was exclusively limited to the documents that we were served with. Further to that, it is our argument and our application that these documents will prejudice our case in the sense that they will violate our rights to a fair hearing.

This is trial by ambush by the National Assembly. I refer to the findings of this House in the Hon. Governor Sonko in a ruling delivered by the Speaker of this House on 17th December that barred the County Assembly of Nairobi from introducing any new evidence. It has been the tradition of this House to protect all the parties that appear before it, so that justice will not only be done, but also seen to be done. We move this House to have these documents expunged from record and for the National Assembly be barred from relying on these documents.

Mr. Speaker, Sir, if these documents will be admitted, we shall suffer prejudice in the sense that we shall have no ability or we shall have been denied an opportunity to respond to the same. We urge you to hold that these documents is new evidence and rely on Rule 19 of this House.

Noting that the rules guiding these proceedings today do not provide for how to deal with new evidence as and when the same is brought to the attention of the House.

However, the rules guiding the proceedings in the impeachment of a governor or deputy governor provides that new evidence shall not be admitted.

Mr. Speaker, Sir, further to that, permit me to bring to your attention the findings in the Civil Appeal No.21 of 2014, which was the case of Governor Wambora *versus* the County Assembly of Embu.

In that case, Justice Odek (may the Lord rest his soul in peace), Chief Justice Martha Koome as then was and Justice Visram held that these proceedings of the impeachment of a President or Deputy President are *pari materia* to the impeachment of a governor. That is to say they are identical. So, what applies in those rules in the impeachment of the governor can and should equally apply to these rules. Finally, this House being a House of record, we are bound by our previous precedence.

I am most obliged.

The Speaker (Hon. Kingi): Counsel for the National Assembly, you have one and a half minutes to respond. You may respond now or after the lunch break.

Mr. Eric Gumbo: Mr. Speaker, Sir, I could respond shortly after the lunch break.

The Speaker (Hon. Kingi): Under Rules, we have to rise at 1.15 p.m.

Mr. Eric Gumbo: Permit me to respond after lunch break. Most obliged.

ADJOURNMENT

The Speaker (Hon. Kingi): Hon. Members, I will deliver a ruling at 2.30 p.m. then allow the Counsel for the National Assembly to respond to the second limb of the objection.

The Senate rose at 1.15 p.m.