

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 16<sup>th</sup> October, 2024

### Special Sitting

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

*The House met at the Senate Chamber,  
Parliament Buildings, at 2.50 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)*

Clerk, proceed to call the first Order.

### COMMUNICATION FROM THE CHAIR

RULING ON THE PRELIMINARY OBJECTION ON APPEARANCE  
OF HON. GOVERNOR JAMES ORENGO, SC, AS  
COUNSEL FOR THE NATIONAL ASSEMBLY

**The Speaker** (Hon. Kingi): Hon. Senators, this morning at the commencement of the hearing for the removal from office, by impeachment, of His Excellency Rigathi Gachagua, the Deputy President of the Republic of Kenya, Legal Counsel for the Deputy President; Mr. Ndegwa Njiru, Learned Counsel, raised a preliminary objection on the legal representation for the National Assembly.

Learned Counsel opposed the appearance of Hon. James Orengo, SC, who is the serving Governor of Siaya County and, therefore, a State Officer.

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Learned Counsel submitted that the Hon. James Orengo, SC, is a full-time serving state officer as per Article 260 of the Constitution, as read together with Section 26, Subsection (2), of the Leadership and Integrity Act, which bars a full-time state officer from engaging in any other gainful employment. Counsel further submitted that it would be prejudicial to the Deputy President if the Senate allowed Hon. James Orengo, SC, to represent the National Assembly in these proceedings.

Counsel drew the attention of the Senate to the precedent set in the matter of the proposed impeachment of the Deputy Governor of Kisii County, Hon. Richard Monda, in which a decision was taken to bar Hon. Sylvanus Osoro, Majority Whip of the National Assembly and Member of the National Assembly for South Mugirango in Kisii County, from appearing as Counsel for the Kisii County Assembly.

In his submission, Counsel cited Article 77 of the Constitution and Section 26 of the Leadership and Integrity Act, as well as the decision of the High Court in Office of the Director of Public Prosecutions versus Orengo; Manduku and 2 others (interested parties) (Constitutional Petition 204 of 2019) (2021) KEHC 456 (KLR) (27 April 2021) (Ruling), where Hon. Justice Ogola found and ruled that the continued representation of the 1<sup>st</sup> interested party, Mr. Manduku, by the Respondent, Hon. Sen. James Orengo, SC, as he then was or any other state officer is against the spirit of Chapter 6 of the Constitution, for failing to conform to the mandatory provisions of the Leadership and Integrity Act.

The judge ruled that in that case, there was an inescapable conclusion of conflict of interest in Senator Orengo representing the Petitioner, highlighted by the fact that the interested party, Mr. Manduku, the Managing Director of Kenya Ports Authority (KPA) may at one time be summoned to appear before a Committee of the Senate to answer to some of the matters that the Petitioner was being investigated on.

In response, Mr. Eric Gumbo, Learned Counsel for the National Assembly, submitted that Article 77 of the Constitution is the primary law that restricts activities of state officers and it specifically prohibits a state officer from engaging in other “gainful employment.” Counsel further relied on Section 26 of the Leadership and Integrity Act, which he submitted has defined gainful employment and in this matter no evidence had been laid that the Hon. James Orengo, SC, was participating in gainful employment.

Counsel referred the Senate to the decision of the High Court in Busia Election Petition No. 3 of 2013 where the Court interpreted Article 77 of the Constitution and Section 26 of the Leadership and Integrity Act, 2012. Counsel also cited the decision of the court in the Mwilu case, which defined conflict as where one is confronted by two different interests where one is competing with the other.

Learned Counsel for the National Assembly submitted further that no prejudice has been demonstrated that would arise or be occasioned to the Deputy President by the participation of Hon. James Orengo, SC, in these proceedings.

Learned Counsel for the National Assembly sought to distinguish the decision by Hon. Justice Ogola in the Office of the Director of Public Prosecution Versu Orengo; Manduku and 2 Others (Interested Parties) (Constitution Petition 204 of 2019) on the basis that this case turned on the fact that Hon. James Orengo was at that time a sitting Senator before whom the matters in respect of which his client was charged could

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potentially come for adjudication in the Senate and that no such possibility exists into the current matter with Hon. James Orengo, SC, as the Governor of Siaya County.

In his rejoinder, Mr. Njiru, Learned Counsel, submitted that Hon. Orengo, SC, is the serving Governor of Siaya County and, therefore, a full-time State officer and by that fact is in violation of Article 77 of the Constitution.

Further, Mr. Njiru submitted that prejudice is not one of the applicable tests under Article 77 and Section 26 of the Leadership and Integrity Act, but that the only applicable test is whether or not Hon. Orengo is engaged in gainful employment. He argued that the National Assembly had not proved that Hon. Orengo was providing *pro bono* services in this matter.

Hon. Senators, Article 77(1) of the Constitution provides that “a full-time State Officer shall not participate in any other gainful employment”.

Further, Section 26 of the Leadership and Integrity Act provides that “a full-time State Officer shall not participate in any other gainful employment” while Section 26(2) defines “gainful employment” as –

“Work that a person can pursue and perform for money or other form of compensation or remuneration which is inherently incompatible with the responsibilities of the state office or which results in the impairment of the judgment of the state officer in the execution of the functions of the state office or results in conflict of interest in terms of Section 16.”

Having considered the matter, it is important to state that a state officer must inspire confidence. However, it is trite law that he who asserts must prove. In this regard, I wish to observe that the Learned Counsel for the Deputy President did not adduce evidence to prove and demonstrate the allegation of gainful employment. In fact, it is somewhat surprising that Counsel attempted to shift the onus of proving gainful employment to the National Assembly. That argument is untenable.

As to the Ruling of the Senate that barred Hon. Osoro from appearing for the County Assembly of Kisii in the impeachment proceedings of the Deputy Governor of the Kisii County Government, it is clear that what was objectionable was that Hon. Osoro was not only a Member of Parliament for a constituency in the same county whose Deputy Governor’s impeachment was in issue, but was also a high ranking Member of the leadership of the National Assembly, and by extension, of the same Parliament before which the impeachment was being undertaken.

It was ruled that in these circumstances, it was clear that in the minds of the public, the fine distinctions of the bicameral Parliament would be lost and their confidence in the impeachment process would entirely be undermined.

In the same breath, as rightfully contended by Counsel for the Deputy President, it is true that in both Article 77 of the Constitution and Section 26 of the Leadership and Integrity Act, no test of prejudice is expressly provided for. It, therefore, follows that both the contention of the Counsel for the Deputy President that his side would be prejudiced by the appearance of James Orengo, SC, and the rebuttal by the National Assembly that no prejudice will be occasioned are moot.

Hon. Senators, ladies and gentlemen, having analysed the preliminary objection raised and for the reasons I have given, the preliminary objection raised on the

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appearance for the National Assembly by Senior Counsel James Orengo, SC, is hereby dismissed.

We will now hear the response on the second objection raised by the Counsel for the Deputy President. Counsel, you have five minutes to do that.

**Mr. Eric Gumbo:** Thank you, Mr. Speaker, Sir. I will endeavour to respond to the Preliminary Objection within the time allowed for us.

The objection was premised on Rule 20 governing the proceedings that are currently before this House. The rule reads that:

“In presenting its evidence, the Assembly shall not introduce any new evidence that was not a part of the allegations against the President by the National Assembly as forwarded by the Speaker to the National Assembly to the Speaker of the Senate.”

Mr. Speaker, Sir, the context of this rule is important. A true reading of this Rule would mean that every material that was available before the National Assembly while deliberating the Motion that was before it is what is contemplated to have been sent to the Speaker of the Senate.

The question, therefore, that we would be asking ourselves this afternoon is whether there is any new evidence that has been adduced by the National Assembly. Our answer to that is an emphatic no. Why do we say no? We say no for the first reason that the reference to the letter forwarding the material that came from the National Assembly contained amongst other items paragraph 21 which spoke to a report of a public participation that was conducted by the National Assembly.

That report was tabled on the Floor of the House was adopted by the House. Deliberations in relation to that report were made. Not a single objection arose. Therefore, it certainly follows that, that material from public participation became a necessary part of the material that was considered before the National Assembly.

To give it context, in addition to the material that was presented by the Mover of the Motion to the National Assembly, hon. Members of the National Assembly had their deliberations, which were also captured in the HANSARD.

In that HANSARD, material was introduced by way of questions, by way of contribution from the Floor of the House. That material too forms part of evidence of proceedings before the National Assembly.

It is, therefore, our submission that just in the same manner in which the HANSARD from the National Assembly forms part of a report that was presented before you, the report on the public participation too is an important component of that report. There must have been a reason why that public participation was conducted.

In our humble submission, Mr. Speaker, Sir, the appropriate test that one would want to apply on whether or not to allow that material to be before this honourable House is the all-celebrated test of relevance.

It should not be lost that sitting as this House is sitting this afternoon, it is a *quasi-judicial* proceeding. It is a proceeding that is also inquisitorial. Therefore, what is important is that the material that is presented by way of public participation or by any other way is relevant to help the House determine the truth or otherwise of the issues that have been raised for the consideration of this House.

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How then, Mr. Speaker, Sir, do we get to answer that question? I have had a look at the specific document that my learned friend, Mr. Ndegwa Njiru, objected to. It is an affidavit by one Mr. Peterson Njomo Muchira.

Mr. Njomo Muchira says that he followed the proceedings before the National Assembly. He says in particular at his Paragraph 4 that he has also had occasion to look at the response filed by His Excellency the Deputy President of the Republic of Kenya at Part 1.1 of his response. He says that he has personal knowledge of the items that would give clarity to part of the assertions in response by His Excellency the Deputy President.

For context, that Part 1.1 is contained in Volume 6 of one of the volumes that were presented before you. It is the volume speaking to the response by His Excellency the Deputy President.

At part 1.1, it speaks about a hotel called the Olive Garden Hotel. In particular, at Part 1.1.4, His Excellency the Deputy President says, in accordance with these instructions, the Hotel was sold by executors to a third party.

Mr. Peterson Njomo Muchira, on the other hand, says:

“I have information that---

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

**Mr. Eric Gumbo:** Thank you, Mr. Speaker, Sir. Mr. Peterson Njomo then says that he has information, which indicates that number one is a shareholder to the company, which bought that hotel and that according to him, he got into a secret transaction with His Excellency the Deputy President to buy it.

It is our submission that, that is material that is relevant for purposes of consideration of the matter that is before this House. I urge that that preliminary objection be dismissed.

I am most obliged.

**The Speaker** (hon. Kingi): Thank you. Hon. Senators, ladies and gentlemen, we need not take a break to allow me prepare my ruling. Just give me a minute; I put my thoughts together so that we may make progress.

**Mr. Ndegwa Njiru:** Mr. Speaker, Sir, with your kind permission, I was just seeking your guidance on whether I need to do a rejoinder because I am the one who had moved the National Assembly in respect to the---

**The Speaker** (Hon. Kingi): Very well, you may go on as I put my thoughts together.

**Mr. Ndegwa Njiru:** Thank you, Mr. Speaker, Sir. In response to what my learned friend has raised, the objection had nothing to do with the public participation as cited. We simply raised an objection that goes to the roots of the ability to enjoy proceedings that will appear fair to all parties.

My objection was premised on the non-derogable right to a fair hearing. The Counsel has addressed you that the deponent of that affidavit, Mr. Njomo, was responding to the Deputy President's response.

There is nothing that can be far from the truth; this is a witness who is being brought to attempt to panel beat the case for the National Assembly. The question and the

test, is shall we suffer prejudice? Shall our rights be deemed to have been held? That is a non-derogable right to a fair hearing.

This is not a witness who was before the National Assembly. Where is a source of this information in the document that was submitted to this House by the Speaker of the National Assembly? Where does it sit? Who sits to suffer prejudice if the same is admitted? Is it a state organ or an individual in the name of the Deputy President of the Republic of Kenya?

We urge you to uphold our ruling and justice be seen to be done, even the people following these proceedings.

I am most obliged.

### COMMUNICATION FROM THE CHAIR

#### RULING ON THE SECOND PRELIMINARY OBJECTION ON INTRODUCTION OF NEW DOCUMENTS BY THE NATIONAL ASSEMBLY

**The Speaker** (Hon. Kingi): Now, hon. Senators, the second preliminary objection raised by the Counsel for the Deputy President was that the following documents, which were submitted by the National Assembly on Monday, 14<sup>th</sup> October, 2024, were not part of the bundle of documents of the National Assembly that was served on the Deputy President on Wednesday, 9<sup>th</sup> October, 2024.

- (a) An affidavit signed by Mr. Peterson Njomo Muchira; and
- (b) The document of the National Assembly marked as Volume 8(a): responses from various government agencies.

Counsel for the Deputy President stated that these documents prejudice the Deputy President's case and amounted to a trial by ambush by the National Assembly. Counsel urged the Senate to bar the introduction of these two documents as they constitute new evidence in terms of Rule 20 of Part 1 of the Second Schedule to the Senate Standing Orders.

Counsel for the National Assembly opposed the preliminary objection raised by the Counsel for the Deputy President.

Hon. Senators, ladies and gentlemen, Rule 20 of Part 1 of the Second Schedule to the Senate Standing Orders provides, and I quote-

“In presenting its evidence, the Assembly shall not introduce any new evidence that was not part of the allegations against the President by the National Assembly, as forwarded by the Speaker of the National Assembly to the Speaker of the Senate.”

As I indicated in my earlier Communication, by a letter dated 8<sup>th</sup> October, 2024, I received a bundle of documents and records of proceedings in the National Assembly in this matter. Thereafter, on 9<sup>th</sup> October, 2024, pursuant to Rule 6 and 7 of Part 1 of the Second Schedule to the Senate Standing Orders, the Office of the Clerk of the Senate sent invitations to appear to both parties. The parties were required, amongst other things, to specify any other evidence to be relied on in this matter.

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In response to this invitation, on Monday, 14<sup>th</sup> October, 2024, the National Assembly filed further documentation. Having analysed the documentation submitted against the grounds for the proposed impeachment, I find that the documents objected to constitute evidence in support of the allegations already made in the Impeachment Motion as received from the National Assembly.

It is noteworthy that the parties were instructed when sending responses to indicate any other evidence to be relied on. Accordingly, the documents being referred to do not constitute new evidence, but form evidence in support of an allegation which was already made. That is why Rules 6 and 7 of the Rules of Procedure permit the Senate to receive witness statements, list of witnesses to be invited and any other evidence to buttress an allegation already made. What is not allowed is to introduce new allegations or to introduce any evidence that is extraneous to the allegations made in an Impeachment Motion. In the event, it is my considered view that the affidavit and document marked as Volume 8(a) being referred to fall within the permissible documents of our Rules of Procedure. I, therefore, rule that the objection is hereby dismissed.

Hon. Senators, having dispensed with the preliminary matters in this particular hearing, we will now move to hear---

Yes, Counsel for the National Assembly.

**Mr. Eric Gumbo:** Mr. Speaker, Sir, with your very kind permission and indulgence, we as well on the part of the National Assembly had two quick preliminary issues, which we want to draw your attention to. They are quick housekeeping issues. If you permit me, just in two minutes, I may be able to draw them to your attention.

**The Speaker** (Hon. Kingi): You have exactly two minutes.

**Mr. Eric Gumbo:** I am most obliged, Mr. Speaker, Sir. The first one is in relation to the bundle of documents that we have filed before this House to help it determine the matter that is before it. In particular, we have one of our volumes, Volume 4, as a document presented before this honourable House. When we were perusing our documents yesterday, we did realize that one of the documents in that Volume 4 running from page 135 to 140 appears to have been inadvertently copied just on one part. In other words, in the course of the printing, we missed out the even numbers and just printed out the odd numbers.

We have since availed that document. It is not a new document. The only thing that had happened is that inadvertently, we did not get the even numbers printed. We have since done that and with your permission, we urge that we be allowed to rely on that document. We filed it and served it to our colleagues, Counsel, appearing for His Excellency the Deputy President, as well as to the House, that it may be relied upon. That is the first preliminary intervention that we seek.

The second issue is in relation to a letter that we did to you on 14<sup>th</sup> October, 2024, wherein we sought the help of this House through your Office to have summons issued to the Chief Executive Officer (CEO) of the Ethics and Anti-Corruption Commission (EACC) for purposes of helping give testimony to matters that are before this House.

The reason for us seeking this preliminary intervention is to ask formally that those summons be issued so that the said witness could attend to help us determine the matters that are before you. In our letter, we indicated the specific item that he is to

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testify to. It is equally our humble plea that an order be made that summons be issued to have the CEO of the EACC attend as a witness.

I am most obliged, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): Counsel for the Deputy President, what say you?

**Hon. Paul Muite, SC:** Mheshimiwa Speaker, Hon. Senators, with regard to the first request, which I understand to mean that when they were photocopying some pages were left, we will examine that and see what was served on us and what those pages that are now being introduced contain.

With regard to summons, to ask individuals from the EACC to come and give evidence, we draw your attention to Article 50 of the Constitution, which is a fulcrum of a fair trial. This honourable House is executing a *quasi-judicial* function of the most weighted nature regarding the Proposed Removal from Office of the Deputy President of the Republic of Kenya, elected by the people of Kenya. Nothing would be more prejudicial than to call witnesses whose statements or affidavits we have not seen.

The whole purpose of affidavits and witness statements is to enable the other side, in this case, the Deputy President, to seek legal advice, give instructions on how best to respond to it. This honourable House has fixed two days for this trial.

One of the issues we will be raising is these allegations and you are going to go through them, against the Deputy President, suspicions, conclusions, on matters that were never referred to Directorate of Criminal Investigations (DCI) on Kiambu Road, who are trained to investigate these matters. Nothing was referred to the EACC or any of the other investigative agencies, including money laundering.

We strongly object and ask that the record of this honourable House reflects that if this is permitted, for the National Assembly to call witnesses at this stage without first furnishing us with their witness statement and affidavit, the case of the Deputy President will be irredeemably prejudiced. So, we object very strongly to that application.

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

**Mr. Paul Nyamodi:** Mr. Speaker, Sir, in brief rejoinder to the objection by learned Senior Counsel for the Deputy President, in the invitation to attend that was extended by this House to the National Assembly, it included a request as to a list of witnesses the National Assembly required summoned. We responded to that request. All we seek is a confirmation that our response has been actioned. What the learned Counsel for the Deputy President is objecting to is not our request, but a response to a request made by this august House.

I am most obliged.

**The Speaker** (Hon. Kingi): Counsel for Deputy President, do I get it that you have no problem with the first request made by the National Assembly?

**Hon. Paul Muite, SC:** Mr. Speaker, Sir, we would want to see those pages and, at that time, say, yes or not. It is the second one.

**The Speaker** (Hon. Kingi): Clerk, has that document been made available to the Deputy President's team? In the next few seconds, make it available so that we make progress.

Hon. Senators, if there is any Senator who has not gotten that document, let the Chair know so that we supply it to you.

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Sen. Madzayo, Sen. Olekina, Sen. Miraj, Sen. Kavindu, Sen. Crystal Asige and Sen. M. Kajwang’.

**Mr. Tom Macharia:** Mr. Speaker, Sir, just to highlight on one point based on what my learned friends for the National Assembly have said. The letter they refer to is dated 14<sup>th</sup> October, 2024, addressed to the Speaker of the Senate by the Clerk of the National Assembly. It does not contain any information about any other witnesses being sought. It does not indicate that the EACC will be asked to produce any other witness, affidavits or documents.

**The Speaker** (Hon. Kingi): Take your seat, Counsel. Senior Counsel Paul Muite, are you in receipt of the document now?

**Hon. Paul Muite, SC:** Mr. Speaker, Sir, we are seeing this document for the first time now; about three or four minutes ago. It has many pages and we were quickly going through it. In order to save the time of this honourable House, perhaps, you could give us the opportunity to go the documents. *Inaonekana kama hii ni ukarabati.*

If you agree, Mr. Speaker, Sir, we can get on with the first prosecution witness, giving evidence. As soon as we have gone through this, then we shall come to you.

**The Speaker** (Hon. Kingi): Thank you for your wisdom, Senior Counsel. The other limb that has been raised is on the issue of summons to witnesses. If you look at our Rules of Procedure, particularly Rule No.10 which provides as follows:

“The Senate may at the request of the National Assembly or the President and in this matter, the Deputy President, invite or summon any person to appear and give evidence before the Senate.”

So, the summons that have been sought are in line with the spirit of Rule 10 of our Rules of Procedure. You may attack the evidence of these witnesses who have been summoned if their evidence introduces other allegations and at that particular juncture, the legal team of the Deputy President may raise an issue and I will certainly hear you.

**Hon. Paul Muite, SC:** Mr. Speaker, Sir, permit me to place it on record that the Rules of these honourable Senate must and have to be respected. Even above respecting the rules of this honourable House and our Constitution has to be respected.

Article 50, the right to a fair trial, which in terms of Article 25(c), you are aware that that is a right that cannot be compromised in any manner. There has been no explanation as to why the EACC was never asked to investigate the allegations before they were tabled before the National Assembly and before a decision was taken.

This is because the National Assembly cannot investigate criminal offences. In implementing Chapter 6 of the Constitution, the Act of Parliament says that a conviction is necessary and now, you want to reverse the will of the Kenyan people in electing the Deputy President, without him being reported or the matter being investigated or him being convicted.

Mr. Speaker, Sir, I plead that you reconsider your exercise of that discretion in permitting witnesses from the EACC to be called in order for the Deputy President to have a fair trial before this Senate.

**The Speaker** (Hon. Kingi): Senior Counsel Paul Muite, you are actually arguing your case. I said that there was invitation sent to both parties and each party was requested to submit a list of witnesses.

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The National Assembly submitted a list of witnesses with a request under Rule 10 of our Rules of Procedure for the Senate to summon. That is the request that has just been made by the National Assembly and it is permissible and within our Rules of Procedure.

Senior Counsel Paul Muite, I will refer you to Rule No.30 of our Rules of Procedure, where the speaker's ruling is final. Let us leave the matter there. I have made my ruling. Let us make progress.

**Hon. Paul Muite, SC:** Mr. Speaker, Sir, I agree entirely. You are the one sitting in the seat of power; your word is final. I have said what I have said. Your rules are subject to the Constitution. I accept your ruling.

**The Speaker** (Hon. Kingi): We will move to the second limb of this hearing. Clerk, call the next Order. Summons should be issued to those witnesses.

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

**The Speaker** (Hon. Kingi): Hon. Senators, ladies and gentlemen, we will move to the opening statements. Each party will have half-an-hour to make their opening statement, starting with the Counsel for the National Assembly. Your time starts running from now.

#### **OPENING STATEMENT ON BEHALF OF THE NATIONAL ASSEMBLY**

**Hon. James Orengo, SC:** Thank you, Mr. Speaker, Sir, and hon. Members of the Senate. Speaking for us, this is a momentous occasion in our history. This must be recorded as such. The United States of America (USA) has been 248 years old since its Independence. For the entire two-and-a-half centuries, no Vice President of the USA has undergone a process of removal by way of impeachment. In a way, we are making history.

This is such an important occasion for the 13<sup>th</sup> Parliament and this Senate that it will go down in the annals of history that the first impeachment of a Deputy President in the Republic of Kenya was undertaken by this Senate.

We come here with a lot of confidence that the Senate is not new to the process of impeachment as understood under our Constitution. Indeed, the Senate has handled many impeachment proceedings related to the Office of Governors and Deputy Governors.

More importantly, this Senate has been a great contributor to establishing the jurisprudence revolving around the impeachment process in the Republic of Kenya. Many of the cases that have gone for determination in our systems of courts, High Courts, Court of Appeal and the Supreme Court have involved the participation of the Senate.

As we address you today, we are not addressing a Chamber that is dealing with a novel idea. Indeed, by dint of Article 10 of the Constitution, which requires all State organs and offices to make any decisions or apply the law and the Constitution. They are

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required to apply the Constitution of the Republic of Kenya. This is by dint of Article 10(1). It should not be lost to anybody that the application of the Constitution in decision-making is entirely in the province of the courts.

This Senate on this issue, you are seized of this matter. It is an exclusive jurisdiction that is granted to the Senate to undertake a trial for the impeachment and removal of a deputy governor or governor or a Deputy President or President.

This is an exclusive jurisdiction that even the courts have spoken about many times. The courts can intervene in limited and justified occasions that merit their intervention. However, it should never be lost that this is the trial court, if I may put it that way. We also come here knowing that the Senate is a repository of the law with regard to impeachments. All the cases involving the impeachment of governors and deputy governors that have gone to the courts have involved the participation of the Senate.

If we were ever to talk about a repository of the law regarding the removal of state officers by way of impeachment, it is the Senate. It should not be lost historically from comparative studies in various jurisdictions why this role in our constitutional design was left to the Senate. It was a decision by the framers of our Constitution that it should be an exclusive matter to be dealt with by the Senate.

Having said that, I was advised by the leadership of our National Assembly who are our clients, to read a certain passage of the Bible. I have a copy here. I had to carry this Bible. I read the Bible a lot to myself, but never on this kind of occasion. This is the Book of Exodus 22:22-24. I will read the St. James Version, which I prefer because of the language and from the Living Bible whose English is more appropriate –

King James Version–

“Ye shall not afflict any widow, or fatherless child.

<sup>23</sup> If thou afflict them in any wise, and they cry at all unto me, I will surely hear their cry.<sup>24</sup> And my wrath shall wax hot, and I will kill you with the sword, and your wives shall be widows, and your children fatherless.”

Living Bible –

<sup>22</sup> “You must not exploit widows or orphans; <sup>23</sup> if you do so in any way, and they cry to me for my help, I will surely give it. <sup>24</sup> And my anger shall flame out against you, and I will kill you with enemy armies so that your wives will be widows and your children fatherless.”

“If you do so in any way and they cry to me for my help, I shall surely give it. And my anger shall flame out against you, and I will kill you with enemy armies, so that your wives will be widows and your children fatherless”.

This is the Lord of the Old Testament.

Now, I will come back to this matter later. For now, I want to walk a constitutional journey with the Senate in giving a panoramic view of what our constitutional order is in regard to the Office of the President and the Deputy President.

