

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Monday, 14<sup>th</sup> October, 2024

Afternoon Sitting

Special Sitting

*(Convened via Kenya Gazette Notice  
No.13179 of 9<sup>th</sup> October, 2024)*

*The House met at the Senate Chamber,  
Parliament Buildings, at 2.30 p.m.*

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

### PRAYER

#### DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

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

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

Please, proceed to call the first Order.

#### HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF KERICHO COUNTY, HON. (DR.) ERICK KIPKOECH MUTAI

#### INTERVENTIONS ON PRELIMINARY MATTERS AND OBJECTIONS

**The Speaker** (Hon. Kingi): Hon. Senators, we will proceed with the interventions on the preliminary objections that have been raised by the parties.

Sen. (Prof.) Tom Ojienda, you have the Floor.

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**Sen. (Prof.) Tom Odhiambo Ojienda, SC:** Mr. Speaker, Sir, I wish to address a few issues on the preliminary objection that has been raised before this House, this morning.

There are two issues: One touches on the propriety of these proceedings and whether or not the proceedings before the Assembly under Article 181 and Section 33 of the County Governments Act are a continuum. In law, the process that defines the commencement of impeachment proceedings - which is instructive to note - has now been settled in terms of what constitutes a process.

Mr. Speaker, Sir, the Senate Majority Leader, Sen. Cheruiyot, has referred to two decisions that have informed prior impeachments in this House; the impeachment of Hon. Ferdinand Waititu and of the then Governor of Nairobi City, Mike Sonko. Both were my clients at some point. Therefore, I had the advantage of litigating on impeachment.

I will proceed to the first objection. The proceedings of this House are cushioned from any other processes. When this House sits to hear impeachment proceedings, we sit as a court. Since all the issues will be canvassed here, what was raised by the counsel for the governor as preliminary objections do not strictly in law qualify as preliminary objections because the House has been asked to look at various exhibits and to see various videos. That is the province of evidence.

On that account alone, the preliminary objections will collapse. Since there are two interpretations of the whole number in the Nkaduda case and in other decisions, this Senate would have to sit and consider all the submissions from parties to arrive at a proper finding as a jury at the end of this process and when witnesses are called.

The magical number of 31 and 31.3, that the whip Sen. (Dr.) Khalwale was referring to as *res ipsa loquitur* is not quite. The facts are not obvious because the interpretation and the tilting of all numbers between 31 and 32 are matters of evidence and presentation before this House. We have seen from the submissions by the County Assembly and from the other side.

I must say that I have had an advantage of litigating the question of continuum in the case of Marete Kauma and Hon. Nyaga Wambora, which was Supreme Court Petition No.32 of 2014. The court, in summary, in dealing with Hassan Joho, Saeed Shabal, and other decisions, Raila Odinga and in citing the National Assembly (Powers and Privileges) Act, Section 12, insulates this House from any contempt proceedings.

Two, it also insulates this House and other institutions from any claim of interference by other institutions. The Supreme Court in that matter, defining the independence of institutions as a primacy that must be considered and the Supreme Court holding our petition in 2014, on the basis that this House cannot be enjoined by a court. The orders issued by Justice Serگون cannot therefore stop the proceedings of this House.

Mr. Speaker---

**The Speaker** (Hon. Kingi): Just one minute.

**Sen. (Prof.) Tom Odhiambo Ojienda, SC:** Mr. Speaker, Sir, just to note that a dark cloud hangs over the head of the governor over the allegations that have been made. What other place would the governor have to clear the allegations made against him other than in this House?

This is the opportunity for the governor, the county assembly and the people of Kericho County to know whether or not their governor is guilty or innocent of the wrong doings that have been levelled against him.

Please, allow the Senate to make a decision on this matter by going through a substantive hearing of all these allegations.

**The Speaker** (Hon. Kingi): Sen. (Dr.) Murango, you have the Floor.

**Sen. (Dr.) Murango:** Asante, Bw. Spika. Ninakushukuru kwa kusikiiliza ombi la Kiongozi wa Seneti wa Walio Wengi, Sen. Cheruiyot, na kuruhusu Wawakilishi wa Wadi kusikiliza kesi hii. Mimi pia nilikuwa Mwakilishi wa Wadi na ni vizuri kuhudhuria kikao kama hiki na kushuhudia kwa sababu kesho wataweza kuwa hapa pia.

Katika Kanuni zetu za Kudumu, Nyongeza ya Tatu ambayo inatoa masharti ya utaratibu wa kusikiliza na kuamua mashtaka ya kumwondoa gavana mamlakani; Kanuni ya Kudumu namba 80(12) inasema masharti ambayo yamepeanwa yakizingatiwa, gavana atasikilizwa na ushahidi utakapoanza, utaendelea hadi Seneti itakapohitimisha kusikiliza swala hilo.

Bw. Spika, tumeanza kusikiliza jambo hili na Kanuni zetu za Kudumu zinasema kuwa tunapoanza, tunafaa kuenda mpaka mwisho. Seneti kwa sasa, haiwezi kuangalia namba ilikuwa namna gani. Tutaangalia makosa ambayo yataletwa hapa na tutasikiliza pande zote mbili na mwishowe tutaamua kesi baada ya kusikiliza kila kitu.

Bw. Spika, mahali ambapo utatuelekeza, ni vizuri Maseneta wapewe nafasi kuamua jambo hilo. Hii ni kwa sababu kulingana na vile nimesikiliza kesi kutoka kwa wakili wa gavana wanakualika kufanya uamuzi. Sidhani kwamba uamuzi unaweza kufanywa na Spika peke yake katika muda huu. Lakini Maseneta wote wanafaa wasikilize kesi halafu waweze kuamua.

**The Speaker** (Hon. Kingi): Proceed, Sen. Osotsi.

**Sen. Osotsi:** Thank you, Mr. Speaker, Sir. Indeed, listening to my colleagues, we are confronted with a very important decision to make on how we are going to dispense with a preliminary objection. The matters raised in the preliminary objections are very weighty, from both sides. I want to agree with the Senators who have said that Rule 30 does not apply in this case. It is the Senators to make a determination.

Mr. Speaker, Sir, I want to dissuade you from applying Rule 30, and instead, let Senators exercise their constitutional right to determine whether the preliminary objection stands or not. Looking at the numbers, I want to pick from Sen. Mumma who talked about the numbers of women in the Count Assembly. I think we would need to get some wisdom or a communication from the Independent Electoral and Boundaries Commission (IEBC).

From my experience, I know the IEBC has been doing rounding off. They round off to the next human being. So, when we talk about 31.3 points, the next number is 32. That is what IEBC has been doing.

