

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 20th August, 2024

Special Sitting

*(Convened via Kenya Gazette Notice
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*The House met at the Senate Chamber,
Parliament Buildings, at 9.00 a.m.*

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

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

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

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

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Serjeant-at-Arms, kindly ring the quorum bell for another 10 minutes.

The parties to the impeachment proceedings, your matter starts at 10.00 a.m. So, you may elect to sit and witness the first Order of business to be transacted or you may want to go to the holding room and take tea and be back here by 10.00 a.m., whichever you elect.

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Order, hon. Senators. We do have quorum now. We will proceed with the business of the morning. Clerk, proceed to call the first Order.

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The Chairperson, Standing Committee on National Security, Defense and Foreign Relations, kindly proceed.

MOTION

ADOPTION OF JOINT REPORT ON APPROVAL OF MR. DOUGLAS KANJA KIROCHO FOR APPOINTMENT AS INSPECTOR-GENERAL OF NPS

Sen. Cheptumo: Thank you, Mr. Speaker, Sir. In the interest of time, I will be brief in moving this Motion. I beg to move-

THAT, the Senate adopts the Joint Report of the Departmental Committee on Administration and Internal Affairs of the National Assembly and the Standing Committee on National Security, Defence and Foreign Relations of the Senate, on the approval hearing for the nominee to the position of Inspector-general of the National Police Service, laid on the Table of the Senate on Monday, 19th August, 2024, and pursuant to Article 245(2)(a) of the Constitution, section 12 of the National Police Service Act, section 8 of the Public Appointments (Parliamentary Approval) Act, and Standing Order 77 of the Senate, the Senate approves the nomination of Mr. Douglas Kanja Kirocho, for appointment to the position of Inspector-general of the National Police Service.

Mr. Speaker, Sir, as you are aware, pursuant to provision of Article 245(2) (a) of the Constitution, Section 12(2) of the National Police Service Act Cap 84 and Section 5 of the Public Appointments (Parliamentary Approval) Act, Cap 7(f), His Excellency the President submitted the name of Mr. Douglas Kanja Kirocho, CBS, OGW, as the nominee for appointment to the position of Inspector-general of the NPS.

Mr. Speaker, Sir, what followed thereafter is procedural issues where the Speaker of the National Assembly and the Speaker of the Senate, vide communication made on 1st August, 2024, conveyed the Message from the President nominating Mr. Douglas Kanja Kirocho, as the nominee for appointment to the position of Inspector-General of the NPS.

Consequently, the Speaker of the National Assembly and the Speaker of the Senate referred the matter to the two committees to hold a joint approval hearing.

Mr. Speaker, Sir, in accordance to Section 6(9) of the Public Appointments (Parliamentary Approval) Act, the Clerk of the National Assembly and the Clerk of the Senate, invited interested members of the public to submit any representations by written statements on oath; that is affidavits with supporting evidence on the suitability of the nominee for appointment to the position of Inspector-general. The invitations were made vide advertisements, which appeared in the *Daily Nation* and the *Standard Newspaper* on Saturday 3rd August, 2024. The notification was followed by a letter to the nominee inviting him to attend an approval hearing and requesting him to submit the completed questionnaire set out in the schedule to the Public Appointments (Parliamentary Approval) Act, Cap. 7f, together with the clearance certificates from the office of the Director of Public Prosecutions (ODPP), Ethics and Anti-Corruption Commission (EACC), Kenya Revenue Authority (KRA), Director of Criminal Investigations (DCI),

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Higher Education Loans Board (HELB) and Credit Reference Bureau (CRB) as required under the law.

Further, the clerks of the two Houses also wrote to the same institutions, seeking reference and background checks relating to the suitability of the nominee. These are legal requirements that are mandatory. It should be received as we vet the nominee. Further, the Clerks of the two Houses of Parliament went forward to receive these responses.

Pursuant to Article 118 of the Constitution, Section 6(3) of the Public Appointments (Parliamentary Approval) Act, Standing Order No.45(3) of the National Assembly and Standing Order No.77(2) of the Senate Standing Orders, the Clerks of the two Houses of Parliament, by way of advertisement in the print media notified the general public of the intention of the Joint Committee to conduct public approvals.

It is important for the public and this House to know that public participation is no longer optional, it is mandatory. That is why the Constitution of the Republic and Article 118 comes to play. This is to enable us to know from the public what they think of a nominee, whether a Cabinet Secretary, Principal Secretary or the Inspector-General of the National Police Service (NPS).

The Joint Committee conducted the approval hearing on Thursday, 15th August, 2024. In conducting the approval hearing, the Joint Committee was guided by the provisions of the Constitution, the Public Appointments (Parliamentary Approval) Act, the National Police Service Act, the National Assembly Standing Orders and the Senate Standing Orders. Those are the legal provisions that guided the Joint Committee during the approval hearings.

Mr. Speaker, Sir, in the interest of time, I would request my colleagues to refer to chapter three as they go through this Report. The Report of this Joint Committee is well detailed. Every aspect of what transpired during the approval hearings are captured very well in this detailed Report. It is in chapter three of the report, from paragraph 36 all the way. If you want to know what transpired, including the responses by the nominee and his mind-set on the issues that are pertinent in his leadership if approved, it is captured in chapter three of the Report. In the interest of time, I will stop at that. I will go to the Joint Committee's observations based on the approval hearings.

The Joint Committee observed that a total of 30 memoranda were received with regard to the suitability of the nominee. Memoranda from the public must fulfil certain requirements. It should be supported by an affidavit and evidence. That is also mandatory. So, out of the 30, only two fulfilled the requirements of the law. It had an affidavit in support and the evidence. The issues raised in the two memoranda contesting the suitability of the nominee was sufficiently and satisfactorily addressed by the nominee, and do not provide sufficient evidence to warn the disqualification of the nominee for appointment to the position of Inspector-General of the National Police Service.

Again, the full details of those issues raised by the two Kenyans are also contained in the Report. They include the complaints, the response by the nominee and the analysis by the Joint Committee as to whether those two complaints can stop the approval of the nominee.

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The other observation the Joint Committee made is that the nominee fulfilled the provisions of Article 78(1) and (2) of the Constitution for appointment since he is a Kenyan citizen and does not hold dual citizenship. That is a very critical point. A person serving as an Inspector-General of the National Police Service must not hold dual citizenship. It should be only one and in the country. That was also fulfilled.

Another observation is that the nominee holds a degree as required by the provisions of Section 11(1) of the National Police Service Act for appointment as the Inspector-General. It is important to note that the National Police Service Act has most of the provisions of the requirements and qualifications of the nominee. We were satisfied as a Joint Committee under observation number 10(d) that he had that provision of a degree.

The nominee meets the requirements of Chapter Six of the Constitution on leadership and integrity having obtained a clearance from the institutions I spoke about; that is, the EACC, KRA and all the other institutions. The Joint Committee was satisfied that indeed the nominee fulfils requirements of Chapter 6 on leadership and integrity.

The nominee demonstrated knowledge of topical, administrative and technical issues relating to governance and the requisite abilities, qualifications and experience to serve. I participated in vetting the immediate former Inspector-General of National Police Service. As we all do this, this nominee promises heaven for the Kenyan people that they will be available, hands-on, and visit the ground and respond to issues. We took time as a Joint Committee to inquire from the nominee, if indeed he will be one of those people who will just come and make some public pronouncements, which immediately after appointment, they forget about.

Mr. Speaker, Sir, the nominee rose from the ranks of a corporal and has served this country as a police officer for 39 years, rising through the ranks. He has served in almost every part of the country in various positions. He assured the Joint Committee and the public that he is going to ensure that he fulfils the promises he made.

Mr. Speaker, Sir, I will only state two mentions. There is the issue of the seven counties in the North Rift that host nine million Kenyans and which suffer from cattle rustling. I have moved a Motion which got approved and it is now being implemented by the Department concerned. The nominee promised deployment of enough National Police Reservists (NPR) and more security forces if approved by this House.

He also addressed the issue of extra-judicial killings, which Kenyans feel still exists and he affirmed to the Committee that he would work on this issue. There is also the other issue of robberies occurring in our cities and welfare of the members in housing, insurance and in other areas.

Mr. Speaker, Sir, because of time, I will refer Members to the Report as it contains all those issues. Based on the observations made, the Committee recommends that the House approves Mr. Douglas Kanja Kirocho, EBS, OGW, for appointment as the Inspector-General of the National Police Service.

I will end there and request my brother, Sen. Mungatana, to briefly second this Motion, so that Members will have a moment to debate before we go to the other matter before the House.

Mr. Speaker, Sir, I beg to move.

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

Sen. Mungatana, MGH: Thank you, Mr. Speaker, Sir. I take this opportunity to thank Hon. William Cheptumo, our Chairman for the Committee on National Security, Defense and Foreign Relations and Hon. Gabriel Tongoyo, his counterpart in the National Assembly for the good work they have done in preparing this Report.

In seconding the appointment of Mr. Douglas Kanja, I take this Floor to commend Mr. Kanja. I know a lot is going to be said in this House about his good qualifications, his many years in service and his excellent performance up to now. However, I would like to emphasize on what Mr. Kanja has been doing of late and I would like him to not stop.

We are not saying anything bad about the previous IG, but even in his acting capacity, Douglas Kanja has been communicating to the Kenyan people, especially when we were having challenges in the city and other areas with high population in the country. He would come out and tell us; this is the plan the police have, this is what we expect from those who want to express their opinion, where they need to go and what they want to do and this is the way we are going to handle this matter.

Mr. Speaker, Sir, this is the expectation of the public and this is the expectation we want the new IG to carry out. We want proper communication. I have sat in this House and spoken about the responsibility of public officers and their responsibility to speak to Kenyans.

When we were approving Dr. Patrick Amoth here, I stood here in this House and said that we are having issues that need proper communication. We do not want to be told by bloggers what is happening with Mpox. We want the officials of the Government to speak with authority on these matters and, therefore, yesterday, I was very gratified when I saw the Director of Public Health speaking with authority on the question of Mpox.

Mr. Speaker, Sir, that is not a matter of the Principal Secretary or the Cabinet Secretary. That is a matter of an official who is technical in the Ministry to speak to us with authority, so that we are not exposed to the half and quarter knowledge of bloggers which they circulate as the truth.

We want the new IG of police to be addressing us. The Cabinet Secretary and the PS have their place, but when it comes to security matters, the IG must be seen, must be heard and must be felt within the Republic of Kenya. When we see the Cabinet Secretary going to Baringo, he is a policy man, but we want to see what the person in charge has done, how many people he has deployed and how much money he has used for the operation.

We want people who are holding public offices to speak with the authority of that office, so that Kenyans can get value for money. When there is a gap, there are problems, rumours and false information. For example, when we had the recent demonstrations that happened, it was the responsibility of the IG of the NPS to come and say; this is what transpired, the estimated value of the property lost is this, the police lost some officers and this is the number that we lost. The public should also be given condolences; we lost some lives and this is the number. You speak with authority and impartially.

Mr. Speaker, Sir, unfortunately, we have even had arguments about the number of people we lost and we have not been told that. When we say that our people are involved, we want the police authorities and Mr. Kanja to take this official position without fearing

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the political class because for us, we will never be satisfied with what you do. There will be those who will be telling you that what you are doing is rubbish and there will be those who will be telling you that what you are doing is good. The IG needs to come out and tell us the impartial position.

I will speak about the question of his responsibilities. If you look at the NPS Act, Cap 84, one of the things he is supposed to do is to establish broader relationships with the society. I was going to request Mr. Kanja because we are approving him as the new IG, that he must come out and set a certain legacy; that in his time, the Kenyan Police Service actually becomes the police service. It did not change to become a police force.

Mr. Speaker, Sir, we should be able to have that confidence as Kenyans and not run away from police officers when we see them. We should be able to approach them and speak to them. I am saying this because for us who come from the outer parts of this nation, you will find the relationship in some parts, not all parts that when children see the police, they run away, because of the fear the police have installed and bestowed upon the people. May he come out as the IG of the National Police Service who set up a new standard that we can approach police officers with confidence, like they do in other parts of the world, and we can speak to them.

I do not need to be a Member of Parliament (MP), a Member of the County Assembly (MCA), a County Executive Committee Member (CECM) or any person in the Government for you to listen to me. Any person should be heard. We want to see the images of police officers helping the disabled people cross the roads. We want to see police officers being on the first line. When we call you, do not tell us you do not have fuel.

One of the first things the President did when he got sworn into office, he gave the Inspector-General of police full authority to spend the money. So now you have no reason to tell us you do not have fuel when emergencies occur especially for counties which are outside towns. This is where we need a lot of emergency response.

Mr. Speaker, Sir, as I second this Motion, I would like to request that he should not be an IG who stays in Nairobi. We want him to come to these areas where there have been security issues. We want to see him there and we want to see you talking when you are there, telling people what the Government is doing. As an AIE holder, you should tell us how much money you are allocating, say, to Tana River for operations. How many police stations are you opening in our counties? I am not speaking only about my county, I am speaking across the nation. Tell us how much money you are allocating, what is your strategic plan for operations in these counties? We should not be hearing only of the police when we have seen people die, when there are accidents, or when there are attacks. Come out and tell us this is the plan, this is how we are executing.

You should be part and parcel of our lives because security is our life. Security is part and parcel of our life. You should be coming to the televisions, to the radios, and so on speaking to us of your plans, so that we do not wait for things to happen, that is when we see you. We want you to tell us in advance that I will be coming to Tana River County and this is the plan, we have this number of police stations, and this is what we are doing. So that we walk with you.

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I commend to this Senate and especially the Republic of Kenya this new officer who has served for 39 years with distinction. So we ask that we support him and I beg to second this Motion.

Thank you, Mr. Speaker, Sir.

(Sen. MunyiMundigi stood up in his place)

The Speaker (Hon. Kingi): Sen. Mundigi, have your seat.

(Question proposed)

Now the floor is open.

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

The Speaker (Hon. Kingi): Yes, proceed.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I rise under Standing Order No.111 on Limitation of Debate. You understand the kind of schedule we have today. We have an impeachment hearing. Yesterday we left here at midnight and with the Assembly only having presented their side. Today we have the defence and they have quite some work.

So, we consulted with the Senate Minority Leader and agreed to let us have four representatives from each side speaking for five minutes and we close the debate in the interest of the very heavy agenda that is ahead of us. Therefore, that is a request I wish to make. I request the Senate Minority Leader to second.

The Speaker (Hon. Kingi): The Senate Minority Leader, can you confirm that there is a position?

The Senate Minority Leader (Sen. Madzayo): Yes, I do.

The Speaker (Hon. Kingi): Very well. So we will take five from each side, each speaking for five minutes.

Sen. Wambua Kiiio?

Sen. Wambua: Thank you, Mr. Speaker, Sir. I take this opportunity to support the report of the Committee on the recommendation for the appointment of Douglas Kanja Kirocho, CBS, OGW, as the IG of Police for the next four years.