Under the old Constitution, we had no provisions like the ones we have in this Constitution. However, I want to persuade this honourable Senate that this Constitution does not just address rights as contemplated in the Bill of Rights, it also addresses fears; fears out of a long struggle and experience of the people of Kenya.

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The Kenyan people, having given themselves this Constitution, were addressing rights and fears, and more importantly, they wanted to establish a system of government that can work. With that, I want to take you, the Senate, to Article 75 of the Constitution, just to draw the attention of the House to the seriousness of the matter we are dealing with, which is a provision in relation to the oath of office of state officers. Article 74 says:

“Before assuming a State office, acting in a state office, or performing any functions of the State office, a person shall take and subscribe the oath or affirmation of office in the manner and form prescribed by the Third Schedule or under an Act of Parliament”.

I want to take you to that schedule and I want to draw a difference, a distinction between the oath of office that is administered to the President and the Deputy President, as opposed to the other oaths that are taken by other State officers, including Members of Parliament (MPs). There is a big distinction.

When it comes to the oath of the due execution of the Office of the President and that of the Deputy President, which is found in the Third Schedule of the Constitution, there are words there that I would plead to the Senate to consider in consideration to the matters which were raised in the Motion of impeachment by the National Assembly and the charges as they have been read out here.

Now, the Motion, the oath or solemn affirmation for the due execution of Office for the Deputy President reads as follows:

“I do swear, solemnly affirm, that I will always truly and diligently serve the people and the Republic of Kenya in the office of the Deputy President.”

I pause there to emphasise those words that are found in the Constitution, ‘that I will always truly and diligently serve the people of Kenya’, that is, the Republic of Kenya.

It continues to say as follows:

“That I will diligently discharge my duties and perform my functions in the said office to the best of my judgment, that I will at all times, when so required, faithfully and truly give my counsel and advice to the President of the Republic of Kenya, and that I will do justice to all without fear.”

I emphasize the word “doing justice to all”.

Those three words in the oaths and affirmations for due execution of office which are found in the Third Schedule are not contained in similar words when it comes to the Speaker of the Senate, the Speaker of the National Assembly, or the Chief Justice. It only applies to the Deputy President and the President.

Why am I saying this? If you look at the Constitution in terms of the election of the President and the Deputy President, you will find that the President and the Deputy President are elected at constituencies.

In that election, they must receive a majority of votes in at least half the constituencies of the Republic of Kenya. What am I trying to say? It has come out and I say this with the utmost respect, that the Deputy President, who stands here on trial by the Senate, would assume that he was elected to represent the interests of a certain region,

whereas the Constitution is clear, he is elected by the whole country. He has no area to protect.

Under the old Constitution, the President had to be elected from a constituency. A Vice President had to be elected from a constituency as a Member of Parliament. This Constitution has no similar provisions.

When you come to the functions of the Deputy President and I think this is extremely important in the kind of relationship that there should be between the President and the Deputy President, it says so in the following words, which I need to read for clarity in terms of the Deputy President.

They are found in Article 147. It says:

“The Deputy President shall be the principal assistant of the President and shall deputise for the President in the execution of the President's functions.”

He may be assigned duties by the President. The kind of symbiotic relationship that should exist between the President and the Deputy President is underlined in this Constitution.

Now, this is the main issue that I want to deal with in some detail. It is uncontested from the record that you have, even from the Deputy President, that the words he is accused of having uttered, where he alleges that Kenya is like a company existing of shareholders, does not sit in the Constitution of the Republic of Kenya. Kenya is not a Republic that is established on the basis of shareholding. It is a Republic of citizens.

So, when a Deputy President talks about taking the interests of *watu wa Murima* or whatever that would mean, it is not in compliance with his constitutional remit. The words are there. What he has said in public on this issue is very clear.

The second issue is on the question of collective responsibility. You would find out from this Constitution that in nearly all the important constitutional bodies established under the Constitution, the Deputy President is a member of those particular institutions or organs, like the National Security Council. One would wonder why even the issue of the Director General (DG) of the National Intelligence Service (NIS) would be discussed in a public forum, yet the Deputy President is the second in command in the National Security Council (NSC) as established under the Constitution.

I plead with the Senate to look at the utterances of the Deputy President *vis-a-vis* his role under the Constitution. He has even said that where he has stated certain things that are deemed to be inciteful, that is protected speech.

It cannot be protected speech under our Constitution. Because of what we have undergone as a nation, Article 33(2) of the Constitution has a limitation that expressions that extend to propaganda for war, incitement to violence, hate speech, advocacy of hatred cannot be protected speech.

There is another important point which I want to put before the Senate. Sometime in February, 2017, the Deputy President travelled to London. He went to a hospital in London where his brother had been admitted and was in the Intensive Care Unit (ICU). When he arrived, the next day, he prevailed upon his brother to execute a will. That was on 17<sup>th</sup> February, 2017. In that trip, there is no evidence at all that he tried to talk to

doctors or physicians who were looking after his own brother. After that visit, he walked away and seven days later---

**Mr. Elisha Ongoya:** Mr. Speaker, Sir, I rise to raise an objection.

**The Speaker** (Hon. Kingi): Kindly, proceed.

**Mr. Elisha Ongoya:** Mr. Speaker, Sir, we owe the Deputy President elementary decency. We owe it to the Deputy President to be basically decent in these proceedings.

I want to know whether Counsel at the Bar can adduce this kind of evidence that is not contained in any evidentiary material before the Senate. I would also like to know which Ground in the 11 Grounds in the Impeachment Motion this evidence from the Bar is supporting.

I repeat, Mr. Speaker, Sir. We owe the Deputy President the most basic decency. I object.

**The Speaker** (Hon. Kingi): Senior Counsel Orengo, are those abatements contained?

**Hon. James Orengo, SC:** They are contained. They are all here.

**The Speaker** (Hon. Kingi): Then kindly refer to the documents.

**Hon. James Orengo, SC:** That is Volume 4. I am not referring to them because if I were to refer to every document, it would take a lot of time but I only have 30 minutes. If you look at Volume 4 of the document on public participation, from page---

**The Speaker** (Hon. Kingi): Volume 4 of the National Assembly documents. Which pages?

**Hon. James Orengo, SC:** Volume 4 of the National Assembly documents, page 114. In fact, this page also contains the Will and the Deputy President is the one who will be relying on it.

The death certificate is contained on page 119. It shows the only person who attended the deceased - that is the brother of the Deputy President at that time - was his daughter. She was the only person present, then there is the Will.

This is why I was raising this matter. On page 128 of the documents, there is a letter by Mr. Mathenge and Mr. Njoroge Regeru, who together with Mr. Rigathi Gachagua, were the joint Will executors. They are complaining about the conduct and action of the Deputy President as an executor of the Will.

A family member of the late Nderitu Gachagua, on page 129, paragraph 8 states; "from bank statements for this account seen by us, you transferred some funds from these accounts to other persons as follows---

On the date when Nderitu Gachagua died on 24<sup>th</sup>, the Deputy President was already withdrawing money. When he died, he was only with his daughter.

They have gone ahead to say: "on 19<sup>th</sup> May, 2017, again, another amount of money was withdrawn and paid to M/s Wamunyoro Investment Limited." You will find this story in the documentation and part of it is what Mr. Njomo was saying---

**The Speaker** (Hon. Kingi): Counsel for Deputy President, just have your seat. When your time comes, you will make the rebuttals.

Proceed, Senior Counsel.

**Hon. James Orengo, SC:** How many minutes do I have?

**Mr. Elisha Ongoya:** Mr. Speaker, Sir, I respect your direction. I am willing to take a seat right away. However, just to point out something; the document you are being referred to is the document you held in abeyance, because it was given to us later for purposes of our consideration.

Secondly, remember that my learned colleague talked about how my client travelled to London without talking to any doctor. These are factual claims that are just coming from the Bar. Thirdly, the opening statement speaks to the Motion and the grounds therein.

I beseech that parties restrict themselves to the Motion and the grounds therein. The facts you are now being referred to have no basis or grounds in the Motion, unless the learned Senior Counsel, His Excellency Governor Orengo, can draw your attention to any ground in the Motion that those facts are now addressing.

Mr. Speaker, Sir, I want to repeat what I said earlier that the ruling is yours. However, we owe it to the Deputy President and the integrity of our checks and balances institutions to maintain basic decency in these proceedings.

I rest.

**The Speaker** (Hon. Kingi): Counsels, I cannot tell you how you will make your opening statements. If you go outside the allegations, that is up to you. The Senators are here listening and they will make the necessary decision at the end of it.

Senior Counsel Orengo, there is an averment that you have made, that the Deputy President of the Republic of Kenya, on a certain date that you indicated, travelled to London.

**Hon. James Orengo, SC:** Yes. The evidence is---

**The Speaker** (Hon. Kingi): Because of his sick brother. On the side of the sickbed, he made his brother sign a Will. Is that contained anywhere in the documents from the National Assembly?

**Hon. James Orengo, SC:** Mr. Speaker, Sir, if you look at Volume 4 on the pages that I indicated, right from page 113, it shows the flight he took and at what time. It was a British Airways flight on 16<sup>th</sup> and he arrived in London on 17<sup>th</sup>.

The only business that comes out from that document and his documents is that, he got a Will signed. There is no further evidence of his activities in London until 24<sup>th</sup>, when the only activity in which he did participate, was to be present when his brother died in London. I am saying all these in relation to the allegations that we have against the Deputy President---

**Mr. Tom Macharia:** Mr. Speaker, Sir---

**The Speaker** (Hon. Kingi): Counsel, ordinarily no objections are raised during the 30 minutes of opening statements. I have tried to accommodate, but you are now stretching my generosity a bit too far. Allow Senior Counsel Orengo to conclude. In your opening statement, you may choose to make a rejoinder.

**Hon. James Orengo, SC:** I would like to make my conclusion. From the way his brother's accounts were raided, that was continued to the time when Olive Gardens was acquired for a sale by proxy of Kshs412 million. He bought property in Nyeri, the Outspan and Treetops for an amount exceeding Kshs800 million.

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Part of that money was not money coming from him. Evidence will show that he was raiding monies that truly belonged to the estate of his late brother to acquire property. This an offense by law. That, these were proceeds of crime committed by the Deputy President to acquire property.

To drive this point home, the judgment by Justice Maina, which is also part of the record, where she made a determination and that judgment stands, that, the money that was found in an account with a financial institution, in excess of Kshs200 million, were proceeds of crime.

There is documentation here and we will show it in evidence that the Kshs200 million, was the same money that was used to acquire Treetops and Aberdares as part of the money that his sons were able to use to acquire those properties. The acquisition of these properties came out of criminal conduct, and all the particulars of the criminal conduct is found in the documents that were presented before the Senate.

Mr. Speaker, Sir, it is critical that we look at the authority of the Office of the Deputy President *vis-à-vis* that of the President, the doctrine of collective responsibility. I showed why the Office of the Deputy President is so important in carrying certain functions so long as it lives to the true spirit of the Constitution.

Many times, the incidents have been shown, acts of insubordination, for instance, when he issued a press statement in Mombasa after the President had issued a statement that went contrary. That is absolute insubordination to the President, who is his boss. If one can talk about insubordination, that was an act of insubordination.

Lastly, the other issue that I need to bring out is that the Senate is aware of the fact that at the end of every five years, you pass a basis for allocation of resources here in the Senate and they abide by certain principles which are contained in Article 203 of the Constitution.

This issue about certain areas being preferred because they are shareholders goes against the spirit of the Constitution. The notion that people can be appointed in the Government on the basis of how they voted or on the basis that they are shareholders, is not also borne by the Constitution.

This is because the executive authority that is granted to the Executive requires that even in allocation of revenue and appointment of people to serve in the public service, must depend on regional balance.

So, to talk about shareholders, some people being able to reap on the basis of shareholding, is repugnant and in conflict with the provisions in our Constitution.

Mr. Speaker, Sir, I would want to say this with all the seriousness it deserves. This Constitution is supposed to work. However, it can only work if state officers are compliant with the provisions of the Constitution---

**The Speaker** (Hon. Kingi): You have two minutes to wind up.

**Hon. James Orenge, SC:** The adopting of collective responsibility and the authority of Members of the Cabinet, spring from the fact that they are all individually and collectively responsible to the President. If that primary principle cannot be applied, then it will be difficult for any Government elected, to function in a manner that it can deliver services to the people of the Republic of Kenya.



I urge this Hon. Senate, that having painted that large picture, the next phase when you will be listening to the evidence and look at the exhibit that we have attached, you will find that a strong case has been made out for the impeachment and removal from office of the Deputy President of the Republic of Kenya. This Senate should not shy away from undertaking that responsibility.

It does not matter that there is a matter that could be taken to the DCI or to the EACC. The role of the Senate is different - To undertake oversight over those who are given responsibility to manage the affairs of the country.

That does not depend on the role of any other agency or body created by the Constitution. Your role is to demonstrate to all people in state offices that, this oversight role that you play, whether it is that of impeachment, that, it is not cosmetic. Where there is evidence like the one that we are showing and adducing before you, that person should suffer the consequences.

**The Speaker** (Hon. Kingi): Senior Counsel, I am afraid your time is up.

**Hon. James Orengo, SC:** I thank you.

**The Speaker** (Hon. Kingi): Counsel for the Deputy President. The floor is yours.

OPENING STATEMENT ON BEHALF OF THE DEPUTY  
PRESIDENT OF THE REPUBLIC OF KENYA

**Mr. Elisha Ongoya:** Thank you, Mr. Speaker, Sir and distinguished Senators. My name is Elisha Ongoya. I stand here to make the Deputy President's opening statement.

Allow me, Mr. Speaker, Sir, distinguished Senators, to open by reminding us some fundamental principles.

We are sitting here today as a Senate to discharge a constitutional mandate. Before you are given the cudgels to start discharging any mandate in this Senate, the Constitution demanded that you had to take an Oath of Office before you do anything else. I now understand better why that Oath of Office was described and why it was framed the way it was framed.

The Deputy President reminds you the following terms in your oath of office, before you assumed office to discharge the functions of Senators: You have to bear true faith and allegiance to the people and the Republic of Kenya. You have to obey, respect, uphold, preserve, protect and defend the Constitution of Kenya. You have to faithfully and conscientiously discharge your duties as members of the Senate.

I submit respectfully that the case regarding the proposal to remove the Deputy President from office by impeachment, may appear to put the deputy President on trial, but that is only in the most technical sense of this process.

At a more significant level, what is on trial throughout these proceedings is the resilience and steadfastness of our Constitution, our constitutional institutions of checks and balances and their capacity to withstand any form of waves and pressures. That is what is truly on trial.

His Excellency Rigathi Gachagua beseeches this House to keep in mind that we have a Constitution, a constitutional order and a constitutional democracy to protect as we conduct these proceedings and as we make decisions in these proceedings. He asks

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you that at the end of this exercise, let our Constitution, our constitutional democracy and our constitutional order emerge stronger.

Allow me to address this House on the defined standard for impeachment of the Deputy President. In a comparable decision by the Supreme Court of Kenya, the case of Hon. Mike Mbuvi Sonko *versus* the Clerk, County Assembly of Nairobi and others, the Supreme Court observed as follows:

“It must, however, be stressed for the avoidance of doubt that the power of impeachment, removal or recall is not one expected to be in constant or frequent exercise. It is only in the face of credible evidence of extraordinary wrongdoing that the conduct of a state officer will be investigated. Even then, only upon sufficient proof of the allegations that the impeachment, removal or recall would be warranted.”

Distinguished Senators, we pose two questions that must constantly linger in your minds as you undertake the assignment before you. Number one, we beseech you to bear in mind the question: is there credible evidence of extraordinary wrongdoing on the part of His Excellency, Hon. Rigathi Gachagua, before you? Number two; is there sufficient proof of the allegations levelled against His Excellency, Rigathi Gachagua?

Article 150(1)(b) sets out the grounds for removal of a deputy president from office by impeachment. These grounds are: One, gross violation of the constitution or any other law. We emphasise the drafters’ use of the word “gross”. Serious reasons to believe that the Deputy President has committed a crime under national or international law.

Again, we emphasise the word “serious” then “gross misconduct”. Summises, conjecture and street rumours cannot pass master. This conduct must be the conduct of the person, the Deputy President.

It is sufficiently notorious for this court to take judicial notice of when the late Nderitu Gachagua whose Will is now referred to here, died. You are told to investigate the conduct of His Excellency Rigathi Gachagua at the time around which his brother, His Excellency Governor Nderitu Gachagua, as he then was, died. It is sufficiently notorious that His Excellency Rigathi Gachagua was not Deputy President of the Republic of Kenya.

That is not enough. You will peruse the Motion before you with a view to finding which ground in that Motion is sought to be established by these allegations around what may or may not have happened around the time the late Nderitu Gachagua died. You will find absolutely no ground supported by those allegations. Let me disclose here that it is designed to whip your emotions. It has no other purpose.

Looking at your oath of office that I have alluded to, there is no room for your emotions to be whipped as the basis of decision making in any act that you engage into in the discharge of your constitutional mandate and responsibilities. What does our Constitution expect of the Mover of the Motion in proceedings of this nature?

Our Constitution expects the Mover of the Motion to make allegations of any or all the grounds set out in Article 150(1)(b) of the Constitution. It begins by submitting that it is true the Mover of this Motion has written down some allegations in Volume 1 of the documents from the National Assembly. Secondly, the Mover of the Motion is thereafter expected to supply credible evidence of an extraordinary wrongdoing and sufficient proof of the allegations against the Deputy President.

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Mr. Speaker, Sir, and distinguished Senators, we submit that is where the Mover of this Motion ought to start having problems with this House, when he is called upon to account. It is the submission of His Excellency, Rigathi Gachagua that the Motion before you has fallen short of the threshold set by law by multiple miles.

When you examine the material before you, you will discover that it will oscillate between the following categories of stages. One, you will have material before you that is plainly false. Then from falsehood, it will go to the ridiculous ones. I will demonstrate that shortly. There will be ridiculous claims here. Then finally, it will end up into embarrassing claims.

Allow me in the few minutes I have, to do a snip preview of some of these claims so that we have an overview of the case that is before you. At paragraph 74(b) of the first volume, which is the Impeachment Motion, you will find an allegation that His Excellency, Rigathi Gachagua, has influenced his family members, allies, associates and proxies to take control of a local corporate society in Mathira, which they are financially haemorrhaging.

Number one, no name of any family member is supplied in the allegation or in any of the evidentiary documents before you. No name of any ally is supplied in the Motion or in any of the documents before you.

No name of any associate is supplied even a false name; none is supplied in the Motion and in the documents before you. No name of any proxy is supplied in the Motion or in any of the documents before you. The name of the alleged Savings and Credit Cooperatives (SACCO) is not identified.

Mr. Speaker, Sir, and distinguished Senators, you can imagine being called to defend yourself on a claim that you have taken over, through your associates, a SACCO that we do know; so now come and defend yourself. I began by saying some of these claims are either ridiculous or embarrassing.

Secondly, at paragraph 74 (A) you will be told that His Excellency has connived with cartels in the tea sector to block the Kenya Tea Development Agency (KTDA) from implementing guaranteed minimum returns that would benefit tea farmers. No statement, affidavit or correspondence from any official of the KTDA is before you.

No complaint to any agency, no complaint to this Parliament by any official of the KTDA is before you. It is just a claim, which the Mover of this Motion said before the National Assembly. Surprisingly, for those of us who have some residual faith in our institution, he told the National Assembly just believe my word for what it is.

When we thought that that was a joke, we got a joke lifted a notch higher. The National Assembly actually just believed his word for what it is. No evidence. Nothing in the five affidavits before you address anything about the KTDA.

Let us progress, good people. Paragraph 72 of the Motion before you states that His Excellency has persistently undermined, demeaned and committed insubordination instead of assisting the President.

Let us face it, if you accuse somebody of insubordination, the only person who can complain of being insubordinated is the supervisor. No statement or affidavit from the President or witness summons to the President has been sought here to call him to complain that he has been insubordinated.

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The Deputy President, when he received this Motion, wrote to the Secretary to the Cabinet, requesting to be supplied by any or all assignments given to him by the President and any that he has not delivered. To date, as we stand here, we have not received a response to that letter.

Mr. Speaker, Sir, we shall be told, just believe the Mover of this Motion, the MP for Kibwezi West Constituency, that when he is oscillating between the National Assembly and Kibwezi West to serve his people, he knows better than the supervisor of the Deputy President that the Deputy President has insubordinated his boss. I began by observing they will move from the false through the ridiculous to the embarrassing and these are the claims before you.

At paragraph 64, paragraph (a) of the Impeachment Motion, you will be told that His Excellency the Deputy President said that he would present a petition for the removal of Justice Esther Maina from office, which he has not done to date.

Mr. Speaker, Sir, my eyes are normally problematic, so I will not know the time allocation.

**The Speaker** (Hon. Kingi): It is 15 minutes.

**Mr. Elisha Ongoya:** Thank you so much, Mr. Speaker, Sir. The claim is that His Excellency publicly said that he would present a Petition for the removal of Justice Esther Maina from office, which he has not done to date. That is the complaint.

The evidence before you is that there is a pending complaint by His Excellency the Deputy President before the Judicial Service Commission (JSC). Therefore, the Mover of this Motion first has perjured himself in his affidavit by saying that each of these facts are correct when this fact is false by evidence available.

You will find that paragraph 34 of the Motion before you says that His Excellency falsely threatened to file a Petition for removal of Justice Esther Maina. How can the Deputy President be accused of falsely threatening when, in fact, he has filed the complaint? Where is the falsehood when there is a pending complaint? That complaint is before you in the Deputy President's documents for your own perusal.

I began by saying they will move from the false through the ridiculous to the embarrassing.

At paragraph 78(c), you will be told that His Excellency routinely summons procurement officers in Ministries and State institutions and instructs them to direct procurement of goods and services in a specific manner. No officer from any Ministry will swear an affidavit claiming to have been summoned to award any procurement for any goods or any services in a particular manner. In fact, what you will have before you is actually very ridiculous.

You will be told that there was a tender for supply of mosquito nets that was cancelled in May, 2023. Then a local company that was an agent of the supplier was following for the return of its bid bond in July, two months after the cancellation of the tender. How can you influence a tender that was cancelled two months ago? I have told you it will move from the false through the ridiculous to the embarrassing.

Now, the more interesting one is at Paragraph 78(A). You will be told that His Excellency bullied Kenya Medical Supplies Agency (KEMSA) officials into awarding a tender for the supply of mosquito nets to Crystal Limited.

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Good people, Crystal Limited was not even a bidder for that tender. He pressurized people to award it to somebody who is not even a bidder for that tender. I observed it will move from the false through the ridiculous to the embarrassing.

Those of us who understand this Motion for what it is understand why these panel beating manoeuvres are being tried here. The Motion as presented and approved by the National Assembly will remain in our constitutional history as the most embarrassing Motion ever approved by a House of Parliament in the Commonwealth. We respectfully submit.

You will be told at paragraph 58 that His Excellency is reasonably suspected to be the principal beneficiary of what are called dubious transactions by Lusona Events Ltd. You will then go to the allegations on Lusona Events Ltd and you will want to see those transactions, how are they terminating to the Deputy President? You will not come across any connection.

They will just say a director of this company withdrew some money from his own company, the Deputy President is not a director and none of his family members are directors. That person withdrew money from his company and bought a motor vehicle in his own name. The Mover will say; I am, therefore, drawing a reasonable conclusion that the Deputy President is the beneficiary of this.

Good people, the word “reasonable” has meaning known to law. I submit very respectfully that this falls short of the definition of the word reasonable suspicion. I submit it actually gravitates towards unreasonable suspicion.

Now let us look at this. You will be told that His Excellency has acquired 40 acres of land in Kakuret, Kamburaini in Nyeri. Evidence before you will show that this is land that the Deputy President, in fact, bought from a current Member of the National Assembly. So, he knows that Member; in 2015, before he even joined State office as an MP.

You are told that the purchase of this land in 2015 shows that in the last two years the Deputy President has amassed immense wealth. I began by saying let us be elementarily decent.

One of the most frustrating things about preparing for such a hopelessly conceptualized, hopelessly crafted and hopelessly presented case is that you begin doubting yourself because you begin wondering what am I not seeing?

Land bought from a sitting Member of the National Assembly in the year 2015, is supposed to be evidence that in the last two years, His Excellency Rigathi Gachagua has amassed immense wealth from the office of the Deputy President to acquire that property.

Let us look at paragraph 45(g). You will be told that His Excellency has acquired 80 acres of land in Meru County. No land registration number is provided. Not even an affidavit of a neighbor who says: “I know he has this land. He is my neighbour.” Just an allegation by the Mover of this Motion like that.

The Swahili say; “*Ukistaajabu ya Musa, utaona ya Firauni.*” This Mover of this Motion stood before the National Assembly and said, “just believe me for this statement as it is.” That was the first joke. The second joke was that the National Assembly actually believed him and approved the Motion.

You will be told in Paragraph 45(h), that His Excellency has acquired a dairy farm in Nyandarua County. Now, I guess we all have a common understanding what a dairy farm is. His Excellency has no dairy farm in Nyandarua County. The Mover of this Motion does not give us any evidence of this dairy farm.

You will be told that His Excellency has used the office of the Deputy President to corruptly influence unnecessary and expensive renovation of his official residence in Karen and Mombasa.

What will shock you good people is this the contract for the renovation of the official residence of the Deputy President which was signed by the Controller of State House. Unless the Mover of this Motion wants to make a claim that the Deputy President conspired with the State House to have this contract executed.

Secondly, it will be known to all of us as Members of Parliament that the money for renovation of this official residence was approved by the National Assembly. Is the National Assembly conceding that it approved money for unnecessary expenditure by Government?

How can the National Assembly approve money for renovation of the residence of the Deputy President and then after that money is used for the intended purpose - the renovation of the official residence of the Deputy President - now drag the Deputy President for impeachment for the reason of that renovation? I said it will move through the ridiculous to the embarrassing.