So, we need to look at this matter very critically, and decide through a vote on how we want to proceed. If the decision is in support of the Governor's preliminary objection, then the whole matter collapses. That is the position of the law. It would not make any sense for us to proceed with a matter of this nature if the preliminary objection succeeds.

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Mr. Speaker, Sir, I want to dissuade you from applying Rule 30, but allow the Members to make a determination through a vote.

**The Speaker** (Hon. Kingi): Senator Chute, you have the Floor.

**Sen. Chute:** Mr. Speaker, Sir, I am not a lawyer but, I have been in business for many years. If you look at what is happening in the business circles, you will find that a shopkeeper writes a price of Kshs999. They do this because they want to attract a customer. The price can be Kshs1,000, but they want to attract a customer, and they put Kshs999.

Referring you to Section 33 of the County Governments Act, it clearly says that a minimum of two-thirds. The County Assembly of Kericho should go back and get 32 MCAs and then come back to the Senate.

We are not here to sacrifice the Governor of Kericho County. We need to protect each and every person, if that person was brought here in a way that the Constitution has made it very clear that anything that is less than two-thirds is not acceptable.

So, 31 is not 32. It is 31. If they can bring the governor here with 32 votes, I will say, yes, because that is acceptable. Let them do their homework well and come back with 32 votes and that is how we will prosecute this.

**The Speaker** (Hon. Kingi): The Senate Minority Leader, Sen. Madzayo, you have the Floor.

**The Senate Minority Leader** (Madzayo): Asante, Bw. Spika. Kwa sasa, watu wa Kaunti ya Kericho wanajua ya kwamba kesi yao sasa hivi iko kwa Seneti. Hoja iliyo mbele yetu ni ya kusimamisha kusikilizwa kwa kesi dhidi ya gavana ama kuimaliza wakati huu.

Tumekuwa na mifano tofauti tofauti mbele ya Seneti. Kulikuwa na Kesi ya Mhe. Mike Sonko aliyekuwa Gavana wa Jimbo la Nairobi City. Jambo kama hili lilitendeka lakini Seneti iliamua kusikiliza kesi yote kwa ujumla ndiposa iamue. Ninataka tuchukue uamuzi huo huo ambao ulichukuliwa wakati ule na Bunge hili. Bunge hili na Maseneta wengine sio waliokuwako lakini wale ambao wako sasa hivi wanaweza kufanya vile walivyofanya. Nyumbani huwa tunasema kuwa; “Maji hufuata mkondo”

Hivi sasa, tuko na uamuzi ambao ulichukuliwa katika Seneti hii, kwamba kitendo kama hiki kikitokea, na *Preliminary Objection* kama hii ikiletwa hapa, wacha iwe mojawapo ya sababu ambayo tutasikiliza Motion ambayo iko mbele yetu.

Kwa hivyo, turuhusu kesi hii iliyoko mbele yetu iweze kuendelea, tuweke *Preliminary Objection* kando kidogo ili tuweze kuichukua pamoja na hizi zingine kama tulivyofanya katika mfano wa kesi ya Mhe. Sonko.

**The Speaker** (Hon. Kingi): Sen. Tabitha Mutinda, you have the Floor.

**Sen. Tabitha Mutinda:** Thank you, Mr. Speaker, Sir. I want to agree with colleagues on the point that Parliament is independent and so cannot be injunctioned.

The discussion on the Table of the House today is an arithmetic of 31.3. As a student of mathematics, 47 less 31.3 is 15.7. Does it mean that 15.7 Members of the County Assembly (MCAs) of Kericho County Assembly did not vote for this Impeachment Motion, but 31.3 did vote? It is very clear we cannot have a decimal arithmetic in terms of a human being. It is also very clear that 31 MCAs voted to impeach the governor and 16 did not vote, which equivalents that number to 47.

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Mr. Speaker, Sir, a very straightforward situation is, if 23 Senators vote to impeach a governor, 23 vote not to impeach and one abstains, then the governor is not impeached. What is clear is that the decision on this preliminary objection is a decision by the Senators. Even when we shall be voting for the next big assignment on Thursday, two-thirds is equivalent to 44.6. The required number is not 44, but 45. In the event---

*(Sen. Tabitha Mutinda's microphone went off)*

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

**Sen. Veronica Maina:** Thank you, Mr. Speaker, Sir, for the opportunity to contribute to the issues at hand, the preliminary points that have been raised and applications. At the very onset, I would encourage you not to take the bait of having to determine---

*(Sen. Veronica Maina's microphone went off)*

What happened?

**The Speaker** (Hon. Kingi): Is your time up?

**Sen. Veronica Maina:** No, I have not spoken for 20 seconds.

**The Speaker** (Hon. Kingi): Okay, proceed then.

**Sen. Veronica Maina:** Mr. Speaker, Sir, I would persuade you not to take the bait of having to determine these preliminary points or applications for two reasons. They raise such fundamental and weighty points of law and some have, of course, raised issues of fact, whether service was effected or not. If you were to determine these issues, it would bring to a determination of the entire impeachment proceeding. That means you would have abrogated yourself the function of what the Senate is supposed to be doing. Consequently, you should bring these points to a vote by the honourable Members of the Senate.

Secondly, there was an application on the issue of protection of a key witness in these proceedings. It is my opinion that that protection should be afforded to a witness who feels vulnerable because of the nature of the offenses that have been brought forth. However, while giving that protection to this witness, there must be a balance as to how that protection is given. For instance, if you are guided by the Witness Protection Act, we could take off the proceedings from camera with respect to that witness, but ensure that Senators have an opportunity to hear the kind of allegations.

This will ensure that you balance between the witness not being hidden away from the accused governor and the Senators who are supposed to be judges, and also ensure that the witness is not exposed to an extent that reputational damage would occur, in the event that the evidence she is adducing is true. Whether that evidence is true or not, will be determined after the witness has been heard. We should balance the two, but ensure that the witness is protected because of the nature of the offenses.