As we wish Douglas Kanja well in the service, I want to remind him of a few things. Following the enactment of the Constitution of Kenya, 2010, the police force then was changed into a Service. Under that Service, it recreated the office of the IG of Police. Article 243 up to Article 245 of the Constitution, details the establishment of the office, the functions of the office, and the Service command.

I begin by saying that Mr. Kanja is taking office at a very critical moment in the history of our country. He is occupying office at a time when this country has endured the greatest levels of police brutality. Mr. Kanja is coming into office when the National Police Service (NPS) in the eyes of almost every Kenyan, is known for two things. One, brutality, and two, corruption. Yet, in Article 244 of the Constitution, under the functions of the service, I took time to go through that Article.

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I cannot locate the NPS under the provisions of Article 244 of the Constitution. Why? That Article says that the Service is supposed to uphold the highest standards of professionalism. That is wanting in the Service. It says that the Service is supposed to prevent corruption, act transparently and pursue accountability. I cannot locate that in the Service. It says that the Service is supposed to protect human rights and fundamental freedoms, which is also lacking in the Service. It says that the service should promote a relationship with the broader society. That also is lacking in the service.

I have listened to Sen. Mugatana seconding the Motion. He spoke from my mouth. A time has come that perhaps the head of the NPS needs to work extra hours and with greater dedication, to change the face of the NPS, so that a person in dire need sees a police officer on the streets, they run to the officer because the officer will provide help at the time of need.

As I speak, if you are lost in the streets of Nairobi and see police officers, it is difficult to approach them for help. What could happen is that they may mislead or arrest you. They might even threaten to charge you with loitering with bad intent.

The glory of this service must be reclaimed---

(Sen. Wambua's microphone was switched off)

The Speaker (Hon. Kingi): You have a half a minute to conclude.

Sen. Wambua: The IG is coming into office at a time when there is need for him to exercise full independence as provided for in Article 245 of the Constitution. Abductions by hooded police officers must be dealt with.

Mr. Speaker, Sir, as I conclude, he is coming into office on a day when Maina Wanjigi has been arrested for reasons we do not even understand. That belongs to the past and it must stop.

I thank you.

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

Sen. Chute: Mr. Speaker, Sir, let me also take this opportunity to support this Motion. Allow me to thank both committees of the two Houses, together with their Chairpersons; my friend Sen. Cheptumo and Hon. Tongoyo.

Mr. Douglas Kanja has done a good job for this country for the past 39 years. He started as a police constable and rose through the ranks. He then served as a corporal before being a Senior Assistant IG. Now he has been nominated as the IG.

Mr. Speaker, Sir, I would also like to take this opportunity to congratulate the nominee. When he was being vetted, he indicated that he is worth Kshs46 million. For 39 years he has served in this country, he used to get Kshs98,290 per month. For some Cabinet Secretaries who have worked for the Government for two years, they earned Kshs8,333,000 every month. It is really commendable that after 39 years of service as a police officer, starting with the rank of police constable, he has an asset base of Kshs46 million.

Some people are talking of police officers being cruel. I think the problem we have in this country is that police officers are underpaid. What I would request Mr. Kanja to do immediately he is confirmed is to look at police housing. If you go to Industrial

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Area Police Station, the way they live is not humane. How do you expect a police officer to work for the whole day and go back to those kinds of houses? That is terrible! I went to Ileret in my county and visited police posts and police stations. The houses they live in were built in 1950s. I would like Mr. Kanja to visit Ileret, so that he can see how police officers live there and many other police stations.

The other issue I would like to raise with Mr. Kanja, if he is approved, is about two Korean missionaries who were abducted last week. He must visit Moyale. They were abducted in Oda, Moyale. I would like him to visit and see how to solve that problem.

The other issue I would like to raise is about the Ethiopia-Kenya border. We have incursions from the Ethiopian military regularly coming to Kenya mainly around Anona, Elebor, and Sololo areas. Our people have suffered. There are Internally Displaced Persons (IDPs) in Sololo Area because of the issues we face from the Ethiopian military.

The other one is the issue of the National Police Reservists (NPR). I would like him to visit Marsabit, Samburu, Garissa, Mandera, Turkana and West Pokot counties to address the issue of NPR. We have a lot of shortages in those sides.

Finally, there are many barriers on the road from Moyale to Isiolo. We have 18 police barriers. I would like Mr. Kanja to address the issue of these barriers. What are they for and why do we keep police barriers when they can do patrols? We know they are all toll stations.

The Speaker (Hon. Kingi): Next is Sen. Crystal Asige.

Sen. Crystal Asige: Thank you, Mr. Speaker, Sir, for also allowing me to contribute to this Motion with regards to the new appointment of our IG of the National Police Service (NPS). My contribution will be very brief and to the point.

I am standing here extremely hurt and disappointed because of how Kenya has been portrayed due to the sufferings, killings and pain we have seen over the past two months. Two years ago, we sat here, vetted and approved the former IG who unfortunately has become one of the most disappointing appointees that Kenya has seen in the NPS. I say that honestly and sincerely.

With this new IG appointment and vetting that has been done by the joint committees, I do not think that 39 years of a career will do it for me. I do not think that a Curriculum Vitae (CV) really tells what somebody is, his or her morals and what they intend to do once they get into a position.

A CV is just a piece of paper. Anyone can speak in an interview process if they have the gift of the gab and woo the entire committee. However, the proof will be in the pudding and what he does in his first 100 days or first year in that office. That will determine the intention of the new IG and where he would like to take the NPS.

Mr. Speaker, Sir, two months later, we still have conflicting police reports on how many people died during the anti-Government protest in the past two months. I hope this will be his first order of business. We heard the President give his number and the Independent Policing Oversight Authority (IPOA) and the Kenya National Commission on Human Rights (KNCHR) also gave their numbers. However, we still have over 240 unidentified bodies lying in mortuaries with no clue of where they came from.

Some of them have been changed in terms of the location they were picked from. When you go to the morgues, you will find that they have tags showing other locations

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and for other crimes or accidents. It is an absolute mess. I wish that this becomes his first order of business and priority if and when he gets into office.

As I said, we still have unidentified bodies two months later. We have abductions still going on with the most recent one that has gone viral on the internet, being of a popular blogger named Maverick Aoko, just released yesterday.

Two months later, we still have families who are left in the dark. They do not know where their children, family members and loved ones are.

The Speaker (Hon. Kingi): What is your point of order, Sen. Mandago?

Mr. Mandago: Mr. Speaker, Sir, Standing Order No.105, on statement of fact, I have heard Sen. Asige saying that Aoko was abducted. There is a difference between police arrest and abduction. I think it is time that we also set records straight that, the police must be left to do their work.

That is the reason why the hon. Parliament---

(Loud consultations)

The Speaker (Hon. Kingi): Order! Order, Sen. Kinyua. Senate Minority Leader, Sen. Madzayo, order.

Sen. Mandago: Mr. Speaker, Sir, you must protect me because I get surprised when a Senior Counsel like Sen. Omogeni, who was in this House and passed the Cybercrime Act, would want to gag the police from doing their work.

Can Sen. Asige substantiate her allegation of abduction? Otherwise, she should withdraw the statement and apologise to the police of this country.

The Speaker (Hon. Kingi): Sen. Crystal Asige, you have made a very heavy statement that a blogger was abducted. Are you in a position to substantiate that claim? If not, then you may proceed to withdraw.

Sen. Crystal Asige: Mr. Speaker, Sir, as I was contributing, perhaps the good Senator from Uasin Gishu did not hear me correctly. What I said was that, there are reports on social media of a blogger who has been abducted. I did not say anything else besides that.

I will continue. What I was trying to say is that there are still families who are also left to the dark---

The Speaker (Hon. Kingi): Sen. Crystal Asige, you said abductions are still going on, I heard you correctly. Abductions do not happen on social media.

Sen. Crystal Asige: Mr. Speaker, Sir, I said the reports that are coming from social media are that there are abductions still ongoing.

The Speaker (Hon. Kingi): You know social media may not be the correct source.

Sen. Crystal Asige: Correct, Mr. Speaker, Sir. I hope that the incoming IG will turn every single stone, so that we can get down to the bottom of these reports---

(Loud consultations)

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The Speaker (Hon. Kingi): Order, hon. Senators. Sen. Crystal Asige, did you verify the information you got from the social media?

Sen. Crystal Asige: Mr. Speaker, Sir, I was continuing to say that I hope that the new IG will take it upon himself to prioritise turning all of these stones ongoing allegations, so that we can find out the truth. That, he can do his job in informing the country of the true position of what is going on.

The Speaker (Hon. Kingi): Proceed.

Sen. Crystal Asige: Thank you, Mr. Speaker, Sir. Families who are still seeking for answers to questions that they have been having over several months now should also be given information about the whereabouts of their loved ones who are still missing.

I hope that the new IG will take note of the court ruling that has pronounced itself clearly about using live bullets, teargas, water cannons, police in civilian clothing and masked officers roaming our streets. I hope that this will also be rectified through his tenure when he reaches the office that he is going to assume soon.

These kinds of things cannot continue happening in the Republic of Kenya. We are not a banana republic. I hope he will definitely prioritised this.

Mr. Speaker, Sir, I hope that he works to follow the law, not work to follow anyone else's orders, opinions or way of doing business. The law is very clear and concise. Hopefully, I want to believe that he will be following it.

Thank you.

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

Sen. Seki: Thank you, Mr. Speaker, Sir, for this opportunity that you have given me to take to the Floor to support this Motion and speak more about the IG nominee, Douglas Kanja.

This is a time when the country really needs an IG. I happened to be in the Standing Committee of National Security and Foreign Relations in the Senate Joint Committee with the National Assembly and we had an interactive session with the nominee.

We realised that the experience the nominee has in this country is quite enormous and we were really impressed. We brought to the limelight of the entire country that this is the right nominee; somebody who has rose from a constable to the position of the Deputy Inspector General of Police.

This is enormous. It is something that we really encourage. We thank God that we still have officers who can work through different ranks. He went through all the ranks from the first rank of a corporal to the Director General of Police. This motivates the entire service. They get to understand that somebody can rise from the position of a constable to the IG position. We realised that is a very important opportunity for the entire country.

Mr. Speaker, Sir, since we broadcasted all this live, the nominee promised the Committee and the entire country to deal with issues of corruption, particularly on the issue of traffic, where we realised that there is a big gap in this country. He also promised to look at the issues of deployment of staff to areas with shortages and even try to bring discipline within the force. These are the issues that he brought out to the committee and Kenyans when he was being vetted.

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I request that as we continue to approve the nomination of this officer, Mr. Douglas Kanja, that he will observe and address a few issues that were coming out very strongly during the interview from the Members of the committees and also public. We received quite a number of memoranda through public participation.

I request that the nominee addresses the issue of shortage of police vehicles. We realised that a number of police stations have no vehicles. If there are no vehicles, then there is no fuel, no transport, no supervision and a shortage of security.

The issue of housing for the police in this country is something that has been a big problem. Most of our police officers are staying in “*viosks*” and shanty areas, which is a horrible situation.

I also want the nominee to address the issue of border points. For example, we have a big problem in Kajiado. The Tanzania authorities are threatening members of this country. They are abducting, arresting, taking our---

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

Sen. Onyonka: Thank you, Mr. Speaker, Sir. I take this opportunity to contribute to this very important matter. The selection, nomination and maybe appointment of the Inspector-General of Police position in our country is highly regarded and respected. I feel that as a country, we have done exceptionally well when it comes to performing internationally.

Mr. Speaker, Sir, because of the institutional memory, many of my friends here may not know or remember that Kenya is the country that provided security teams from the Kenyan Police Service (KPS) to go to Namibia to set up their police system after their independence. Kenya did the same in Zimbabwe and Rwanda.

Right now, Kenya is in Haiti. Internationally, we have kept a highly respectful kind of engagement and people have known us, as a country that believes in the rule of law and that performs quite reasonably when it comes to our police service. However, one of the things that I have observed having been lucky to be around for quite a while is that the police service that we have right now is dysfunctional.

One of the issues that my colleagues have raised and I would like to also raise is that you cannot have a police officer staying in a mud hut with his colleagues and some even sharing rooms with their wives. We cannot have a police service where sometimes a police officer is transferred unilaterally because he has annoyed some big person somewhere and their rights are violated. I keep talking about their salary for obvious reasons. I would probably spend a whole day discussing how we have mistreated our police service.

Indeed, due to this dysfunction, the KPS has failed us miserably. My colleagues have talked about the recent events of unilateral arrests that you saw happen. If you look at it right now, a gentleman called Jimmy Wanjigi was arrested and his house was demolished. These are issues that I would like to seek in this House and to my brothers.

I remember when Sen. Cherarkey was being arrested some three years ago and he was screaming, saying, “Oh my God, what will happen to me?” These people came at 5.00 a.m.. At that time when Sen. Cherarkey was speaking and crying, I thought he had lost his mind. I would like to encourage Mr. Kanja---

Sen. Cherarkey: Mr. Speaker, Sir, I stand under Standing Order No.101 and No.105 on statement of fact. Is it in order for this statement to go on the HANSARD of this House that I was yelling and crying? I am a dry Kalenjin man who was circumcised at 3.00 a.m. Is it in order for the Senator of Kisii to insinuate that I was crying? In fact, I was arrested naked, but I have never cried about it.

Can he apologize to me, the great men of Nandi and the people of Nandi, in the spirit of Koitalel Samoei and the Talai?

(Laughter)

(Loud consultations)

Sen. Onyonka: Mr. Speaker, Sir, I literally saw hon. Sen. Cherarkey wailing, asking for his gods to excuse him. When I asked him what the problem was, he told me he had seen Mr. Matiang'i the night before. It was scary for him. I am using this argument to justify---

(Loud consultations)

Mr. Speaker, could you allow me to look for---

(The Speaker (Hon. Kingi) spoke off record)

Mr. Speaker, Sir, I promised to deliver the video. I would not wish---

Hon. Okong'o Omogeni would like---

The Speaker (Hon. Kingi): I have not given that permission. After the adjournment of this House, we will proceed on recess. Once we come back on the 17th September---

Sen. Onyonka: I will provide the video to show how he was crying. He was wailing.

The Speaker (Hon. Kingi): Now proceed to conclude.

Sen. Onyonka: Mr. Speaker, Sir, I plead with the new Inspector-General of Police to make sure that he carries himself with the dignity that he has. Mr. Kanja is somebody we all know. I would like him to look at several issues, but I plead with this House and the National Assembly for the police service to perform. We went as a committee and met the team from the police service during the Shakahola hearings.

They have always said and I believe them that our forensic labs hardly work. The police vehicles do not have fuel. The police officers do not even have insurance for themselves. Most of the issues involving the police are treated casually.

I would like to plead that we provide them with the necessary funding. Make sure that this aspect of corruption and roadblocks stationed everywhere on our roads are rationalized. I hope that Mr. Kanja will do an excellent job. He should make sure that this House interfaces with him because we are the ones who will be over sighting him.