You will be told that the Deputy President has a helicopter landing facility at his land in Ruguru-Kiamariga 1223 in Mathira. The Deputy President simply has no helicopter landing pad on that farm, a small parcel of land with Napier grass.

Unless the Mover of this Motion can now convince us that new technology has emerged, that Napier grass is the constructing material for landing pads for aircrafts. That is the only way it can make sense. Since it does not make sense, good people, you will agree with me, it moves from the false through the ridiculous to the embarrassing.

Now let us deal with it. You will be told the Deputy President has amassed a wealth portfolio amounting to Kshs5.2 billion. Elementarily, we must then look at the particularization. Tell us which one is what plus which one to amount to this Kshs5.2 billion.

This figure, the origin, is only known to the Mover of this Motion. There is nothing on the body of the Motion. There is nothing in the documents attached to the Motion. There is nothing in the video clips to be played by the Mover of this Motion that tells us mathematically how he arrived at this figure of Kshs5.2 billion.

Then when the charges were read, distinguished Senators, you heard some 22 companies being read one by one. Twenty-two companies! A number of things will surprise you. You will just find a company listed called Spirit Way Limited; nothing in this Motion tells us what wrong has this company done; nothing in the Motion, completely. It is just listed that way it is.

Fortisviz Group Limited. nothing in this Motion tells us what wrong has Fortisviz Group Limited done. They are just companies whose names have been listed and we have spent the taxpayers' money this afternoon listening to these companies' names being written with nothing in this Motion telling giving us evidence of wrongdoing.

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So, what wrong has Dorcas Rigathi Foundation done? What act are you complaining of that company? What omission are you complaining of in respect of that company?

Heartland Supplies Limited; you just find a name of a company there. No wrongdoing is alluded to it; no allegation is made against it. They are just companies thrown there.

Distinguished Senators, the Romans called their Assembly, which was the equivalent of this Senate, the *Patres*; it was an advisory council. That name was derived from an old Latin word meaning father.

The Senate derives its name from the Latin word *Senex*, meaning council or old man. All these words are supposed to address the sagacious state of wisdom of the Senate.

If this Senate lives true to its historical origin as the *Patres*; if this Senate lives true to its Latin origins as the *Senex*, the old man, the wise man, it will see through these lies, ridiculousness and embarrassing statements.

If time were to permit, I will take you through other allegations that meet the same test of falsehood, ridiculousness and embarrassment. Fortunately for us, the rules of procedure permit us to cross-examine the Mover of this Motion and the respective witnesses as a way of bringing forth these lies much more clearly. We shall do that when the time presents itself.

At the end of it all, we shall beseech you to do two things, to be true to your oath of office as Senators, to be true to your oath of office as Senators, to pore over this evidence, to listen keenly to this evidence and make a decision premised on the evidence as tested here in cross-examination.

If you do that, we have no doubt in our mind you will reach the same conclusion that what has been presented before you as a most consequential Motion perhaps in our lifetime is false, ridiculous and embarrassing.

I rest the governor's opening statement.

**The Speaker** (Hon. Kingi): Counsel, that is the Deputy President; it is not the governor.

**Mr. Elisha Ongoya**: My apologies, Mr. Speaker, Sir. I have been here multiple times on governors and I think that is what was reigning in my mind.

I rest the Deputy President's opening statement. My apologies for that.

#### PRESENTATION OF THE CASE OF THE NATIONAL ASSEMBLY

**The Speaker** (Hon. Kingi): Very well. Now, hon. Senators, we will now move to hear the case of the National Assembly. It has three hours to present its case, meaning all the witnesses, evidence in chief, cross-examination will be given two hours. The legal team for the Deputy President, you will have two hours to cross-examine the witnesses as presented by the National Assembly.

Clerk, you may now usher in the first witness of the National Assembly.

**Dr. Muthomi Thiankolu**: Mr. Speaker, as we wait for the witness, I plead if it finds favour with you, one of my assistants, Mr. Boniface Mawira, could come to help us

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with turning the pages. I reckon that we would move much faster. He should be perhaps in the Gallery.

**The Speaker** (Hon. King): That is a valid request. You may proceed.

Counsel for the National Assembly, where are your witnesses coming from? They are taking too long.

**Dr. Muthomi Thiankolu:** They must be in Room 4, Hon. Speaker. Our first witness is the Hon. Eckomass Mwengi Mutuse, who was the Mover of the Motion.

**The Speaker** (Hon. Kingi): Are you sure he has not deserted you?

**Dr. Muthomi Thiankolu:** There is always a risk in this type of business, Hon. Speaker, but I am sure he is around.

**The Speaker** (Hon. Kingi): Counsel, before you proceed, first introduce yourself and the team.

**Dr. Muthomi Thiankolu:** For the record, Hon. Speaker, my name is Muthomi Thiankolu. I will be doing the examination-in-chief on behalf of the National Assembly. I shall be assisted in that enterprise by my learned friend, Mr. Peter Manyonge Wanyama. I will cover Grounds 1, 5, 6, and 7, and my learned friend will lead the witness in respect of the other grounds in the Motion.

**The Speaker** (Hon. Kingi): May the witness take the Oath.

*(Hon. Eckomass Mwengi Mutuse took the Oath)*

Your three hours start running from now.

**Dr. Muthomi Thiankolu:** Good afternoon, Sir. Again, for the record, confirm your name and what you do for a living.

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, Hon. Senators, my name is Mwingi Mutuse. I am the Member of Parliament (MP) for Kibwezi West Constituency and I was the Mover of the instant Motion that is before your consideration in the National Assembly. I am also an advocate of the High Court of Kenya by profession.

**Dr. Muthomi Thiankolu:** Great. Let us go straight to the Motion due to the constraints of time. Hon. Speaker, the Motion is in Volume 1 of the Assembly's bundle of Documents. Allegation No. 1 runs from pages 3 to 10 of Volume 1.

Without much ado, Hon. Mutuse, let us go to Allegation No.1 of your Impeachment Motion. Can you tell the Senate, in very condensed summary, what is the grievance you have raised against His Excellency the Deputy President?

**Hon. Mwengi Mutuse:** Hon. Speaker, Hon. Senators, Ground 1 allegation against the Deputy President is that he has violated various Articles of the Constitution that we have listed; being 10(2)(a), (b) and (c); 27(4), 73(1)(a) and (2)(b); 75 (1) (c), and 129 (2) of the Constitution and Articles 147(1), as read with Article 131(2)(c) and (d) of the Constitution.

Basically, the Deputy President in the last two years has been in various places within the Republic of Kenya publicizing a notion that Kenya is a company that is owned by shareholders and only those who have shares in the company called Kenya, according to him, will benefit in terms of development and service delivery from the Republic.

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It is our contention that Kenya is not a company. Kenya is a Republic that is supposed to serve all Kenyans. The particular Articles of the Constitution that we have cited, because of time, also speak to the functions of the Deputy President being to promote national unity and the citizens of Kenya to receive services and development from the Government, including appointments, without discrimination. That is in short.

**Dr. Muthomi Thiankolu:** Let us quickly go through some of those provisions. If you could be shown the preamble to our Constitution, what does the third paragraph say?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, Hon. Senators, the preamble to our Constitution and I read the third paragraph, “proud of our ethnic, cultural, and religious diversity and determined to live in peace and unity as one indivisible sovereign nation.”

Underline ethnic, cultural and religious diversity.

**Dr. Muthomi Thiankolu:** We will come to the evidence you have adduced to support this shortly. Are the utterances you complain about consistent with that constitutional provision?

**Hon. Mwengi Mutuse:** Definitely, not at all.

**Dr. Muthomi Thiankolu:** Let us go quickly to Article 10. What does it say?

**Hon. Mwengi Mutuse:** Article 10 (1) states-

“The national values and principles of governance in this Article bind all state organs, state officers, public officers and all persons whenever any of them –

- (a) Applies or interprets this Constitution;
- (b) Enacts, applies or interprets any law; or
- (c) Makes or implements public policy decisions.”

**Dr. Muthomi Thiankolu:** Hon. Member, someone would say these are just utterances and we surely cannot remove the Deputy President from office because he has a loose tongue or something like that. What is the problem with these utterances in the context of our history as the Republic of Kenya?

**Hon. Mwengi Mutuse:** Number one, the constitutional context is that they bind all State officers and the Deputy President is a state officer. There are no two ways. You cannot choose the laws to obey and which not to obey.

Number two, we have also had a history in our country. All of us would remember that we had clashes in Likoni in 1992 where populations were displaced. We had problems in Molo in every other cycle of election; in election of 1992-1997 and most recently where the country almost torn apart during the post-election violence of 2007 and 2008.

There are examples within the region. Rwanda, Burundi and Yugoslavia and Bosnia is still struggling. As we speak today, Congo is fighting. Across the globe, there has been problems in all these countries. They all began from utterances of this nature.

**Dr. Muthomi Thiankolu:** Is it your testimony, therefore, that utterances of the type we are about to see are a threat to the very existence of Kenya as a republic?

**Hon. Mwengi Mutuse:** Indeed, that is my testimony.

**Dr. Muthomi Thiankolu:** Is our lived history consistent with the submission that those are not utterances that should emanate from the Deputy President of the Republic of Kenya?

**Hon. Mwengi Mutuse:** Not just the Deputy President of the Republic of Kenya, but not from any citizen of the Republic.

**Dr. Muthomi Thiankolu:** Hon. Mutuse, have you placed any evidence? You said the Deputy President has been doing this for two years. Have you placed any material to prove this allegation?

**Hon. Mwengi Mutuse:** Yes. We have placed evidence in the form of videos that have been recorded in meetings where the Deputy President has been attending, being Video No.1, 2, 3, 4, 8, and 11, which contain utterances of the Deputy President in that regard.

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, I request we play Video No.1 from the National Assembly's set of videos.

*(A video clip was played)*

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, due to time constraint, what did these utterances mean and what were they understood by any fair minded Kenyan to mean?

**Hon. Mwengi Mutuse:** The ordinary meaning is that there are Kenyans who are supposed to benefit from the Kenyan Government and there are other Kenyans not supposed to benefit, and the hon. Deputy President will make sure that only those who voted for the present Government benefit from the Government. Those who did not vote will not get any benefit because they are not shareholders.

**Dr. Muthomi Thiankolu:** Are those utterances consistent with the national value in human dignity in Article 10(b)?

**Hon. Mwengi Mutuse:** No, Mr. Speaker, Sir.

**Dr. Muthomi Thiankolu:** Are they consistent with the value of national unity in Article 10(a)?

**Hon. Mwengi Mutuse:** Not at all.

**Dr. Muthomi Thiankolu:** Are they consistent with social justice in Article 10(2)(b)?

**Hon. Mwengi Mutuse:** Not at all.

**Dr. Muthomi Thiankolu:** What about inclusiveness?

**Hon. Mwengi Mutuse:** They are divisive.

**Dr. Muthomi Thiankolu:** What about equality?

**Hon. Mwengi Mutuse:** Not at all.

**Dr. Muthomi Thiankolu:** What about non-discrimination?

**Hon. Mwengi Mutuse:** They are very discriminative?

**Dr. Muthomi Thiankolu:** What about protection of the marginalized?

**Hon. Mwengi Mutuse:** They do not protect the marginalized. They marginalize them further.

**Dr. Muthomi Thiankolu:** We could go on and on, but are those utterances consistent with any of the Articles you claim on ground one have been violated?

**Hon. Mwengi Mutuse:** Not at all.

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, let us play video No.2.

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*(A video clip was played)*

In the interest of time, I want to play all of them and then put the question. Let us hear Video No. 3.

*(A video clip was played)*

Let us play Video No. 4, 8 and 11, in that sequence.

*(A video clip was played)*

There is an element of repetition, let us go to the next video.

*(Two video clips were played)*

Hon. Mutuse, we could play these videos endlessly. Unfortunately, time is not with us.

Please confirm that you have presented before the Senate the utterances made by the Deputy President on this theme in Kitui County. Is that correct?

**Hon. Mwengi Mutuse:** That is correct.

**Dr. Muthomi Thiankolu:** In Nandi, is that correct?

**Hon. Mwengi Mutuse:** That is correct.

**Dr. Muthomi Thiankolu:** In Kericho, is that correct?

**Hon. Mwengi Mutuse:** That is correct.

**Dr. Muthomi Thiankolu:** In Kajiado?

**Hon. Mwengi Mutuse:** That is correct.

**Dr. Muthomi Thiankolu:** Please confirm that it is in the public domain. These utterances have been made in many other places; they were just illustrations.

**Hon. Mwengi Mutuse:** Indeed, I suspect they have been made even in the counties represented by the Senators seated here.

**Dr. Muthomi Thiankolu:** Have these been isolated aberrations, or has the Deputy President's campaign and mantra been consistent across the Republic?

**Hon. Mwengi Mutuse:** It has been consistent and as the Deputy President says, 'unapologetic'.

**Dr. Muthomi Thiankolu:** But you also played the video of the President speaking for us. How does it compare with his utterance and the campaign by his Deputy?

**Hon. Mwengi Mutuse:** The President is preaching National Unity, and I believe this is a function assigned by the President under Article 131 of the Constitution to be a symbol of national unity. The Deputy President is required to deputise the President in the performance of his functions. Therefore, it is expected that the Deputy President will take the cue. Instead, the Deputy President is contradicting the President.

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**Dr. Muthomi Thiankolu:** We have seen these events covered by a major television station. Right?

**Hon. Mwengi Mutuse:** Indeed.

**Dr. Muthomi Thiankolu:** Does that television, to the best of your knowledge, have national or local coverage?

**Hon. Mwengi Mutuse:** National and sometimes regional coverage.

**Dr. Muthomi Thiankolu:** Should the Deputy President of the Republic have the wisdom to know his utterances will be conveyed to the country and the world?

**Hon. Mwengi Mutuse:** Indeed, yes.

**Dr. Muthomi Thiankolu:** We saw him talking about children that belong to the family – although we do not use the language these days, some illegitimate children. Who was he calling children from outside the home or the illegitimate ones?

**Hon. Mwengi Mutuse:** Looking at the videos in totality, he must have made those who voted for the Kenya Kwanza Government, legitimate children and those who did not vote for Kenya Kwanza, illegitimate children.

**Dr. Muthomi Thiankolu:** We have seen him saying he has no apologies to make. Notwithstanding these utterances, the media house was leaving a bad taste in the mouths of many people. Is that correct or incorrect?

**Hon. Mwengi Mutuse:** Yes, he is loud and clear that he has no apologies to make for saying Kenya is a company belonging to shareholders for the benefit of the shareholders.

**Dr. Muthomi Thiankolu:** That defiance and the stance that he has no apology to make. Does it depict the department of a man or a woman who should be the Deputy President of the Republic of Kenya?

**Hon. Mwengi Mutuse:** Not at all.

**Dr. Muthomi Thiankolu:** But you heard his counsel say that there must be some extraordinary wrongdoing before we can impeach you for the things you have alleged. To the best of your knowledge, how many vice presidents or deputy presidents has Kenya had since 1963? In your estimate, how many?

**Hon. Mwengi Mutuse:** 11 or thereabout.

**Dr. Muthomi Thiankolu:** Let us say a dozen. Do we have, in our history since 1963, experienced a Deputy President who traverses the country preaching ethnic exclusion?

**Hon. Mwengi Mutuse:** I do not remember any. The only incident I remember is when Jaramogi disagreed with Kenyatta and did the moral thing, which was to resign from the Government. I also remember an incident. I think it was Vice President Murumbi, who also disagreed with the then President and did the honourable thing, which was to resign from the Government.

**Dr. Muthomi Thiankolu:** Those were the first two Vice Presidents, Daniel Arap Moi was the third. Do you know of any incidence where Daniel Arap Moi was moving around this country as Vice President committing this type of wrongdoing?

**Hon. Mwengi Mutuse:** Not at all.

**Dr. Muthomi Thiankolu:** How about Mwai Kibaki?

**Hon. Mwengi Mutuse:** In fact, when he was demoted, he continued working in the Cabinet.

**Dr. Muthomi Thiankolu:** How about Josephat Karanja?

**Hon. Mwengi Mutuse:** Not at all.

**Dr. Muthomi Thiankolu:** How about George Saitoti?

**Hon. Mwengi Mutuse:** Even when he was sacked, he continued being loyal to the Government of the day.

**Dr. Muthomi Thiankolu:** How about Musalia Mudavadi?

**Hon. Mwengi Mutuse:** In his short stint, nothing has been heard about him undermining his boss.

**Dr. Muthomi Thiankolu:** How about Moody Awori?

**Hon. Mwengi Mutuse:** Not at all.

**Dr. Muthomi Thiankolu:** Kalonzo Musyoka?

**Hon. Mwengi Mutuse:** Not at all.

**Dr. Muthomi Thiankolu:** When we are told there is nothing extraordinary about this wrongdoing, is that consistent with the live reality of Kenya.

**Hon. Mwengi Mutuse:** There is everything extraordinary when a country of 46 tribes someone advocates for the servicing of less than two of those communities. Where will the 44 go?

**Dr. Muthomi Thiankolu:** Given the politics of 41 against one in 2007 and the post-election violence, would this allegation be extraordinary wrongdoing?

**Hon. Mwengi Mutuse:** It is an extraordinary wrongdoing. In fact, the post-election violence that resulted from that particular kind of campaign was extremely dangerous to our social fabric and our economy.

**Dr. Muthomi Thiankolu:** Given the experience of the Molo and Likoni clashes in the 1990s, would this be extraordinary wrongdoing coming from the second senior state officer?

**Hon. Mwengi Mutuse:** Indeed, also when it is remembered that he was a District Officer in Molo when those clashes were happening.

**Dr. Muthomi Thiankolu:** Given what is going on right now as we speak in Tana River, would conduct like this emanating from none other than the Deputy President be extraordinary misconduct?

**Hon. Mwengi Mutuse:** I have seen in the news that families are displaced and people have lost property, and if that is not extraordinary, then I do not know what extraordinary means.

**Dr. Muthomi Thiankolu:** Given what this type of campaign achieved in Rwanda, Burundi, Sudan, South Sudan, former Yugoslavia, Nigeria, and the Biafran war, we could count and count until the cows go home. Can anyone be heard in good conscience to say that this is not extraordinary misconduct?

**Hon. Mwengi Mutuse:** Indeed, this is very extraordinary, requiring impeachment.

**Dr. Muthomi Thiankolu:** Please confirm because we have been pressed for time that the evidence you are relying on this ground applies equally to allegation No.5 of your Motion.

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**Hon. Mwengi Mutuse:** Just a minute to confirm.

**Dr. Muthomi Thiankolu:** What is your complaint in allegation No. 5? Allegation No.5 would be on pages 16 to 17 of volume two.

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, hon. Members, our allegation No.5 relates to a gross violation of Article 3(1) of the Constitution and Article 148(5)(a) of the Constitution, specifically the breach of the oath of office and allegiance.

**Dr. Muthomi Thiankolu:** Does the oath of office require the Deputy President to promote national unity or shareholder politics?

**Hon. Mwengi Mutuse:** The oath of office demands of the Deputy President to promote national unity.

**Dr. Muthomi Thiankolu:** What is your complaint in ground Number six, Sir?

**Hon. Mwengi Mutuse:** In ground number six---

**Dr. Muthomi Thiankolu:** This is on pages 16 to 17.

**Hon. Mwengi Mutuse:** Ground number six is about serious reasons to believe the Deputy President has committed a crime under national law pursuant to Article 151(b) (ii) of the Constitution.

**Dr. Muthomi Thiankolu:** What is the specific complaint?

**Hon. Mwengi Mutuse:** The specific complaint is that there are serious reasons to believe that His Excellency, Rigathi Gachagua, has committed crimes under Section 13(1)(a) and 62 of the National Cohesion and Integration Act.

**Dr. Muthomi Thiankolu:** Can you please read for us those sections of the law?

**Hon. Mwengi Mutuse:** Section 13 of the National Cohesion and Integration Act provides that it is an offence---

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, that section will be in Volume 7 of the National Assembly's documents.

**Hon. Mwengi Mutuse:** Section 13 of the National Cohesion and Integration Act states that it is an offence for any person to use threatening, abusive, or insulting words or behaviour where the person intends to stir up feelings of ethnic contempt, hatred, hostility, violence or discrimination. The section also makes it an offense to use words or engage in such behaviour when having regard to all the circumstances, ethnic hatred is likely to be stirred up.

**Dr. Muthomi Thiankolu:** Is ethnic hatred likely to be stirred up by this campaign of shareholding?

**Hon. Mwengi Mutuse:** Obviously.

**Dr. Muthomi Thiankolu:** Is it likely to stir up ethnic contempt?

**Hon. Mwengi Mutuse:** Obviously.

**Dr. Muthomi Thiankolu:** What does Section 62 say?

**Hon. Mwengi Mutuse:** Section 62 of the National Cohesion and Integration Act states that-

“A person commits an offense when the person makes statements that are intended or are likely to stir up feelings of ethnic contempt, hatred, hostility, violence or discrimination”

**Dr. Muthomi Thiankolu:** Are the utterances by the Deputy President likely to trigger any of those things?

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**Hon. Mwengi Mutuse:** Yes, indeed.

**Dr. Muthomi Thiankolu:** As a matter of fact, Hon. Mutuse, that law on National Cohesion and Integration that you just read, was it not the law Parliament enacted to ensure we never go back to where our country was in 2007/2008 because of utterances like this?

**Hon. Mwengi Mutuse:** It was pursuant to the post-election violence and the country resolved that we needed a law as a result. Therefore, it is a law that is supposed to ensure that we in office live to promote national unity and not the opposite.

**Dr. Muthomi Thiankolu:** Given that history and why that law exists, we repeat the question. Has the Deputy President committed ordinary or extraordinary wrong doing?

**Hon. Mwengi Mutuse:** He has under Article 150 of the Constitution in relation to this ground. There are serious reasons to believe that he has committed wrongs against the National Cohesion and Integration Act, and extraordinary in nature. If you allow me, these are not my words. I have been accused of urging the National Assembly to believe me. These are not my words, they are words of the Constitution, under Article 150.

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, we are urging if the Senate could consider the evidence, so far, adduced, then that evidence applies to ground one, five and six. So, we are prosecuting them together to save on time.

Let us go to allegation number seven, that runs from pages 17 to 31. It was the one you were told runs from falsehoods culminating in the embarrassing and other things. Let us see whether it is actually falsehoods, embarrassing and the other adjectives that were told.

I would urge Members to walk with me by holding Volume 2A of the National Assembly's documents. Together with our Volume 6 which I will only mention briefly.

Please confirm at page two of Volume 6 between you and the Deputy President aspersions were cast that you are referring to irrelevant material about the estate of the late Nderitu Gachagua. Between you and the Deputy President, who has brought up this issue of the estate? Is it you or him?

**Hon. Mwengi Mutuse:** In the response by the Deputy President on page two of Volume 6, he brought out the issue of the estate of his late brother in response to the allegations that he has acquired properties worth Kshs5.2 billion within the period that he has been Deputy President.

**Dr. Muthomi Thiankolu:** So, we will come back to that document much later. I am only mentioning it now to clear the air. Whether it is you trying to whip emotions by bringing up this matter or it is the Deputy President attempting, by his own response, to hide behind the shadow of his late brother.

**Hon. Mwengi Mutuse:** I never mentioned any of my deceased relatives. I have them, but I never mentioned any. The Deputy President is the one who mentioned his deceased relatives.

**Dr. Muthomi Thiankolu:** He is actually the one who has brought this material. Is that true?

**Hon. Mwengi Mutuse:** Indeed.

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**Dr. Muthomi Thiankolu:** Good. We will come to it. Let us go back to your allegation. Ground 7, can you tell the Senate, in summary, we are so pressed for time?

**Hon. Mwengi Mutuse:** Under the ground number seven, our allegation is that there are serious reasons to believe that His Excellency, Rigathi Gachagua, has committed crimes under Section 45(1), 46, 47(a) (3) and 48(1) of the Anti-Corruption and Economic Crimes Act, as well as Sections 2, 3, 4, and 7 of the Proceeds of Crime and Money Laundering Act.

In short, during the short period that I was doing research on this Motion, I have come across properties that are registered in the name of the Deputy President, or in the name of his children, or other proxies, that run cumulatively to a value of about Kshs5.2 billion.

There is no clear trace of where the money is to purchase those properties came from. Therefore, under the Anti-Corruption and Economic Crimes Act, qualify to be unexplained assets.

Secondly, I have also listed companies that are associated with the Deputy President; 22 of them. These companies when you look at the objects and purposes, they are all the same. It is our theory and evidence that these companies have been used for money laundering.

Similarly, I have also listed companies that have been transacting with the office of the Deputy President held by the Deputy President His Excellency Rigathi Gachagua, with tremendous respect. They are being paid from that office and we have laid ground for serious reasons to believe that these companies are actually conduits for corruption and that political responsibility, even when he is not the accounting officer, rests with the highest order of that office.

That is the case we are making here. We shall be showing the connection between the properties and His Excellency Rigathi Gachagua. In the case of unexplained assets, it is upon the person to show where they got the money to buy the assets. We have evidence that the assets belong to him.

**Dr. Muthomi Thiankolu:** Let us begin with the companies Hon. Mutuse. You said you have attached Form CR 12 to your Motion.

**Hon. Mwengi Mutuse:** Indeed, I have attached Form CR 12, being evidence of ownership of those companies.

**Dr. Muthomi Thiankolu:** Would that be the Form CR 12 on pages eight all the way to 32 of volume 2A?

**Hon. Mwengi Mutuse:** Indeed, yes.

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, it is volume 2A, pages eight to 32. It is from page one to 32, right? It is me who is mistaken.

**Hon. Mwengi Mutuse:** Indeed, yes.

**Dr. Muthomi Thiankolu:** We are stressed for time. Do these documents show in black and white that the majority of these companies, the directors and shareholders, are either the Deputy President, his sons or his spouse?

**Hon. Mwengi Mutuse:** Yes, they do. Hon. Senators will have the opportunity to look at these CR12 forms here at the House. Many of them are under two weeks old. So, they are very recent.