Mr. Speaker, Sir, with those remarks, I would urge you to allow the Senators to vote on this. I will not---

**The Speaker** (Hon. Kingi): Sen. Faki, proceed.

**Sen. Faki:** Asante, Bw, Spika, kwa kunipa fursa hii. Kimsingi ni kwamba mawakili wa gavana wanataka masuala haya yaamuliwe kabla ya kusikiliza mashtaka ambayo yameletwa hapa na Bunge la Kaunti ya Kericho. Seneti inapokaa kuaamua masuala ya *Impeachment*, ni kama mahakama. Katiba yetu katika kifungu cha 159 inasema kwamba mahakama zinapokaa, haki iamuliwe bila kuzingatia masuala magumu ya *procedure* na *technically*. *If I may read it in English is, that justice shall be administered without a---*

**The Speaker** (Hon. Kingi): Sen. Faki, choose the language you would wish to use.

**Sen. Faki:** For the benefit of the two parties---Samahani, Bw. Spika.

**The Speaker** (Hon. Kingi): You started in Kiswahili, proceed in Kiswahili.

**Sen. Faki:** Samahani Bw. Spika. Suala lililoko mbele ya Seneti ni kwamba Seneti iamue Hoja iliyofikishwa mbele yake bila kuzingatia mambo ya *technicality* kwa sababu tutapoteza fursa ya kutenda haki ya kimsingi.

Pili, Seneti inapiga kura kwa *delegation*. Hili ni suala ninaloathiri kaunti na masuala yote yanayoathiri kaunti, uamuzi huwa ni kupiga kura kwa wawakilishi 47 waliopo katika Bunge hili.

Bw, Spika, kwa hivyo wewe kutoa uamuzi kwamba *quorum* haikutimia katika Bunge la Kaunti ya Kericho, hapo utakuwa umekiuka Katiba na Kanuni za Kudumu zetu zinazosema kuwa uamuzi ufanywe na *wawakilishi wa Kaunti* waliopo Katika Bunge hili.

Asante sana.

**The Speaker** (Hon. Kingi): Sen. Tabitha Keroche, proceed.

**Sen. Tabitha Keroche:** Thank you, Mr. Speaker, Sir, for giving me the opportunity. It is true, I agree with the other Senators that there is an issue when it comes to the law, that is Section 33 of County Governments Act, 2012. There is need to verify and know whether the MCAs that approved this Motion met the threshold.

I am lucky because I happen to have furthered my education in Mathematics. It reaches a point where maths and science go together. When it comes now to 31.3, the science maths says there is no half person, so it should have been 32. The 0.3 always becomes the whole person, which is 32. However, the other big question is, if this Motion is returned back to the County Assembly, how sure are we that it will not come back within a week? We are now again not very sure whether we are going to save or hurt the people that brought this Motion here. However, it is true, we have not met the threshold? It should have been 32, and not 31.

I thank you.

**Sen. Oketch Gicheru:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): Sen. Oketch Gicheru, certainly you cannot rise on a point of order. There is no Senator speaking.

Sen. Lomenen, proceed.

**Sen. Lomenen:** Thank you, Mr. Speaker, Sir, for this opportunity. I have listened to the counsel from both sides. We have a heavy duty to do in this House and we need time. If you see the voluminous books that are with us, there are many contents that we have to listen to before we make a ruling.

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Mr. Speaker, Sir, I urge you and this House to give us an opportunity, as Senators, to be judges and make a ruling of this appeal by making a vote and then we continue from there.

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

**Sen. Wamatinga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. Indeed, we are invited as Senators to do justice to a matter brought before us. Even before we do so, it is our duty and responsibility, as the whole country and the whole world watches, to ensure that we do justice to matters that have come before us.

It has been cited that decisions have been made and precedents have been set. However, that notwithstanding, it is also imperative that we interrogate under which condition those decisions and precedents were set.

As an engineer, I know that rounding numbers to the nearest is a common practice. However, we are invited in this matter not to look at the case before us scientifically, but to look at it as is required using the jurisprudence that has been set before. Therefore, 31.3 cannot meet the threshold. It is imperative that we, as Senators, move a Motion, decide and determine on this matter, even before we go into the full hearing. That is our responsibility; it is what people expect of us and it is what we must do as Senators.

Mr. Speaker, Sir, the role of these Senators is to sit here as juries and make a decision on whether the prerequisite preliminaries have been met. If they have not been met, then we must return the matter to the sender so that they can meet the threshold. We sit in a matter that is supposed to be set forth by this House.

I submit.

**The Speaker** (Hon. Kingi): Sen. Eddy.

**Sen. Oketch Gicheru:** I thank you, Mr. Speaker, Sir. I cannot belabour on what we are invited to do in this House on the two substantive preliminary objections. We cannot be gagged by decisions of the court from doing our job. That ought to be in tandem.

On this issue of mathematics, you are invited to make a decision, which I believe the House should make. One is a practical equation and the other one is a mathematical equation. Practically, you cannot have a fraction of human beings reduced to the lower number. Mathematically, this is a question that probably would have needed a judicial review even long before it came to this place. This is because constitutionally this question of two-thirds has never confronted the country.

Mr. Speaker, Sir, the only time that we see it is from the case of Tana River, which has been presented here. It behooves us, as a House, to go with the larger equation of what has been determined in court. What has been determined in court as per now and without a judicial review; is the case for Tana River. This case can be the only legal basis and legal framework that then we use to question this practicality of numbers.

I urge the House that because this is a very serious issue and the people of the Kericho would want to be heard, the determination of these two preliminary objections should be done with the other substantive issues that have been brought in the House, so that Senators get a chance to make observations at the end of this entire process.

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Mr. Speaker, Sir, these preliminaries will form part of the conversations as we go through the charges. This matter gets to be heard, and then we will make a determination at the end. If we do not, then you will be invited to a very dangerous path.

**The Speaker** (Hon. Kingi): Sen. Orwoba.

**Sen. Orwoba:** Thank you, Mr. Speaker, Sir. I want to add my voice about the victim protection. The Victim Protection Act, Section 8 says that any victim has a right for privacy and protection. Therefore, because the proceedings here will be broadcasted, I believe that we have no choice, but to follow the law and ensure that Sections 8, 10 and 11, particularly on the issue of disclosing the identity of the victim, are taken care of.

On the matter of the two-thirds threshold, this is a House of procedure. We are guided by procedures and we have our Standing Orders. Our Standing Orders on the procedure for removal of a governor say that within seven days after receiving notice of a resolution from the Speaker of the County Assembly, supporting the removal of a governor, pursuant to Article 181, then the proceedings begin.

In that sense, why are we even debating this? There is no opportunity in our Standing Orders where we are told to go back to the county assembly to check if the threshold was met and if the allegations were substituted. For us, we are a quasi-judicial process.

They have reached here as long as we have the notice of the resolution from the Speaker of the county assembly; our work is to proceed. For those who feel that the threshold was not met, they can go to court and proceed with that argument there.