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I believe that he is a man capable of understanding that he must offer justice, be fair and willing to make Kenya a better place than he found it. Other than that, I honestly feel that Mr. Kanja will manage this office. I hope that my colleagues in this House will be open enough for us to make sure that we begin to change our systems, which are failing. We do not have data of our children who were killed. That has already been mentioned.

We need closure on some things and be honest with ourselves because if you do not have justice, you cannot have peace. Thank you.

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

Sen. Kinyua: Bw. Spika, asante sana kwa kunipa fursa hii. Mwanzo, nampongeza Bw. Douglas Kanja kwa kuteuliwa kuwa generali mkuu wa polisi. Ni vizuri ijulikane wazi, Kanja anapokuja, aje akijua kwamba kazi kuu ya Serikali yoyote ni kulinda mali na maisha ya wananchi.

Bw. Spika, ukitembea sehemu nyingi za Bonde la Ufa, hasa Laikipia County, utapata wakati mwingi watu wanaishi kwa maisha ya kukimbizwa na kuibiwa na wezi wa mifugo. Ningependa kumuuliza Generali wa Polisi atakapoingia, azingatie na kukubalia tuongeze askari wetu wa ziada, kwa Kingereza wanaitwa *National Police Reservists* (NPR). Hii ni kwa sababu hawa ndio askari walio na uzoefu na ujuzi katika mahali ambapo wametoka.

Vile vile, hao askari wanapaswa kuangaliwa na kushughulikiwa kwa sababu wakati mwingi wanapouawa huwa hawapati faida yeyote. Ningependa wao na familia zao wapewe National Hospital Insurance Fund (NHIF) iwe ikiwashughulikia wakati wanatapa matatizo, hasa ya magonjwa.

Nikiangalia ripoti iliyoletwa mbele yetu, nimefurahi kuona ya kwamba, utajiri wote wa Inspekta Generali ni shilingi milioni 46. Tungependa baada ya mwaka mmoja tuangalie utajiri wake utakuwa umepanda kiasi kipi kwa sababu kila wakati tunaona mtu anaingia katika ofisi kuu za Serikali, utajiri wake unaendelea kuongezeka zaidi. Hio ni ahadi moja ya kupigana na ufisadi. Ufisadi ni lazima ungaliwe kwa kiasi cha haja.

Sehemu zingine ambazo tungependa kumuambia anapoingia ni, kwa mfano, Bonde la Ufa, wakora wengi wanabunduki kinyume cha sheria. Kwa hivyo, anapaswa aungane na maafisa wale wengine wa ujasusi na jeshi ili waweze kuwanyanganya wale watu walio na bunduki kinyume cha sheria. Hii ni kwa sababu hizi bunduki ndizo zinahangaisha watu wengi wanaoishi katika sehemu hizo.

Bw. Spika, ukitembea Kaunti ya Laikipia mahali panaitwa Ol Moran, Wangwashi, Miteta na Ethituna utaona kuna shida ya usalama. Ninafahamu na kujua ya kwamba, ataweza kuifanya kazi yake kwa ujasiri na bila kuogopa chochote kwa sababu huyu afisa ni mtu ambaye amebombea katika kazi yake. Nikiangalia alianza kufanya kazi ya usalama kwa muda mrefu.

Bw. Spika, nchi yetu tuna kumbwa na magaidi, na kwa sababu yeye aliongoza katika oparesheni ya fagia Boni, najua atasaida zaidi. Tumekuwa na shida ya pombe katika sehemu nyingi nchini Kenya. Watu wanakisia ya kwamba maafisa wengine wa polisi wanamiliki *bars* na wanaendeleza mambo ya kuuza pombe. Kwa hivyo, anapaswa kushughulikia hayo mambo ya mgongano wa kiraslimali.

Kwa mambo ya maandamano yaliyokuwa yakifanyika katika nchi ya Kenya, sisi tulitoa mwongozo hapa na tukapitisha vile ambavyo Serikali inapaswa kufanya. Kwa hivyo, hatuna haja ya kujisumbua kumuuliza huyu afisa. Anapaswa kufuata mambo ambayo tulielekeza katika Bunge hili. Tulisema ya kwamba, wale waliouawa wanafaa kufidiwa na Serikali. Vile vile, tulisema walioko kwa hospitali pia wanapaswa kufidiwa.

Ningependa kusema nampongeza huyu afisa. Tukiangalia historia yake, ni mtu aliye na uzoefu, sina shaka. Namtakia kila la heri katika jukumu mpya alilopewa la kuongoza askari wetu. Tunajua ya kwamba, baada yamuda aliopewa, tutaona kazi atakayaokuwa ameifanya.

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

Sen. Mumma: Thank you, Mr. Speaker, Sir, for the opportunity to contribute to this Motion.

I wish to support the decision of the Joint Committees on the appointment of Mr. Douglas Kanja to the position of the Inspector-General (IG).

Mr. Speaker, Sir, as we support his appointment, I would like to send a message that when we passed the Constitution of Kenya 2010, we intended that we move from the Police Force to a Police Service.

Mr. Speaker, Sir, Article 244 of the Constitution that guides on how the police can be a service has, to date, not been implemented. The police continue to be a force rather than a service. My plea to the incoming IG is that this is a golden opportunity for him to be the first IG to make a serious attempt to implement the police as a service.

I believe if you implement the police as a service, this will benefit everybody in the country. It will benefit communities, families and the Government and we will be a better off community.

Mr. Speaker, Sir, I would like to speak to a few particular issues that I think the IG must pay attention to. We have so many cases of lost children in this country. Every so often you hear this child is being looked for, disappeared or died. I would like to ask the police to invest more time in trying to deal with child trafficking in the country, so that we can deal with that menace.

Mr. Speaker, Sir, I would like to request that the IG collaborates better with other departments. The information from the Kenya Health Information System indicates that between 2016 and 2023, we had nearly 200,000, 10- 14-year-old girls who were became pregnant. This information was picked from health facilities. All of these are defilements.

Do we have a similar number of prosecutions in our courts? No, we do not have. This is because these cases are not prosecuted and followed because the provincial administration from sub-chiefs and the others, including the police get into negotiations instead of prosecuting these cases.

We are asking that for the protection of girls and boys in this country, because the defilement is also happening to the boys, that the IG will spend a lot more time and put in place mechanisms to ensure that our children, especially the girls, are protected from sexual violence.

Mr. Speaker, Sir, we have had quite a number of deaths in our universities. We have had brutal deaths that happen where, people, especially girls are murdered. We are asking that he also looks into that.

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Finally, I would like to speak to the new issue where the police are covering their faces, using cars without number plates and hiding their identity. Why would the police mimic terrorists? How would I know that this is a police officer when they are behaving like a terrorist or a robber?

We need the IG to immediately stop the new practice in the police where they are mimicking terrorist and terrorizing the society in the manner in which they are carrying out, particularly when they want to arrest the people who have made political speeches.

Recently, my former colleague, former Commissioner Khelef Khalifa, was arrested by people who were hooded. When he tried to ask for his rights---

The Speaker (Hon. Kingi): Sen. Mumma, wind up. Your time is up.

Sen. Mumma: Thank you, Mr. Speaker, Sir.

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

Sen. Wamatinga: Thank you, Mr. Speaker, Sir. Let me kick off by thanking both committees of the Senate the National Assembly for approving IG nominee, Mr. Kanja. I have had the privilege of knowing Mr. Kanja since I was a young boy and I know his commitment and dedication. His journey in the police force has been quite long. Indeed, with 39 years of experience, having worked in all the terrains in this country and having served in different challenges, indeed, he has what it takes to take the police force to the next level.

We have come from an age where we have been confronted by a new challenge of the Gen Zs. This is a tribe-less approach to doing things. This is a generation that is leveraging on technology to have their things done. My prayer to the nominee is that he equally leverages technology and uses IT to advance, promote, and most importantly, ensure that the safety and security of Kenyans is guaranteed.

We came sometimes back with the initiative of the *Nyumba Kumi*. This was a noble concept that has not taken deep root because it lacked support from the structural and structured forces. My request to the new IG is to leverage the *Nyumba Kumi* initiative and ensure that we are given adequate technology in line with the community frontiers, so that we not only capture data, but also timely and effectively report occurrences in any part of this country.

Being a people-centric approach in offering police services would require that we, Kenyan citizens, also change our approach in the way we do things. It is high time we stop looking at the police force as our adversaries, but look at them as our partners so that we can promote the well-being of each one of us. Most of the activities, if not all the activities, criminal or otherwise, are conducted among the citizens. It is our sons, daughters, fathers and our mothers who commit these crimes.

Having lived for over 20 years in a European country, I saw that people take a very active role in reporting incidents to the police. Indeed, if we were to do this, then we would also promote the welfare of not only the police, but also the welfare and the security of every Kenyan.

It is also important that we recall the slogan of the police "*Utumishi kwa Wote.*" However, we as the legislatures, must also enhance the budget that is allocated to the police services as has been mentioned by my colleagues. We must ensure that they have

decent houses, adequate equipment, but most importantly, that the excuse they always get of not having fuel, not being well motorized, not being well equipped, comes to an end.

This can only be done if we are very deliberate in ensuring that the budgetary allocation to the police forces and all the disciplined forces matches the demand and the technology that is required in the present age.

The Kenyan police performance in Haiti as much as it was ill-talked about, has made us very proud because they have been able to bring some sanity. It is this dedication, the *utumishi kwa wote* dedication that makes Kenyan police and Kenyan people shine.

As I wind up, I want to say, Mr. Kanja has what it takes to take this country to the next level. Most importantly, I urge my colleagues to be very supportive in terms of being deliberate at the county level and international level by allocating adequate resources, so that the police can deliver. Most importantly, they get adequate resources in terms of their facilities and housing. We want to see them living and working in humane conditions.

In a generation that is getting ever younger, it is high time that we look at leveraging---

The Speaker (Hon. King): Sen. Omogeni, you may proceed.

Sen. Omogeni: Thank you very much, Mr. Speaker, Sir. From the onset, I want to congratulate the Inspector-General nominee, Douglas Kanja, for having gotten a chance to serve, I believe as the fourth IG of Police.

Mr. Kanja will be taking office during a very challenging time. I want to state here that his first responsibility should be to ensure that the police respect the provisions of Article 244 of the Constitution. We need to restore public confidence in our police being a police service and not a terrorist unit.

I have just been wondering, when those out there who are looking at us as a country see police officers arresting Hon. Keter the way they did; coming from church with his wife and child. He was picked like a terrorist arresting somebody--- How does the international community look at us when we raid the house of a former presidential candidate, Mr. Jimmy Wanjigi and maliciously damage his property? No! It is not right; we must say these things because it is affecting our image out there. Why should the police who are hiding their faces arrest people? Are they thugs?

I should be able to know anybody arresting me. I should be able to know who that person is and have a right to inform my lawyer. I want Kenyans to be arrested the way Sen. Mandago was arrested. The police approached him and said, "Sir, could we kindly arrest you?" That is why I want it to be that way. Not the way they picked Sen. Cherarkey on a Friday, and booked him in Muthaiga Police Station. I went there to see him at Gigiri. He was put in a corridor with grills the whole weekend. That is not right.

This lady you call Scorphine Aoko was arrested because she made a false publication of information contrary to Section 23 of the Computer and Cyber Crimes Act; a very small offense. She was arrested on the 16th locked up in a police station and denied access to a lawyer, only to be presented to court yesterday and given cash bail of Kshs20,000. Are we serious as a country? The police have better things to do.

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When they gave summons to Mr. Jimmy Wanjigi to appear at the Directorate of Criminal Investigations (DCI), he walked there yesterday. That is how we should be; proud as a nation and then we can say we have a police.

I am the one who defended Hon. Keter. He was arrested. The Ethics and Anti-Corruption Commission (EACC) published his name on the run-up to elections, and said, this is the big fish that we got. I did that case for him in Naivasha and he was acquitted. However, before he was acquitted, he was in police detention for two nights, before he was charged in Naivasha. We do not want this kind of police being used to do malicious prosecution. I am sure even Sen. Cherarkey, in the fullness of time, will be a free citizen.

So, we want our police service to fight crime. Look at the corruption. Sen. Cheruiyot, every weekend I drive from Nairobi to Nyamira. On the road, the police officers have put up toll stations, collecting money from Kenyans who are honestly trying to make a living from doing matatu business. It is not right.

When Kenyans enacted this Constitution, they put in Article 244 that the police should prevent corruption. So, if this guy can change that image, then we can be proud as a country. So, he should take office knowing that two of his predecessors resigned from office.

The first Inspector-General, Mr. Kimayo, was forced out of office and Mr. Koome resigned from office. We do not want that demon to follow him. Let him serve Kenyans, respect the Constitution, respect human rights and leave a mark. That is the only time we will all say, as Kenyans, we passed a Constitution that put in place a police service that is there to serve Kenyans.

I support his nomination and I thank you.

The Speaker (Hon. Kingi): The Senate Majority Leader, please proceed.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I know that I just have two minutes, but I want to spend them very quickly. In two and a half minutes, I will say what I want to say and then I will donate the rest to Sen. Cherarkey who wants to say something on this topic.

Just two things. Number one, the reason why I give a vote of approval to the Deputy Inspector General (DIG) of Police, Mr. Douglas Kanja Kirocho is because he is a man of his word.

I want to give him my vote of approval on behalf of the people of Kericho, but with only one assurance. Sen. Omogeni has spoken about something that I am very passionate about it. If you drive from a place called Total to Kaplong or Chebilat, where we border with Sen. Omogeni, you will count more than 20 police stops. There is nothing else they are doing other than collecting money from *matatus*.

I want to tell Mr. Kanja that the only reason I am giving you a vote this afternoon, on behalf of the people of Kericho, is with the assurance that those police roadblocks will disappear. I do not want to see those toll stations in Kericho. That is the only deal that I want to enter with him.

Second and the final thing, Mr. Speaker, Sir, is that I was in the United Kingdom (UK) last week. This is overly about the institutions of oversight. As you are aware, there were riots in the UK two weeks ago. As I speak today, the police have been able to round up those who were inciting people to violence, including online.

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Their judicial system is so efficient that two weeks down the line, those people are in jail already. We need to see that level of efficiency between the police and the Judiciary, so that we do not discuss these small issues like the state of arrest or the *modus operandi* of police while effecting arrest.

It is my sincere hope that IG, Mr. Kanja, will infuse the level of professionalism that Kenyans are yearning for into the police service.

With those main remarks, I support. I yield the remaining two minutes to Sen. Cherarkey.

The Speaker (Hon. Kingi): You have a remainder of one minute.

Sen. Cherarkey: Thank you, Mr. Speaker, Sir, for your indulgence. I support this report of the Committee on National Security, Defence and Foreign Relations.

As a guest of most of the police stations; it is only in Kilifi County that I have not slept in that police station, but I hope to do so soon. This is in good faith.

There are many challenges that the police face. Two things I will mention in quick succession. One is those police stations when you are arrested and taken to the cell. The last time those police cells were painted was in the 1990s. When you go there, the toilets are pathetic. I slept on the corridor in Gigiri, which is supposed to be the prestigious police station in this Republic, for three days. Sen. Omogeni visited me. My dignity was stripped off.