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**Dr. Muthomi Thiankolu:** Let us go to the question of the purchase of---

**Hon. Mwengi Mutuse:** You can also independently confirm from the e- Citizen portal. It is only Kshs650 to do a company search.

**Dr. Muthomi Thiankolu:** You, you have mentioned Treetops Hotel and Outspan Hotel in paragraph 45A.

**Hon. Mwengi Mutuse:** Yes, indeed.

**Dr. Muthomi Thiankolu:** Let us confirm whether this is false, ridiculous, or embarrassing. Did the Deputy President issue a public address on the 7<sup>th</sup> October in which he admitted acquiring these two hotels?

**Hon. Mwengi Mutuse:** Yes, indeed. That is correct. That it is part of our evidence.

**Dr. Muthomi Thiankolu:** So, with that admission from him, can he be right to say your allegations are false, ridiculous and embarrassing?

**Hon. Mwengi Mutuse:** That is not expected from the son of Mau Mau.

**Dr. Muthomi Thiankolu:** Let us go to page 33 of your volume 2A.

**Mr. Ndegwa Njiru:** Mr. Speaker, Sir, we have been patiently waiting and I have been restraining myself---

**The Speaker (Hon. Kingi):** Kindly pause the time for the National Assembly. Proceed, Counsel.

**Mr. Ndegwa Njiru:** I have been constraining myself when listening to the proceedings. Counsel is testifying instead of the witness testifying. Secondly, he is asking leading questions in examination-in-chief. Counsel understands the rules of examination.

**The Speaker (Hon. Kingi):** A case in point? You are very general.

**Mr. Ndegwa Njiru:** Mr. Speaker, Sir, the HANSARD will bear us witness. The Senate is the custodian of the HANSARD.

**The Speaker (Hon. Kingi):** Counsel, I am very alert. Even before you take to your feet, I will object to any leading questions. I am very alert to that.

Proceed, Counsel.

**Dr. Muthomi Thiankolu:** Much obliged, Mr. Speaker, Sir. Let us go to page 33. What is that document on volume 2A?

**Hon. Mwengi Mutuse:** On page 33, we have a discharge of charge between Wayne Holdings Limited and Aberdare Safari Lodges Limited drawn by the firm of Dentons Hamilton Harrison & Mathews

**Dr. Muthomi Thiankolu:** On page 34, what is given as the amount of the loan being discharged?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, the loan being discharged is Kshs143,885,042.

**Dr. Muthomi Thiankolu:** Please confirm this loan is being discharged as of 30<sup>th</sup> October, 2023.

**Hon. Mwengi Mutuse:** Yes. The loan is being discharged as of 30<sup>th</sup> October, 2023. The loan was to Aberdare Safari Hotels Limited.

**Dr. Muthomi Thiankolu:** Would that mean this hotel was indebted before the Deputy President acquired it?

**Hon. Mwengi Mutuse:** It was indebted.

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**Dr. Muthomi Thiankolu:** To what amount?

**Hon. Mwengi Mutuse:** A sum of Kshs143,885,042.

**Dr. Muthomi Thiankolu:** Let us go to page 37. What is that document you have annexed?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, the document I have annexed here is a transfer instrument; transfer to companies and limited liability partnerships. It is a document ordinarily that is used to transfer---

**Dr. Muthomi Thiankolu:** Interest in what?

**Hon. Mwengi Mutuse:** Interest in property from one party to the next.

**Dr. Muthomi Thiankolu:** Who is acquiring that property according to this document?

**Hon. Mwengi Mutuse:** The property as at this time belonged to Aberdare Safari Hotels Limited and is being transferred to Crystal Kenya Limited.

**Dr. Muthomi Thiankolu:** Is Crystal Kenya Limited a company linked to the Deputy President?

**Hon. Mwengi Mutuse:** Yes, indeed, and we have annexed Form CR-12.

**Dr. Muthomi Thiankolu:** In which page?

**Hon. Mwengi Mutuse:** Form CR-12 is on page 23 of our volume 2A.

**Dr. Muthomi Thiankolu:** Who are given as the directors there?

**Hon. Mwengi Mutuse:** The directors are one, Keith Ikinu Rigathi---

**Dr. Muthomi Thiankolu:** Who is that?

**Hon. Mwengi Mutuse:** That is a son to Hon. Rigathi Gachagua. The second director is Kevin Gachagua Rigathi who is also his son.

**Dr. Muthomi Thiankolu:** Now, let us go back to page 37. Has the Deputy President in his response explained where he got more than half a billion shillings, and to be precise, Kshs535 million to acquire this hotel?

**Hon. Mwengi Mutuse:** To begin with, the consideration for this transfer was Kshs535 million and this needs to be added to the loan of Kshs143 million cumulatively, so that you get the value in terms of what was the purchase.

**Dr. Muthomi Thiankolu:** Yes.

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, in his response and I have seen it, the Deputy President alludes that he got a loan of Kshs600 million. He used to run this company called Crystal Kenya Limited, but when he became the Deputy President, he gave it to his children to run it. He goes further to say that he got a loan of Kshs600 million from the Credit Bank Limited of Kenya.

**Dr. Muthomi Thiankolu:** Has he placed before the Senate evidence of the disbursement of any such loan?

**Hon. Mwengi Mutuse:** I have seen a letter of offer for that loan, but I have not seen any evidence of disbursement nor any charge in respect of that loan.

**Dr. Muthomi Thiankolu:** Is a letter of offer for loan evidence that a loan has actually been given?

**Hon. Mwengi Mutuse:** A letter of offer is just that, an offer.

**Dr. Muthomi Thiankolu:** That letter of offer is annexed; it says that as security for the supposed loan, there will be director's guarantees. Has he annexed those director's guarantees?

**Hon. Mwengi Mutuse:** To the best of my recollection, I have not seen them.

**Dr. Muthomi Thiankolu:** It says that the loan will be secured by personal guarantees. Has he also annexed those personal guarantees?

**Hon. Mwengi Mutuse:** I have not seen them.

**Dr. Muthomi Thiankolu:** Has he annexed any security known in the banking world for acquiring a loan of this amount?

**Hon. Mwengi Mutuse:** What I have seen in the letter of offer is in terms of the lien and set-off at page 132 of 534; That lien and set-off of a fixed deposit---

**Dr. Muthomi Thiankolu:** Please say the volume you are referring to and the page, so that the Senate can walk with you---

**The Speaker (Hon. Kingi):** Counsel, the Senators would wish to know where the letter of offer is contained. Which volume and page?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, the letter of offer---

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, it is on volume six---

**Hon. Mwengi Mutuse:** Volume six, starting from page 98.

**Dr. Muthomi Thiankolu:** Kindly take us through that letter of offer.

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, there is a letter of offer, meaning there was an application for a loan. This is to the directors of Crystal Kenya Limited. Crystal Kenya Limited is a company that is acquiring Aberdare Safari Lodges and the loan is in respect of an amount of Kshs600 million.

In the clause for lien and set-off, I have seen that a lien and set-off over fixed deposits, this is on page 99, in respect of INO, Crystal Kenya Limited, for an aggregate amount of Kshs300 million to be obtained. Interest accrued shall be credited to your deposit settlement account.

**Dr. Muthomi Thiankolu:** Let us stick to that one for now. From elementary banking knowledge, what do we conclude from this issue of the Kshs300 million?

**Hon. Mwengi Mutuse:** My understanding is that the account held at the bank had Kshs300 million in cash and that amount was going to be part of the security for the loan.

**Dr. Muthomi Thiankolu:** So, it means the Deputy President or his sons already had cash in that account amounting to Kshs300 million?

**Hon. Mwengi Mutuse:** Yes, Mr. Speaker, Sir, and it is also an asset that we are counting in cumulating the Kshs5.2 billion.

**Dr. Muthomi Thiankolu:** Now, let us count that Kshs300 million, Kshs535 million and the Kshs143 million that had been paid to pave away for this transaction.

**Hon. Mwengi Mutuse:** Indeed, yes.

**Dr. Muthomi Thiankolu:** In estimate, that would be like how much money?

**Hon. Mwengi Mutuse:** The Kshs535 plus Kshs300 equals to Kshs 835 million plus the Kshs143 million comes roughly to a billion shillings in respect of one transaction.

**Dr. Muthomi Thiankolu:** Roughly a billion shillings for just one property. Now, if the Deputy President were to save all his net salary for 10 years, would he have savings of a billion shillings to acquire this hotel?

**Hon. Mwengi Mutuse:** Not at all. From the known legitimate source of income, which is his salary as Deputy President, it would not be possible for him to acquire a billion shillings within a period of two years. This is because his salary as gazetted by the Salaries and Remuneration Commission (SRC) is roughly around Kshs1.2 million. After taxation, we get an aggregate of a million shillings.

**Dr. Muthomi Thiankolu:** In reference to these three figures, whether it is the Kshs143 million, Kshs300 million or Kshs535 million, has the Deputy President in his response, offered any legitimate explanation of how he or his young sons came up to this incredible fortune of money?

**Hon. Mwengi Mutuse:** Nowhere in the response, other than the letter of offer, that is in itself, not evidence of acquiring a loan.

**Dr. Muthomi Thiankolu:** At page 39 who are shown as the parties to this transaction for Aberdare Safari Lodges Limited?

**Hon. Mwengi Mutuse:** At Page 39 of volume 2(A), the parties to this transaction, for Crystal Kenya Limited are Kevin Gachagua Rigathi and Keith Ikinu Rigathi, while for Aberdare Safari Hotels, there is Robert Gathenji and Kenneth Waiboshi.

**Dr. Muthomi Thiankolu:** Are those two gentlemen you mentioned first related to the Deputy President?

**Hon. Mwengi Mutuse:** Indeed, they are his children.

**Dr. Muthomi Thiankolu:** As a matter of fact, Hon. Mutuse, and we will do it in the closing statement, does our Public Officer Ethics Act or the Leadership and Integrity Act faced with facts like this, permit the Deputy President to hide behind his sons?

**Hon. Mwengi Mutuse:** Not at all.

**Dr. Muthomi Thiankolu:** Is he allowed to hide behind any of his relatives?

**Hon. Mwengi Mutuse:** Not at all.

**Dr. Muthomi Thiankolu:** What about his spouse?

**Hon. Mwengi Mutuse:** Not at all.

**Dr. Muthomi Thiankolu:** So even if the Senate were to accept for argument's sake that this company is run by the sons, would that, based on our Public Officer Ethics Act or the Leadership and Integrity Act, be a valid answer to this unexplained wealth?

**Hon. Mwengi Mutuse:** Section 35 of the Leadership and Integrity Act---

**Dr. Muthomi Thiankolu:** Which volume are you reading, please?

**Hon. Mwengi Mutuse:** I am reading from volume seven in our bundle of documents. On page 34-

Acting through Others

A state officer contravenes the court if the officer-

(a) causes anything to be done through another person that would constitute a contravention of the court if done by the state officer

(b) or allows or directs a person under their supervision or control to do anything that is in contravention of the court.

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, acting through others is what previously I have called 'it was not me.'

Let us go to page 79 of volume 2(A).

**Hon. Mwengi Mutuse:** We are there.

**Dr. Muthomi Thiankolu:** This is documentation for that same property that the Deputy President admits he acquired, right?

**Hon. Mwengi Mutuse:** Yes, through Aberdare Safari Lodges Limited. For contextualization, Aberdare Safari Lodges Limited, owned two hotels, the Treetops Hotel and Outspan. The Outspan Hotel is the one that we have demonstrated how it was purchased. Treetops is a property developed by the Kenya Wildlife Service. However, it was under the same management of Aberdare Safari Lodges Limited, so they were acquired together.

**Dr. Muthomi Thiankolu:** Let us pause at - "it is owned by the Kenya Wildlife Service." Is the Kenya Wildlife Service a public or a private entity?

**Hon. Mwengi Mutuse:** It is a public entity, funded by the taxpayers.

**Dr. Muthomi Thiankolu:** Under Chapter Six laws, that is the Public Officer Ethics Act, the Leadership and Integrity Act, if you wish, you can even draw the Public Procurement and Disposal Act, is it consistent with all those laws for the Deputy President of the Republic to acquire without competitive bidding, an interest in a resource owned by the Kenya Wildlife Service (KWS)?

**Hon. Mwengi Mutuse:** It is not. In fact, the Deputy President is on record in these proceedings as having said that he advised his family not to transact with the Government. However, we will demonstrate that he actually transacted with KWS, yet KWS is a public entity.

**Dr. Muthomi Thiankolu:** If this hotel were to be leased or sold, would there be a requirement for open, competitive and transparent bidding?

**Hon. Mwengi Mutuse:** We have reasonable grounds to believe that the Deputy President has breached Section 45 of the Anti-Corruption and Economic Crimes Act. I will read page 23 of volume seven. It states as follows-

"Protection of Public Property and Revenue

A person is guilty of an offence if the person fraudulently or otherwise unlawfully-

(a) Acquires public property or public service or benefits  
(b) Mortgages, charges or disposes of any public property  
(c) Damages public property, including causing a computer or another electronic machinery to perform any function that directly or indirectly results in a loss or adversely affects any public revenue or service.

(d) or fails to pay any taxes or any fees, levies, charges payable to any public body or effects or obtains an exemption, remission, reduction or abatement from payment of any such taxes, levies and fees."

Section 46-

"Abuse of Office

A person who uses his office to improperly confer a benefit on himself or anyone else is guilty of an offence."

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**Dr. Muthomi Thiankolu:** Let us go to page 81 of volume 2(A), Sir. It is still about Treetops Hotel.

**Hon. Mwengi Mutuse:** I am there.

**Dr. Muthomi Thiankolu:** Can you read for us the last sentence of the second paragraph?

**Hon. Mwengi Mutuse:** This is a letter from the Kenya Wildlife Service to Mr. Amos Kisilu of Kisilu and Wandati Company Advocates.

**Dr. Muthomi Thiankolu:** When is it dated?

**Hon. Mwengi Mutuse:** The letter is dated 5<sup>th</sup> of June, 2023.

**Dr. Muthomi Thiankolu:** Was His Excellency, the Hon. Rigathi Gachagua, the Deputy President of Kenya on that date?

**Hon. Mwengi Mutuse:** Yes.

**Dr. Muthomi Thiankolu:** Whom is it addressed to?

**Hon. Mwengi Mutuse:** It is addressed to Kisilu Wandati and Company Advocates.

**Dr. Muthomi Thiankolu:** In the Deputy President's response, is that law firm indicated as one of the law firm's uses?

**Hon. Mwengi Mutuse:** Yes, indeed.

**Dr. Muthomi Thiankolu:** Good.

Now, read for us the second paragraph of that letter, beginning with the word, 'However'.

**Hon. Mwengi Mutuse:** It reads as follows:

"However, the tenant is in rental areas of Kshs35,481,548 and the Lodge has not been operational since 2019, which has resulted in deterioration of the same, in breach of the lease agreement."

**Dr. Muthomi Thiankolu:** So, we are being told a number of things about this hotel. One, it has not been in operation for four years, is that correct?

**Hon. Mwengi Mutuse:** Indeed.

**Dr. Muthomi Thiankolu:** As a result, it has accumulated rent arrears, is this correct or incorrect?

**Hon. Mwengi Mutuse:** Yes, and deteriorated, which in effect means it requires renovation money.

**Dr. Muthomi Thiankolu:** Now, let us go to page 80, where the Deputy President develops interest in the hotel.

**Hon. Mwengi Mutuse:** I am there.

**Dr. Muthomi Thiankolu:** Can you read the opening line of that, the first paragraph of that letter?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, and hon. Senators, this is a letter from Kisilu Wandati and Company Advocates to the Director General of the Kenya Wildlife Service. The opening sentence reads as follows-

"We act for a party (our client), who is interested in taking on an assignment of lease of the Treetops Hotel Lodge, as defined in the lease agreement dated 31<sup>st</sup> December, 1998 between yourselves and the Aberdare Safari Lodges Limited, the Lessee.

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**Dr. Muthomi Thiankolu:** Please confirm this is a letter by the Deputy President's lawyers.

**Hon. Mwengi Mutuse:** This indeed is a letter by the Deputy President's lawyers, but funny enough, against all professional knowledge in terms of how you write letters, they do not disclose their client. They just say, they act for a party.

**Dr. Muthomi Thiankolu:** Does that letter disclose the identity of the client anywhere?

**Hon. Mwengi Mutuse:** No, it does not. Yet it is a requirement that you must disclose the client as you move ahead.

**Dr. Muthomi Thiankolu:** Is that how lawyers usually write letters in honest, genuine transactions?

**Hon. Mwengi Mutuse:** Not at all. I am one of them, so I know.

**Dr. Muthomi Thiankolu:** Let us go to page 83 of Volume 2(A). What is written there?

**Hon. Mwengi Mutuse:** On page 83 is a letter to Dr. Kanga, Director General of Acting, Kenya Wildlife Service from Aberdare Safari Lodges Limited. It is about Treetops Lodge debt and lease.

**Dr. Muthomi Thiankolu:** Please hold 83 together with 81. In 81, we are told the hotel has not been in operation for years because it is in rent arrears, right?

**Hon. Mwengi Mutuse:** Yes, rent arrears of upwards of Kshs35 million.

**Dr. Muthomi Thiankolu:** That is on which date?

**Hon. Mwengi Mutuse:** This is on 5<sup>th</sup> June, 2023.

**Dr. Muthomi Thiankolu:** The letter on page 83 is on what date?

**Hon. Mwengi Mutuse:** It is 7<sup>th</sup> July, 2023, a month later.

**Dr. Muthomi Thiankolu:** Roughly, how many days in between?

**Hon. Mwengi Mutuse:** Roughly a month, 30 days or so.

**Dr. Muthomi Thiankolu:** What does this letter say?

**Hon. Mwengi Mutuse:** The letter says:-

“I refer to Treetops rent arrears debt of Kshs35,481,548.14 and I am pleased to inform you that the Aberdare Safari Hotels Limited as today paid via Real Time Gross Settlement (RTGS) bank transfer amount of Kshs34,869,797 to Kenya Wildlife Service (KWS) main collection Standard Chartered Bank account and the amount of Kshs611 to Kenya Revenue Authority (KRA) for 2 per cent withholding tax.”

**Dr. Muthomi Thiankolu:** Hon. Mutuse, what do you have to tell the Senate of the fact a company that was in arrears for four years of Kshs35 million is in distress, not in operation, the Deputy President shows interest and is suddenly able to pay these arrears of Kshs35 million?

**Hon. Mwengi Mutuse:** The Deputy President must be very magical. You have not operated for over four years, you are in debt that you have not been able to service four years, but you have just interacted with him for a month and you pay your debt overnight.

**Dr. Muthomi Thiankolu:** When you see this, is it consistent with the narrative that your allegations are false, ridiculous and embarrassing?

**Hon. Mwengi Mutuse:** Not at all. Indeed, our allegations are backed up by concrete evidence as we have demonstrated.

**Dr. Muthomi Thiankolu:** What is the document at page 85 of Volume 2A?

**Hon. Mwengi Mutuse:** On page 85 is a letter by KWS to our one Ken Waibochi, the Managing Director of Aberdare Safari Lodges and it is acknowledgement of funds.

**Dr. Muthomi Thiankolu:** How much money?

**Hon. Mwengi Mutuse:** The letter in paragraph 2 reads as follows:

“We acknowledge receipt of Kshs34,481---

**Dr. Muthomi Thiankolu:** Has the Deputy President in his response explained the mysterious availability of this Kshs35 million when he comes to the picture?

**Hon. Mwengi Mutuse:** I have not seen anywhere where he explains where this money came from.

**Dr. Muthomi Thiankolu:** What is that document on page 87?

Volume 2A, Mr Speaker, Sir.

**Hon. Mwengi Mutuse:** This is novation and assignment of lease agreement and addendum to lease dated 31<sup>st</sup> December, 1998 and 27<sup>th</sup> July, 2023 respectively, between KWS, Aberdare Safari Lodges Limited and Crystal Kenya Limited, the company of interest.

**Dr. Muthomi Thiankolu:** Does this confirm just like the deputy admitting that he acquired Treetops Hotel?

**Hon. Mwengi Mutuse:** It confirms and has not been contested.

**Dr. Muthomi Thiankolu:** Mr. Mutuse, is your allegation about Treetops, false, ridiculous and embarrassing?

**Hon. Mwengi Mutuse:** Come again.

**Dr. Muthomi Thiankolu:** Is the evidence you have just taken the Senate through about Treetops Hotel consistent with the narrative of a Mover of Motion who makes ridiculous, false and embarrassing claims?

**Hon. Mwengi Mutuse:** Not at all. It demonstrates that our allegations are not malicious.

**Dr. Muthomi Thiankolu:** Let us go to his response in Volume 6. It should be page 8 if I am not mistaken, Mr Speaker, Sir.

**Hon. Mwengi Mutuse:** Yes, there we are.

**Dr. Muthomi Thiankolu:** Okay, is page 9.

**Hon. Mwengi Mutuse:** Yes.

**Dr. Muthomi Thiankolu:** At the top of page 9, what does the Deputy President in his response to the National Assembly tell it?

**Hon. Mwengi Mutuse:** He says in respect to Crystal Kenya Limited:

“This company was incorporated in 2009, way before I became Deputy President.”

**Dr. Muthomi Thiankolu:** Let us pause there. Is that a valid response to your Motion; the date when the company was incorporated?

**Hon. Mwengi Mutuse:** I am interested in what the company did when Mr. Rigathi Gachagua did as Deputy President and not when the company was incorporated.

**Dr. Muthomi Thiankolu:** Okay, read for us the next line.

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**Hon. Mwengi Mutuse:** It says: “I transferred the company to my sons when I became Deputy President.”

**Dr. Muthomi Thiankolu:** Is that a valid answer given the things we have seen about Treetops and Outspan?

**Hon. Mwengi Mutuse:** It confirms that, indeed, the sons are acting on his behalf.

**Dr. Muthomi Thiankolu:** Read the next line, please.

**Hon. Mwengi Mutuse:** It says: “It acquired Outspan Hotel and Treetops Hotel following financing by a local bank. I also gave the company a personal loan from funds, which were returned to me by the Asset Recovery Agency. I wish to clarify that Treetops Hotel was not bought, but leased from KWS.

The lease was assigned to Crystal Kenya Limited by a private company, Aberdare Safari Hotels Limited. I have annexed the facility letter dated 24<sup>th</sup> October as well as the company resolution to borrow Kshs600 million and marked as annexed to RG 14 and annexed to RG 15, respectively.

**Dr. Muthomi Thiankolu:** Let us go to page 44. This relates to the property called Ruguru-Kiamariga 1223. This is in Volume 2A, page 44.

Please, confirm from the Deputy President's response whether he has admitted acquiring this property.

**Hon. Mwengi Mutuse:** Yes, he admits acquiring the property, but goes ahead to make some justifications.

**Dr. Muthomi Thiankolu:** The justification he makes is to what effect?

**Hon. Mwengi Mutuse:** Is that the acreage which is different and that he bought it for Kshs3.5 million and not Kshs5 million as alleged?

**Dr. Muthomi Thiankolu:** Now, let us go to that page 44. What is that document?

**Hon. Mwengi Mutuse:** This is a document transfer by a personal representative to a person on intestate. Basically---

**Dr. Muthomi Thiankolu:** Who is given that transfer? Who is making it?

**Hon. Mwengi Mutuse:** A certain Naftali Guandaru Gathogo.

**Dr. Muthomi Thiankolu:** Can you read the opening line of that document?

**Hon. Mwengi Mutuse:** Public trustee of the Republic of Kenya of P.O. Box 49672 Nairobi as personal representatives of Naftali Guandaru Gathogo deceased hereby transferred to Hannah Gathongo Mugo, absolutely.

**Dr. Muthomi Thiankolu:** Is the public trustee a public officer?

**Hon. Mwengi Mutuse:** The public trustee is a public office.

**Dr. Muthomi Thiankolu:** Under what circumstances to the best of your knowledge does the public trustee obtain letters of administration of an estate, in this case the estate of the deceased Naftali Guandaru Gathogo?

In terms of the law of succession, the public trustee only steps in where there are no beneficiaries of a deceased person's estate.

The person to whom the trustee is transferring is their picture given there?

**Hon. Mwengi Mutuse:** Yes, it is given and I will invite hon. Senators to look at it.

**Dr. Muthomi Thiankolu:** What observation do you want them to make about it?

**Hon. Mwengi Mutuse:** Well, this is a photograph of--- I do not want to say dishevelled, old lady who signs by appending her thumb signifying she was probably not even aware of the transaction.

**Dr. Muthomi Thiankolu:** Has she signed or affixed a thumbprint?

**Hon. Mwengi Mutuse:** A thumbprint.

**Dr. Muthomi Thiankolu:** On the face of it, does that look like a privileged or vulnerable and marginalised Kenyan?

**Hon. Mwengi Mutuse:** Very vulnerable.

**Mr. Ndegwa Njiru:** Mr Speaker, Sir, kindly allow me again to bring to the attention of the Assembly that the advocate is leading his lay witness. He has put a question. Does that in your own imagination, look like a vulnerable witness?

**The Speaker (Hon. Kingi):** Objection sustained. Counsel for National Assembly, stop leading the witness.

**Dr. Muthomi Thiankolu:** I am much guided, Mr Speaker, Sir. We will proceed. What page are we?

**Hon. Mwengi Mutuse:** We are on page 44.

**Dr. Muthomi Thiankolu:** Did the Deputy President, in his response, disclose that this property initially belonged to a deceased person?

**Hon. Mwengi Mutuse:** No.

**Dr. Muthomi Thiankolu:** Did he in his response disclose that this property was initially vested on the public trustee?

**Hon. Mwengi Mutuse:** No, he did not.

**Dr. Muthomi Thiankolu:** Let us go to his response in paragraph 1.4.2, which is in Volume 6.

**The Speaker (Hon. Kingi):** Page?

**Dr. Muthomi Thiankolu:** Page 4 of Volume 6. Can you read paragraph 1.4.2 of the Deputy President's response?

**Hon. Mwengi Mutuse:** It says: "I purchased the land in the year 2023 for Kshs3.5 million for my farm proceeds. Some of you are aware that I have a dairy farm with close to 200 cows."