**The Speaker** (Hon. Kingi): Sen. Asige.

**Sen. Crystal Asige:** Thank you, Mr. Speaker, Sir. I have two observations to make. It is my understanding that the Kericho County Assembly consists of 47 members, and Section 33 of the County Governments Act requires that two-thirds of the votes are needed to support an impeachment Motion, which means that the county assembly needed 31.3 votes.

Further, if we use the Justin Nkaduda *versus* the County Assembly of Tana River, we can infer because of jurisprudence that a natural person cannot be fragmented into a fraction. Therefore, the logical thing to do would be to round off the decimal to the nearest round number. The nearest round number in this case is 31.

Mr. Speaker, Sir, we are here as a *quasi*-judicial hearing. I, therefore, see us as judges, very strongly so in this case. I also see us akin to scientists who have been given the mandate to deal with this case with precision. This is a laboratory and we are all scientists. We have been called to make a very fine cut with these preliminary objections.

Science has laws. There is the law of gravity, the law of motion, the Mendel's law, the Megan law and other several laws. Those are absolute. They cannot be moved. They cannot be wished away. Similarly, the High Court has ruled through this jurisprudence that you should calculate to the nearest round number, and that is law. It is through a court of law and I believe that we should continue in that way. Thirty-one has been met in terms of votes. Therefore, we should listen to this case further and the substantive issues therein.

Mr. Speaker, Sir, you have also been invited by the governor's counsel to mirror the decision of your counterpart in the National Assembly. I feel that is out of order. You

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are not a conveyor belt. You are not somebody who regurgitates what the Speaker of the National Assembly does or says. You are not a parrot of the National Assembly. Therefore, being invited to mirror a decision that---

**The Speaker** (Hon. Kingi): Sen. Seki.

**Sen. Seki:** Thank you, Mr. Speaker, Sir. I also stand to put my voice on this matter. I believe that the county assembly have pronounced themselves and they have presented themselves. The governor's panel have also presented themselves and now it is the Senate to determine whether to listen to proceed with this matter.

I want to assure and believe that this matter will be determined in whichever case. We have presented ourselves and pronounced ourselves. We have determined ourselves before this case, or even when we determine this case when we are finishing, we will listen to this case towards the end. I believe that this is the right time. We need to hear the both sides of the county assembly and the governor's team. At the end of it, everything will determine whether the county assembly met the threshold or not and, also the governor has issues he has been accused of doing. At the end, we will determine.

I believe that this is the time we need to hear this case because the process has started and there is no way we can stop it. I support proceeding with the matter.

**The Speaker** (Hon. Kingi): Sen. Ogola, proceed.

**Sen. Ogola:** Mr. Speaker, Sir, I thank you for this opportunity. The issue I want to talk about is on the threshold. You cannot round off human beings. If a threshold has to be determined as has been stated here, there is no way around it. We must look at the issue of threshold, which must be determined because we cannot set a precedent otherwise.

On determination of the preliminary objection, this is a matter that does not concern counties. I stand guided, but all the 67 Senators stand to vote on this. On the issue of threshold, I support the idea that it has to be met from the word go.

**The Speaker** (Hon. Kingi): Sen. Methu, proceed.

**Sen. Methu:** Thank you, Mr. Speaker, Sir. I do not want to buttress what my colleagues have said. I agree that the first preliminary objection falls because precedencies have been set that Parliament cannot be injuncted on the course of its work. However, you have been invited to make a critical decision without speaking on whether the threshold was 31 or 32; both parties have come up with arguments and counterarguments about why they think 31 would be the threshold or 32 would be. Authorities have been cited, especially in the Tana River County.

The county speaker and Nkaduda *versus* the County Assembly, at what point should you truncate the numbers? They believe that they should be rounded off to the nearest whole. The defence of the governor, through their counsel, Katwa Kigen, feels that at the beginning of the inception of the county assembly, there was a precedent that 32 would be the number.

You have been invited to make this decision, which is weighty. If you were to allow these preliminary objections, then these impeachment proceedings would fall as at now. The jury would not have had an opportunity to make a decision on this matter. It is a serious invitation. I would want to dissuade you from agreeing to fall prey to Rule 30 of the rules of procedure that you use to make this decision on preliminary objections.

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Mr. Speaker, Sir, allow the 47 delegations to make this decision on whether it should be 67 Senators or 47 Senators, whatever would be the case if it touches on the counties. However, allow the Senators who are the judges on this matter to make this decision.

On this matter, you are an umpire. You have no dog in this fight. Yours is to umpire---

*(Sen. Madzayo and Sen. M. Kajwang'  
stood up in their places)*

**The Speaker** (Hon. Kingi): Hon. Senators, we need to make progress. Sen. Madzayo and Sen. M. Kajwang' take your seats. I have heard you and nothing new seems to be coming out at this juncture. Therefore, for us to make progress, I will use Standing Order No.1 to suspend the sitting for 15 minutes, so that we can resume at 3.30 p.m. I will consider the interventions you have made and give a way forward on how we will dispense with this matter.

Remember if in the event we proceed with this hearing, we have to start from the beginning. The hearing has not started yet. We are merely dealing with preliminary matters. Therefore, time is of the essence.

Kindly, hon. Senators, I will proceed to suspend the sitting for 15 minutes. We shall resume at 3.30 p.m.

*(The House was temporarily suspended at 3.16 p.m.)*

*(The House resumed at 410 p.m.)*

### CONSIDERED RULING

#### PROCESSING OF PRELIMINARY OBJECTIONS RAISED ON THE PROPOSED REMOVAL, BY IMPEACHMENT, OF THE GOVERNOR OF KERICHO COUNTY

**The Speaker** (Hon. Kingi): Hon. Senators, we have now resumed our session. I am ready to give a communication on the preliminary objections that have been raised so as to get to know how we proceed from here going forward.

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

**The Speaker** (Hon. Kingi): Yes, Sen. Olekina, what is your clarification?

**Sen. Olekina:** Mr. Speaker, Sir, I remember very well that you had allowed us to ask questions. However, I have just heard you saying that you will now be giving us a communication on the way forward. Were the questions to be responded to or was the matter debated upon? It is just an issue of procedure.

**The Speaker** (Hon. Kingi): Sen. Olekina, you are anticipating debate. Hear me out. From there then, if it is not clear to you, you may seek your clarification.

**Sen. Olekina:** Thank you.

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**The Speaker** (Hon. Kingi): Now, Hon. Senators, ladies and gentlemen, as you will recall, at the commencement of the hearing of the proposed removal by impeachment of Dr. Erick---

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

Hon. Senators, you will note that this ruling was prepared under 20 minutes. So, you will have to bear with the Chair.