We want the police, under Article 245 of the Constitution, to do their job with professionalism. On police housing, how can you explain police are depressed? The police are killing each other. You are putting two families in one room where only bed sheets separate them. How will they enjoy their conjugal rights and privacy?

If you leave your wife and go on night patrol, the other police might patrol your wife at night.

(Laughter)

We must give dignity to the police. I want to challenge the man from Biriri village, the IG nominee, Mr. Kanja, to talk with the President and do affordable housing programme across all police stations.

I am happy that the issue of body cameras is being introduced to monitor crime and ensure the police are held accountable to the highest police standards across the world.

On the police uniform; what happened to the blue police uniform? Nowadays, you get police adorning green camouflage from the DIG, IG and to everyone. The issue of police uniform must be sorted out to avoid confusion.

Finally, on the financial autonomy, we must agree with the fact that the IG of Police is given financial autonomy, it should be reflected. I want to agree with the Senator Majority Leader on police stops. When you go to Kapsabet when you are coming from Kisumu or Eldoret at the Airport and Matunda, there are so many police road blocks. We are not told what these toll stations are about. We want to see professionalism.

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Mr. Speaker, Sir, I believe you can recall when Sen. Onyonka was a Member of Parliament (MP) and there were allegations that he bought sugar through the National Government Constituencies Development Fund (NG-CDF), dubious deals. When the police were looking for him, how could they have done it?

(Laughter)

If, for example, Mr. Jimmy Wanjigi would have summoned himself and appeared before the police---

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

Sen. Cherarkey: Mr. Speaker, Sir, I want to say that when you are needed by the police, you must submit yourself. If you cannot submit yourself, the police can even break into the bank.

I support and thank you, Mr. Speaker, Sir.

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

The Speaker (Hon. Kingi): Order! Hon. Members.

Sen. Onyonka: Mr. Speaker, Sir, Sen. Cherarkey just mentioned me adversely because I never sold sugar using the NG-CDF. The case I had, I won. He is just making this for political expediency because I said he was running and crying like a baby.

The point of order is that unless you have a---

(Sen. Cherarkey stood up in his place)

The Speaker (Hon. Kingi): Can you have a seat the Senator for Nandi?

(Sen. Cherarkey took his seat)

(Sen. Cherarkey spoke off record)

Sen. Onyonka, just take your seat.

Sen. Onyonka: Thank you.

The Speaker (Hon. Kingi): Proceed, Sen. Githuku. We only have two minutes and we wind up this, so that I put the question.

Sen. Onyonka: I won the case, shame on you.

Sen. Cherarkey: I said there were allegations.

(Laughter)

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

Sen. Githuku: Thank you very much, Mr. Speaker, Sir.

(Sen. Cherarkey consulted loudly)

The Speaker (Hon. Kingi): Order, Senator for Nandi.

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Sen. Githuku: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this very important Motion.

Mr. Speaker, Sir, I was privileged to be among the people that vetted the IG of Police. I want to confirm to this House that the IG demonstrated a wide range of experience for 39 years. The committee was convinced beyond reasonable doubt that Mr. Kanja is suitable for that position.

On the issue of insecurity; I was very much concerned about the issues of insecurity and how he would handle these issues. Nonetheless, he was very eloquent in terms of elaborating on how he will handle the issues of insecurities in counties and to the people that are in close proximity to Somalia border.

Mr. Speaker, Sir, he had experience in terms of handling the insecurity in the counties that are in proximity to Somalia borders having worked in Lamu County where I come from. I was convinced that he will handle the insecurity issues in those areas.

On the issues of demonstrations, he was able to demonstrate very clearly that he will handle the issues of demonstrations in terms of seeing to it that the law is followed to the letter, so that nobody will feel that his rights are not followed.

Finally, I look forward to having Mr. Kanja in office, so that he improves the working conditions of police officers. Police officers are people with families. They need proper working conditions, so that they feel that the Government is concerned about their families. They also need their stipend taken care of, so that they have morale to work and serve the people of this country effectively.

Mr. Speaker, Sir, with that I support this Motion.

The Speaker (Hon. Kingi): The Chairperson Standing Committee on National Security, Defence and Foreign Relations to proceed and reply.

Sen. Cheptumo: Thank you, Mr. Speaker, Sir. First of all, I thank all Members who have spoken to this Motion. I am happy that they all supported.

Mr. Speaker, Sir, the issues raised by Members ranging from improved communication of the police, improved relationship between the public and the police service, matters touching on implementation of Article 245 of the Constitution, issues of roadblocks and the general welfare of the police officers, are among the matters that were raised in the committee when we had the nominee.

If you want to know the way the IG thinks about these issues, refer to the report that we have tabled in this House. I wish to say that this is the day and the time for us, as a House, to make a decision and give our approval for the member.

I beg to reply, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Hon. Senators, I will proceed to put the question.

(Question put and agreed to)

Next Order.

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

The Speaker (Hon. Kingi): Clerk, do we have the parties in the Chamber?

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

Hon. Senators, yesterday we heard the case of the Meru County Assembly. Today, we are going to hear the case of the Governor of Meru County. I am informed that at the adjournment of the House yesterday, that is last night, there are some Senators who had expressed their wish to seek clarifications from the counsel for the County Assembly.

The system is not helping today. I am unable to look from my dashboard and know who intended to seek any further clarification from the counsel, and therefore---

Yes, Senator for Nandi County, what is your issue?

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. I hope the Parliamentary Service Commissioner, Sen. Kinyua, is noticing we also need a welfare like the police. Yesterday, we wanted to seek further clarification from the counsel for the County Assembly. I remember the first witness stepped down and some of us wanted to seek further clarification. Would it be in order to proceed?

The Speaker (Hon. Kingi): We will proceed to seek clarification from the counsel for the County Assembly for half an hour. So, at exactly 11.34 a.m., we should embark on the case of the county governor.

PRESENTATION OF THE CASE OF THE
MERU COUNTY ASSEMBLY

Sen. Cherarkey: Mr. Speaker, Sir, through you, yesterday I wanted seek clarification on the pleadings of the County Assembly made through their counsel led by Mr. Ndegwa Njiru.

One of the issues is, it was never indicated whether an invitation to the Governor of Meru County was sent out during the impeachment proceedings at the County Assembly of Meru. I would want to know whether there is proof to that effect because I have seen the pleadings and submissions that have been made. Mr. Ndegwa Njiru and the team of youthful counsels could provide that.

The second point is, in case the Governor was invited to appear before the County Assembly, was there any communication to that effect? I would like to know whether she received that communication and whether it was confirmed.

Mr. Speaker, Sir, I also need to know from the counsels for the County Assembly, through you, whether there is any evidence that was tabled before the Meru County Assembly to challenge the Motion of impeachment because that is where the charges are held. The Senate has either to uphold the charges that have been done at the County Assembly or not. Is there any evidence to challenge the Motion of impeachment against Meru Governor at the County Assembly?

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Finally, there was an argument over the office of the Auditor-General's report and the reading of the Constitution. Some of Members felt, the fact that the office of the Auditor-General has generated a report, it can be quoted as a legal document.

Can it be used persuasively in any of the pleadings or any case that is before the House? I would want to know the opinion of Mr. Ndegwa Njiru and the County Assembly's youthful counsels whether that can be taken into consideration.

I thank you.

Mr. Ndegwa Njiru: Thank you very much, Mr. Speaker, Sir, and Hon. Senators. The appearance for the County Assembly is as before. We are greatly humbled for granting us a further opportunity to urge our case before you. We do not take it for granted that the Senate creates time for that engagement. We are greatly humbled.

In response to the inquiry by my learned friend, Sen. Cherarkey, I refer you to volume IV of the County Assembly's documents where we have the index and description of the document that we have filed. If hon. Senators are with me, at page 55 of volume IV of the bundles by the County Assembly, you will find a notification of the impeachment Motion dated 31st July, 2024.

This notification was issued by Hon. Zipporah Kinya, MCA and the Deputy Majority Leader. It was addressed to Her Excellency the Governor, Hon. Kawira Mwangaza. It was notifying her of the pending proceedings before the County Assembly.

Hon. Senators, permit me to indicate to you that this was pursuant to Hon. Lady Justice Cherere's findings in Meru High Courts in the first impeachment. That the mover ought to notify personally the intended respondent, who is the Governor.

Equally, at page 56 of the same document, you will find a letter from the County Assembly of Meru from the office of the Speaker. The letter is dated 31st July, 2024. The same is addressed to Her Excellency the Governor, Hon. Kawira Mwangaza.

It is an invitation to respond and appear before the County Assembly for the removal from office of the Governor of Meru County pursuant to the Motion. The same was prepared by Ayub Bundi, who is the Speaker and it was duly served upon the Governor and she acknowledged receipt, by stamping on the said document on 31st July, 2024 at 4.16 p.m.

The same was supported by an affidavit of service. The first one is dated 31st July and it is on page 59 of the same bundles. It is deponed by one Benson Kinyua Ngunjiri who is a duly licensed process service and an advocate of the High Court of Kenya. At paragraphs 2, 3, 4 and 5, he depones how he effected service at the office of the Governor.

Of most interest is paragraph two where he says-

“That on 31st July, I was instructed to serve Her Excellency the Governor of Meru County, Hon. Kawira Mwangaza with the invitation to respond and appear before the County Assembly *vide* a letter dated 31st July, 2024, referenced as MCA/GC/1/24, together with the hard copies of the late Notice of Motion by Hon. Zipporah Kinya, seeking the removal from the office of Governor of Meru County by way of impeachment.”

That letter referred therein is the letter you will find at page 56 of the said documents. That is what Benson deponed to have served.

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Mr. Speaker, Sir, at page 64 of the said document, you will find another affidavit of service deposed by Joel Maitethia M'Rukunga. He deposes at paragraph two, that on 31st July, I received a copy of the Notice of Motion for the removal from office of the Governor of Meru County by impeachment from Hon. Zipporah Kinya and the deputy leader of the majority party, County Assembly of Meru, with instructions to effect service upon Her Excellency, the governor of Meru County, Hon. Kawira Mwangaza and the Speaker of the County Assembly.

He says that on the same day, he proceeded at around 4.17 p.m. to the office of the governor-

"I served the aforementioned document to Fridah, the secretary to the Governor, Meru County by giving the copy to her and requiring her signature at my principal copy."

This is clear evidence that there was effective service. The question is whether there was response and whether there was attendance from the Governor. She will be telling us in our cross-examination whether she did attend.

That answers the first and the second issue on whether there was communication. Whether there was evidence that was tabled to challenge the notice, there was no correspondence or pleadings that were filed before our clients, challenging or responding to the invitation and challenging the notice of impeachment. We are not aware of one.

Mr. Speaker, Sir, the impeachment notice at the County Assembly went uncontroverted and unchallenged. As to the question of the Auditor-General's report and on whether it can form the basis of this impeachment, I will draw your attention to Article 10 of the Constitution because that is a legal question.

It lays down the national values and principles of governance, which Article 10 provides and binds all state organs, state and public officers and all persons whenever any of them applies in the presence of the Constitution. In this case, we are applying the Constitution and any other related law.

One of the principles is that of accountability, transparency, the rule of the law and good governance. The Article establishing the office of the Auditor-General, it comes to scrutinize and lay effect to the implementation of Article 10, whether there was accountability, transparency and whether the rule of law was followed in public expenditure. This must be read together with Article 201 of the Constitution that provides and lays down the principles on how public resources must be expended.

One of the overriding principles is that there must be prudent utilization of the resources and secondly, when reading the Constitution, we must read it as a whole with any Article reading life to the subsequent one. This means that if an office has been established by the Constitution, such as the one for the OAG, it must be seen as a complimenting office, that compliments the principles laid down under Article 10, pursuing the doctrine of transparency, accountability, of the observation of the rule of the law and the doctrine of good governance.

Mr. Speaker, Sir, when an issue has been raised---

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

The Speaker (Hon. Kingi): Sen. Crystal, allow the counsel to conclude and then you can make your intervention. What is your issue, Sen. Crystal Asige?

Sen. Crystal Asige: Thank you, Mr. Speaker, Sir, for allowing me to make this quick comment. You have given directions that we only have 30 minutes for this clarification session and I believe that we are moving into an area where the counsel is being allowed to re-prosecute his case by giving lengthy responses while the rest of us have clarifications we still seek. If it pleases the House and yourself, could the counsel be guided to just make his responses brief, so that we get more clarifications and not re-prosecute his case.

The Speaker (Hon. Kingi): Counsel for the County Assembly, I was wondering what kind of question you were responding to. The question by the Senator for Nandi has no relationship with the lengthy statement you are giving. Be precise and go straight to what you have been asked to clarify. I am giving you two minutes to conclude that.

Mr. Ndegwa Njiru: Mr. Speaker, Sir, I am well guided. The answer is yes, the OAG reports can form a basis for impeachment because at the time of generating that report, Article 229 requires the County Assembly to debate.

After debating, that does not mean that it waives the County's responsibility of oversight. It can form a basis for impeachment because an action must ensue or follow from the findings of the county or the reports. It is not just a report that has to be done and be placed somewhere to gather dust.

The Speaker (Hon. Kingi): The Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. At a point, we have to move away from this stone age practice. I hope in the next impeachment process, we will go digital. This is unfair to the climate. Look at every Senator with their bundle of documents.

Mine is a simple clarification. Part of the documents I have spent time reading are from the public participation because I wanted to know what the people of Meru are saying as this is about the people of Meru. I will refer the Counsel for the Assembly to their document Vol.V, the huge voluminous document before us. The reason I did this was because I wanted to understand. I will be satisfied if the counsel points to me any of the documents they have presented because it will help me form a correct opinion.

Listening to the counsel yesterday in his opening remarks, he alluded to, and this has been captured as part of the documents they presented on pages 11, 13 and 34, on views of members of the public supporting notice of the proposed Motion to impeach the governor of the county government of Meru, Hon. Kawira Mwangaza.

There is one main issue that keeps coming up, which I also heard the counsel speak about. Hon. Zipporah, the one who moved the impeachment Motion, also referred to it yesterday. They said that the Governor is allegedly behind the disunity problem especially amongst leaders of Meru and that efforts, especially by Meru professionals, *Njuri Ncheke*, and the clergy, seem not to bear any fruits.

That does not concern me much, because we disagree as leaders due to many reasons. However, as an exit to this problem, last time we made our conversation, we had requested---

Mr. Speaker, Sir, allow me to finish the last point.

The Speaker (Hon. Kingi): Senate Majority Leader, you have less than two minutes to seek your clarification.

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The Senate Majority Leader (Sen. Cheruiyot): In Paragraph 11, the Governor is alleged to have frustrated the process of reconciliation between her, the deputy governor, and MCAs. This featured prominently in their case and submissions.

Mr. Speaker, Sir, is there any document they can point out to us to confirm that, indeed, there have been efforts to do this, but the Governor specifically frustrated them? I will be satisfied even if I was just told to go to that document and see.