**Dr. Muthomi Thiankolu:** Now, let us see who is saying things that are embarrassing, false and ridiculous. What is the price he has said he acquired it for on that page?

**Hon. Mwengi Mutuse:** At a cost of Kshs3.5 million.

**Dr. Muthomi Thiankolu:** Let us go to the agreement he has attached to show how he purchased this property. It is on page 63 of the same volume. Clause 3, what is given as the purchase price?

**Hon. Mwengi Mutuse:** The purchase price is Kshs5 million only, to be paid as follows.

**Dr. Muthomi Thiankolu:** Is that consistent?

**Hon. Mwengi Mutuse:** This is volume six.

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, we are holding Volume 6, pages 4 and 63. No, it is page 4 of 534 and page 96 of 534. The problem is that there are two sets

of pagination, so the one we will refer to is the one that is of 534. We are talking of page 4 of 534. You hold that together with page 96 of 534.

My apologies, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): In other words, go to page four and page 96.

**Dr. Muthomi Thiankolu**: Page 96 of Volume 6.

**The Speaker** (Hon. Kingi): Yes, we are there.

**Dr. Muthomi Thiankolu**: We will shortly take you to the paragraphs. Mr. Speaker, Sir, you know I am under a lot of pressure because of time. So, are we all there, hon. Senators? Good. Can you read again for the Senate on page 4 of 534 what the Deputy President says was the purchase price for this property?

**Hon. Mwengi Mutuse**: This is land Parcel No. Ruguru Kiamariga, 1223 in Mathira East Constituency. That is on Page 3. On page 4, the Deputy President says:

“I purchased the land in 2023 for Kshs 3.5 million for my farm proceeds.”

**Dr. Muthomi Thiankolu**: Let us pause it there. He bought it for Kshs3.5 million. Let us go to the document he has annexed to prove that he acquired this property for Kshs3.5 million. It is on page 96 of 534.

**Hon. Mwengi Mutuse**: Indeed, this is an agreement for the sale of the whole of LR No. Ruguru Kiamariga, 1223, measuring approximately 2.5 acres. Under Clause 3, the purchase price is Kshs5 million to be paid as follows.

**Dr. Muthomi Thiankolu**: Given these inconsistencies, Sir, is it fair for the Deputy President to lie in his own document and accuse you of presenting material that is false, ridiculous and embarrassing?

**Hon. Mwengi Mutuse**: It is not fair, especially when one of our allegations against the Deputy President is that he consistently misleads the public.

**Dr. Muthomi Thiankolu**: Back to Page 4 of 534, he says that he bought it in the year 2023. Was that during his tenure as Deputy President?

**Hon. Mwengi Mutuse**: Indeed.

**Dr. Muthomi Thiankolu**: He says he has a dairy farm there with 200 cows.

**Hon. Mwengi Mutuse**: Indeed, he says so.

**Dr. Muthomi Thiankolu**: In his presser on 7<sup>th</sup> October 2024, what did he tell the country was the source of these 200 cows?

**Hon. Mwengi Mutuse**: If I remember correctly, in the televised address by the Deputy President on that fateful night, he did say that the Kalenjin people of the Rift Valley have gifted him the cows that he keeps in his farm.

**Dr. Muthomi Thiankolu**: Can you now read for us Article 76 (1) of the Constitution on what it says about gifts given to public officers?

**Hon. Mwengi Mutuse**: Article 76 (1), Financial Property of State Officers, it says:

“A gift or donation to a state officer on a public or official occasion is a gift or donation to the Republic and shall be delivered to the State unless exempted under an Act of Parliament.”

**Dr. Muthomi Thiankolu**: Has the Deputy President presented any evidence that he surrendered these gifts to the State?

**Hon. Mwengi Mutuse**: He says that he has kept them on his farm.

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**Dr. Muthomi Thiankolu:** Would that not be an admission by his public statement of violating Chapter Six?

**Hon. Mwengi Mutuse:** Indeed, it is an admission and should be treated as such.

**Dr. Muthomi Thiankolu:** Let us go to the land in Meru. Have you placed any evidence to prove this allegation?

**Hon. Mwengi Mutuse:** I have placed evidence to prove that the Deputy President indeed acquired land in Meru and to the best of my recollection, he has also admitted in his response to having bought land in Meru.

**Dr. Muthomi Thiankolu:** I now want you to watch Volume 8 against the Deputy President's response. Let us go to first of all Volume 6, which is the Deputy President's response. What does he say about the Olive Garden Hotel? In summary, it is Clause 1.1.1, all the way ---

**Hon. Mwengi Mutuse:** For Clarity Counsel, we leave the issue of Meru, we will come to it later.

**Dr. Muthomi Thiankolu:** We will come to it later. Do not worry. Let us deal with Olive Gardens Hotel for now in Volume 6, which is the Deputy President's response.

**Hon. Mwengi Mutuse:** We made an allegation that the Deputy President had bought Olive Gardens Hotel through proxies.

**The Speaker (Hon. Kingi):** Volume six, page?

**Dr. Muthomi Thiankolu:** Volume six, page 2 of 534.

**The Speaker (Hon. Kingi):** Page 2?

**Dr. Muthomi Thiankolu:** Yes, Page two of 534.

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, and Hon. Senators, in my Motion I made allegations that the Deputy President has bought the Olive Gardens Hotel initially owned by his late brother.

In response, the Deputy President said as follows –

“The allegation that I own Olive Gardens Hotel is false. The truth is that Olive Gardens Hotel used to belong to my deceased brother, the late Hon. James Nderitu Gachagua, and therefore, has never been my property. This is information that most of you may be aware of as it is in the public domain. Upon his demise, my late brother left a Will in his recognition that I am an honest man.”

**Dr. Muthomi Thiankolu:** We can leave it there. And ‘honest man’ is written in bold, right?

**Hon. Mwengi Mutuse:** It says: “He appointed me as one of the executors of his estate.”

**Dr. Muthomi Thiankolu:** Now, is the Deputy President's response about Olive Gardens Hotel, which runs from page 2 to 3, consistent with the Affidavit in the National Assembly's Volume 8 by Peterson Njomo Muchira?

**Hon. Mwengi Mutuse:** Maybe so that we can point Members to Volume 8, we have the Affidavit of Mr. Peterson Njomo Muchira.

**Dr. Muthomi Thiankolu:** Tell us in summary because we are so pressed for time.

**Hon. Mwengi Mutuse:** Peterson Njomo Muchira says:

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“I have personal knowledge of one of the issues raised in the Special Motion, for the removal from office by impeachment, of Mr. Rigathi Gachagua, the Deputy President. I have personal knowledge of the facts relating to the sale of Olive Gardens Hotel, which initially formed part of the estate of the late Nderitu Gachagua.

Given the matters settled in the preceding paragraph, I am competent to swear this affidavit. I decided to swear this affidavit after my attention was drawn to contradictions between the contents of Part 1.1 on pages 1-2 of the response that His Excellency Rigathi Gachagua filed at the National Assembly on 8<sup>th</sup> October, 2024 in opposition to the Special Motion for his removal;

Remarks made by Hon. Mwangi Mutuse when prosecuting the Motion in the National Assembly, and remarks made by Hon. Kimani Ichung’wah at the National Assembly. Remarks made by Members of the Assembly ---”

**Dr. Muthomi Thiankolu:** Let us go to the next paragraph in the interest of time.

**Hon. Mwangi Mutuse:** I wish to clarify and state as follows –

“I am a shareholder and director of TM Civil Engineering Limited, the company referred to in the agreement annexed on pages 10 to 34 of the Deputy President’s response to the Motion. On 31<sup>st</sup> March, 2023, the Deputy President approached and convinced me to purchase the Olive Gardens Hotel, which was at the time part of the estate of the late Nderitu Gachagua”.

**Dr. Muthomi Thiankolu:** Let us go to (d).

**Hon. Mwangi Mutuse:** In (d) he avers that in summary ---

**Dr. Muthomi Thiankolu:** Now, let us go to (c).

**Hon. Mwangi Mutuse:** Now at (c), he says:

“The Deputy President persuaded me to enter into an informal secret arrangement regarding the transaction embodied in the agreement annexed in pages 10 to 34 of his response to the Impeachment Motion.

In summary, the terms of the secret agreement were that–

(i) the Deputy President would buy the hotel from me by refunding the purchase price of Kshs412 million set out in the agreement annexed in pages 10 to 34 of his response;

(ii) the Deputy President would instruct and pay a contractor to renovate the hotel after completion of the transaction embodied in the agreement;

(iii) to protect the Deputy President’s undisclosed interest in the hotel, I will appoint Miss Julianne Jahenda as a signatory or agent for the hotel’s account at the Co-operative Bank of Kenya; and,

(iv) to further protect the Deputy President’s undisclosed interest, Miss Juliane Jahenda will run the hotel.

**Dr. Muthomi Thiankolu:** Is Miss Julianne Jahenda the same person mentioned in Volume 8A on page 1 of 19?

**Hon. Mwangi Mutuse:** Yes. This is a letter from the Public Service Commission.

**Dr. Muthomi Thiankolu:** So, does that mean we have two sources, one being Njomo Muchira?

**Hon. Mwangi Mutuse:** Mr. Speaker, Sir, we are looking at Volume 8A, page 1 of 19. The names are there. We have the first, second and the third one is Miss Makaa

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Julianne Jahenda, who is the Deputy Director in charge of co-ordination in the Office of the Deputy President, working on a local contract.

**Dr. Muthomi Thiankolu:** Who is the author of this document?

**Hon. Mwengi Mutuse:** The author of this document is the Public Service Commission.

**Dr. Muthomi Thiankolu:** Is this document consistent with what Johnson Muchira said in his affidavit about Julianne Jahenda?

**Hon. Mwengi Mutuse:** It shows that Julianne Jahenda is a staff and a close associate of the Deputy President. She is the same person who was seconded to manage his interests in the Olive Gardens Hotel.

**Dr. Muthomi Thiankolu:** Is the acquisition of this hotel through a secret arrangement from the estate of his brother consistent with “an honest man” as written in bold font in his response?

**Hon. Mwengi Mutuse:** It is, indeed, consistent with our allegation that His Excellency the Deputy President raided the estate of his late brother and acquired properties directly and through proxies.

**Dr. Muthomi Thiankolu:** Lastly, from me, so that Mr. Wanyama wraps up, let us go to the Vipingo property that also belonged to his brother.

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, for Senators to note, this is another Kshs412 million in terms of purchase and renovations. Those are extra millions of money, but there is no disclosure as to where the money was coming from.

**Dr. Muthomi Thiankolu:** Now, let us go to Vipingo Beach Resort, which again the Deputy President wants to hide under the shadow of his late brother. Who are given on page 18 of Volume 2A as the directors of Vipingo Beach Resort Limited? That is contained in Volume 2A, page 18 of 123.

**Hon. Mwengi Mutuse:** On page 18 of Volume 2A, we have annexed form CR12, dated 27<sup>th</sup> September, 2024, for Vipingo Beach Resort Limited. The Directors are Keith Ikinu Rigathi and Kevin Gachagua Rigathi. That was the estate of deceased James Nderitu Gachagua.

**Dr. Muthomi Thiankolu:** Let us begin with Kevin, who is a son of the Deputy President. Was he an executor of the will that the Deputy President has annexed to his response?

**Hon. Mwengi Mutuse:** No. The Will was to be executed by the Deputy President, Hon. Rigathi Gachagua, advocate Njoroge Rugeru and Mr. Maina. The children of the Deputy President were not executors of the estate. Therefore, cannot be in the directorship of this company by virtue of the Will of the late Nderitu Gachagua because they were not named as executors of his estate.

**Dr. Muthomi Thiankolu:** So, is this document on its face consistent with his defence that this hotel belongs to his late brother?

**Hon. Mwengi Mutuse:** It flies in the face.

**Dr. Muthomi Thiankolu:** Let us see whether he actually acquired it. Let us go to Volume 4, page 107 of 484.

**Hon. Mwengi Mutuse:** I am there.

**Dr. Muthomi Thiankolu:** What is that document, Sir?

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**Hon. Mwengi Mutuse:** This is a joint will executors' report on the status of the estate as at 27<sup>th</sup> February, 2024. This is the estate of the late Nderitu Gachagua.

**Dr. Muthomi Thiankolu:** What does it tell us about Kuruwitu Home Resort in (iii) on that page?

**Hon. Mwengi Mutuse:** The broad headline is sale of estates assets. It lists Queensgate, Olive Gardens Hotel and Kuruwitu Home Resort. It states as follows:

“The resort was sold to Kuruwitu Properties Limited for Kshs250---

**The Speaker (Hon. Kingi):** What volume and page is that?

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, it is Volume 4, page 107 of 484.

**Hon. Mwengi Mutuse:** Can we continue?

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

**Hon. Mwengi Mutuse:** Kuruwitu Home Resort was sold to Kuruwitu Properties Limited for Kshs250 million only.

**Dr. Muthomi Thiankolu:** Let us stop there. Is Kuruwitu Properties Limited to which this hotel or resort was sold a company linked to the Deputy President?

**Hon. Mwengi Mutuse:** Indeed, and we have annexed in our Volume 2A. If the hon. Speaker and Senators can look at Volume 2A of our exhibits, that is on page 8. We have annexed form CR12 in respect of Kuruwitu Properties Limited.

**Dr. Muthomi Thiankolu:** Who are shown as the directors there?

**Hon. Mwengi Mutuse:** The directors are Vipingo Beach Resort Limited, which we have demonstrated that is owned by Hon. Rigathi Gachagua's children.

**Dr. Muthomi Thiankolu:** Back to Volume 4, page 111 of 484. Can you read the sentence that begins with “for instance” at the top?

**Hon. Mwengi Mutuse:** This is still the joint will executors' report. I will read what is at the top on page 111 which states as follows:

“For instance, the sale of Kuruwitu Beach Resort cottages and Olive Gardens Hotel was done after beneficiaries were apprised in the meeting of 24<sup>th</sup> June, 2023, cited herein before. Significantly, the beneficiaries themselves in their meetings with one of the executors approved the sale Kuruwitu Beach Resort to one of them who is also an executor---

**Dr. Muthomi Thiankolu:** Who is the executor and beneficiary being referred to here?

**Hon. Mwengi Mutuse:** The only executor and beneficiary of the late Nderitu Gachagua's estate as named in the Will and the joint will executors' report is one Hon. Rigathi Gachagua.

**Dr. Muthomi Thiankolu:** Where is this property located, Hon. Mutuse?

**Hon. Mwengi Mutuse:** Vipingo Beach Resort should be somewhere in the coast.

**Dr. Muthomi Thiankolu:** Back to page 107 of Volume 4. In his response, has the Deputy President explained where he got the sum of Kshs250 million to purchase this property?

**Hon. Mwengi Mutuse:** In fact, he denies buying the property.

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, I will cede the Floor to my learned friend, Mr. Wanyama, to prosecute the remaining grounds of the Motion.

**Mr. Peter Wanyama:** Mr. Speaker, Sir, with your permission, I will proceed from where my colleague, Dr. Muthomi, has left.

Hon. Mutuse, can you go to Ground No.2 of your Motion?

**Hon. Mwengi Mutuse:** We will be there shortly.

**Mr. Peter Wanyama:** That is on Page 10 of Volume 1.

**Hon. Mwengi Mutuse:** Here we are.

**Mr. Peter Wanyama:** Yes, what is the nature of this ground? What are you complaining about?

**Hon. Mwengi Mutuse:** We are complaining that the Deputy President has on numerous occasions violated Article 147(1) as read together with Article 152(1) of the Constitution of Kenya. In particular, Article 147(1) provides that the Deputy President shall be the principal assistant of the President and shall deputize the President in the execution of the President's functions, while Article 152 (1) of the Constitution states that the Deputy President is a member of the Cabinet.

In particular, through Cabinet Communique, as you are aware, after every Cabinet meeting, there is normally a press release that is released. We were aware of a decision of the Cabinet of 30<sup>th</sup> April, 2024, where it passed a resolution to evacuate members of the public for their own safety from the 30-metre riparian zone of the Nairobi River.

When that decision was made, insofar as I understand processing of business in the Cabinet, the Deputy President sat in Cabinet. He is one who chairs Cabinet sub-committees, which process business before going to Cabinet. Therefore, to my own understanding, he was fully involved in the making of that decision. However---

**Mr. Peter Wanyama:** Just to cut you short because of time, the allegation is that the Deputy President has been undermining the President.

**Hon. Mwengi Mutuse:** Yes.

**Mr. Peter Wanyama:** Do you have evidence in your Motion that supports this allegation?

**Hon. Mwengi Mutuse:** Yes, I have evidence.

**Mr. Peter Wanyama:** Which evidence is this?

**Hon. Mwengi Mutuse:** The evidence is in respect of the Cabinet resolution regarding the evacuation of the settlers around the riparian area. Our evidence is contained in the affidavit of Ms. Mercy Wanjau.

**Mr. Peter Wanyama:** Where is this affidavit of Ms. Mercy Wanjau?

**Hon. Mwengi Mutuse:** The affidavit of Ms. Mercy Wanjau is to be found on Page 78 to 80 of Volume 1.

**Mr. Peter Wanyama:** Has the Deputy President admitted these allegations?

**Hon. Mwengi Mutuse:** Yes, the Deputy President has admitted the allegation to say there was a Cabinet resolution, but he went against it.

**Mr. Peter Wanyama:** Where is the admission by the Deputy President contained for purpose of the answer?

**Hon. Mwengi Mutuse:** If you look at paragraphs 10.1.1 and 10.1.3 of the Deputy President's response---

**The Speaker (Hon. Kingi):** Which volume and page?



**Hon. Mwengi Mutuse:** Volume 6, page 19 of 534. Paragraph 10.1.1, he says as follows-

“The Office of the Deputy President has undertaken extensive engagement with all parties in regard to the Cabinet decision on eviction, which I fully support, including the Nairobi River, which is an entity under the Office of the Deputy President (ODP)---”

**Mr. Peter Wanyama:** Okay, we can stop there. In your opinion, as the Mover of the Motion, can the Government of Kenya function if the Deputy President and the President are not reading from the same page?

**Hon. Mwengi Mutuse:** It will be very difficult for the Government to function and deliver effectively to the people of Kenya when the two highest office holders are reading from different scripts, especially when the Deputy President, for political expedience, would disown decisions of the Cabinet in a meeting that he sat through to make a decision.

**Mr. Peter Wanyama:** Thank you very much. Have you annexed any videos to prove this allegation?

**Hon. Mwengi Mutuse:** Yes, indeed.

**Mr. Peter Wanyama:** Video number?

**Hon. Mwengi Mutuse:** We have annexed Video No.10.

**Mr. Peter Wanyama:** What is Video No.10 all about?

**Hon. Mwengi Mutuse:** Maybe they can play it for honourable Senators to see for themselves.

**Mr. Peter Wanyama:** Can you play video No.10 briefly, Mr. Speaker, Sir.

*(A video clip was played)*

Mr. Speaker, Sir, because of time, we are requesting you play at minute 1.25.

*(A section of a video clip was played)*

Mr. Speaker, Sir, we can stop there because of time. The video has been submitted as part of the evidence from the National Assembly.

Hon. Mutuse, let us go to Ground No.3 very quickly. What is it all about? What is your complaint in the Senate in Ground No.3?

**Hon. Mwengi Mutuse:** Our complaint to the Senate is that the Deputy President has undermined devolution.

**Mr. Peter Wanyama:** Why do you say so, briefly?

**Hon. Mwengi Mutuse:** We say so because there was a lawful decision by the Nairobi City County.

**Mr. Peter Wanyama:** Which is this lawful decision? You can be specific.

**Hon. Mwengi Mutuse:** The Nairobi City County made a resolution to relocate traders from the Central Business District (CBD) to Kangundo Road. The Deputy President, through evidence that we have---

**Mr. Peter Wanyama:** Is that decision to relocate traders a county government function?

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**Hon. Mwengi Mutuse:** Yes and because the Senate is a House that is created under Article 96 to protect the interests of counties would take notice that markets, under Schedule 4, is an exclusive function of counties.

**Mr. Peter Wanyama:** Have you submitted any video evidence to support this allegation that the Deputy President has undermined the devolved government system, especially the County Government of Nairobi City?

**Hon. Mwengi Mutuse:** Yes, Video No.12 and 13, where Members of the Senate shortly, will see that the Deputy President went to Wakulima Market and incited members of the public not to obey lawful directives of the Nairobi City County. We have also, as part of our evidence, annexed the sworn affidavit of Hon. Johnson Sakaja, the Governor of Nairobi City County, with averments to that effect. This is on page 81 to 85 of our Volume 1.

**Mr. Peter Wanyama:** Okay. The video is part of the evidence and record. Why do you complain about this in the Senate?

**The Speaker (Hon. Kingi):** The Senators want to see and hear the video.

**Mr. Peter Wanyama:** Can we play Video No. 12?

*(A video clip was played)*

**Mr. Peter Wanyama:** Hon. Mutuse, is that act by the Deputy President impeachable?

**Hon. Mwengi Mutuse:** It is impeachable in the sense that two levels of the government have been assigned their roles and functions under the Fourth Schedule of the Constitution. The Constitution under Article 6 requires the two levels of the government, much as they are interdependent, also respect their functional independence. If a county government makes a decision, it is upon them to implement that decision.

Much as Nairobi is the cosmopolitan capital city of Kenya when the Deputy President went there, he addressed Kenyans in his native language.

**Mr. Peter Wanyama:** Is it compatible with the status of the Deputy President to address these core issues at a market place like this?

**Hon. Mwengi Mutuse:** It is not consistent. The expectation was that through the inter-governmental relations framework that is already established in law, there would have been a formula to deal with that issue outside the rally.

**Mr. Peter Wanyama:** Which is this framework for inter-governmental relations you are talking about?

**Hon. Mwengi Mutuse:** We have the Intergovernmental Relations Act and it would be expected the Deputy President being the Chair of the Intergovernmental Relations Committee and also the Intergovernmental Budget and Economic Council (IBEC); he would have exercised his responsibility under the law and those responsibilities to call a meeting with the City County of Nairobi to deliberate on those issues, and if indeed there were complaints from the citizens of Nairobi in a manner that is consistent with the formal running of a government.

**Mr. Peter Wanyama:** Mr. Speaker, Sir, due to time constraints, we can move to Allegation No. 4. Explain briefly what it is all about to the hon. Senators.

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**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, and hon. Senators, is gross violation of Article 161 of the Constitution; specifically undermining the institutional and independence of the judges.

**Mr. Peter Wanyama:** Hon. Mutuse, what do you understand by the word 'gross'. You are using it in a context and it is important you explain briefly.

**Hon. Mwengi Mutuse:** My understanding of gross violation of the Constitution, I do not whether I will be speaking in my knowledge as a lawyer.

**Mr. Peter Wanyama:** Just give your opinion on what is gross. It goes into the HANSARD.

**Hon. Mwengi Mutuse:** Gross violation of the Constitution, the best would be found in the Wambora decision, which defined what gross violation of the Constitution means. It said it is the violation of Article 10, 1 and several articles of the Constitution. I do not have that particular citation, but in my mind, it is paragraph 46 of that decision.

**Mr. Peter Wanyama:** Let us go back to Ground No.4. What is it you are complaining about on this ground?

**Hon. Mwengi Mutuse:** We are complaining that the Deputy President did threaten in a manner that displayed personal vendetta against the person of Esther Maina, a Judge of the High Court of Kenya. The reason for threatening her with filing a petition for her removal from office was in relation to a decision that she made in a case involving the Deputy President by finding that assets to the tune of cash Kshs202 million held in his companies' accounts were proceeds of corruption and money laundering. For making that decision, the Deputy President against the provisions of Article 161 threatened Justice Maina with corruption and removal from office.

**Mr. Peter Wanyama:** Point out this Justice Maina's decision you are talking about to the hon. Senators.

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, in our Volume 2A on page 60 to 77, we have annexed the judgement of the hon. Judge, Esther Maina, where many of the companies we have stated in the other allegations are listed here as companies are conduits of corruption and money laundering.

**Mr. Peter Wanyama:** Which companies are these? You can name a few of them, so that we are more specific for the HANSARD.

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, we have talked about Crystal Kenya. It is mentioned in the judgment on page 64. There is Wamunyoro Investments and it is mentioned here several times.

**Mr. Peter Wanyama:** What was the conclusion by the Judge in that judgement?

**Hon. Mwengi Mutuse:** On page 77 of 123 in our Volume 2A, the Judge said that in the upshot the motion is granted in terms of prayers 2, that a declaration is hereby issued that the following funds are proceeds of crime and, therefore, liable for forfeiture to the State.

They are listed there, Kshs165 million held in a certain account at Rafiki Finance Bank, Kshs35 million in the name of Rigathi Gachagua. Kshs773,000.

**Mr. Peter Wanyama:** How much in total did the Judge find to be the money that Nderitu Gachagua at the time had through proceeds of corruption?

**Hon. Mwengi Mutuse:** An order is hereby issued that the above funds be forfeited to the Government of Kenya and transferred to the Assets Recovery Agency and the amount is about Kshs200 million.

**Mr. Peter Wanyama:** She finds Mr. Rigathi Gachagua to have obtained Kshs200 million?

**Hon. Mwengi Mutuse:** He was unable to explain how he obtained Kshs200 million.

**Mr. Peter Wanyama:** What did the Judge do after that finding?

**Hon. Mwengi Mutuse:** The Judge directed that the amounts be forfeited to the Government of Kenya through the Asset Recovery Agency, which is the body created under the Proceeds of Crime and Anti-Money Laundering Act to take care of money laundering.

**Mr. Peter Wanyama:** Mr. Ongoya for the Deputy President was here and he firmly stated that you have no ground at all to bring this allegation in the Senate. What is your specific complain in the Senate on this allegation?