Now, as you will recall, at the commencement of the hearing of the proposed removal by impeachment of Dr. Eric Mutai, Governor of Kericho County, earlier today on the 14<sup>th</sup> October, 2024, a number of preliminary issues and questions were raised.

Counsel for the County Assembly raised the following two preliminary issues. One, in the first preliminary issue, counsel indicated that in correspondence, which had been issued to the Office of the Clerk, the county assembly had requested that arrangements be made to secure the anonymity of one of the witnesses who will be testifying for the county assembly.

The counsel reiterated that pursuant to Rule 28(1) of the Third Schedule to the Senate Standing Orders, the county assembly sought that the necessary arrangements and facilitation be provided in this regard. On this matter, counsel for the governor indicated that the governor objected to this request.

On the second issue, counsel indicated that on the receipt of documentation filed by the governor on Sunday, 12<sup>th</sup> October, 2024, the county assembly had observed that the governor proposed to raise a number of preliminary questions.

In this regard, the county assembly had prepared an affidavit dated 13<sup>th</sup> October, 2024, in response to the preliminary questions and the county assembly showed that the affidavit be admitted and be deemed to be properly on record. On this matter, counsel for the governor indicated that they had no objection and consequently the affidavit was made available to all Senators.

Counsel for the Governor raised the following three preliminary questions and issues. The first preliminary issue related to the documents submitted by the governor. The counsel stated that the documentation was not properly paginated and sought the indulgence of the Senate to be allowed to withdraw and replace the documentation. The counsel for the county assembly did not object to this request. The documentation was subsequently availed to all Senators. Therefore, this matter was dispensed with.

In the second preliminary issue, the counsel stated that on 3<sup>rd</sup> October, 2024, the High Court at Kericho had issued orders restraining the County Assembly of Kericho, the Speaker of the County Assembly of Kericho, the Senate and the Speaker of the Senate from considering the impeachment matter.

The counsel referred the Senate to the order and specifically cited paragraph (5) of the order, which reads as follows-

“That pending the inter parties hearing of the motion dated the 2<sup>nd</sup> October, 2024, an interim order is hereby issued to restrain the Senate and the Speaker from receiving or acting or presenting to the Plenary of the Senate and or allowing for debate at the Senate, at the Plenary, or any Senate Committee, at or discussing and or making any decision or

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resolution in regard to the impeachment of the petitioner, governor, Kericho county government.” Counsel, therefore, urged the Senate to find that in light of the court order, the matter should not proceed before the Senate.”

On this matter, the counsel for the county assembly indicated that the county assembly objected to this preliminary issue, stating that the matter did not fit within the definition of a preliminary objection. That it was not a pure question of law, but rather a question of fact.

Counsel stated that the county assembly in its replying affidavit, had provided evidence and would be making submissions to the effect that no such court orders existed.

The third preliminary issue is related to the matter of whether two-thirds threshold required under Section 33 of the County Government Act, Cap 265 of the laws of Kenya and the Kericho County Standing Orders were met. It was a submission of the counsel for the governor that the threshold had not been made as 31 rather than 32 MCA voted in favour of the Motion for the proposed removal from office, by impeachment, of the Governor of Kericho County. Counsel argued that on that basis alone, the impeachment proceedings could not proceed.

Counsel for the county assembly took a different view on this matter. First, arguing that this was not a matter that could be disposed of as a preliminary matter and that the county assembly intended to adduce evidence to prove its case on this particular matter. Therefore, counsel, argued that it was necessary for this matter to be canvassed within the context of the hearing so that the evidence will be presented and tested in cross-examination.

A number of hon. Senators spoke to these matters in the morning sitting and, this afternoon’s sitting. Now, hon. Senators, ladies and gentlemen, arising from the preliminary issues and having dispensed with those relating to the submission of documentation, the following are the issues that require determination and further guidance.

(1) Whether in light of the court order, if any, the Senate is able to proceed with the hearing of the proposed removal from office, by impeachment, of the Governor of Kericho County.

(2) Whether as contended by the governor, the threshold of two-thirds required at the county assembly was not met.

(3) Whether the request by the county assembly for arrangements to be made to secure the anonymity of one of the witnesses who will be testifying for the county assembly, should be allowed.

Now, hon. Senators, ladies and gentlemen, it is noteworthy that only two of these three issues need to be determined in the first instance. Namely, whether, in light of the court order, if any, the Senate is able to proceed with the hearing of the proposed removal from office by the impeachment of the governor of Kericho County. Secondly, whether as contended by the governor, the threshold of two-thirds required at the county assembly was not met.

The third issue on whether the request by the county assembly for arrangements to be made to secure the anonymity of one of the witnesses, who will be testifying for the

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county assembly, should not be allowed will depend on the outcome of the first two cases.

In respect of the first issue, which is whether, in light of the court order, the Senate is able to proceed with the hearing of the proposed removal from office, by impeachment, of the Governor of Kericho County, the Senate has been faced with similar circumstances in the past.

On each occasion, the Senate has had to carefully consider two competing constitutional imperatives that arise. On the one hand, Article two of the Constitution provides for the supremacy of the Constitution and for the obligation of all persons and all State organs to abide by the Constitution.

On the other hand, Article one of the Constitution provides that all sovereign power belongs to the people. This sovereign power is delegated to the various state organs at both national and county levels of government. In accordance with the doctrine of separation of powers, each of these organs is required to perform their functions in accordance with the Constitution while observing the principles of comity and respect for jurisdiction as between state organs.

In the words of the former Speaker of the National Assembly, the Hon. Kenneth Marende, while delivering a Communication in the National Assembly on the 3<sup>rd</sup> September, 2009, he had this to say and I quote-

“Power thus divided presents the absolutism of the Executive, the possible anarchy of Parliament on the presumption of the Judiciary. The operation of the principle of separation of powers both separates and blends powers so that each branch serves as a check and balance on the powers of the other. It ensures the protection of the rule of law and secures the fundamental rights of the individual. The principle of separation of powers has a superficial simplicity, but is in reality, inherently complex.”

In a Communication delivered on 23<sup>rd</sup> October, 2019, the then Deputy Speaker of the Senate, Sen. (Prof.) Kithure Kindiki had occasion to consider this matter. The matter arose in the context of the proposed removal from office, by impeachment, of the then Governor of Taita Taveta County. The Senator for Taita Taveta County, Sen. Johnes Mwaruma, rose on a point of order and sought the directions of the Deputy Speaker on whether it was in order for the Senate to continue deliberating on the Motion and taking further action while there were active court proceedings in the matter. In the course of the Communication, the Deputy Speaker explained why an injunction of Parliament was untenable.