I thank you.

The Speaker (Hon. Kingi): Counsel for the County Assembly, you have one minute.

Mr. Ndegwa Njiru: Senate Majority Leader, the voluminous document that you see contains the report and the analysis that came or accrued from the processes of public participation.

We have voluminous evidence where MCAs said that there have not been fruitful results from the processes initiated for reconciliation. Some of them are yet to give us their reports. For example, the *Njuri Ncheke* that you referred to is yet to give its findings on the current existing status and whether there has been reconciliation or not.

In any case, public participation and the views of the public are quite different from the views of perhaps those who may want to reconcile. Reconciliation efforts may also be evidenced by the fact that I have noted in the Governor's response that individuals have even moved to His Excellency the President asking him to dissolve Meru County Government. That is the indifference or conundrum on whether it should be dissolved or we should deal with the problem at hand.

I am most obliged.

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

Sen. Olekina: Mr. Speaker, Sir, I would like to seek some clarification from the counsel for the Assembly. Yesterday, when you were leading one of your witnesses, you alleged the fact that the governor had made a statement and said that witness was given Kshs86 million. Could you clarify the following issues?

First, I would like to know whether there was only one Pay bill number or there were others. Refer to page 168 of Volume 1B. There is an account number 075560442, which is also for Pay bill No.247247, which I believe is for Equity Bank.

Do you have that statement here? There was also a statement on the same page 168 that said that those donating from abroad should send to 0720103913. Do we have a statement to that effect?

Finally, on the issue of the Auditor-General report, Article 229(8) of the Constitution states as follows-

“Within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action.”

Maybe I missed it. Do you have any report where the County Assembly of Meru debated on the Auditor-General's findings and took appropriate action, so that we can look into it, or did you just take the Auditor-General's report and submit it as part of your case?

The Speaker (Hon. Kingi): Counsel for the County Assembly, you have one minute.

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Mr. Ndegwa Njiru: Mr. Speaker, Sir, the witness who testified, one Hyrene Kawira, who is the widow to the deceased, confirmed before the Assembly that there only existed one account.

As to whether the money that was being sent from abroad was ever uploaded to the said account, in her examination-in-chief, she led the House to the evidence that Kshs115,000 that had been generated found itself to the Pay bill.

You will find that on page 301 of volume two, where all the money from that particular number, which was registered in the name of Judith, was eventually credited to the said account, and the credit is reflected as Kshs115,000.

The number that was responsible for collecting the Kshs115,000 appears in the Governor's bundles of documents, labelled as Volume 1B on page 168 and marked as KM20. Those in the diaspora sent to 0720103913, which is registered in the name of Judith. That is the number reflected in our bundle of document statements on page 301. So, all the money had one centralized mechanism of management and only one Pay bill. We will be asking her to give evidence as to the whereabouts of the other millions when her time comes.

Regarding the question on whether the Auditor-General's report has been debated, the same was generated on 20th June, 2024, and the Motion before the Assembly is dated 31st July. Debate is yet to take effect at the County Assembly. The question is; was there a transgression that was notified or noticed by a constitutional organ, and if yes, how do we proceed to deal with that legal transgression?

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

Sen. Okiya Omtatah: Mr. Speaker, Sir, I rise on the question of public participation. I have gone through the bundle, but I cannot see any evidence that feedback was provided to the people who gave their views on either why they accepted or rejected. This is a standard that has been set by the courts, that there must be feedback to those who present their views. It is not like a census or something.

Could the learned counsel point to me any part of the evidence they have where they complied with that standard on public participation, so that what they have submitted can be admissible as having met the threshold that has been set by the courts, especially in Civil Appeal Number E003 of 2023? That was the National Assembly versus Okiya Omtatah Okoiti and 52 others.

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

Mr. Ndegwa Njiru: Mr. Speaker, Sir, I must thank the Senator for Busia for the good work in contributing to the jurisprudence of this country, especially since the question of public participation is still a moot area, with a lot of jurisprudences emerging; a challenge that also faces perhaps most Government organizations on how to initiate it and how to get feedback.

I must admit that this is a recent ruling and judgement of the Court of Appeal, which is barely a month old. Therefore, it was delivered on the 31st July, 2024 when the Motion was already in the County Assembly. I believe that most of the organizations, including this Senate, is yet to adjust itself to meet the legal threshold as laid out by the Court of Appeal.

Previously---

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The Speaker (Hon. Kingi): Counsel you have answered. Sen. Crystal Sige proceed.

Sen. Crystal Asige: Thank you, Mr. Speaker, Sir. Yesterday, the Counsel, through his witness-in-chief, played some videos. My questions are as follows. There was one video that depicted a scene said to be the home of the witness-in-chief whereby somebody was pouring petrol and then torched a fence on that property. Who took that video?

Is there any evidence showing the owner of the device that took that video because in the evidence, the witness-in-chief, said that the first person to have known that there was a fire on the property was the watchman who came running and then told others? Who took that video at that exact moment when the fence was being torched?

Second, there were also two other videos; one, where the witness-in-chief was doing an interview and spoke about grievances from farmers about dead cows. The second was a news report talking about lack of service delivery in a hospital where a lady was forced to give birth outside of a hospital.

Mr. Speaker, Sir, I wanted to find out if there are any supporting affidavits or certified reports of the same two scenarios, which would give credence to the allegation of lack of service delivery in our batch of documentation.

Lastly, on page 168, there is a number of an account. I wanted to know whose it belongs to. It is No.075560442. Can you please clarify who that belongs to? I thank you.

The Speaker (Hon. Kingi): County Assembly?

Mr. Njiru Ndegwa: Thank you, Mr. Speaker, Sir. The video that was played was captured by the Closed-Circuit Television (CCTV) footage at 3.48 a.m. It is evidence from the video supported by the affidavit of the mover and the matter is still subject of these proceedings.

The video on the evidence on the dead cows and the lack of services at the Meru County Government is supported by the evidence and the affidavit of the mover annexed hereto. Evidence has been led in chief in that respect. We have a certificate of electronic evidence produced in respect to that particular footage.

Account number, 0755560442 is the number of the witness PW2 who happens to be the widow to the slain blogger, Mr. Sniper. That is part and parcel of the number that forms the basis of the account.

The Speaker (Hon. Kingi): Thank you. Hon. Senators, we shall now move to hear the case for the governor. Counsel for the governor, you have the floor. You have four hours to present your case. However, those four hours do not include the time that the Hon. Senators will take to seek for clarifications.

PRESENTATION OF THE CASE OF THE MERU COUNTY GOVERNOR

Mr. Elisha Ongoya: Thank you, Mr. Speaker, Sir, and distinguished Senators. I stand here to seek your direction on time management, so that we begin on a clear understanding.

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I make this request because of what transpired here yesterday when the County Assembly made their case. They spent three hours and ten minutes on the evidence of their first witness, essentially leaving the official time of four hours with a balance of only 50 minutes.

The net effect is that the Governor's team was completely disadvantaged throughout yesterday and I am certain that the Senators who were here last night could see how we struggled to wriggle within the limited time. We therefore beseech that you give directions on time management. We propose as follows-

We ended up using six hours yesterday for the Assembly's witnesses. Out of these six hours, two were given to the Governor's team with no opportunity for extension and four hours and ten minutes were given to the Assembly team. It therefore follows that the Assembly got two-thirds of the time yesterday and the Governor's team got one-third. We beseech you that in tandem with the principle of equality of arms, the Governor's team gets two-thirds of their time today and the Assembly team gets one-third of their time today in advance of commencement of the proceedings, so that every party decides how they want to use or play about with their time. When they run out of time, it is their own making and they take the consequences.

Mr. Speaker, Sir, if that direction finds favour with you, the four hours you have given us today translate to 240 minutes, two-thirds of which is 160 minutes. We urge that from the very outset, you direct that the Governor's team has their 160 minutes, which they will decide how to use and the Assembly team has the balance which translates mathematically to one-third of the four hours that you have given us today. They will decide how to use it.

If any party wastes time, they are singularly wasting their own and not the adverse party's time. I make this plea, precisely to underpin the principle of equality of arms because the HANSARD of this House will bear me out. The Assembly got two-thirds of yesterday's time, and the Governor's side got one-third.

Mr. Speaker, Sir, once you give that direction, I will then give you how we intend to distribute our time and how we shall go about calling our witnesses.

I humbly submit.

The Speaker (Hon. Kingi): Now, counsel for the County Assembly, we need not debate on issues of time. You know exactly what happened yesterday. You were given four hours. You took three hours and ten minutes.

Mr. Njiru Ndegwa: Mr. Speaker, Sir, I am of a different position, but I also wish your guidance so that you can just---

The Speaker (Hon. Kingi): No, time is squarely in my hands. I will just give direction---

Mr. Njiru Ndegwa: That is correct.

The Speaker (Hon. Kingi): Kindly take your seat.

Mr. Njiru Ndegwa: Mr. Speaker, Sir, in yesterday's proceedings, Ms. Linda Gakii Kiome, who was a legal advisor alluded to a fact of forgery of a document that was purported to have been issued by her.

I am making an application under Section 65 of the Evidence Act that for purposes of establishing the truthfulness or lack of it, of that claim which is grievous, that

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this Senate does order the bearer of this document, Governor Kawira, to produce the original copy of the same before the close of business, so that we can have a look at it.

The Speaker (Hon. Kingi): Counsel for the County Assembly, let us allow the Governor to present her case.

Mr. Njiru Ndegwa: Most obliged.

The Speaker (Hon. Kingi): Then we will be able to handle each issue at the time it is being raised.

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

The Speaker (Hon. Kingi): Counsel for the governor, you may proceed. Indeed, the County Assembly will have one-third of the time allocated, just like it happened yesterday.

Proceed.

Mr. Elisha Ongoya: Thank you, Mr. Speaker, Sir. Therefore, I will be ceding ground to my colleague, Mr. Robert Mutembei, to put on the stand our first witness, Mr. Ibrahim Mutwiri Kirimi. I urge that the said witness be presented on the stand.

Mr. Robert Mutembei: Mr. Speaker, Sir, as we wait for the witness to be brought in, for the record, my name is Robert Mutembei. I intend to take about 20 minutes with this witness.

The Speaker (Hon. Kingi): Where is the witness? Serjeant-at-Arms, can you usher in the witness, please?

(The Witness for the Meru County Governor (Mr. Ibrahim Mutwiri Kirimi) was ushered into the Chamber)

Secretariat, may you administer the oath?

(The Witness for Meru County Governor (Mr. Ibrahim Mutwiri Kirimi) took the Oath)

Mr. Robert Mutembei: Mr. Ibrahim, could you kindly introduce yourself to the House?

Mr. Ibrahim Mutwiri Kirimi: My name is Ibrahim Mutwiri Kirimi, the County Executive Committee Member (CECM) for Finance, Economic Planning and ICT, Meru county government.

Mr. Robert Mutembei: Mr. Ibrahim, kindly confirm that you wrote an affidavit that appears in support of the response of the governor and that, that is your signature on the affidavit.

Mr. Ibrahim Mutwiri Kirimi: Yes, I do confirm that this is my affidavit signed by me in support of the Governor of Meru County Government.

Mr. Robert Mutembei: Do you wish to rely on this affidavit as your evidence before this House?

Mr. Ibrahim Mutwiri Kirimi: Yes, I do.

Mr. Robert Mutembei: The affidavit was signed on 16th August, 2024. It appears from pages 30 to 35 of volume one of the Governor's response.

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Mr. Ibrahim, let us just go straight to what has brought you here in light of the time that we have. Have you read the impeachment Motion that has been brought against the governor?

Mr. Ibrahim Mutwiri Kirimi: Yes, I have.

Mr. Robert Mutembei: Specifically, have you read Count No.3 which largely talks about financial issues, most of which have been the subject of discussion yesterday and today morning?

Mr. Ibrahim Mutwiri Kirimi: Yes, I have and particularly, on manual payroll and alleged irregular payment of allowances to doctors.

Mr. Robert Mutembei: Very well. Let us go to the Motion, Count No.3. Look at the grounds under that count. The first one reads: Irregular payment of emergency call allowances to doctors and medical officers using the wrong rates contrary to Sections 45 and 46 of the Anti-Corruption and Economic Crimes Act and others mentioned there.

The second one reads: Use of manual payroll contrary to Section 6(7)(6) of the County Financial Accounting Reporting Manual.

Do you recall where else the wording of those grounds has been picked from?

Mr. Ibrahim Mutwiri Kirimi: Yes, indeed, I can report that I have interacted with similar wordings. They have been picked directly from the report of Auditor-General for the Meru County Executive for the Financial Year 2022/2023.

Mr. Robert Mutembei: The same report is also produced in the County Assembly Exhibit of Documents on Page 347. So, are you saying that these very grounds that form part of Count No.3 have been plucked from the audit report in the same manner of wording?

Mr. Ibrahim Mutwiri Kirimi: Yes, the Auditor-General's Report for the 2022/2023 Financial Year.

Mr. Robert Mutembei: I want you to demonstrate that this audit report is not unique and does not raise unique issues. So, people would be wondering what is so wrong with this audit report. Are there peculiar issues in this report?

I want us to go to that report and particularly read for us the opinion of the Auditor-General. This report at page 333 of the Assembly documents, volume two. It starts at page 333 of volume two; Exhibit in Support of the Impeachment Motion. That is one of the major documents that has been submitted in support of the Impeachment Motion.

Bwana Ibrahim, I want you to go to page 341 and particularly read paragraph 2 that appears at the top of that page.

Mr. Ibrahim Mutwiri Kirimi: Yes, I will read. Opinion of the Auditor-General-

“In my opinion, except for the effect of the matters described on the basis of the qualified opinion, section of my report, the financial statements present fairly in all material respects, the financial position of Meru County Executive as at 30th June, 2023 and of its financial performance and its cash flows for the year then ended in accordance with International Public Sector Accounting Standards (IPSAS)”.

That is, cash basis and compliance with the Public Finance Management Act, 2012 and the County Government Act, 2012.

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Mr. Robert Mutembei: Okay. If you remember the wording of the impeachment Motion, you recall that the Motion accuses the Governor of violating those very laws that the Auditor-General confirms that the County Executive has not complied with. Is that true?

Mr. Ibrahim Mutwiri Kirimi: That is very true.

Mr. Robert Mutembei: Perhaps you could enlighten this House on the nature of opinions that would ordinarily be rendered pursuant to an audit report.

Mr. Ibrahim Mutwiri Kirimi: Thank you, Mr. Speaker, Sir and Hon. Senators. There are a number of audit opinions that an auditor may give, given the kind of financial statement he or she has come across.

One, there is unqualified report. Unqualified report means that the documents that have been provided and the financial statements do agree.

The next one is qualified report, which means that the documentation that has been provided and the financial statements do agree, however, there are some minor items or matters within the report. Then there is adverse report. Adverse report means there are quite a number of issues that do not agree in the financial statements and the documentation that has been provided. Then there is a disclaimer of opinion.