**Hon. Mwengi Mutuse:** My complaint is that when a Judge in a functional democracy in a country of rule and law like ours makes a finding and judges make findings against all of us every day, the civil way of challenging that decision is through an appeal. You appeal the decision. You do not go to a rally and start threatening judges because you create fear in the judges so that they are not able to exercise their decisions independently.

You can interfere with the financing of the Judiciary and other things, but let us not take away the decisional independence of the judges.

**Mr. Peter Wanyama:** Hon. Mutuse, do you have any evidence you have submitted to the Senate to prove this allegation of interference with the independence of the Judiciary?

**Hon. Mwengi Mutuse:** I have presented Video Nos.14 and 15.

**Mr. Peter Wanyama:** Mr. Speaker, Sir, we request those videos to be played.

*(A video clip was played)*

Hon. Senators, we can stop there. Hon. Mutuse, it looks like all the politicians who attended this public forum made statements against the judiciary. Is that correct?

**Hon. Mwengi Mutuse:** Yes, it is correct that even others who were there made statements against the judiciary. There is no problem with that.

**Mr. Peter Wanyama:** What is so extraordinary? Mr. Ongoya said there is nothing extraordinary about your complaint.

**Hon. Mwengi Mutuse:** My complaint is extraordinary in the sense that the hon. Rigathi Gachagua was not complaining about the judiciary, but about a specific judge for a decision that she made, a finding that she made against him. It was not about corruption in the judiciary, inefficiency in the judiciary or how the Judiciary runs. It was about, “*huyo judge alisema mali yangu ni mali ya wizi.*”

**Mr. Peter Wanyama:** In that public statement, the Deputy President says he has evidence of corruption against Lady Justice Maina. In his response filed before this

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House, have you seen any evidence adduced for corruption against Lady Justice Esther Maina?

**Hon. Mwengi Mutuse:** I have not seen any evidence to show that he has evidence of corruption influencing the judge to make the finding that the Kshs200 million were proceeds of crime. This leads me to my conclusion that this is a personal vendetta.

**Mr. Peter Wanyama:** What do you mean by personal vendetta?

**Hon. Mwengi Mutuse:** Personal vendetta: You are in the Senate representing your people, and you debate and make decisions here as part of your constitutional mandate. You mention people who are not doing things right and when you get out there, they threaten you. They tell you that when you say that again in the Senate, I will kill you. I will get you removed from the Senate to create fear. This is a personal vendetta.

**Mr. Peter Wanyama:** The judgement you said is available on pages 60 to 77 and quoted to Volume 2(a) of your documents. Could you, by any chance, know what happened to this judgment?

**Hon. Mwengi Mutuse:** Yes, I am aware that the Deputy President did appeal against that decision. After becoming Deputy President, the matter was settled through a compromise and the money was returned to him.

**Mr. Peter Wanyama:** Have you seen this consent that was recorded at the Court of Appeal?

**Hon. Mwengi Mutuse:** Yes, I am aware of the consent. I am aware that the consent was not arrived at based on the merits or demerits of the case. It was Government bodies because leadership changed hands and the second in command became powerful. A few Government bodies went to court and stated they wanted to withdraw the case.

**Mr. Peter Wanyama:** Finally, hon. Mutuse, is there a decision of the Court of Appeal setting aside this judgement and Lady Justice Esther Maina's finding about His Excellency the Deputy President?

**Hon. Mwengi Mutuse:** To my understanding and that of the lawyers in the House, we will also have the same finding. The Court of Appeal has not overturned Justice Maina's decision. Therefore, Justice Maina's decision remains good law.

**Mr. Peter Wanyama:** You have combed through His Excellency Rigathi Gachagua's response. Have you seen any appeal decision setting aside the judgement?

**Hon. Mwengi Mutuse:** The consent is there, but the Court of Appeal has not made a decision on merit.

**Mr. Peter Wanyama:** Hon. Mutuse, let us go to Ground No.8. Briefly explain to the---

**Hon. Mwengi Mutuse:** Before we leave there because we are complaining about Article 160, it is important for me to read Article 160(5). It says:

“A Member of the Judiciary is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a judicial function.”

This is the particular Article we are complaining that the Deputy President has violated.

**Mr. Peter Wanyama:** Okay. In your opinion, does undermining the impedance of the judiciary amount to a gross violation of the Constitution?

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**Hon. Mwengi Mutuse:** Indeed, it amounts to a gross violation of the Constitution. It should be remembered that we have three arms of Government — the Executive branch, the Legislature, where we sit, and the Judiciary.

**Mr. Peter Wanyama:** Is it proper for the Deputy President of the Republic of Kenya to make this kind of attack? Is it proper, in your opinion?

**Hon. Mwengi Mutuse:** It is not proper at all.

**Mr. Peter Wanyama:** To wrap that point up. What---

**The Speaker (Hon. Kingi):** Counsel, before you get there, you have referred to a consent. Is it contained in any of these bundles? The Senators would wish to look at that consent.

**Mr. Peter Wanyama:** Hon. Mutuse, you said you have seen a consent form and are aware of it. Have you seen the consent?

**Hon. Mwengi Mutuse:** It is not filed in our documents. However, in my ordinary course of business, I am aware of the need for consent. If it becomes necessary, the Senate has the power to recall it. In fact, it is a public document because it is reported under Kenya Law reports.

**Mr. Peter Wanyama:** Fair enough. Let us go to Allegation No.8. We do not want take a lot of time and finish our time. What is the substance of your Allegation No.8?

**Hon. Mwengi Mutuse:** Ground No.8 is that there are serious reasons to believe that His Excellency Rigathi Gachagua has committed crimes under Section 132 of the Penal Code and Section 129 of the Leadership and Integrity Act.

Basically, it is on two fronts. The two sections we have cited. Section 132 of the Penal Code and Section 29 of the Leadership and Integrity Act speak to State Officers misleading the public and spreading falsehoods. On the issue of Justice Maina, as we have shown evidence, it was a personal vendetta because the Deputy President was attacking the Judge based on a decision the Judge had made.

Secondly, in terms of the particulars. His Excellency Rigathi Gachagua recklessly and unmindful of the high calling and dignified status of the Office of Deputy President of the Republic of Kenya as well as his membership to the National Security Council and Article 240 of the Constitution, both being positions that require one to be discrete and tempered, especially during moments of national crisis addressed Kenyans on live television in Mombasa County and publicly made sessional statements against the National Intelligence Service (NIS) an essential national security organ, its Director General and officers serving---

**Mr. Peter Wanyama:** You can hold on there. Do you have evidence to prove these allegations about the live television statement in Mombasa by the Deputy President? Do you have any evidence before this House?

**Hon. Mwengi Mutuse:** Yes, we have annexed our video No.15.

**Mr. Peter Wanyama:** May I request we play video No.15, please?

*(A video clip was played)*

Mr. Speaker, Sir, we can pause it because of time. We have captured the parts.

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Now, Hon. Mutuse, the Deputy President recently addressed a press conference where he rubbished this allegation. He said it is pure hogwash, nonsense upon stealth. What is your specific complaint against the Deputy President in this allegation?

**Hon. Mwengi Mutuse:** I have two specific complaints. One, the Deputy President is a member of the National Security Council (NSC). If he has any complaints against the NIS, who also sits in the National Intelligence Council, he can raise those concerns there so that we promote institutional leadership.

**Mr. Peter Wanyama:** You mean the National Security Council (NSC)?

**Hon. Mwengi Mutuse:** The National Security Council (NSC) created under Article 240 of the Constitution. The Deputy President has a forum, unlike all other ordinary citizens, Senators included. We can complain out there because we do not have an official institutional forum. The Deputy President has a forum where he can raise his concerns.

Two, this was a time of monumental crisis in the Republic of Kenya. The statements were sensational and would have made Kenyans to believe that our security organs are not functional. They would have easily led to citizens running amok, the Republic getting torn apart and our national fabric getting destroyed completely.

Even more importantly, I heard learned Counsel Ongoya refer you to your oath of office. I would wish that he also refers his client to the oath of due execution of office that he did swear. In the oath of due execution of office that the Deputy President took on ascension of office, it states as follows.

“That I will not directly or indirectly reveal such matters as shall come to my knowledge in the discharge of my duties and committed to my secrecy.”

The emphasis is on “secrecy.”

He has said in the clip that we have played that officers of the National Police Service (NPS) have told him in confidence that they had not received advance intelligence reports. That is what was contemplated by this oath of due execution of office. This is what Senior Counsel Orenge called “addressing fears”, that if a matter is committed to you as a state officer in secrecy, it must remain in secrecy. If you take it to a public press conference, then you have gone against your oath of office. That is an impeachable offence.

**Mr. Peter Wanyama:** This oath of office that you say the Deputy President takes, is it anchored in any section of the Constitution?

**Hon. Mwengi Mutuse:** Yes, the oath of office is in the Third Schedule of our Constitution and, therefore, part of our Constitution.

**Mr. Peter Wanyama:** Can you read Article 148(5)(a) of the Constitution?

**Hon. Mwengi Mutuse:** To begin with, under Article 74 of the Constitution, which says:

“Before assuming a State office, acting in a State office, or performing any functions of a State office, a person shall take and subscribe the oath or affirmation of office, in the manner and form prescribed by the Third Schedule or under an Act of Parliament.”

**Mr. Peter Wanyama:** What about Article 148(5)(a)? What does it say?

**Hon. Mwengi Mutuse:** Article 148(5)(a) and (b) says:

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- “The Deputy President-elect assumes office by taking and subscribing –
- (a) the oath or affirmation of allegiance; and
  - (b) the oath or affirmation for the execution of the functions of office as prescribed in the Third Schedule”

So, it is a constitutional issue.

**Mr. Peter Wanyama:** Finally, the Deputy President in his press statement the other day, he said even in other countries with stable democracies such as the USA, it is not uncommon to see heads of intelligence institutions being attacked or criticised by public officers. What is your comment about that specific remark?

**Hon. Mwangi Mutuse:** Even in our country, it is not uncommon, but it depends on who is doing it. The Deputy President of the Republic of Kenya cannot behave in a manner that disparages the institutions of the State that he was elected to superintend, especially so when he has official institutional forum to raise those concerns.

**Mr. Peter Wanyama:** Is there a forum where the Deputy President can conveniently raise these issues without undermining public confidence in the security system and public trust in these institutions that are paid by the taxpayer?

**Hon. Mwangi Mutuse:** I have said earlier, under Article 240, the membership of the National Security Committee is the President and number two, the Deputy President. The NIS is a member and, therefore, that can be canvassed behind closed doors in a formal way and a decision made, so that we do not break down our institutions. Instead, we empower them.

**Mr. Peter Wanyama:** Which article of the institution are you referring to? Where NSC is established?

**Hon. Mwangi Mutuse:** Article 240, if my mind serves me right. We can read it if we have time.

**Mr. Peter Wanyama:** The other explanation by the Deputy President is that these agencies are accountable to the civilian authority and therefore not immune to criticism.

**Hon. Mwangi Mutuse:** Article 240 talks about the establishment of the National Security Council. It says there is established the National Security Council. The Council consists of the President and the Deputy President, so is a member, by dint of Article 240. He says they are subject to civilian authority because of Article 1.

**Mr. Peter Wanyama:** Because of time, let us go to the last allegation, which is Ground No.11. Are you there?

**Hon. Mwangi Mutuse:** Yes, Mr. Speaker, Sir, I am there.

**Mr. Peter Wanyama:** Can you explain to the Senators your specific grievance about this ground?

**Hon. Mwangi Mutuse:** We are saying that the Deputy President has committed gross misconduct by bullying state officers.

**Mr. Peter Wanyama:** What is your specific ground on that gross misconduct that you want the Senators to take into consideration?

**Hon. Mwangi Mutuse:** Mr. Speaker, Sir, we are saying that His Excellency, Rigathi Gachagua, bullied Kenya Medical Supplies Agency (KEMSA) officials into awarding a tender for the supply of mosquito nets to Crystal Limited, his proxy company,

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that had submitted an irregular bid bond with the sole intention of fraudulently acquiring public property.

Basically, in relation to KEMSA, so that we can paraphrase; KEMSA advertised a tender funded by the Global Fund, which is one of our major development partners in terms of delivery of health care in Kenya. The tender was valued at about Kshs3.7 billion.

At the time, the procurement process got botched up. The Senate would take notice that at that time, the PS in charge of public health and the Chief Executive Officer (CEO) at KEMSA were dismissed by His Excellency the President. An acting CEO was then appointed. The Acting CEO also swore an affidavit to this regard. The problem here was that there was an Indian-based company, called Shobikaa Limited.

We have been told we are bringing in a company that was not part of the tender. In the evidence of the Deputy President, this company called Shobikaa Limited is represented locally here in Kenya by a company called Crystal Limited. That is by admission of the Deputy President himself in his own response.

We have demonstrated all the way from Nyeri, Malindi to Kilifi that this company Crystal Limited is the major special purpose vehicle that the Deputy President has been using to acquire property and to launder money.

This company has an agency agreement with Shobikaa Limited to represent them locally. The evidence that we have placed on record is that when Mr. Andrew Mulwa is appointed the new CEO of KEMSA, at that time, investigations are going on into the irregular procurement of the Kshs3.7 billion mosquito nets.

One of the issues of interest in that tender is how Shobikaa Limited submitted their bid bond. The main complaint was that they submitted their bid bond outside the tendering period.

When investigations are going on, the Deputy President, who admitted live on television, called Mr. Andrew Mulwa, the Acting CEO of KEMSA and told him, I have sent my people, please give them that bid bond. He said that he did it because people were wondering.

We have annexed messages, WhatsApp excerpts, in the affidavit of Mr. Andrew Mulwa that is contained Page 67 of Volume 1 all the way to Page 77. We have annexed the witness affidavit of Mr. Andrew Mulwa and on it, we have also exhibited SMS messages---

**Mr. Peter Wanyama:** Hon. Mutuse, we have seen the affidavit. You have said it is at page 67. Yes?

**Hon. Mwengi Mutuse:** Yes, page 67 of Volume 1.

**Mr. Peter Wanyama:** You have also said that the Deputy President attempted to interfere with this tender process?

**Hon. Mwengi Mutuse:** There is evidence.

**Mr. Peter Wanyama:** Where is that evidence so that we can conclude our testimony?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, it is the evidence on oath of Mr. Andrew Mulwa.

**Mr. Peter Wanyama:** Is that the evidence on page 70?

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**Hon. Mwengi Mutuse:** I read and Dr. Mulwa is available for this purpose. He says on Page 68 Volume 1 Paragraph 4:

“On or around 11<sup>th</sup> July, 2023, His Excellency Rigathi Gachagua called me from his mobile phone number - and he has given the number there - on my mobile number - and pressured me to surrender to his proxy the original bid bond submitted by Shobikaa Impex Private Limited for the above tender. He told me that he would send a proxy to collect the original bid bond.”

He goes ahead to state, Dr. Ikinu Rigathi, His Excellency Rigathi Gachagua’s son, called and sent a WhatsApp message from a mobile number indicated, claiming to be acting for and on behalf of His Excellency Rigathi Gachagua. He asked for---

**Mr. Peter Wanyama:** Where is that WhatsApp message exhibited so that we can wind up this session?

**Hon. Mwengi Mutuse:** Go to page 70.

**Mr. Peter Wanyama:** Page 70 of your volume?

**Hon. Mwengi Mutuse:** You will see, you will see WhatsApp messages that are exhibited from the phone of Dr. Ikinu Rigathi.

**Mr. Peter Wanyama:** Who is Ikinu Rigathi?

**Hon. Mwengi Mutuse:** He is a son to Rigathi Gachagua and the message says as follows:-

“Hello, Dr. Ikinu Rigathi here. Kindly contact me when possible. There is a document for H.E - H.E is the short form for His Excellency - we are trying to collect”.

He was not collecting his own document. He was not collecting a public document. He was collecting a document for H.E.

**Mr. Peter Wanyama:** We can stop there, Hon. Mutuse. Now, finally, have you sworn an affidavit to support these allegations against the Deputy President?

**Hon. Mwengi Mutuse:** Yes, indeed, I swore.

**Mr. Peter Wanyama:** Where is this affidavit?

**Hon. Mwengi Mutuse:** In Volume 1 of our bundle of documents on page 41 of 85. From Page 41 all the way to Page 43 is my affidavit in support of all the grounds of impeachment against the Deputy President.

**Mr. Peter Wanyama:** Thank you, Mr. Speaker. Sir. We request to end our examination in chief for this witness because of time. Thank you for your indulgence and accommodating us.

**The Speaker** (Hon. Kingi): How much time is remaining out of the three hours?

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

So, Counsel for the National Assembly, you have 45 minutes to conclude your case to call the other witnesses and do the re-examination. That is the time remaining.

Now, Counsel for the Deputy President, you have two hours in total for cross-examination of all witnesses that will be presented. So, you may choose to use all that with this witness or you may decide on how you are going to apportion it. You may now proceed to cross-examine the witness. Your time starts running from now.

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**Mr. Elisha Ongoya:** Mr. Speaker, Sir, this is Ongoya for the Deputy President. I noticed that we have two hours---

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, there is a request from our side which we hope will find favour with you. The witness has been on his feet for quite long and to save time, there is a suggestion that perhaps we could call our next witness, by which time he will have taken a breather, then we come to his cross-examination. However, I leave it to your discretion.

**The Speaker (Hon. Kingi):** Give him a seat. Let him be cross-examined while seated.

**Dr. Muthomi Thiankolu:** I am much obliged, Mr. Speaker, Sir.

**Mr. Elisha Ongoya:** Thank you, Mr. Speaker, Sir. Once again, I am Ongoya, Counsel for the Deputy President. Our request is that the schedule allocates us two hours for cross-examination in total, and three hours for our evidence-in-chief, tomorrow.

We beseech that without compromising that time, we put three hours on cross-examination, which will eat from our own time tomorrow, so that we will have two hours to deal with our evidence-in-chief.

**The Speaker (Hon. Kingi):** That is not in line with the directions that I have given. You have two hours for purposes of cross-examination of these witnesses.

**Mr. Elisha Ongoya:** Thank you, Mr. Speaker, Sir. We shall proceed.

Hon. Mutuse, I will refer to you as Hon. Mutuse throughout. For the benefit of the Senators, we were contemporaries at the university, many years ago.

Mr. Speaker, Sir, as they are setting up the witness administratively, I beg to have my time paused.

**The Speaker (Hon. Kingi):** Proceed, Counsel.

**Mr. Elisha Ongoya:** Thank you. Hon. Mutuse, before being a Member of Parliament, what is your professional background?

**Hon. Mwengi Mutuse:** I am a lawyer.

**Mr. Elisha Ongoya:** As a lawyer by profession, you understand the substantive laws and the procedural laws of this country. Is that a fair assessment?

**Hon. Mwengi Mutuse:** Yes, it is.

**Mr. Elisha Ongoya:** I will take a few minutes examining you, then I will release you to my learned colleagues, Mr. Swanya and Mr. Macharia, to take you on a number of issues. However, allow me to start with the issue of Justice Esther Maina.

You are aware, being a lawyer, that by law, you are bound by the allegations you presented to the National Assembly. Are you aware of that?

**Hon. Mwengi Mutuse:** Yes, we are bound by the allegations in the context of the rules of the Senate and the other laws.

**Mr. Elisha Ongoya:** To deal with the issue of Justice Esther Maina, allow me to take you to paragraph 64(a) of your allegations. That would be Volume 1 of the National Assembly documents, page 32. Do you have that allegation?

**Hon. Mwengi Mutuse:** Yes, I am there.

**Mr. Elisha Ongoya:** The allegation says that sometime in January 2024, His Excellency Rigathi Gachagua made a sensational, but false allegation that Hon. Esther Maina, Judge of the High Court, had engaged in corruption. He publicly said that he

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would present a Petition for the removal of the said Judge, which he has not done to date. It is your allegation that Hon. Rigathi Gachagua has not presented this Petition to date, being 26<sup>th</sup> of September, 2024. Is that true or not?

**Hon. Mwengi Mutuse:** This is in context.

**Mr. Elisha Ongoya:** Is this true or not? Is it true that your claim says he has not presented that claim as at 26<sup>th</sup>?

**Hon. Mwengi Mutuse:** It is true.

**Mr. Elisha Ongoya:** Do you still stand by that part of your allegation that he has not presented that complaint to the Judiciary Service Commission (JSC) to that date?

**Hon. Mwengi Mutuse:** I have since learned that indeed, His Excellency Rigathi Gachagua did present a Petition. However---

**Mr. Elisha Ongoya:** Do you still stand by the fact that he has not presented the claim to the JSC as at 26<sup>th</sup> September, 2024?

**Hon. Mwengi Mutuse:** I have since learned that he did present a Petition.

**Mr. Elisha Ongoya:** To that extent, that allegation is not true. Right?

**Hon. Mwengi Mutuse:** To the extent of presenting the Petition, but to the extent of threatening the Judge---

**Mr. Elisha Ongoya:** To the extent that you say he has not presented the allegation to the JSC as at 26<sup>th</sup> September, 2024, that allegation is not true, is it?

**Hon. Mwengi Mutuse:** We are in agreement, Counsel.

**Mr. Elisha Ongoya:** Thank you. Therefore, do you understand where we start from by saying it starts with falsehoods? Do you?

**Hon. Mwengi Mutuse:** That is you, saying so.

**Mr. Elisha Ongoya:** I have asked whether you understand it. You have drawn the attention of these Senators to the judgment of Justice Esther Maina. Have you not done so?

**Hon. Mwengi Mutuse:** I have done so.

**Mr. Elisha Ongoya:** Your intention of doing so is to have these Senators draw an inference of acts of corruption on the part of His Excellency. Is that true or not?

**Hon. Mwengi Mutuse:** It is true.

**Mr. Elisha Ongoya:** Thank you.

**Hon. Mwengi Mutuse:** My allegation is that Justice Maina had made a finding against the Deputy President.

**Mr. Elisha Ongoya:** Did you attend the hearing of that case?

**Hon. Mwengi Mutuse:** I do not have to attend. It is a reported case.

**Mr. Elisha Ongoya:** I have asked whether you attended. Please, answer my question, you know the process.

**Hon. Mwengi Mutuse:** I did not attend.

**Mr. Elisha Ongoya:** His Excellency the Deputy President, in the clip you have played, says that the judge denied him a chance to cross-examine witnesses. Did you see that in the clips?

**Hon. Mwengi Mutuse:** Yes, I did see.

**Mr. Elisha Ongoya:** Did you have any evidence to the contrary that the judge did not deny him?

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**Hon. Mwengi Mutuse:** If you are denied---

**Mr. Elisha Ongoya:** Do you have any evidence to the contrary? It is either you do or not.

**Hon. Mwengi Mutuse:** That is not my allegation.

**Mr. Elisha Ongoya:** My question to you is: Do you have any evidence to the contrary? Answer my question.

**Hon. Mwengi Mutuse:** The truth is that is a judicial process.

**Mr. Elisha Ongoya:** Do you have any evidence to the contrary when His Excellency the Deputy President says the judge denied him a chance to cross-examine witnesses?

**Hon. Mwengi Mutuse:** I do not have to.

**Mr. Elisha Ongoya:** Do you have it, Hon. Mutuse? Please, be decent as a lawyer, a lawmaker and a witness before this House.

**The Speaker (Hon. Kingi):** Hon. Mutuse, these are questions that you either say yes or no.

**Hon. Mwengi Mutuse:** Thank you.

**Mr. Elisha Ongoya:** You then say you are aware that there was an appeal from the decision of Justice Maina. Do you confirm that as a fact?

**Hon. Mwengi Mutuse:** Yes, I am aware that there was an appeal that was---

**Mr. Elisha Ongoya:** I am happy with that answer. Let me make progress. That appeal was settled by consent. Is that true or not?

**Hon. Mwengi Mutuse:** It is true.

**Mr. Elisha Ongoya:** Is a consent a lawful way of settling disputes in court, to your knowledge, as a lawyer?

**Hon. Mwengi Mutuse:** It is a lawful way, but it is not a settlement by merit or demerits.

**Mr. Elisha Ongoya:** Is a consent a lawful way of settling court disputes before a court of law?

**Hon. Mwengi Mutuse:** It is a lawful way, but---

**Mr. Elisha Ongoya:** I am going to my next question. Mr. Mutuse, you have confirmed my answer. Do you know as a lawyer that a consent order adopted by the court becomes an order of the court?

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Elisha Ongoya:** Have you presented that consent before these Senators for their own assessment of it?

**Hon. Mwengi Mutuse:** It is not part of my case.

**Mr. Elisha Ongoya:** Have you presented that consent before the Senators for their own assessment of it?

**Hon. Mwengi Mutuse:** It was not part of my case. Therefore, I did not present it.

**Mr. Elisha Ongoya:** Hon. Mutuse, I have asked whether you have presented it.

**Hon. Mwengi Mutuse:** No.

**Mr. Elisha Ongoya:** Have you lodged any complaint against the public officials of the Asset Recovery Agency who signed that consent?

**Hon. Mwengi Mutuse:** I have lodged it in Parliament.

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**Mr. Elisha Ongoya:** Have you lodged it before any investigative agencies?

**Hon. Mwengi Mutuse:** Through this Motion, I lodged a complaint in the National Assembly, exercising the powers that I have as a Member of the National Assembly.

**Mr. Elisha Ongoya:** I sought to know whether you have lodged any complaint against the officials of the Asset Recovery Agency. Are you saying this Motion is against the officers of the Asset Recovery Agency?

**Hon. Mwengi Mutuse:** This Motion is against the handling of that case.

**Mr. Elisha Ongoya:** Are you saying this Motion is a complaint against the officers of the Asset Recovery Agency?

**Hon. Mwengi Mutuse:** I am not saying so.

**Mr. Elisha Ongoya:** Have you lodged any complaint against the officers of the Asset Recovery Agency who entered that consent?

**Hon. Mwengi Mutuse:** I have not done so.

**Mr. Elisha Ongoya:** Are you suggesting that in a way this Motion is an appeal against the consent order in the Court of Appeal?