The Deputy Speaker stated that-

“(a) Firstly, an injunction by the court against Parliament is a frontal and deadly attack on the substratum and hallowed legal doctrine of separation of powers, the bedrock of our Constitution. Separation of powers creates separate and distinct arms of Government with equal but different powers. Each Arm must exercise its powers in a fine balancing act to ensure that it carries out its functions without infringing on the powers of other branches of government;

(b) Secondly, curtailing Parliament’s constitutional responsibilities undermines the *sui generis* nature of Parliament. Members of Parliament are direct

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representatives of the people and thus, Parliament cannot be prevented from giving a voice to the will of the people of Kenya. There are checks and balances within the separation of powers such that while Parliament should fulfil its responsibilities unabated, the courts will have their say in the exercise of judicial authority to declare any legislation or other output of Parliament illegal, unlawful or unconstitutional; and

(c) Thirdly, attempts to injunct Parliament are inimical to the desired levels of institutional comity and cordial relations among other branches of government. Intergovernmental relations survive on inter-institutional respect and deference in a mutual manner, on the basis of reciprocity. Parliament ought to respect the Judiciary and the opposite is also true.”

Hon. Senators, ladies and gentlemen, the Supreme Court in *Petition No.32 of 2014; Justus Kariuki Mate & Another vs Martin Nyaga Wambora & Another* [2017] also had an occasion to consider the competing constitutional imperatives under Articles 1 and 2 of the Constitution, in what would be described in legal parlance as the *locus classicus* on this issue.

In this matter, the Senate had resolved to remove the then governor of Embu County, Martin Wambora from office, by impeachment. Additionally, the High Court had issued conservatory orders, the effect of which were to prevent the impeachment of the governor.

Following his impeachment, the governor challenged the impeachment by an application before the High Court and sought interim orders for his reinstatement into office and an order of contempt of court against the appellants (the Speaker and Clerk of the County Assembly of Embu) for allowing an impeachment Motion to be discussed and passed while conservatory orders were in place. The governor was successful in his application, the Court held that all proceedings conducted in disobedience of the court orders were null and void and found the appellants guilty of contempt.

Aggrieved by the decision, the appellants filed an appeal at the Court of Appeal challenging the findings of the High Court. The Court of Appeal affirmed the findings of the High Court, leading to the appeal to the Supreme Court. Before the Supreme Court, the appellants urged that the trial court ought to have noted the legitimate dilemma facing the Speaker of the County Assembly, who was subject to constitutional timelines, yet was faced with a court order stopping the process.

It was argued that in this case that the Speaker had complied with the Constitution in a context in which the question of constitutional obligation, on the one hand, and the burden of knowledge of the court order, on the other, were at stake, and asked the court to clarify to what extent parties would be in violation of legal requirements if court orders that conflicted with constitutional deadlines were binding on them.

In rendering its decision, the Supreme Court made reference to the decision of the Court of Appeal in the case of *Mumo Matemu vs Trusted Society of Human Rights Alliance & Two others*, Civil Appeal No.290 of 2012 where the Court of Appeal adopted the High Court’s position on the doctrine of separation of powers, to the effect that-[Separation of powers] must mean that the courts must show deference to the independence of the Legislature as an important institution in the maintenance of our

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constitutional democracy as well as accord the Executive sufficient latitude to implement legislative intent.

Yet, as the respondents also concede, the courts have an interpretative role - including the last word - in determining the constitutionality of all governmental actions. The Supreme Court further made reference to its decision in *Speaker of the Senate & Another vs Attorney General & Four others*, Reference No.2 of 2013, and noted that the court had cautioned against undue interference with running processes in other arms of Government and had stated that-

“This court will not question each and every procedural infraction that may occur in either of the Houses of Parliament. The Court cannot supervise the workings of Parliament. The institutional comity between the three Arms of government must not be endangered by the unwarranted intrusions into the workings of one Arm by another”.

The Supreme Court aptly summarized the principles applicable to separation of powers in the Kenyan context as follows-

(a) Each Arm of Government has an obligation to recognize the independence of other Arms of Government;

(b) Each Arm of Government is under duty to refrain from directing another Arm on how to exercise its mandate;

(c) The courts of law are the proper judge of compliance with the constitutional edict, for all public agencies, but in exercising their judgment, Courts should be objective;

(d) For the due functioning of constitutional governance, the courts are to be guided by restraint, limiting themselves to intervention in requisite instances, upon appreciating the prevailing circumstances and the objective needs and public interests attending each case; and,

(e) In the performance of the respective functions, every Arm of Government is subject to the law.

In the end, the Supreme Court upheld County Speaker Justus Kariuki Mate’s appeal and nullified the conservatory orders that had been issued in the matter. In a recent Court of Appeal case, Civil Application No. E093 of 2023, *Hon. Kawira Mwangaza versus County Assembly of Meru and Others*.

The Court of Appeal also considered the issue of whether a court has jurisdiction to intervene in an impeachment process that is provided for in the Constitution and which has strict timelines for its determination. In its ruling delivered on 27<sup>th</sup> October, 2023, the Court of Appeal, while relying on the decision of the Supreme Court in the Embu impeachment matter, held as follows-

“The courts cannot, in the first instance, intervene in the impeachment of the applicant. This is because of the strict timelines provided by the law. The Supreme Court decision of Justus Kariuki Mate is binding on this court. The preliminary objection is, therefore, upheld. This court lacks jurisdiction in the first instance to consider the merits of the applicant’s application which sought Conservatory Orders before the impeachment process has run its constitutional and legal course.”

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I note that the constitutional mandate to impeach a governor is assigned to the county assembly and the Senate. Article 181 of the Constitution provides the circumstances under which a governor may be removed from office. In line with the terms of Article 181(2) of the Constitution, Parliament duly enacted the County Governments Act, Cap. 265, which, at Section 33, sets out the procedure to be followed in proceedings for the proposed removal of a governor.

Further, Standing Order No.80 of the Senate Standing Orders also provides for the procedure for removal of a governor from office. These provisions provide for strict timelines to be followed by the Senate in such proceedings. Constitutional and statutory timelines cannot be wished away by the issuance of *ex parte* orders as this would jeopardize the Senate's constitutional and statutory obligations.

Professor Kithure Kindiki, the then Deputy Speaker in the Senate, could not have put it better when, in a ruling that he delivered on 23rd October, 2019, he ruled, and I quote-

“I respectfully, but firmly determine that beyond peradventure, courts of law cannot and shall not stop or attempt to prevent Parliament from undertaking its constitutional mandate. Neither can the Judiciary compel any action to be undertaken by Parliament.