Mr. Robert Mutembei: Very well. Where does the opinion of the county executive fall?

Mr. Ibrahim Mutwiri Kirimi: It falls under qualified report and I will explain. If you check the green book by the Auditor-General for the year 2023, you will find that out of the 47 county executives in Kenya, there is no single county executive that has an unqualified report. However, 41 county executives have qualified reports and six have adverse opinions. In our case, Meru County Executive has qualified audit opinion or audit report.

Mr. Robert Mutembei: Do you confirm that Meru County is not one of those six which have adverse opinions?

Mr. Ibrahim Mutwiri Kirimi: It is not among them.

Mr. Robert Mutembei: Have you had a chance to also review audit reports of the County Assembly of Meru for the current year and the previous years? Do they form the same opinion?

Mr. Ibrahim Mutwiri Kirimi: Yes, I have. If you also check the green book for the county assemblies, the County Assembly of Meru is within the qualifying reports. There are three county assemblies in Kenya that have unqualified reports. However, the County Assembly of Meru has qualified reports like the County Executive of Meru.

Mr. Robert Mutembei: Ibrahim, what you are telling this House is that there is nothing unique about the report of the County Executive of Meru.

Mr. Ibrahim Mutwiri Kirimi: There is nothing unique. A qualified report is where the documentation and the financial statements are agreeing.

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

[The Temporary Speaker (Sen. Veronica Maina) in the Chair]

Mr. Robert Mutembei: Okay, very well. I want you to tell us what would have been the recommendation of the Auditor-General if there was something so materially in breach of the law.

Mr. Ibrahim Mutwiri Kirimi: Thank you, Madam Temporary Speaker and hon. Senators. If there are particular substantive issues within financial statements, the Auditor-General may recommend for a forensic audit or a special audit.

If a county assembly committee or a Senate committee has considered those reports, an Auditor-General may recommend for surcharge where there is a loss of money. They may also recommend an investigative body to take up the matter or reprimand a certain officer for any omission or commission within the financial statements.

Mr. Robert Mutembei: That satisfies it. So, what you are saying is contained in the Public Audit Act. I want you to confirm that that is what you are saying is at Section 53 and Section 54. Section 37 also talks about forensic audit. Confirm that what you are explaining is in the law.

Mr. Ibrahim Mutwiri Kirimi: That is very true, counsel. I confirm.

Mr. Robert Mutembei: I want you to confirm by looking at the Public Audit Act. What does Section 54 say? We can start with Section 53.

Mr. Ibrahim Mutwiri Kirimi: Thank you, Madam Temporary Speaker and hon. Senators.

“53. Implementation of reports by an accounting officer-

(1) The relevant accounting officer of a State organ or public entity shall within three months after Parliament has considered and made recommendations on the audit report—

(a) take the relevant steps to implement the recommendations of parliament in the report of the Auditor-General; or

(b) give explanations in writing to the Parliament on why the report has not been acted upon.”

Mr. Robert Mutembei: Just stop there. Counsel for the Assembly stated when he was answering the questions before the Senators; he said: “Action must ensue from the audit report.”

How does action arise from the audit report? Is that what you read at Section 53?

Mr. Ibrahim Mutwiri Kirimi: Yes. These actions ensue from an audit report. I want to explain to hon. Senators that an audit report by itself is not a final report. That is why the County Assembly or Parliament must consider the recommendations or the opinion. In fact, the audit report is an opinion of the Auditor-General. Why is it an opinion? It is an opinion because when the auditor was auditing the books, the time was limited. In fact, the audit is just a sampling.

It is not forensic or a complete audit. There must be an event after the audit report for a complete investigation of matters where a number of them are dropped and other matters are taken up by other institutions.

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Mr. Robert Mutembei: What you are saying is that the submission of the audit report in itself is not the end of the audit process?

Mr. Ibrahim Mutwiri Kirimi: Indeed, it is not and that is what this provision is putting.

Mr. Robert Mutembei: Have you ever been summoned by the County Assembly to shed light on the audit report?

Mr. Ibrahim Mutwiri Kirimi: For this particular audit report for the Financial Year 2022/2023, I have not.

Mr. Robert Mutembei: Okay, very well. Let us go to the issues that have been raised in those two counts we have made reference to. There is the issue of the manual payroll. Why was there a manual payroll used for that period? Maybe you could explain very briefly what leads to the use of a manual payroll?

Mr. Ibrahim Mutwiri Kirimi: Madam Temporary Speaker and hon. Senators, a manual payroll means an individual has been paid outside the automated system, the Integrated Payroll and Personnel Database (IPPD). This happens when an individual has been recruited before one is formally assigned the IPPD number, which does not end and finish with the County Executive. Before he or she gets that number---

Mr. Robert Mutembei: Just to cut you short. Who gives the IPPD numbers?

Mr. Ibrahim Mutwiri Kirimi: It is given by the Directorate of Personnel Management in the Ministry of Public Service in the national Government.

Mr. Robert Mutembei: Have you produced evidence to show that the County Executive applied for these numbers and how long it takes?

Mr. Ibrahim Mutwiri Kirimi: In fact, in the evidence that I have provided---

Mr. Robert Mutembei: Hon. Senators, the evidence is in Volume 1B of the Governor's bundle of documents from pages 183 to 194.

Mr. Mutwiri, what do the documents contained in those pages /show in summary? Very briefly, what do those documents reveal?

Mr. Ibrahim Mutwiri Kirimi: Let me begin with page 183, it is KM28. It shows a request for personal numbers by the Department of Public Service of the County Executive of Meru, which was done on 11th December, 2023.

Mr. Robert Mutembei: When was this response received?

Mr. Ibrahim Mutwiri Kirimi: Madam Temporary Speaker, Page 186, KM29, indicates that this response came back on 19th March, 2024.

Mr. Robert Mutembei: How many months are those? Was it within a very short time?

Mr. Ibrahim Mutwiri Kirimi: No, it was not, Counsel.

Mr. Robert Mutembei: Essentially, are you saying that it takes time?

Mr. Ibrahim Mutwiri Kirimi: Yes, it takes time. I would like to explain a bit further; that these are the newly recruited officers. For the officers that are coming from other state agencies, it may take a year or even longer for them to release that data, if, for instance, that officer had a mortgage with the other institution.

Mr. Robert Mutembei: Okay. That supports your evidence on the delay. Have you addressed this issue elsewhere?

Mr. Ibrahim Mutwiri Kirimi: Yes, this matter was also in the audit report for the Financial Year 2021/2022, where the County Executive appeared before the Senate Committee on County Public Accounts (CPAC).

Mr. Robert Mutembei: Did you write a response to the Senate on that issue?

Mr. Ibrahim Mutwiri Kirimi: Yes, I wrote and explained myself.

Mr. Robert Mutembei: Is it the response that appears on page 180 to 182 of volume 1B of the Governor's documents? Is that the response you are talking about?

Mr. Ibrahim Mutwiri Kirimi: That is true. It indicates---

Mr. Robert Mutembei: We can leave the details, but I just wanted you to confirm that you were actually invited by the Senate Committee on County Public Accounts.

Mr. Ibrahim Mutwiri Kirimi: Absolutely.

Mr. Robert Mutembei: What is the current status? Is that an issue in Meru County, as we speak?

Mr. Ibrahim Mutwiri Kirimi: From the information and evidence, this matter has since been resolved on the 1st of April, 2024.

Mr. Robert Mutembei: Okay. That means that this issue was resolved even before the impeachment Motion that is before this House?

Mr. Ibrahim Mutwiri Kirimi: Absolutely.

Mr. Robert Mutembei: To the best of your knowledge, was the County Assembly informed of this resolution of the manual payroll issue?

Mr. Ibrahim Mutwiri Kirimi: It was not because this matter is appearing in the audit report for the 2022/2023 Financial Year. If the Public Accounts Committee for the County Assembly had invited the County Executive to address these matters in the audit report, they would have been satisfied.

Mr. Robert Mutembei: Do you mean to say that this issue was resolved and it is the issue that the Assembly wants the Governor impeached on?

Mr. Ibrahim Mutwiri Kirimi: Yes.

Mr. Robert Mutembei: Have you seen the issue elsewhere in the County Assembly?

Mr. Ibrahim Mutwiri Kirimi: This is not a matter unique to only the County Executive of Meru. It is a matter that also appeared in the 2021/2022 Financial Year. If you peruse that audit report, you will find that the County Assembly of Meru had a similar case.

Mr. Robert Mutembei: Okay. That appears on pages 247 to 326 of Volume 1B of the Governor's documents.

Now, let us go to the issue of the doctor's pay. The Governor has been accused of paying doctor's allowances illegally. As you said earlier, that issue has been picked from the same audit report. What was the basis of making this payment?

Mr. Ibrahim Mutwiri Kirimi: Hon. Madam Temporary Speaker, and Members of the Senate, this matter arose from a return-to-work formula, dated 18th April, 2017. There are correspondences that were made by the Minister of Health concerning the matter and what they resolved and agreed on. The same is copied to the Council of Governors (CoG).

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Mr. Robert Mutembei: I am sorry to cut you short, but is the correspondence that you are talking about the one found on pages 327 to 330 of volume 1B of the Governor's documents? Is that the correspondence confirming that the County Executive of Meru was actually within the law in making that payment?

Mr. Ibrahim Mutwiri Kirimi: Yes.

Mr. Robert Mutembei: So, are those the documents that you wish to rely on to confirm that payment?

Mr. Ibrahim Mutwiri Kirimi: Yes.

Mr. Robert Mutembei: That is on pages 327 to 330 of volume 1B of the Governor's documents.

Before we move on from there, in reference to this issue that you are saying relates to payment of doctors relating to the Collective Bargaining Agreement (CBA) of 2017, are you familiar with the recent developments relating to doctors' strikes and the implementation of this CBA?

Mr. Ibrahim Mutwiri Kirimi: Let me give some explanation. It is a practice that a CBA runs for four years. However, if there is no other subsequent CBA, the CBA runs until another CBA is arrived at. I am aware that in April, there was an agitation for improved remuneration to the medical field and there was a return-to-work formula and that CBA is the one that I can quote.

Mr. Robert Mutembei: Are you talking about the strike that we saw recently?

Mr. Ibrahim Mutwiri Kirimi: Yes.

Mr. Robert Mutembei: The Assembly has also produced a video of doctors striking on basis of that implementation of the CBA. Are you referring to that strike?

Mr. Ibrahim Mutwiri Kirimi: Yes, the one that was agreed in April, 2024.

Mr. Robert Mutembei: Do you find it in good faith that these two issues are being brought before this House to impeach the Governor?

Mr. Ibrahim Mutwiri Kirimi: I know the Human Resources (HR) practice is, once a benefit has been given or confirmed, you cannot go back and retract that benefit unless it is done the same way that communication was done or the Salaries and Remuneration Commission (SRC), which is a body that is tasked with the remunerations, also issues a notice. So, in this case, what we would have seen is a similar communication the way it was done to retract those benefits to the doctors.

Mr. Robert Mutembei: Let us go to the last issue. You have also mentioned in your affidavit that there were frustrations that the Executive faced in coming up with the budget for 2024/2025 Financial Year. So, would you tell us, briefly, why you wrote the letter that appears on page 344 of volume 1B of the Governor's documents, to the Controller of Budget?

Mr. Ibrahim Mutwiri Kirimi: During our budgeting process, we made a County Fiscal Strategy Paper (CFSP) as touched by the Public Finance Management (PFM) Act, 2012. We submitted to the County Assembly, which then went beyond the timelines that are set by the PFM Act. It went beyond other key considerations that are set by the legal provisions. So, that is when I wrote to the Controller of Budget, seeking advice on those issues.

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Mr. Robert Mutembei: The documents you have relied upon are from pages 336 to 344. Has the County Assembly implemented the memorandum that was arrived at between the Executive, the Assembly and the Controller of Budget?

Mr. Ibrahim Mutwiri Kirimi: It is important that I give some information to this hon. House. What happened---

Mr. Robert Mutembei: For the sake of time, I just want you to confirm very briefly, explain what happened after you came up with a memorandum.

Mr. Ibrahim Mutwiri Kirimi: Okay. After coming up with a memorandum that was negotiated between the County Assembly and the County Executive, we made a budget estimate because that memorandum was supposed to inform that budget estimate.

The budget estimate was submitted to the County Assembly, which they approved as part of the memorandum. However, after the approval of the budget estimates, I was supposed to draft an Appropriations Act to appropriate that budget estimates, which I submitted to the County Assembly.

Mr. Robert Mutembei: So, after you submitted, did the Assembly change that Appropriations Bill?

Mr. Ibrahim Mutwiri Kirimi: In fact, what the County Assembly did, they went against the memorandum and against the budget estimates that they had already adopted or approved.

Mr. Robert Mutembei: So, are the changes they made contained in volume 1B, pages 409 to 413 of the Governor's response? Just briefly mention whether those are the changes that you are talking about.

Mr. Ibrahim Mutwiri Kirimi: In fact, these are the changes, and this you will see, it is an Order Paper, because I also wrote again to the Controller of Budget (CoB), when I realized there is a business appearing in the Order Paper of the County Assembly, proposing to make amendments against the proposed memorandum and against the budget estimates that the County Assembly had already adopted.

Mr. Robert Mutembei: Okay, very well. So, just before we invite, before we let you off for the examination-in-chief, there were several comments made yesterday about service delivery of the Governor. Can you just tell us briefly, how is the Governor's performance in terms of financial performance relating to development in the county?

Mr. Ibrahim Mutwiri Kirimi: Madam Temporary Speaker and Hon. Members of the Senate, the performance of a Governor can only be informed by how the Governor has managed the budget, through the report that has been produced by the Controller of Budget, through the absorption rates. Currently, the Meru County Government, this Financial Year, we have achieved 79 per cent of performance in terms of budget absorption.

Then, on financial management, the only person who can measure the financial performance of a Governor is the report of the Auditor-General. The Auditor-General's report that we have for FY2022/2023, confirms that the Governor transparently and prudently utilized the finances of the funds of Meru County.

Revenue performance is another indicator of performance. The only report that we can rely on revenue performance is a report from the Commission on Revenue Allocation (CRA). We have not seen any adverse report from the CRA. We have not seen

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any adverse report from the Controller of Budget. We have also not received any adverse report. What we have is a qualifying report from the Auditor-General.

Mr. Robert Mutembei: Okay, that would be all for this witness. Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): Is that all for the witness?

Yes, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): So, we are proceeding on to cross-examination.

Mr. Boniface Mwereru Mawira: Yes, Madam Temporary Speaker. My name is Boniface Mawira. I will not take more than 10 minutes with this witness.

The Temporary Speaker (Sen. Veronica Maina): You may proceed.

Mr. Boniface Mwereru Mawira: Mr. Ibrahim, I want to take you straight to your affidavit, the one that you have filed and specifically at Paragraph 26. Are you there?

Mr. Ibrahim Mutwiri Kirimi: Yes, Counsel, I am.