**Hon. Mwengi Mutuse:** I am not suggesting so.

**Mr. Elisha Ongoya:** By the way, do you know the position of the law on illegal consents? Can a court of law accept an illegal consent?

**Hon. Mwengi Mutuse:** I would not imagine that.

**Mr. Elisha Ongoya:** You are a lawyer. Can a court of law accept an illegal consent?

**Hon. Mwengi Mutuse:** No.

**Mr. Elisha Ongoya:** Was this consent accepted by a court of law?

**Hon. Mwengi Mutuse:** It was adopted, yes.

**Mr. Elisha Ongoya:** Should that not present a presumption of legality until you present evidence to the contrary?

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Elisha Ongoya:** Thank you. Allow me to move to a second element; the videos in respect of the evictions along the Nairobi River. I trust that was Video 9 and 10. Let us have Video 9 played from the technical side.

*(Technical hitch)*

Mr. Speaker, Sir, may I have Video 9 played?

We may need to have the sound, Mr. Speaker, Sir. I would argue that the time taken by the technical people to play my videos is frozen because I have no control about it.

**The Speaker** (Hon. Kingi): No, that cannot be the case. Otherwise, we will continue freezing time.

**Mr. Elisha Ongoya:** Mr. Speaker, Sir, may you then direct the people in the technical side---

**The Speaker** (Hon. Kingi): We had a similar problem when the Counsel for the National Assembly was leading the witness in evidence-in-chief and time was not frozen. So, we will be fair by applying the very same rule.

**Mr. Elisha Ongoya:** Mr. Speaker, Sir, may I have the technical side play my videos? My time is running.

*(Technical hitch)*

Mr. Speaker, Sir, may I get a fair treatment on this question? May I get my videos played without eating into my time?

**The Speaker** (Hon. Kingi): That is exactly what is happening.

*(A video clip was played)*

**Mr. Elisha Ongoya:** That is a wrong video being played. May I have Video 9 played?

**The Speaker** (Hon. Kingi): Can you pause the time for Counsel?

**Mr. Elisha Ongoya:** Thank you, Mr. Speaker, Sir. May I then have Video 10 played? I have 10 and 10A.

**The Speaker** (Hon. Kingi): Counsel for the Deputy President, is it a video that had been played previously?

**Mr. Elisha Ongoya:** Yes, there are two videos in respect of the evictions along the Nairobi River. They were played here seamlessly when the Assembly side were presenting their case.

**The Speaker** (Hon. Kingi): Very well. Counsel for the Deputy President, do you have your technical person under control?

**Mr. Elisha Ongoya:** I would not be able to establish at the moment.

**The Speaker** (Hon. Kingi): Please, confirm that your technical person is also in the control room.

**Mr. Elisha Ongoya:** Mr. Speaker, Sir, may I move to some other things, then I will proceed with the video later?

**The Speaker** (Hon. Kingi): Proceed, Counsel.

**Mr. Elisha Ongoya:** Thank you so much. Hon. Mutuse, allow me to move to another limb, which is at paragraph 74 of your Motion. That is at page 36 and it runs to page 37.

Mr. Mutuse, confirm that in respect of Ground 10, paragraph 74(a) and (b) are the two illustrations, the two particulars that you have given to prove that ground.

**Hon. Mwengi Mutuse:** Yes, in the Motion, those are the two grounds.

**Mr. Elisha Ongoya:** Let me start with paragraph (b). Confirm that you alleged that His Excellency Rigathi Gachagua has influenced his family members, allies, associates and proxies to take control of a local corporate society in Mathira, which they are financially haemorrhaging. Is that what the Motion claims?

**Hon. Mwengi Mutuse:** It does claim so.

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**Mr. Elisha Ongoya:** Confirm that you have not given us the name or any evidence of that circle, have you?

*(A video clip was played)*

**The Speaker** (Hon. Kingi): There is a problem up there. Proceed then. Let the Senators know when you wish the video to be played.

*(A video clip was played)*

Secretariat, can you move to the control room and tell them to wait?

*(Hon. Mutuse spoke off record)*

Hon. Mutuse, please, speak closer to the microphone.

**Hon. Mwengi Mutuse:** I would be urging the Senate to support the impeachment.

**Mr. Elisha Ongoya:** Mr. Mutuse, I am asking a specific question on a specific allegation. It is your desire for these Senators to impeach this Deputy President on an allegation that he has through his proxies taken control of a cooperative society we do not know? Is that not it?

**Hon. Mwengi Mutuse:** I have said that I leave that to their decision.

**Mr. Elisha Ongoya:** Is that what you desire? You want some outcome from this process, as the Mover of this Motion. Is that what you want?

**Hon. Mwengi Mutuse:** What do you understand when I say I leave it to their decision?

**Mr. Elisha Ongoya:** You have no right to ask me any questions.

**The Speaker** (Hon. Kingi): Hon. Mutuse, just say yes or no. We need to make progress.

**Mr. Elisha Ongoya:** Thank you.

**Hon. Mwengi Mutuse:** My apologies, yes.

*(Laughter)*

**Mr. Elisha Ongoya:** Thank you so much for that comic moment. You also want this distinguished Senate to find the Deputy President to have taken over the control of this unknown Sacco, now this is my element, through undisclosed family members.

**Hon. Mwengi Mutuse:** Indeed, it is my desire that the Motion is upheld.

**Mr. Elisha Ongoya:** Hon. Mutuse, do you know the seriousness of the business that keeps us here?

**Hon. Mwengi Mutuse:** Very well.

**Mr. Elisha Ongoya:** My apologies, I did not get the answer.

**Hon. Mwengi Mutuse:** I know.



**Mr. Elisha Ongoya:** Thank you. You find this request for Senators to find this Deputy President guilty of taking over an undisclosed Sacco, a serious expectation on your part?

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Elisha Ongoya:** You also find your expectation for these Senators to find the Deputy President to use unknown family members to take over that Sacco a serious expectation?

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Elisha Ongoya:** You take your work as a Member of Parliament (MP) seriously?

**Hon. Mwengi Mutuse:** Very seriously.

**Mr. Elisha Ongoya:** You respect your constituents who brought you to this House?

**Hon. Mwengi Mutuse:** Very much.

**Mr. Elisha Ongoya:** You are manifesting that respect for your constituents by this expectation you have just mentioned here?

**Hon. Mwengi Mutuse:** In fact, the whole country is discussing my Motion.

**Mr. Elisha Ongoya:** I am asking whether you are manifesting your respect for your constituents by the expectation you have just alluded to?

**Hon. Mwengi Mutuse:** In the totality of the---

**Mr. Elisha Ongoya:** No. I am talking about this particular fact. I am dealing with a particular fact.

**Hon. Mwengi Mutuse:** In the totality of the Motion, yes.

**Mr. Elisha Ongoya:** My question is your expectation for this Senate to find the Deputy President culpable on allegations of undisclosed family members over undisclosed Sacco. That allegation you are manifesting your respect for your constituents through that allegation?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Elisha Ongoya:** Thank you. Paragraph (a) alleges that H.E. Rigathi Gachagua has connived with cartels in the tea sector to block the Kenya Tea Development Agency (KTDA) from implementing guaranteed minimum returns that would benefit smallholder tea farmers. Is that the allegation?

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Elisha Ongoya:** Have you given us in this Motion or in the supporting evidence the name of any cartel?

**Hon. Mwengi Mutuse:** No.

**Mr. Elisha Ongoya:** Have you given us in this Motion or in the supporting evidence the grievance or the complaint by the KTDA?

**Hon. Mwengi Mutuse:** No.

**Mr. Elisha Ongoya:** This is also part of your expression of respect for your constituents?

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Elisha Ongoya:** It is also part of the seriousness with which you take this Motion?

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**Hon. Mwengi Mutuse:** Indeed.

**Mr. Elisha Ongoya:** Thank you. Mr. Speaker, Sir. May I now move to the Video 10 and 10A. Let us start with Video 10 first.

*(A video clip was played)*

Just pause there. Up to that time, the Deputy President is suggesting that he needs citizens there to have a small committee to have an engagement with him. True or not true?

**Hon. Mwengi Mutuse:** True.

**Mr. Elisha Ongoya:** Is there anything wrong with that claim by the Deputy President?

**Hon. Mwengi Mutuse:** There is nothing wrong with it.

**Mr. Elisha Ongoya:** Let us proceed.

*(A video clip was played)*

Let us pause there. The Deputy President is saying he wants to listen to those people so that together they can talk. Is that what he is saying?

**Hon. Mwengi Mutuse:** Ambayo ni kitu tulikuwa tumeahidi haitafanyika Serikali yetu.

**Mr. Elisha Ongoya:** No, you did not get my question. Mr. Mutuse, please, be a good listener. Just answer my questions. The Deputy President is saying he wants to sit with Hon. Mejjadonk and those people and talk. Is that what he is saying?

**Hon. Mwengi Mutuse:** In context, yes, that is part of it.

**Mr. Elisha Ongoya:** Is there anything wrong with that statement?

**Hon. Mwengi Mutuse:** There is nothing wrong with people sitting.

**Mr. Elisha Ongoya:** The Deputy President is also saying that they had promised during the campaigns that they will not be demolishing people's structures. Is that what he is saying?

**Hon. Mwengi Mutuse:** Yes, he is saying that.

**Mr. Elisha Ongoya:** Is there anything wrong in that promise?

**Hon. Mwengi Mutuse:** There is nothing wrong in that promise.

**Mr. Elisha Ongoya:** As an active member of the Kenyan political space, is he lying that there was such a promise?

**Hon. Mwengi Mutuse:** I would not know.

**Mr. Elisha Ongoya:** You would not know. Let us proceed.

*(A video clip was played)*

Let us stop there. The Deputy President is saying let us not have war with *wananchi*. Do you find anything offensive in that statement?

**Hon. Mwengi Mutuse:** There is nothing offensive.

**Mr. Elisha Ongoya:** Thank you.

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*(A video clip was played)*

He is calling for empathy towards *wananchi*. Is that correct?

**Hon. Mwengi Mutuse:** Yes, indeed.

**Mr. Elisha Ongoya:** Do you find anything offensive in that call?

**Hon. Mwengi Mutuse:** It is the forum where he is saying it.

**Mr. Elisha Ongoya:** Do you have anything wrong with that call for empathy?

**Hon. Mwengi Mutuse:** I have a problem with the forum.

**Mr. Elisha Ongoya:** No, you are answering your own question. I am asking whether you have a problem with a call for empathy.

**Hon. Mwengi Mutuse:** My allegation is that he had forum---

**Mr. Elisha Ongoya:** I am asking whether you have a problem with his call for empathy. Please, answer my question.

**Hon. Mwengi Mutuse:** He would have said as much in the Cabinet.

**Mr. Elisha Ongoya:** Please answer my question. Do you have a problem with a call for empathy?

**Hon. Mwengi Mutuse:** I have no problem with the call for empathy.

**Mr. Elisha Ongoya:** Let me move to the next question. Do you have a problem with a Deputy President calling for empathy in public?

**Hon. Mwengi Mutuse:** I have no problem other than the forum.

**Mr. Elisha Ongoya:** What forum was that, by the way?

**Hon. Mwengi Mutuse:** This appears to be a press conference.

**Mr. Elisha Ongoya:** What law prohibits a Deputy President from calling for empathy at a press conference?

**Hon. Mwengi Mutuse:** The law is that you raise all those issues in Cabinet.

**Mr. Elisha Ongoya:** Which law prohibits a Deputy President from calling for empathy at a press conference?

**Hon. Mwengi Mutuse:** There is no law that prohibits a Deputy President from calling for empathy at a press conference.

**Mr. Elisha Ongoya:** Thank you so much. Let us make progress with the playing of the video.

*(A video clip was played)*

Thank you so much. What is wrong with that statement, “if people must move, let there be an engagement.”

**Hon. Mwengi Mutuse:** There is nothing wrong with having engagement.

**Mr. Elisha Ongoya:** Thank you. You are a lawyer. You said.

**Hon. Mwengi Mutuse:** Yes.

**Mr. Elisha Ongoya:** You know the principle of public participation?

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Elisha Ongoya:** It is actually what the Deputy President is addressing. The Deputy President is saying let us have an engagement that is consistent with the principle of public participation. True or not true?

**Hon. Mwengi Mutuse:** Well, that is you saying so.

**Mr. Elisha Ongoya:** The Deputy President is saying let us have an engagement. Is that consistent with or inconsistent with the principle of public participation?

**Hon. Mwengi Mutuse:** Engagement and public participation may mean different things at different levels.

**Mr. Elisha Ongoya:** The Deputy President is saying let us have an engagement. I am asking whether that is consistent with or inconsistent with the principle of public participation.

**Hon. Mwengi Mutuse:** Again, as I said, we would imagine before a policy goes to Cabinet, it has also been taken through public participation.

**Mr. Elisha Ongoya:** Did you engage in public participation?

**Hon. Mwengi Mutuse:** If you sit in Cabinet, you raise objections to that policy. If your objections are upheld, the policy falls.

**Mr. Elisha Ongoya:** Which part of this statement by the Deputy President---

**Hon. Mwengi Mutuse:** If your objections---

**Mr. Elisha Ongoya:** Sorry, I am now asking the question.

**Hon. Mwengi Mutuse:** Yes.

**Mr. Elisha Ongoya:** Which part of this statement calling for empathy violates a policy decision of the Cabinet?

**Hon. Mwengi Mutuse:** We have the affidavit of Mercy Wanjau that clearly shows that the Cabinet adopted a position.

**Mr. Elisha Ongoya:** Did the Cabinet adopt a resolution for un-empathetic evictions?

**Hon. Mwengi Mutuse:** The Deputy President was in the Cabinet. He is the one who is better placed to tell us.

**Mr. Elisha Ongoya:** You are the Mover of this Motion and we are testing the Deputy President's statements against your allegation. Did the Cabinet adopt a resolution for un-empathetic evictions?

**Hon. Mwengi Mutuse:** The Cabinet adopted a resolution.

**Mr. Elisha Ongoya:** Did the Cabinet adopt a resolution for un-empathetic evictions? Yes or no?

**Hon. Mwengi Mutuse:** A resolution for empathetic evictions.

**Mr. Elisha Ongoya:** The Deputy President here is calling for empathetic evictions from what we have heard. True or not true?

**Hon. Mwengi Mutuse:** True.

**Mr. Elisha Ongoya:** So, that is consistent with the Cabinet resolution. True or not true?

**Hon. Mwengi Mutuse:** Semantics.

**Mr. Elisha Ongoya:** Mr. Speaker, Sir, has my question been answered from your understanding? I do not think it has been answered.

*(Loud consultations)*

**The Speaker** (Hon. Kingi): Order, Hon. Senators. Simply note how the witness is answering the questions, then you make a judgment. Let us make progress. If a witness is evading questions, please note that, then we proceed.

**Mr. Elisha Ongoya:** Mr. Speaker, Sir, you were right in that ruling that he is doing this at the expense of my time and the Deputy President's time. That will compromise the Deputy President's right to a fair hearing because he has to have adequate time, which means time managed economically.

**The Speaker** (Hon. Kingi): Proceed.

**Mr. Elisha Ongoya:** Did the Cabinet approve un-empathetic or empathetic evictions?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, the Cabinet approved evictions in public interest.

**Mr. Elisha Ongoya:** I am asking a different question.

**Hon. Mwengi Mutuse:** Empathetic.

**Mr. Elisha Ongoya:** Did the Deputy President call for empathy or lack of empathy?

**Hon. Mwengi Mutuse:** Empathy.

**Mr. Elisha Ongoya:** Is that call by the Deputy President consistent or inconsistent with the Cabinet resolution?

**Hon. Mwengi Mutuse:** Inconsistent.

**Mr. Elisha Ongoya:** Did the Cabinet approve a resolution not to engage citizens in the demolitions?

**Hon. Mwengi Mutuse:** That I would not know because I am not a member of the Cabinet.

**Mr. Elisha Ongoya:** Yet you are saying that call by the Deputy President to engage citizens is part of the violation of the Cabinet resolution?

**Hon. Mwengi Mutuse:** In context.

**Mr. Elisha Ongoya:** Hon. Mwengi Mutuse, I sought to know whether you respect the people who elected you. Do you suspect they will respect you with this behaviour that you are showing here?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, I will also request for your protection because the people of Kibwezi West are not on trial.

**Mr. Elisha Ongoya:** I did not try to---

**The Speaker** (Hon. Kingi): Counsel for the Deputy President, just stick to the subject matter.

**Dr. Muthomi Thiankolu:** Mr. Speaker, we seek that our witness not be subjected to barbs or badgering. The question whether he respects or the people respect him and what not should not arise. The allegation is clear in black and white. It would help if we could stick to that.

**Mr. Elisha Ongoya:** My learned colleague, Dr. Thiankolu---

**The Speaker** (Hon. Kingi): Counsel, I have already ruled on that.

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**Mr. Elisha Ongoya:** I know, but Mr. Speaker, Sir, there is a question or issue here.

**The Speaker** (Hon. Kingi): Let us make progress.

**Mr. Elisha Ongoya:** Mr. Speaker, Sir, I will make progress as you direct. Let us look at Paragraph 72 at Page 35 of Volume one, Page---

**Hon. Mwengi Mutuse:** Which page?

**Mr. Elisha Ongoya:** Mr. Speaker, Sir, my apologies. It is page 36. The original Motion had it on page 35 and now page 36 in the reproduced Motion, paragraph 72. You are saying that His Excellency Rigathi Gachagua has persistently undermined, demeaned and committed insubordination instead of assisting the President. Hon. Mwengi Mutuse, has the President of the Republic of Kenya complained to you that he is being undermined by his Deputy?

**Hon. Mwengi Mutuse:** No.

**Mr. Elisha Ongoya:** Does the Deputy President have another supervisor in the structure of Government other than the President?

**Hon. Mwengi Mutuse:** He has the people of Kenya and Parliament.

**Mr. Elisha Ongoya:** Have the people of Kenya complained to you that the Deputy President is undermining the President?

**Hon. Mwengi Mutuse:** Many of them.

**Mr. Elisha Ongoya:** Have you presented before this Senate those complaints that have been given to you by the people of Kenya?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, I am their representative.

**Mr. Elisha Ongoya:** Have you presented the complaints, emails, letters and messages? You have given us screenshots here. Have you given them to the Senate that the Deputy President is undermining the President?

**Hon. Mwengi Mutuse:** That I do not have, but I have presented the Motion.

**Mr. Elisha Ongoya:** Allow me to move to Ground No.4. Let me start by asking this question. It is your claim that the Deputy President has amassed humongous property portfolio estimated at Kshs5.2 billion.

**Hon. Mwengi Mutuse:** Is that Ground No.4? It is not.

**Mr. Elisha Ongoya:** My apologies. It is Ground No.7 on page 17. My apologies for that.

**Hon. Mwengi Mutuse:** Yes, Mr. Speaker, Sir. It is our allegation and we have justified it in our evidence in chief.

**Mr. Elisha Ongoya:** Who gave you this value of Kshs5.2 billion?

**Hon. Mwengi Mutuse:** We say that it is estimated at Kshs5.2 billion and we have---

**Mr. Elisha Ongoya:** Who gave you that estimate value of Kshs5.2 billion?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, we have made the additions.

**Mr. Elisha Ongoya:** Sorry?

**Hon. Mwengi Mutuse:** It is a matter of additions.

**Mr. Elisha Ongoya:** So, you are saying that when we take you through these values, you will get a property value of about Kshs5.2 billion?

**Hon. Mwengi Mutuse:** Yes. Approximately Kshs5.2 billion.

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**Mr. Elisha Ongoya:** You said you made the additions and additions result into a definite figure, Hon. Mutuse. Although you are a lawyer, mathematics is a prequalification for studying law.

**Hon. Mwengi Mutuse:** There are two things. First, there---

**Mr. Elisha Ongoya:** Are you saying that when we do those additions, we will get Kshs5.2 billion?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, there is the stated value in the sale agreements and in the acquisition documents.

**Mr. Elisha Ongoya:** That is what I am saying. Are you saying when we add those values, we will get Kshs5.2 billion?

**Hon. Mwengi Mutuse:** I will also be telling you what, in my view, the sum of some of the properties is.

**Mr. Elisha Ongoya:** Oh, what, in your view, are the values of some of the properties?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Elisha Ongoya:** You have graduated from a lawyer to a valuer now. Is it not so?

**Hon. Mwengi Mutuse:** That is not exactly what we are saying.

**Mr. Elisha Ongoya:** Okay, thank you. Using what expertise did you attach that value in your view?

**Hon. Mwengi Mutuse:** At market value. I am sure you also know that an acre of land in Kitale goes for Kshs4 million. An acre of land in Kilifi goes for Kshs2 million. If it goes beyond that, it is a reasonable man's test.

**Mr. Elisha Ongoya:** So, that reasonable man is you?

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Elisha Ongoya:** Thank you. At paragraph 44, page 18, you have listed a company called Spirit Way Limited in your Motion. Yes?

**Hon. Mwengi Mutuse:** Number 18.

**Mr. Elisha Ongoya:** Page 18, paragraph 44. It is a continuation of Ground No.7. I am reading Ground No.7 right now.

**Hon. Mwengi Mutuse:** Page 18, Spirit Way Limited.

**Mr. Elisha Ongoya:** What wrong are you saying that company has done anywhere on earth? What role?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, I listed these companies---

**Mr. Elisha Ongoya:** No. I am asking about Spirit Way Limited. What wrong are you saying Spirit Way Limited has committed anywhere on earth?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, these are companies that are associated with His Excellency Rigathi Gachagua---

**Mr. Elisha Ongoya:** So, what wrong has Hon. Rigathi Gachagua committed through Spirit Way Limited? I am dealing with this one now; Spirit Way Limited. What wrong has he done through this one?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, it is one of the companies that we reasonably suspect are used as conduit. They are used as special purpose vehicles for corruption.

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**Mr. Elisha Ongoya:** So, what proceeds of corruption have passed through it and how much?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, we have demonstrated the specific---

**Mr. Elisha Ongoya:** No. I am asking you of the proceeds of corruption that have passed through Spirit Way Limited as a particular company.

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, we have not presented evidence against Spirit Way Limited.

**Mr. Elisha Ongoya:** You have not?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Elisha Ongoya:** In correct English, when I say, “you have not, you say “no, we have not.” You do not say “yes.”

**Hon. Mwengi Mutuse:** Okay.

**Mr. Elisha Ongoya:** You have not presented evidence?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, we have not presented evidence.

**Mr. Elisha Ongoya:** Thank you. Let us move to Fortis Vis Group Limited. What wrong has Fortis Vis Group Limited committed anywhere on earth?

**Hon. Mwengi Mutuse:** Fortis--

**Mr. Elisha Ongoya:** Number two on page 18 of 85 of Volume one.

**Hon. Mwengi Mutuse:** We have no quarrel with Fortis Vis Group Limited.

**Mr. Elisha Ongoya:** Sorry, I did not get the answer.

**Hon. Mwengi Mutuse:** We have no quarrel with Fortis Vis Group Limited---

**Mr. Elisha Ongoya:** You do not quarrel with Fortis Vis Group Limited. What is it doing in this Motion, Hon. Mutuse? Is it decorative?

**Hon. Mwengi Mutuse:** It is one of the companies associated with His Excellency Hon. Rigathi Gachagua.

**Mr. Elisha Ongoya:** What is wrong with Fortis Vis Group Limited being associated with Hon. Rigathi Gachagua? What is wrong with that?

**Hon. Mwengi Mutuse:** At the time of submissions, we will be stating why we think there is something wrong.

**Mr. Elisha Ongoya:** No, we want that question answered now so that we will submit on it. What wrong has Fortis Vis Group Limited committed anywhere on earth?

**Hon. Mwengi Mutuse:** Why would one person own 25 companies doing the same things?

**Mr. Elisha Ongoya:** What law prohibits a person from owning 25 companies? What law?

**The Speaker** (Hon. Kingi): Counsel for the Deputy President, Hon. Mutuse has said he has no quarrel with that company.

**Mr. Elisha Ongoya:** Mr. Speaker, Sir, I made an opening statement. In my opening statement, I said we have allegations that oscillate from the false, to the ridiculous, to the embarrassing. If he just answers and I keep quiet, I will fail to demonstrate the oscillation.

I want these distinguished Senators, in their conscience, to know what exactly we are doing. They were given an 85-page Motion to deal with. This is part of the content of 85 pages.

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Mr. Speaker, Sir, for Mr. Mutuse to tell these Senators that he brought them this company just as a name, I do not know how dignified this House would feel. However, if I sat where this House sits, I would feel that is undignified.

**The Speaker (Hon. Kingi):** Proceed with your cross-examination, Counsel.

**Mr. Elisha Ongoya:** You say one person should not own 22 companies, is it not?

**Hon. Mwengi Mutuse:** I have said I do not have---

**Mr. Elisha Ongoya:** No, you said so. That is your answer.

**Hon. Mwengi Mutuse:** I do not have a problem with Fortis Vis Group Limited.

**Mr. Elisha Ongoya:** That is correct. Who are the shareholders of Fortis Vis Group Limited?

**Hon. Mwengi Mutuse:** It is Kevin Rigathi and Keith Ikinu Rigathi.

**Mr. Elisha Ongoya:** The only crime being they are children of Rigathi Gachagua?

**Hon. Mwengi Mutuse:** Indeed, they are children of Rigathi Gachagua.

**Mr. Elisha Ongoya:** Are they prohibited as children of Rigathi Gachagua from holding shares in a company?

**Hon. Mwengi Mutuse:** As proxies---

**Mr. Elisha Ongoya:** Are they prohibited from holding shares in a company?

**Hon. Mwengi Mutuse:** Not at all.

**Mr. Elisha Ongoya:** So, what proxy business has Fortis Vis Group Limited done?

**Hon. Mwengi Mutuse:** I have already stated that we do not have any problem with Fortis Vis Group Limited.

**Mr. Elisha Ongoya:** You have, however, put it in your Impeachment Motion to support one of your grounds?

**Hon. Mwengi Mutuse:** It is there.

**Mr. Elisha Ongoya:** Without any problem with it?

**Hon. Mwengi Mutuse:** It is there and we have stated the reasons why it is there.

**Mr. Elisha Ongoya:** Grand Bypass Apartments Limited; what problem do you have with it?

**Hon. Mwengi Mutuse:** We do not have a problem with it.

**Mr. Elisha Ongoya:** This company that you have listed, you have no problem with it?

**Hon. Mwengi Mutuse:** We do not have a problem with it.

**Mr. Elisha Ongoya:** You have, however, put it as one of the grounds in your Impeachment Motion?

**Hon. Mwengi Mutuse:** It is one of the companies associated with Rigathi Gachagua. There is no problem with listing and saying I am focusing on this one and not focusing on this one.