I rule that, any injunction interfering with the work of Parliament has no effect on Parliament in exercise of its constitutional functions. Such court orders have no effect on the National Assembly or the Senate, or any of their committees respectively.

In the unlikely event of any such orders, Parliament and its committees shall proceed unabated, unfettered and unhindered, as may be directed by their respective Speaker of Parliament.

The question of the effect, if any, of the court orders injuncting the Senate from conducting any business is well settled. In this respect, the determination on the question is the same regardless of the position advanced by the County Assembly. Whether or not there was, in fact, a court order in this matter does not matter. Nothing turns on it. The result is the same, which is that Parliament cannot be prevented from the discharge of its constitutional functions by deed of an order of the court.

The second issue for determination is whether, as contended by the governor, the threshold of two-thirds required at the County Assembly was not met. Related to this question is whether this is a question of fact, necessitating evidence to be adduced as contended by the County Assembly, or a pure question of law, requiring to be determined before the proceedings can continue.

In other words, is this a classical preliminary objection or not? This question is important because in virtually all impeachment proceedings before the Senate, preliminary objections have been raised and in no instance has the Senate terminated proceedings on the basis of a preliminary objection.

Successive Speakers have ruled that a preliminary objection would be considered together with the evidence and determined on the merits of the matter. In truth, the findings have meant that the preliminary objections raised did not fit within the true character of a preliminary objection.



A preliminary objection was defined in the case of Mukisa Biscuit Manufacturing Company Limited *versus* West End Distributors Ltd (969) EA as follows-

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. A preliminary objection raises a pure point of law, which is argued on assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has not been ascertained or if what is sought is the exercise of a judicial discretion.”

In this case, it is not in contention that the County Assembly of Kericho has 47 Members, and 31 of these Members voted in favour of the Motion for the proposed removal from office, by impeachment, of the governor of Kericho County. The only question that has risen as a preliminary matter is whether the two-thirds threshold was met and the consequence if such threshold was not met.

Linked to this question is the question whether this is a matter to be determined by the Speaker under Rule 30(1) of the Third Schedule to the Senate Standing Orders or a matter to be determined by Plenary. This matter was argued by counsel for the governor in support of determination by the Speaker while the County Assembly took the opposite view. Senators who spoke supported the view advanced by the County Assembly.

It is not in doubt that the trial court in impeachment matters is the Senate. It is however also not in doubt that Rule 30 vests in the Speaker as the presiding officer, the power to make certain determination for purpose of continuity of proceedings of impeachment proceedings.

Nevertheless, taking one thing with another and in the context of the totality of the current proceedings, I rule that the question on whether to uphold the preliminary objection raised by the counsel for the governor on the matter of whether the threshold for impeachment was met will be determined in the present case by a vote of the Senate.

This is so because as earlier explained in this ruling, the preliminary objection raised in the present case is of such momentous character that it goes to the substratum of the impeachment proceedings and has the prospect of terminating the proceedings at this point. The County Governments Act and the Senate Standing Orders did not contemplate a situation where the Speaker is called upon to terminate the proceedings in a proposed impeachment without the participation in that decision by the Senate.

I further rule that considering that the effect of this vote could be a determination of the impeachment process as a whole, this is a matter concerning counties and accordingly, the preliminary objection will be upheld if supported by 24 delegations. In such event, the present proceedings will forthwith terminate.

The procedure for going to this vote, hon. Senators, will be a Motion in the usual manner, preceded by a Notice of Motion. The vote will be taken upon the conclusion of debate in the usual manner and to this end, I have directed the Clerk to prepare and circulate a Supplementary Order Paper containing the Notice of Motion and the Motion as soon as I conclude with this ruling.

One further matter from the preliminary issues raised remains outstanding, which is the matter of the request made by the County Assembly for the protection of the witness. This question will only become relevant after the disposal of the Motion.

It is so directed.

*(Applause)*

Clerk, kindly circulate the Supplementary Order Paper, so that we get down to business.

*(Loud consultations)*

**The Speaker** (Hon. Kingi): Order, hon. Senators. Senate Minority Leader and your team, kindly proceed to take your seats. Sen. Olekina and Sen. Gloria, proceed to take your seats.

Senator for Nairobi, Sen. M. Kajwang' and Sen. Omogeni, this is not a matter that should attract some campaigns. Sen. Sifuna, I will throw you out if you continue having Members around you.

*(Loud consultations)*

Let us be orderly, hon. Senators. Please take your seats.

Clerk, proceed to call the next Order.

## NOTICE OF MOTION

### RESOLUTION OF THE SENATE TO UPHOLD THE PRELIMINARY OBJECTION ON THE THRESHOLD REQUIRED FOR REMOVAL OF A GOVERNOR FROM OFFICE, BY IMPEACHMENT

**Sen. Tabitha Keroche:** Mr. Speaker, Sir, I beg to give Notice of the following Motion-

THAT, AWARE that pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, on Wednesday, 2<sup>nd</sup> October, 2024, the County Assembly of Kericho approved a Motion for the removal from office, by impeachment, of Hon. (Dr.) Erick Kipkoech Mutai, Governor of Kericho County;

NOTING THAT, by a letter Ref. No. KCA/SP/3 Vol. I/4/ (34), dated Wednesday, 2<sup>nd</sup> October, 2024, and received in the Office of the Speaker on the same day, the Speaker of the County Assembly of Kericho informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly, including the list of 31 out of 47 Members of the County Assembly (MCAs) that voted in favour of the Motion for removal from office, by impeachment, of Hon. (Dr.) Erick Kipkoech Mutai, the Governor of Kericho County;

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ALSO NOTING that one of the preliminary objections raised by Hon. (Dr.) Erick Kipkoech Mutai, the Governor of Kericho County, was that the requisite threshold for passage of a Motion for the removal of a governor from office, by impeachment, being two-thirds of Members of the County Assembly, as provided for in Section 33 of the County Governments Act and Standing Order No.74 of the Standing Orders of the County Assembly of Kericho, is 32 Members of the County Assembly and was not met;

NOW THEREFORE, the Senate resolves to uphold the preliminary objection on the threshold required for removal of a Governor from office, by impeachment, provided for in Section 33 of the County Governments Act and Standing Order No.74 of the Standing Orders of the County Assembly of Kericho and forthwith terminates the hearing on the proposed removal from office, by impeachment, of Hon. (Dr.) Erick Kipkoech Mutai, the governor of Kericho County.