Mr. Boniface Mwereru Mawira: You say it is notable that the County Assembly has also faced a similar problem. This is the issue of manual payroll, correct?

Mr. Ibrahim Mutwiri Kirimi: True.

Mr. Boniface Mwereru Mawira: For which year? Which year from the witness statement?

The Temporary Speaker (Sen. Veronica Maina): Which volume are you relying on?

Mr. Boniface Mwereru Mawira: Madam Temporary Speaker, it is volume one of the Governor's Response.

The Temporary Speaker (Sen. Veronica Maina): Is it Vol.1B or just 1?

Mr. Boniface Mwereru Mawira: It is volume one of the Governor's Response. It is a witness statement at page 33.

The Temporary Speaker (Sen. Veronica Maina): Okay, proceed.

Mr. Boniface Mwereru Mawira: Which years are referenced in that statement?

Mr. Ibrahim Mutwiri Kirimi: It is FY2020/2021 and FY2021/2022.

Mr. Boniface Mwereru Mawira: So, was the Mover of the Impeachment Motion a Member of the County Assembly then?

Mr. Ibrahim Mutwiri Kirimi: She was not, but the purpose is to show---

Mr. Boniface Mwereru Mawira: She was not, correct?

Mr. Ibrahim Mutwiri Kirimi: The purpose is to show---

Mr. Boniface Mwereru Mawira: It is a yes-no question.

Mr. Ibrahim Mutwiri Kirimi: No.

Mr. Boniface Mwereru Mawira: She was not a Member of the County Assembly.

Mr. Ibrahim Mutwiri Kirimi: She was not.

Mr. Boniface Mwereru Mawira: In fact, the current Speaker of the County Assembly, was he the Speaker of the County Assembly then?

Mr. Ibrahim Mutwiri Kirimi: She was not, and the same case, from 2017 we sent a manual payroll and the governor was not in office then.

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Mr. Boniface Mwereru Mawira: Mr. witness just focus on the question. The governor was not in office then.

Mr. Ibrahim Mutwiri Kirimi: Yes.

Mr. Boniface Mwereru Mawira: This relates to the County Assembly, correct?

Mr. Ibrahim Mutwiri Kirimi: It is.

The Temporary Speaker (Sen. Veronica Miana): Counsel, allow the witness to answer the questions.

Mr. Boniface Mwereru Mawira: Madam Temporary Speaker, I will seek your guidance because this is cross-examination, and I put a “Yes” or “No” question to him.

The Temporary Speaker (Sen. Veronica Miana): Let him respond.

Mr. Boniface Mwereru Mawira: He will have an opportunity during the examination to clarify anything that might arise out of cross-examination.

The Temporary Speaker (Sen. Veronica Miana): Proceed to respond to that question.

Mr. Ibrahim Mutwiri Kirimi: Okay. Counsel, the information relating here is just a background to show that this matter is not only unique to the county executive---

Mr. Boniface Mwereru Mawira: I appreciate that, Mr. Witness, but my question is, was this before the General Election of 2022, correct?

Mr. Ibrahim Mutwiri Kirimi: Correct.

Mr. Boniface Mwereru Mawira: The evidence you adduced, that is your report, you will turn with me to volume 11B, the report therein also relates to FY2021/2022 for the county assembly?

Mr. Ibrahim Mutwiri Kirimi: Yes.

Mr. Boniface Mwereru Mawira: Yeah, for the two years before the life of the current assembly.

Mr. Ibrahim Mutwiri Kirimi: That is correct.

Mr. Boniface Mwereru Mawira: So, Mr. Ibrahim is it your evidence then that the answer to that allegation by the Governor is that, one, even the County Assembly did it because that is what I am getting from your defence?

Mr. Ibrahim Mutwiri Kirimi: My purpose to produce ---

Mr. Boniface Mwereru Mawira: Is that your defence, that even the county assembly did it?

Mr. Ibrahim Mutwiri Kirimi: That is not my defence.

Mr. Boniface Mwereru Mawira: Okay. Let us proceed. I will take you to the letter at Page 344 of the Volume 1B, the Governor's volume 1B. In fact, it is page 391; that is, KM 49.

The Temporary Speaker (Sen. Veronica Maina): What page?

Mr. Boniface Mwereru Mawira: Page 391, KM 49.

You say there was a budget stalemate, correct?

Mr. Ibrahim Mutwiri Kirimi: True.

Mr. Boniface Mwereru Mawira: You say that the County Assembly, because were writing to the Clerk, you say they increased the Ward Fund from Kshs33 million to Kshs45 million. Correct?

Mr. Ibrahim Mutwiri Kirimi: Correct.

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- Mr. Boniface Mwereru Mawira:** Is that the position in the Appropriations Bill?
- Mr. Ibrahim Mutwiri Kirimi:** Okay, this---
- Mr. Boniface Mwereru Mawira:** It is a “Yes” or “No” question----
- Mr. Ibrahim Mutwiri Kirimi:** I need to explain this one. The context ---
- Mr. Boniface Mwereru Mawira:** What is the amount?
- Mr. Ibrahim Mutwiri Kirimi:** The context of---
- Mr. Boniface Mwereru Mawira:** Just wait for my question. Wait for my question.
- Mr. Ibrahim Mutwiri Kirimi:** Yes.
- Mr. Boniface Mwereru Mawira:** What is the amount in the Appropriations Bill that was passed by the County Assembly?
- Mr. Ibrahim Mutwiri Kirimi:** Currently, it is Kshs36 million and the agreed amount was Kshs33 million, and then the context of this letter is an Order Paper, and it shows what was supposed to be done there.
- Mr. Boniface Mwereru Mawira:** Wait for my question.
- The Temporary Speaker (Sen. Veronica Maina):** Sir, can you respond to the figures you are being asked?
- Mr. Ibrahim Mutwiri Kirimi:** Madam Temporary Speaker, currently, it is Kshs36 million.
- Mr. Boniface Mwereru Mawira:** It is Kshs36 million?
- Mr. Ibrahim Mutwiri Kirimi:** Yes.
- Mr. Boniface Mwereru Mawira:** Madam Speaker, the Appropriations Bill is in the County Assembly's documents, volume six.
- Just a moment, Madam Temporary Speaker. At Page 111, I want you, Mr. Ibrahim, to confirm about the ward-based development projects. What is the total amount for each of them? It is on the far right of the last column. What is the total amount? Is it not Kshs33 million?
- Mr. Ibrahim Mutwiri Kirimi:** Yes.
- Mr. Boniface Mwereru Mawira:** Do you still maintain your answer that the correct amount is Kshs36 million? Yes or no?
- Mr. Ibrahim Mutwiri Kirimi:** It is Kshs33 million.
- Mr. Boniface Mwereru Mawira:** You concede that?
- Mr. Ibrahim Mutwiri Kirimi:** Yes.
- Mr. Boniface Mwereru Mawira:** One of the other contentions is that the County Assembly passed the Appropriations Bill and ignored the memorandum that was agreed with the office of the Controller of Budget (CoB), correct?
- Mr. Ibrahim Mutwiri Kirimi:** True.
- Mr. Boniface Mwereru Mawira:** Another issue that you raised is that the County Fiscal Strategy Paper (CPSP) was not passed within the necessary timelines.
- Mr. Ibrahim Mutwiri Kirimi:** Very true.
- Mr. Boniface Mwereru Mawira:** So, is it your contention then that if a CFSP is not passed within 14 days, then the County Executive can proceed to implement the same without the County Assembly's approval?
- Mr. Ibrahim Mutwiri Kirimi:** That is not so. That is why---

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Mr. Boniface Mwereru Mawira: It is a “Yes” or “No” question.

Mr. Ibrahim Mutwiri Kirimi: That is why I sought an explanation or advice from the CoB.

Mr. Boniface Mwereru Mawira: So, even if 14 days had lapsed and the County Assembly could proceed to consider and make amendments as allowed under Section 117 of the---

Mr. Ibrahim Mutwiri Kirimi: I sought an advisory and we were guided.

Mr. Boniface Mwereru Mawira: You agree that the County Assembly could still, after 14 days, consider the CFSP and pass it with amendments?

Mr. Ibrahim Mutwiri Kirimi: There is guidance from the CoB and there is a letter there. They have been told---

Mr. Boniface Mwereru Mawira: It is a “Yes” or “No” question. Could the County Executive proceed to implement it without the County Assembly’s approval? Yes or no?

Mr. Ibrahim Mutwiri Kirimi: Come up again?

Mr. Boniface Mwereru Mawira: Could the County Executive or the County Treasury that you head, proceed with the CFSP without the County Assembly’s approval?

Mr. Ibrahim Mutwiri Kirimi: No, it could not.

Mr. Boniface Mwereru Mawira: So, the County Assembly approval was necessary even after the lapse of 14 days?

Mr. Ibrahim Mutwiri Kirimi: That is why we were advised by the CoB. The County Assembly was wrong. In order for us to move because there was a stalemate, we were asked to agree together.

Mr. Boniface Mwereru Mawira: Since the law allows that the County Assembly can make amendments, correct?

Mr. Ibrahim Mutwiri Kirimi: In fact, the law states---

Mr. Boniface Mwereru Mawira: Can the County Assembly make amendments to the CFSP?

Mr. Ibrahim Mutwiri Kirimi: It can make. However---

Mr. Boniface Mwereru Mawira: Wait for my question. If the County Assembly could make amendments to the CFSP, and indeed they made those amendments, why did the County Executive bring those budget estimates without considering the amendments that had been done by the County Assembly?

Mr. Ibrahim Mutwiri Kirimi: There was a contention. That is why---

Mr. Boniface Mwereru Mawira: You agree there was a contention from both parties?

Mr. Ibrahim Mutwiri Kirimi: Yes, from both parties. Ours was on the timelines.

Mr. Boniface Mwereru Mawira: No, wait for my question.

Mr. Ibrahim Mutwiri Kirimi: Hon. Members, I need to explain because this is an interrogation.

Mr. Boniface Mwereru Mawira: You will have an opportunity, Mr. Witness. It was a contention by both parties?

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Mr. Ibrahim Mutwiri Kirimi: Yes.

Mr. Boniface Mwereru Mawira: You will agree then that this deadlock was caused by the actions or inactions by both parties?

Mr. Ibrahim Mutwiri Kirimi: Majorly by the County Assembly.

Mr. Boniface Mwereru Mawira: Granted.

Mr. Ibrahim Mutwiri Kirimi: The County Assembly breached the timelines among other provisions of the law.

Mr. Boniface Mwereru Mawira: Please, wait for my question. Do you have evidence that the entire budget for 2024/2025, which is Kshs12 billion, was subjected to public participation? Do you have that evidence in your volume? Yes or no?

Mr. Ibrahim Mutwiri Kirimi: Public participation is subjective.

The Temporary Speaker (Sen. Veronica Maina): Witness, you are required to respond to the question he has asked about public participation. I believe that is one question that you can answer by a “Yes” or “No”. Was there public participation?

Mr. Ibrahim Mutwiri Kirimi: There is evidence to that.

Mr. Boniface Mwereru Mawira: Point me to that evidence in your bundle. You have your volume 1B there. Point me to the evidence that you conducted public participation for the entire Kshs12 billion.

Mr. Ibrahim Mutwiri Kirimi: The County Executive?

Mr. Boniface Mwereru Mawira: Yes.

The Temporary Speaker (Sen. Veronica Maina): Counsel, your 10 minutes are over, but you have the discretion to use more minutes from your allocated timeline of one hour and 20 minutes.

Mr. Boniface Mwereru Mawira: I leave it at that for this witness. We can take the next witness or they can lead the witness for re-exam.

The Temporary Speaker (Sen. Veronica Maina): Do you want more minutes?

Mr. Boniface Mwereru Mawira: No, I think it is okay for this witness.

Mr. Robert Mutembei: Madam Temporary Speaker, I will take just two minutes for the re-exam.

Mr. Ibrahim, you have been tasked to explain the deadlock that was there between the County Assembly and the County Executive. Did you write a letter to the CoB complaining of the actions of the County Assembly?

Mr. Ibrahim Mutwiri Kirimi: Yes, I did.

Mr. Robert Mutembei: Have you produced that letter in your bundle of documents?

Mr. Ibrahim Mutwiri Kirimi: Yes. In fact, several letters and not just one.

Mr. Robert Mutembei: So, the letters that you said fall from pages 336 to 344 of the volume 1B of the Governor’s documents?

Mr. Ibrahim Mutwiri Kirimi: Yes, Counsel.

Mr. Robert Mutembei: Was there a legal basis for you to complain to the CoB?

Mr. Ibrahim Mutwiri Kirimi: Yes, there were several, like the timelines and other key considerations.

Mr. Robert Mutembei: Have you detailed those complaints in your letter?

Mr. Ibrahim Mutwiri Kirimi: Yes, they are detailed.

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Mr. Robert Mutembei: Would you invite Members of this House to have a look at that letter to appreciate the basis on which you are complaining?

Mr. Ibrahim Mutwiri Kirimi: True, Counsel.

Mr. Robert Mutembei: My last question; did you experience a demonstration of good faith from the County Assembly after the issue was mediated by the CoB?

Mr. Ibrahim Mutwiri Kirimi: Yes.

Mr. Robert Mutembei: Did the County Assembly show good faith following the conclusion of the memorandum that you drafted and after the intervention of the CoB?

Mr. Ibrahim Mutwiri Kirimi: It did not.

Mr. Robert Mutembei: Why are you saying so?

Mr. Ibrahim Mutwiri Kirimi: It because after the budget, we went on well. Immediately after the budget, when we went for the Appropriations Bill, that is where things became worse. Firstly, they went against the memorandum and, secondly, they took almost two weeks before considering that Appropriations Bill.

Mr. Robert Mutembei: So, you invite this House to have a look at the documents you have tendered in support of that claim to appreciate your evidence?

Mr. Ibrahim Mutwiri Kirimi: True.

Mr. Robert Mutembei: Madam Temporary Speaker, that will be all for this witness.

I thank you.

The Temporary Speaker (Sen. Veronica Maina): Hon. Senators, we have this witness. I have several requests for clarifications. We should use the least time to get clarifications from this witness.

Proceed, Sen. Tabitha Mutinda.

Sen. Tabitha Mutinda: Madam Temporary Speaker, I am the Vice-Chairperson of the Committee on Finance and Budget. You said that the Commission on Revenue Allocation (CRA) did not raise any audit issues or questions if the audit was qualified or had any advanced reports. To your knowledge, does CRA do audit reports?

Secondly, have you ever been summoned by the County Public Accounts Committee (CPAC)? Lastly, by any chance, are you a member of Institute of Certified Public Accountants of Kenya (ICPAK)?

Finally, we have the Meru County Revenue Board where issues have been raised on the composition of the board. Clause 6 of the Meru County Revenue Act indicates that there has to be a chairperson for that board to execute its mandate. So, how were funds approved without the correct composition of the said board?

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): Witness, you may proceed to respond.