**The Speaker** (Hon. Kingi): Let us move on to the next Order.

### MOTION

#### RESOLUTION OF THE SENATE TO UPHOLD THE PRELIMINARY OBJECTION ON THE THRESHOLD REQUIRED FOR REMOVAL OF A GOVERNOR FROM OFFICE, BY IMPEACHMENT

**Sen. Tabitha Keroche:** Mr. Speaker, Sir, I beg to move the following Motion- THAT, AWARE that pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, on Wednesday, 2<sup>nd</sup> October, 2024, the County Assembly of Kericho approved a Motion for the removal from office, by impeachment, of Hon. (Dr.) Erick Kipkoech Mutai, Governor of Kericho County;

NOTING THAT, by a letter Ref. No. KCA/SP/3 Vol. I/4/ (34), dated Wednesday, 2<sup>nd</sup> October, 2024, and received in the Office of the Speaker on the same day, the Speaker of the County Assembly of Kericho informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly including the list of 31 out of 47 Members of the County Assembly (MCAs) that voted in favour of the Motion for removal from office, by impeachment, of Hon. (Dr.) Erick Kipkoech Mutai, the Governor of Kericho County;

ALSO NOTING that one of the preliminary objections raised by Hon. (Dr.) Erick Kipkoech Mutai, the Governor of Kericho County, was that the requisite threshold for passage of a Motion for the removal of a governor from office, by impeachment, being two-thirds of Members of the County Assembly, as provided for in Section 33 of the County Governments Act and Standing Order No.74 of the Standing Orders of the County Assembly of Kericho, is 32 Members of the County Assembly and was not met;

NOW THEREFORE, the Senate resolves to uphold the preliminary objection on the threshold required for removal of a Governor from office, by impeachment, provided for in Section 33 of the County Governments Act and Standing Order No.74 of the Standing Orders of the County Assembly of Kericho and forthwith terminates the hearing

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on the proposed removal from office, by impeachment, of Hon. (Dr.) Erick Kipkoech Mutai, the governor of Kericho County.

Mr. Speaker, Sir, I request Sen. Madzayo to second.

**The Speaker** (Hon. Kingi): Senator for Kilifi County, are you having difficulties?

**The Senate Minority Leader** (Sen. Madzayo): Mr. Speaker, Sir, reading the mood, let me second.

*(Applause)*

**The Speaker** (Hon. Kingi): Order. Order, Sen. Chimera.

*(Question proposed)*

**The Speaker** (Hon. Kingi): Hon. Senators, of course, the Floor is now open for you to debate this Motion. However, if you may have noticed, debate actually preceded this Motion. With your consensus, therefore, and even assuming that this Motion is defeated, it means that we have to start the hearing. It is now going to 5.00 p.m. and the case of the County Assembly has to be heard today, in the event that this Motion is defeated.

With that Hon. Senators, would you allow me to proceed and put the question?

I will now proceed to put the Question.

*(Question put)*

Hon. Senators, I have already ruled that this is a matter that concerns counties and, therefore, voting shall be by delegations and we are going to vote electronically. At this juncture, I will ask the hon. Senators to remove their cards from the delegate units.

*(Sen. Cherarkey spoke off record)*

Senator for Nandi County, we will get there. So, wait.

Serjeant-at-Arms, you can move around and pick unattended cards as you also ring the Division Bell for five minutes.

*(The Division Bell was rung)*

**The Speaker** (Hon. Kingi): Hon. Senators, the five minutes are spent. Serjeant-at-Arms, kindly draw the Bar and close the Doors.

*(The Bar was drawn and the Doors locked)*

*(Several Senators stood up in their places)*

Hon. Senators, take your seats. Sen. Mumma and Sen. Olekina, please, take your seats.

Hon. Senators, as I had already indicated, voting shall be done electronically. Therefore, you may now proceed to log in and vote. Time is running, hon. Senators; cast your vote.

*(Hon. Senators proceeded to vote)*

Order, Hon. Senators. Senator for Homa Bay County, take your seat. Thank you.

### MOTION

RESOLUTION OF THE SENATE TO UPHOLD THE PRELIMINARY  
OBJECTION ON THE THRESHOLD REQUIRED FOR REMOVAL OF  
A GOVERNOR FROM OFFICE, BY IMPEACHMENT

### DIVISION

#### ELECTRONIC VOTING

*(Question, that the Senate resolves to uphold the preliminary objection on the threshold required for removal of a Governor from Office, by impeachment, provided for in section 33 of the County Governments Act and Standing Order No.74 of the Standing Orders of the County Assembly of Kericho and forthwith terminates the hearing on the proposed removal from office, by impeachment, of Hon. (Dr.) Erick Kipkoech Mutai, the Governor of Kericho County put, and the Senate proceeded to vote by County Delegation)*

**AYES:** Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Cheptumo, Baringo County; Sen. Chute, Marsabit County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire, Tharaka-Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a County; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kinyua, Laikipia County; Sen. Kisang, Elgeyo-Marakwet County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lomenen, Turkana County; Sen. Maanzo, Makueni County; Sen. Mandago, Uasin Gishu County; Sen. Methu, Nyandarua County; Sen. M. Kajwang', Homa Bay County; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Murgor, West Pokot County; Sen. Mwaruma, Taita-Taveta County; Sen. Oketch Gicheru, Migori County; Sen. Okiya Omtatah, Busia County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; and, Sen. Wamatinga, Nyeri County.

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**NOES:** Sen. Boy, Kwale County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Faki, Mombasa County; Sen. Madzayo, Kilifi County; Sen. (Dr.) Oburu Oginga, Siaya County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Tom Odhiambo Ojienda SC, Kisumu County; and, Sen. Wambua, Kitui County. **ABSTENTIONS:** Nil

**The Speaker** (Hon. Kingi): Hon. Senators, the results of the Division are as follows-

**AYES:** 34

**NOES:** 10

**ABSTENTIONS:** Nil

The “Ayes” have it.

*(Question carried by 34 votes to 10)*

Serjeant-at-Arms, you may now draw the Bar and open the Doors.

*(The Bar was drawn and the Doors opened)*

Now, hon. Senators, the Motion having been approved, the hearing proceedings on the proposed removal from office, by impeachment, of Hon. (Dr.) Erick Kipkoech Mutai, the governor of Kericho County, hereby terminates.

### **ADJOURNMENT**

**The Speaker** (Hon. Kingi): Hon. Senators, the Senate now stands adjourned until tomorrow, Tuesday, 15<sup>th</sup> October, 2024 at 9.00 a.m.

The Senate rose at 5.00 p.m.