Mr. Ibrahim Mutwiri Kirimi: Thank you, Madam Temporary Speaker and Hon. Members of the Senate. I want to clarify that I did not say that the Commission on Revenue Allocation(CRA) ought to have made an audit report to say whether there was an adverse opinion or not. I said that CRA makes reports on performance on revenue on whether a county has performed fairly, but not an audit report.

The performance of revenue collection can be well indicated or shown by the reports from the CRA. Once in a while, they say that County X did not meet its revenue thresholds or it performed poorly. However, it is not an office of the Auditor-General's report. It is a report from the CRA and is available on the Commission's website and portal.

The second question is on whether I have ever been invited by the Senate's County Public Account Committee (PAC). Yes, they invited us in July and we appeared. It was on the audit of the Financial Year 2021/2022. Yes, I am a member of the Institute of Certified Public Accountants (ICPAK) and in good standing.

Concerning the transfer to the Meru County Revenue Board, the money that is transferred to that board is from the main revenue of the county after that money has been budgeted and approved. That money is also audited by the Auditor-General on its prudence and how it has been accounted for. So, it is transferred from the Meru County Revenue Fund to maintain its operations because the authority is supposed to be self-sustaining. However, at the moment it is not, so we transfer some money to the board.

The Temporary Speaker (Sen. Veronica Maina): Sen. Wambua, what is your intervention?

Sen. Wambua: Thank you, Madam Temporary Speaker. I have two very quick interventions. The first one is a clarification. The witness said at some point that things turned west. I would want to understand, when things turned west, where are they heading? What you say is the only thing we can use to make a decision.

Secondly, most substantively, there has been reference to the Auditor-General's Report for the Financial Year 2022/2023. The witness did well when he made reference to Article 229(8) of the Constitution on the processing of Auditor-General's reports. That those reports cannot be used as material evidence in any proceeding until and unless they are considered by the Assembly and Parliament. However, he went ahead and made serious submissions on the basis of the Auditor-General's Report for the Financial Year 2022/2023. So, where should we stand? Should we stand on the basis that we cannot make reference to Auditor-General's Report for the Financial Year 2022/2023, and in which case then, dismiss everything that you have said about your standing, or should we take what you have said as part of evidence in these proceedings?

The Temporary Speaker (Sen. Veronica Maina): Witness, you may respond.

Mr. Ibrahim Mutwiri Kiriimi: Thank you, Madam Temporary Speaker and Hon. Members. My reference to things turning west is in relation to the budgeting process. We had a negotiating team that was superintendent of the office of the Controller of Budget (CoB). One of the recommendations she had made is, after coming up with a memorandum, it forms the basis of our budget making. That is as far as the budget making process is concerned. That is where I have said things turned west.

I have referred to the Auditor-General's Report for the Financial Year 2022/2023. I am not saying that it should not be referred to. I am only saying, for this impeachment that is before the Senate, if it would have been addressed in the PAC of the County Assembly of Meru, a number of things like manual payroll would not have found itself here. This is because we would have explained what we have done in that committee and the materiality of that matter.

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We would have explained that the money that was paid through the manual payroll had been budgeted, requested to the CoB and paid to individuals. It is not money that has found its way to other people. You could even find their bank account. So, it is not a material thing that would have brought a Human Resource (HR) person to be reprimanded. It is not so material. However, that is how I have referred to the Auditor-General's Report. I am not saying it should not be referred. However, for an impeachment Motion, if this matter was addressed at the PAC of the Meru County Assembly, they would even have got more information and materials to support or.

The Temporary Speaker (Sen. Veronica Maina): Sen. Cherarkey, proceed.

Sen. Cherarkey: Madam Temporary Speaker, I request the witness to be very brief. Mr. Witness, what is your ICPAK number?

Number two, when you say the Collective Bargaining Agreement (CBA) is for four years, what is the legal authority or policy of labour relations to give weight that it stands four years?

Number three, you have said that the spending of doctor's payment was within the legal authority and the CBA. How much was the budget in that financial year? If it was not there, as a CPA Member, you know that there is allocation as the Public Finance Management (PFM) Act envisages. Was that reallocation sought? Was a supplementary budget sought to effect those changes?

Finally, the memorandum that you have provided in volume 1B is unsigned. It is signed by only the chair. So, how can we trust this document? That memorandum on the engagement is not signed nor stamped on that part of secretary and chairman? Is it an authentic document that you would want to present to this House for proper consideration, considering what is before the House is a very serious issue?

Madam Temporary Speaker, if he can answer those four questions, I will be grateful.

The Temporary Speaker (Sen. Veronica Maina): You may proceed to answer those questions.

Mr. Ibrahim Mutwiri Kirimi: Thank you, Madam Temporary Speaker and Hon. Members of the Senate. On the reference to the CBA running for four years, I may not authoritatively quote it. However, I know it has been termed from the Human Resource (HR) quarters, although I am not an HR expert.

Madam Temporary Speaker, on the legal authority of the payment of the medical allowances that were awarded after the CBA, this payment was not only done in 2022/2023, but it began from 2017. When that expenditure was introduced in the budget, it got accrued there and even in the forthcoming years, it became incorporated in the budget. It required a supplementary budget in the last financial year because it is a payment that was confirmed from 2017, and it has always been there, provided within the budget. The memo on 1(b), I own it completely and it is authentic.

The Temporary Speaker (Sen. Veronica Maina): Hold on a bit, Sen. Danson Mungatana. To the witness, there was a question on your ICPAK registration.

Mr. Ibrahim Mutwiri Kirimi: My ICPAK registration number is 10955.

The Temporary Speaker (Sen. Veronica Maina): Sen. Danson Mungatana.

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Sen. Mungatana MGH: Thank you, Madam Temporary Speaker. I was seeking clarification from the witness. I listened to you when the question was put to you on the financial performance of Meru County. I heard you say that the OAG has given a report giving an unqualified opinion and, therefore, it is good. I would like you to clarify to me, is the OAG way, as a professional, that you would measure the financial performance of Meru County?

Does the budget execution and completing projects and things like that not amount to good financial performance? If so, please, answer that question because it will help us make some decisions.

The Temporary Speaker (Sen. Veronica Maina): Proceed to answer that question.

Mr. Ibrahim Mutwiri Kirimi: Madam Temporary Speaker, the Auditor-General's report is not the only way, but it is the surest way because it takes away every doubt. That is why most issues relating to financial management have recommendations like special audits or audits carried to find out more. However, even budget execution is one of measuring financial performance. That is why in my response, I said that the CoB report in our budget appropriation indicates that the County Government of Meru is performing well in terms of budget execution at 79 per cent. I believe that is good.

Another good indicator of good financial performance is like the payment of allowances to doctors. If a County is performing poorly financially, we would not be able to pay those allowances, but we would be seeing protests on the roads, doctors protesting for a CBA that was agreed in 2017.

The Temporary Speaker (Sen. Veronica Maina): Those were the requests we had on the board. Yours is not showing.

Sen. Kisang,' you can proceed. Clerk, check your system.

Sen. Kisang': Thank you, Madam Temporary Speaker, I do not know why my name is not showing there, but it is showing on my side.

I wanted to put to the witness on the audited report for 2022/2023. As a member of CPIC, the same way Sen. Cherarkey is a member of CPAC, what usually happens is that once the Auditor-General signs the report, the oversight committees of the county assemblies, the Senate and the National Assembly go through those reports to verify. If there are any additional issues that are required, we recommend to the EACC or other Government bodies to investigate.

I wanted to know from the witness if he was called by the PAC and PIC committees of the County Assembly of Meru before they made this audit query an impeachment issue?

The Temporary Speaker (Sen. Veronica Maina): Witness, proceed.

Mr. Ibrahim Mutwiri Kirimi: I confirm that on the audit query of 2022/2023, the County Assembly Committee on Public Accounts and Investments has not invited us.

The Temporary Speaker (Sen. Veronica Maina): That is all with regard to clarifications from the Senators. There is no Senator left out. The County Executive team can call in the next witness.

Mr. Edgar Busiega: Madam Temporary Speaker, our next witness is Dickson Munene Nkanata.

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The Temporary Speaker (Sen. Veronica Maina): County Executive team, where is your witness?

(The Witness for Meru County Governor (Mr. Dickson Munene Nkanata) was ushered into the Chamber and took oath)

Mr. Edgar Busiega: Madam Temporary Speaker, for the record, my name is Edgar Busiega. I have been variously referred to as Busienga and I would wish to correct that and the record to reflect Busiega.

The Temporary Speaker (Sen. Veronica Mania): You may proceed, Counsel Busiega.

Mr. Edgar Busiega: Kindly introduce yourself.

Mr. Dickson Munene Nkanata: My name is Dickson Munene Nkanata. I am the County Executive Committee Member (CECM) in charge of Legal Affairs, Public Service Management and Administration in the County Government of Meru. I am also an advocate by profession.

Mr. Edgar Busiega: Thank you, Mr. Munene. I will refer to you as such. Starting from where you have stopped, indicate to this honourable House, how many years you have practiced law.

Mr. Dickson Munene Nkanata: This is my 11th year of practice as an Advocate. I was admitted in 2014. My Personal Number is P10507 of 2014.

Sen. Cherarkey: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): Sen. Cherarkey, what is your intervention?

Mr. Edgar Busiega: Madam Temporary Speaker, perhaps, you could freeze the time during the intervention.

The Temporary Speaker (Sen. Veronica Maina): Your time is frozen any time there is an intervention. Can you give the microphone to Sen. Cherarkey?

Sen. Cherarkey: Madam Temporary Speaker, under Standing Order No.104 on the Declaration of Interest, I do not know how this one will proceed because Counsels Busiega, Munene and I were in the same class. So is it in order that the Counsel and the witness should have declared their interest before proceeding, so that the House is cognizant of the fact?

The Temporary Speaker (Sen. Veronica Maina): Sen. Cherarkey, I believe you must be out of order because many of us were in class with so many other Senators and many other people who are appearing.

Unless you have special interests like being common shareholders within a company or other interests beyond going to school together, that is the only time you can then. Unless you have very serious interests that go into legal, proprietary or other definable interests in law, that would then bring the team together in such a manner that they have been resolving issues in a way that would influence their judgment in these proceedings.

Otherwise, if it is just going to class together, many people have been in school together. So, I will overrule that objection, or do you have any other interests you want to disclose beyond going to school together?

I have overruled just attending the same school or the same class as a common interest that would influence the decision that should be made, unless there is another special interest that then would influence the decision of the Senator especially.

Sen. Methu: On a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Veronica Maina): What is your point of information? Sen. Methu, is there another point of information which is relevant and will not take away our minutes? We have a very short time.

Sen. Methu: Madam Temporary Speaker, because I know we are very constrained of time, Sen. Cherarkey was selective and that is why he never referred and read the Standing Order No.104.

Specifically, a Senator who wishes to speak on any matter in which a Senator has a pecuniary or proprietary interest shall first declare the interest. So, I do not think going to school together is pecuniary or proprietary. I do not even think the witness before us is a Senator. Standing Order No.104 is for a senator who wishes to speak on a matter. So, the Standing Order that he quoted is irrelevant. I am sure he just wanted us to know that he went to school with brilliant fellows, but that is now water under the bridge.

Thank you.

The Temporary Speaker (Sen. Veronica Maina): Thank you, though presumably it comes late after I had given a direction, but that suffices to close out that issue.

Let us proceed with the witness, Counsel.

Mr. Edgar Busiega: Mr. Munene, you swore an affidavit on the 16th of August this year, correct?

Mr. Dickson Munene Nkanata: That is true.

Mr. Edgar Busiega: Would you wish to rely on the same as your evidence before this House?

Mr. Dickson Munene Nkanata: Madam Temporary Speaker, I wish to rely on the same,

Mr. Edgar Busiega: Now, the first issue is, as the subject of impeachment, what we call an illegal revocation of Virginia Kawira, CPA. Did Virginia have the requisite qualifications at the point of appointment?

Mr. Dickson Munene Nkanata: The Governor has been accused of illegally revoking the appointment of Virginia Kawira, CPA as the Secretary and the Chief Executive Officer (CEO), County Public Service Board (CPSB). I am aware that the Governor revoked the appointment of Virginia Kawira because she is still a public officer. This is an issue that offended Section 58(3)(b) of the County Governments Act.

It was an expectation that after the nomination and approval of Virginia Kawira by the County Assembly before taking the appointment to resign, so as not to own two offices and qualify by Section 58(3)(b) of the County Governments Act.

I am also aware that this decision of the Governor was informed by the legal advice that she received, both from myself, with the background of law, being the CECM

in charge of legal affairs and the only CECM who is an advocate by profession in that Cabinet, and also from her legal advisor.

Mr. Edgar Busiega: Based on what you have just informed this House, are you aware that the legal advisor was before this House yesterday?

Mr. Dickson Munene Nkanata: Yes, I am aware that the legal advisor was before this House yesterday. I am aware that the legal advisor disowned the internal memo, which appears on pages 11 and 12 of volume 1B of the Governor's document.

I am also aware that the employment of the former legal advisor has since been terminated by the Governor. I am aware of the circumstances under which the termination of her employment was done. I am aware that there is a pending case between the former legal advisor, and the Governor in the Employment and Labour Relations Court. I am aware that the former legal advisor is represented by the firm Ngwele & Company Advocates, which is the same firm that is representing the CEO of the CPSB, that is, Virginia Kawira. I am aware they share the same advocate.

I am aware that in the documents filed in court by the former legal advisor, the same Virginia Kawira appears as Linda Kiome's witness. So, I would not be surprised that Linda Kiome would disown such advice she gave while she was still in office.

Mr. Edgar Busiega: Would you confirm unequivocally whether she ever consulted you or shared with you this letter prior to tendering to the Governor?

Mr. Dickson Munene Nkanata: Yes, I confirm that we discussed the issue. I confirm that she delivered the letter to me, which I delivered to the Governor. Yes, and I can confirm that, thereafter when the Governor did a letter of termination, there was an advisory from the chairperson of the Meru CPSB about that revocation. Linda Kiome was not available to advise the Governor on how to respond to such.

I am aware that we agreed that I look at the documents, since we had discussed over this issue. I advised the Governor on how to respond to the response from Mr. Julius Kainga Mitu, the County Public Service Board (CPSB) Chair. I am aware that the Governor did this letter between pages 13 to 15---

The Temporary Speaker (Sen. Veronica Maina): Hon. Senators, it is now 1.00 p.m. I would like to first of all notify the Governors' team of their remaining time, which is one hour 55 minutes, out of the total time of two hours 40 minutes. This will be reflected in the Supplementary Order Paper that will be printed for the afternoon session. The County Assembly team will have one hour 10 minutes out of their total time of one hour 20 minutes.

Hon. Senators, the afternoon session will resume at 2.00 p.m., and not 2.30 p.m.

ADJOURNMENT

Hon. Senators, it is now 1.00 p.m., time to adjourn the Senate. The Senate, therefore, now stands adjourned until later today, Tuesday 20th August, 2024, at 2.00 p.m.

The Senate rose at 1.00 p.m.

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