**Mr. Elisha Ongoya:** Page 19, Company No.5; the Anansi Collective. What problem do you have with it?

**Hon. Mwengi Mutuse:** You are skipping Vipingo Beach Resort Limited and Kuruwitu Properties Limited?

**Mr. Elisha Ongoya:** Do you want to control my cross-examination?

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**The Speaker** (Hon. Kingi): Hon. Mutuse, just respond to what the Counsel has asked.

**Hon. Mwengi Mutuse:** We do not have problems with Anansi Collective.

**Mr. Elisha Ongoya:** Biovet Kenya Limited; what problem do you have with it?

**Hon. Mwengi Mutuse:** We do not have a problem with it.

**Mr. Elisha Ongoya:** Calvary Creed International Limited; what problem do you have with it?

**Hon. Mwengi Mutuse:** We do not have a problem with it.

**Mr. Elisha Ongoya:** Cosmere Venture Limited; what problem do you have with it?

**Hon. Mwengi Mutuse:** We do not have a problem with it, but we have a problem with No.2

**Mr. Elisha Ongoya:** Delta Merchants Limited; what problem do you have with it?

**Hon. Mwengi Mutuse:** Not at all, but we have a problem with Vipingo Beach Resort Limited.

**Mr. Elisha Ongoya:** Let me go to Vipingo Beach Resort Limited because you appear excited to go there. Who owns Vipingo Beach Resort Limited? Just answer my question.

**Hon. Mwengi Mutuse:** I need to check my CR-12s.

**Mr. Elisha Ongoya:** Show us the volume that you are checking for us to look at it together.

Mr. Speaker, Sir, I would not mind a time indication of how much time I have spent.

**Hon. Mwengi Mutuse:** Vipingo Beach Resort Limited is on Volume 2A, page 18.

**The Speaker** (Hon. Kingi): You spent 40 minutes of the two hours. There is an additional 10 minutes for the period we had a problem with the video.

**Mr. Elisha Ongoya:** Thank you so much, Mr. Speaker, Sir. Give us the page number, kindly?

**Hon. Mwengi Mutuse:** Page 18 of 123, volume 2A.

**Mr. Elisha Ongoya:** Yes, proceed. Who owns Vipingo Beach Resort Limited?

**Hon. Mwengi Mutuse:** Keith Ikinu Rigathi, Kevin Gachagua Rigathi, and the estate of the deceased James Nderitu Gachagua.

**Mr. Elisha Ongoya:** Let me go back to the beginning. You are a lawyer by profession

**Hon. Mwengi Mutuse:** Yes, I am.

**Mr. Elisha Ongoya:** You know the meaning of ownership of a company?

**Hon. Mwengi Mutuse:** Yes, I do.

**Mr. Elisha Ongoya:** How is ownership of a company manifested?

**Hon. Mwengi Mutuse:** In shareholding---

**Mr. Elisha Ongoya:** How many shares does Keith Ikinu Rigathi hold according to your own exhibit? It may be getting hotter, but look at the document, compose yourself

and read. How many shares does Keith Ikinu Rigathi hold according to your own document?

**Hon. Mwengi Mutuse:** They are not indicated.

**Mr. Elisha Ongoya:** How many shares does Kevin Gachagua Rigathi hold according to your own exhibit?

**Hon. Mwengi Mutuse:** They are not indicated.

**Mr. Elisha Ongoya:** What is the total number of shares in that company?

**Hon. Mwengi Mutuse:** 10,000.

**Mr. Elisha Ongoya:** Who is indicated as owning all those 10,000 shares?

**Hon. Mwengi Mutuse:** There is a shareholding by the estate of the deceased James Nderitu Gachagua.

**Mr. Elisha Ongoya:** It is the estate of the deceased James Nderitu Gachagua. True or not true?

**Hon. Mwengi Mutuse:** They own 10,000 shares.

**Mr. Elisha Ongoya:** What is the total number of shareholding?

**Hon. Mwengi Mutuse:** 10,000.

**Mr. Elisha Ongoya:** They own all the shares?

**Hon. Mwengi Mutuse:** They own 10,000 shares.

**Mr. Elisha Ongoya:** What is the total number of shares in that company?

**Hon. Mwengi Mutuse:** 10,000.

**Mr. Elisha Ongoya:** So, they own all the shares. The estate of the late James Nderitu Gachagua owns all the shares, according to your document.

**Hon. Mwengi Mutuse:** It would appear so.

**Mr. Elisha Ongoya:** Is it so or not so, from your own document?

**Hon. Mwengi Mutuse:** On the face of the document, it would appear so.

**Mr. Elisha Ongoya:** Do you doubt this document you have given us?

**Hon. Mwengi Mutuse:** No, I do not doubt it.

**Mr. Elisha Ongoya:** Thank you. The Deputy President in defence says this is a property owned by the estate of my late brother. From your own document, is he speaking the truth or not?

**Hon. Mwengi Mutuse:** We---

**Mr. Elisha Ongoya:** The Deputy President says, "This is a company owned by the estate of my late brother." Looking at your own document, is the Deputy President saying the truth or is he not saying the truth? Remember, you are a lawyer all the time.

**Hon. Mwengi Mutuse:** The estate of the deceased James Nderitu Gachagua owns 10,000 shares.

**Mr. Elisha Ongoya:** Out of how many shares?

**Hon. Mwengi Mutuse:** I would not vouch for the truthiness of the Deputy President's testimony.

**Mr. Elisha Ongoya:** I am asking the estate of the late James Nderitu Gachagua owns 10,000 shares out of how many?

**Hon. Mwengi Mutuse:** 10,000.

**Mr. Elisha Ongoya:** Mr. Mutuse, you told me you are a lawyer.

**Hon. Mwengi Mutuse:** Yes.

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**Mr. Elisha Ongoya:** Let us be lawyers now.

**Hon. Mwengi Mutuse:** Yes.

**Mr. Elisha Ongoya:** When the Deputy President says this company is wholly owned by the estate of my deceased brother, is he speaking the truth or not according to your document?

**The Speaker (Hon. Kingi):** It is either yes or no so that we make progress, Hon. Mutuse.

**Hon. Mwengi Mutuse:** Yes.

**Mr. Elisha Ongoya:** Thank you so much. You had begun by telling us you have a problem with this company. Do you have a problem with the estate of the deceased owner holding all the shares in the company?

**Hon. Mwengi Mutuse:** No, we do not have a problem with that.

**Mr. Elisha Ongoya:** From your company law knowledge, do you know the role of directors in a company?

**Hon. Mwengi Mutuse:** Yes, I do.

**Mr. Elisha Ongoya:** What role do directors play in a company?

**Hon. Mwengi Mutuse:** They direct.

**Mr. Elisha Ongoya:** Directors are management. They manage.

**Hon. Mwengi Mutuse:** They direct the leadership.

**Mr. Elisha Ongoya:** Correct. What is wrong with these two boys managing this company on behalf of the shareholders who are disclosed? What is against the law?

**Hon. Mwengi Mutuse:** There is nothing wrong.

**Mr. Elisha Ongoya:** Okay. The value of this hotel is part of your Kshs5.2 billion. True or not true?

**Hon. Mwengi Mutuse:** It is.

**Mr. Elisha Ongoya:** Are you willing to deduct it now from that because you can now see who owns it?

**Hon. Mwengi Mutuse:** At the appropriate time, we will show you.

**Mr. Elisha Ongoya:** Are you willing to deduct it?

**Hon. Mwengi Mutuse:** No.

**Mr. Elisha Ongoya:** Thank you. I was proceeding before you stopped me to deal with Vipingo Beach Resort Limited and I have dealt with it. I hope you are satisfied. Are you satisfied?

**Hon. Mwengi Mutuse:** We can proceed.

**Mr. Elisha Ongoya:** Heartland Supplies Limited; what problem do you have with it?

**Hon. Mwengi Mutuse:** If you could remind us, what page was that?

**Mr. Elisha Ongoya:** That was on page 20 of 85, Company No.14, Volume 1.

**Hon. Mwengi Mutuse:** Just to confirm we are on the same page, this is Heartland Supplies Limited.

**Mr. Elisha Ongoya:** Yes.

**Hon. Mwengi Mutuse:** We have no quarrel with Heartland Supplies Limited.

**Mr. Elisha Ongoya:** Page 21, Paragraph 17. Mothers of the Land Limited; what problem do you have with it?

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**Hon. Mwengi Mutuse:** We have no quarrel with Mothers of the Land Limited.

**Mr. Elisha Ongoya:** No.18; Pioneer Medical Kenya Limited; what problem do you have with it?

**Hon. Mwengi Mutuse:** We do not have a problem with it.

**Mr. Elisha Ongoya:** Overleaf on page 22; Ridor Furniture Mart Limited; what problem do you have with it?

**Hon. Mwengi Mutuse:** We do not have a problem with it.

**Mr. Elisha Ongoya:** Royal Crimson Ventures Limited; what problem do you have with it?

**Hon. Mwengi Mutuse:** No, not at all.

**Mr. Elisha Ongoya:** Technical Supplies and Services Limited; what problem do you have with it?

**Hon. Mwengi Mutuse:** We do not have a problem with it.

**Mr. Elisha Ongoya:** You listed all these companies to create a screaming headline for your Motion with no problem with them?

**Hon. Mwengi Mutuse:** We listed all these companies to show that they are associated with persons close to the Deputy President and they are companies that are either used or can potentially be used for purposes of corruption and money laundering.

**Mr. Elisha Ongoya:** So, they can potentially be used. The DP intends to use them in future. So, this Motion is preventive.

**Hon. Mwengi Mutuse:** Indeed, we are addressing fears.

**Mr. Elisha Ongoya:** You have come here to address fears that the DP may use these companies in future to commit corruption.

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, yes, indeed.

**Mr. Elisha Ongoya:** That is why you want this Senate to impeach the DP on this ground.

**Hon. Mwengi Mutuse:** There are some that we have shown have been used---

**Mr. Elisha Ongoya:** I have taken you through a number of companies, one by one and you have said you have no problem with them.

**Hon. Mwengi Mutuse:** We have no problem with the ones that we have said we have no problem with.

**Mr. Elisha Ongoya:** Let us go to paragraph 78A. His Excellency, Rigathi Gachagua bullied KEMSA officials into awarding a tender for the supply of mosquito nets to Crystal Kenya Ltd. Was Crystal Kenya Ltd a bidder for this tender?

**Hon. Mwengi Mutuse:** Crystal Kenya Ltd is a local representative.

**Mr. Elisha Ongoya:** I have asked; was it a bidder for this tender? Let me now ask you basic questions. Do you know the meaning of the word bidder?

**The Speaker (Hon. Kingi):** Hon. Mutuse, it is very simple. Respond so that we make progress.

**Hon. Mwengi Mutuse:** It was not a bidder.

**Mr. Elisha Ongoya:** Let us read the particulars of the allegation, the particulars. It says, His Excellency Rigathi Gachagua bullied Kenya Medical Supplies Agency

officials into awarding a tender for the supply of mosquito nets to Crystal Kenya Ltd. Was Crystal Kenya Ltd, in fact, awarded that tender?

**Hon. Mwengi Mutuse:** They were not a bidder.

**Mr. Elisha Ongoya:** Were they awarded that tender as your ground alleges?

**Hon. Mwengi Mutuse:** No, they were not.

**Mr. Elisha Ongoya:** So, why are you alleging that they were bullied into awarding the tender? Why are you alleging when they were not awarded?

**Hon. Mwengi Mutuse:** They are the local representatives because they are the local representatives of Shobikaa, the company that is under investigation for this tender.

**Mr. Elisha Ongoya:** Your ground says His Excellency Rigathi Gachagua bullied KEMSA officials into awarding a tender for the supply of mosquito nets to Crystal Kenya Ltd, his proxy company. Full stop. Is that allegation correct and true?

**Hon. Mwengi Mutuse:** It is true to the extent that they are local representatives.

**Mr. Elisha Ongoya:** It is true that His Excellency Rigathi Gachagua bullied KEMSA to award a tender to Crystal Kenya Ltd, his proxy company. I am asking you a different question. Your allegation is that KEMSA was bullied to award a tender to Crystal Kenya Ltd. Full stop.

Am I reading it correctly?

**Hon. Mwengi Mutuse:** You are reading it correctly.

**Mr. Elisha Ongoya:** Is that what I have read correctly itself true?

**Hon. Mwengi Mutuse:** In the narrow sense, it is not true.

**Mr. Elisha Ongoya:** Thank you. You also say that Crystal Limited had submitted a fake big bid bond with the sole intention of fraudulently acquiring public property. What do you mean by a fake bid bond?

**Hon. Mwengi Mutuse:** An irregular bid bond; a bid bond that was found not to meet the requirements.

**Mr. Elisha Ongoya:** What was the irregularity that was found in that bid? You are the one who has brought the allegation here. There was a specific irregularity. What was it?

**Hon. Mwengi Mutuse:** It was brought outside time.

**Mr. Elisha Ongoya:** You are sure of that fact?

**Hon. Mwengi Mutuse:** It was brought outside time.

**Mr. Elisha Ongoya:** You are sure of that fact.

**Hon. Mwengi Mutuse:** In so far as I know.

**Mr. Elisha Ongoya:** You are on oath. Are you sure of that fact?

**Hon. Mwengi Mutuse:** As far as I know.

**Mr. Elisha Ongoya:** Are you sure of the fact that it was brought out of time?

**Hon. Mwengi Mutuse:** In so far as I know.

**Mr. Elisha Ongoya:** You referred us to the letter by KEMSA terminating that bid. Can you draw us to that letter, the volume number and the page where it is?

Mr. Speaker, Sir, the Counsel is talking to the witness and you can see he is answering the question. He is a junior colleague and he is engaged in extremely unethical behaviour. That should not be done in a small claims court, forget about our country's Senate. You have seen it with your own eyes.

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**The Speaker** (Hon. Kingi): Counsel for the Deputy President, I cannot hear exactly what was exchanged there. Therefore, I do not have the benefit of what was exchanged and I am not in a position to rule on it.

Let us make progress, hon. Mutuse.

**Hon. Mwengi Mutuse:** We have the affidavit of Dr. Andrew Mwaura who was the acting CEO of KEMSA at the time.

**Mr. Elisha Ongoya:** I have asked for the letter from KEMSA rejecting the bid.

**Hon. Mwengi Mutuse:** In our Volume 1 from page 67.

**Mr. Elisha Ongoya:** You referred to the letter by KEMSA that rejected the bid in this mosquito net deal.

**Hon. Mwengi Mutuse:** No, I referred us to the messages from hon. Gachagua's son to the CEO.

**Mr. Elisha Ongoya:** Let us go to that directly finish with it now that you have raised it. Are you referring to the document at page 70 of Volume 1? From which phone number is that message coming from? It needs to be read. Just give me the phone number.

**Hon. Mwengi Mutuse:** No. 254 717871036

**Mr. Elisha Ongoya:** I am asking at that page, we can see a screenshot of a message. Is that screenshot telling us the phone number it is coming from?

**Hon. Mwengi Mutuse:** It is not.

**Mr. Elisha Ongoya:** Thank you, Mr. Speaker, Sir, I now want to deal with the document I had looked at earlier.

Let us look at Volume 3 of the Deputy President's documents on page 180. That is a letter from KEMSA.

**Hon. Mwengi Mutuse:** Yes, on the face of it.

**Mr. Elisha Ongoya:** It is addressed to Shobikaa Impex Private Limited. It is setting out the reason why that bid was unsuccessful. Does it set out the reason? It says, "reference is made to the above."

We are looking at page 180 of Volume 3 of the Deputy President's documents and for those of us who can see the phone on the screen, it has been projected on the screen. It is setting out the reason why that bid was rejected. It is because the tender security was not paginated.

**Hon. Mwengi Mutuse:** Yes, from this document it says so.

**Mr. Elisha Ongoya:** That is what you are calling a fake bid document? That is what you are describing as a fake bid document. I am asking: Is this the reason you are saying constitutes a fake bid document?

**Hon. Mwengi Mutuse:** Of course, if the tender security was not paginated, it is irregular.

**Mr. Elisha Ongoya:** Are you saying it is fake?

**Hon. Mwengi Mutuse:** It is irregular.

**Mr. Elisha Ongoya:** Then I am asking a different word. Are you saying that you want this Senate to conclude that this attribute – failing to put a page number on a bid document made it fake?

**Hon. Mwengi Mutuse:** It made it irregular.

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**Mr. Elisha Ongoya:** The word you have used in the Motion is fake. We are trying the Motion.

**Hon. Mwangi Mutuse:** No, but irregular.

**Mr. Elisha Ongoya:** Your Statement in the Motion that it was fake is not true; it is false.

**Hon. Mwangi Mutuse:** Strictly, yes.

**Mr. Elisha Ongoya:** Thank you. Let me move to a fairly different limb of the argument. Let us go to the question of Olive Gardens Hotel. We have massive documents here – let us deal with the Affidavit of Mr. Peterson Jomo Muchira. According to Peterson Jomo Muchira, how did he acquire this property? How did his company acquire this property? The process of acquisition.

**Hon. Mwangi Mutuse:** He says he entered into a secret arrangement with Hon. Rigathi Gachagua to purchase the property on the understanding that---

**Mr. Elisha Ongoya:** Who was purchasing the property?

**Hon. Mwangi Mutuse:** That TM engineering.

**Mr. Elisha Ongoya:** The purchaser of the proper is TM engineering?

**Hon. Mwangi Mutuse:** Yes.

**Mr. Elisha Ongoya:** Who is the registered proprietor of the property?

**Hon. Mwangi Mutuse:** Let me confirm.

**Mr. Elisha Ongoya:** Who is the registered proprietor of the Olive Gardens Hotel property?

**Hon. Mwangi Mutuse:** I am tracing the documents. Philip Wanjema Kago is the registered proprietor of Olive Gardens.

**Mr. Elisha Ongoya:** Kindly refer us to the volume and page you are looking at.

**Hon. Mwangi Mutuse:** This is Volume 2(a), page 10 of 123.

**Mr. Elisha Ongoya:** Who is that?

**Hon. Mwangi Mutuse:** Mr. Philip Wanjema Kago

**Mr. Elisha Ongoya:** I am asking, who is he? Do you know him?

**Hon. Mwangi Mutuse:** No, I do not.

**Mr. Elisha Ongoya:** Let us look at your Affidavit of Jomo. First, do you concede that he says the Deputy President requested him to buy the property as a fact? Jomo is saying the Deputy President requested him to buy the property.

**Hon. Mwangi Mutuse:** They entered into a secret arrangement.

**Mr. Elisha Ongoya:** Requested him to buy the property as a matter of fact?

**Hon. Mwangi Mutuse:** Yes.

**Mr. Elisha Ongoya:** Did he buy the property?

**Hon. Mwangi Mutuse:** Yes, on certain terms of secret arrangement, according to him.

**Mr. Elisha Ongoya:** The arrangement was that?

**Hon. Mwangi Mutuse:** The Deputy President would buy the hotel by refunding--

**Mr. Elisha Ongoya:** Would you buy the hotel from him by refunding the money? Has he, in fact, bought it? You are the Motion Mover; you are here with us, and you will not run away from anything, Hon. Mutuse. Has he, in fact, bought it?

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**Hon. Mwengi Mutuse:** I would imagine so.

**Mr. Elisha Ongoya:** When did he buy it?

**Hon. Mwengi Mutuse:** I do not know.

**Mr. Elisha Ongoya:** You want these Senators to impeach this Deputy President in your imagination?

**Hon. Mwengi Mutuse:** I have said that there is nothing wrong with not knowing. I do not know.

**Mr. Elisha Ongoya:** Does Mr. Peterson Jomo Mushira say that, in fact, the Deputy President has bought this hotel? Does he say so? That, in fact, the Deputy President has bought this hotel? Yes, or no? Does he say that the Deputy President has, in fact, bought this hotel? Yes, or no?

**Hon. Mwengi Mutuse:** He says that the Deputy President would buy the hotel from him by refunding the purchase price of Kshs412 million set out in the agreement.

**Mr. Elisha Ongoya:** If we believe Mr. Jomo, this is a promise for a future transaction.

**Hon. Mwengi Mutuse:** It would appear so.

**Mr. Elisha Ongoya:** No, on the face of it, it is a promise for a future transaction.

**Hon. Mwengi Mutuse:** It would appear so.

**Mr. Elisha Ongoya:** Has that future come? Has that transaction happened to your knowledge?

**Hon. Mwengi Mutuse:** I believe so.

**Mr. Elisha Ongoya:** What is the basis of your belief?

**Hon. Mwengi Mutuse:** Your own response, the Deputy President's response, you said---

**Mr. Elisha Ongoya:** Has the Deputy President said he has bought that property?

**Hon. Mwengi Mutuse:** It was bought by TM engineering.

**Mr. Elisha Ongoya:** Is that not a fact? Is that what Jomo is telling us? What the Deputy President is telling us that it was bought by TM engineering and what Jomo is telling us that it was bought by TM engineering factually are the same. Then Jomo brings a new perspective to it, saying that the Deputy President promised him that in the future, he would buy back the hotel. Jomo is saying that when he bought the hotel, the Deputy President told him that he intends to buy it back in the future.

**Hon. Mwengi Mutuse:** Yes.

**Mr. Elisha Ongoya:** By the way, is there any unlawfulness in a future intent to acquire property?

**Hon. Mwengi Mutuse:** It points to a scheme to launder and hide the transaction.

**Mr. Elisha Ongoya:** Mr. Mutuse, let us be basic sensible people. If he wanted to, he would have bought it immediately. Is a promise to buy in the future evidence of a lack of immediate money?

**Hon. Mwengi Mutuse:** Well, that is a matter of interpretation.

**Mr. Elisha Ongoya:** You are a lawyer like me and we are good at interpretation. In fact, we are trained in interpretation. I am asking you the question. Is the promise to buy in the future on the face of it---

**Hon. Mwengi Mutuse:** Jomo says they have a secret. We do not want to assume what Jomo is saying. Mr. Jomo is saying in his affidavit that there was a secret arrangement that he covers from the Deputy President, buy the hotel and register it in his company then he refunds the money.

**Mr. Elisha Ongoya:** Has that refund been done?

**Hon. Mwengi Mutuse:** He would be best placed to tell us.

**Mr. Elisha Ongoya:** When did Jomo buy this hotel? It is from the affidavit that it is from around March 2023. True or not true?

**Hon. Mwengi Mutuse:** Around 31<sup>st</sup> March –

**Mr. Elisha Ongoya:** More than one and a half years ago. To date, your thorough investigation to support a Motion to remove the Deputy President from office has not revealed the evidence that the Deputy President has bought the hotel. Do you want us to imagine he has bought it?

**Hon. Mwengi Mutuse:** My allegation is that he bought the hotel through a proxy, and he says that, indeed, he has a secret arrangement with the Deputy President to buy the hotel on his behalf as a proxy. I did not allege that it had been transferred to the Deputy President. I said it is an intricate web of economic crimes, white collar crimes that are secretive---

**Mr. Elisha Ongoya:** Is this promise to buy a hotel in the future a white-collar crime?

**Hon. Mwengi Mutuse:** Indeed, economic crimes are white-collar crimes.

**Mr. Elisha Ongoya:** Is this promise to buy a hotel in the future a white-collar crime?

**Hon. Mwengi Mutuse:** It is part of the scheme to hide the real owners of the property.

**Mr. Elisha Ongoya:** So, let me wind up this argument, because my time is running out. You have made hue and cry of the Deputy President wealth portfolio. At least you know that, is that true?

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Elisha Ongoya:** You have also told us that even if we gave him the best possible assumption, he would be having Kshs24 million in his account, because that is his salary.

**Hon. Mwengi Mutuse:** The known sources of income.

**Mr. Elisha Ongoya:** Are you suggesting that the Deputy President assumed office impecunious as a pauper?

**Hon. Mwengi Mutuse:** Not at all. However, I also---

**Mr. Elisha Ongoya:** What was his wealth portfolio by the time he became the Deputy President?

**Hon. Mwengi Mutuse:** I have several lists.

**Mr. Elisha Ongoya:** Do you know his wealth portfolio by the time he became the Deputy President?

**Hon. Mwengi Mutuse:** During the presidential debate?

**Mr. Elisha Ongoya:** Yes.

**Hon. Mwengi Mutuse:** He did say that he was worth Kshs800 million shillings.

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**Mr. Elisha Ongoya:** How then do you question why he would promise in future to buy a property worth Kshs400 million?

**Hon. Mwangi Mutuse:** I question why---

**Mr. Elisha Ongoya:** Do you know the formula he wanted to use to buy the property, whether it is liquidating his wealth or acquiring it? Do you know the formula he wanted to use in future to buy the property?

**Hon. Mwangi Mutuse:** That would be for him to say not me.

**Mr. Elisha Ongoya:** I am asking whether you know. You are the one to establish this charge. Do you know the formula?

**Hon. Mwangi Mutuse:** I have demonstrated that the formula is corrupt and the sources of the wealth are unexplained.

**Mr. Elisha Ongoya:** Which wealth has unexplained sources that you explained?

**Hon. Mwangi Mutuse:** I have shown---

**Mr. Elisha Ongoya:** I thought you began by Vipingo, which we have dealt with you.

**Hon. Mwangi Mutuse:** All the way from Nyeri, Tree Tops, all the way to ---

**Mr. Elisha Ongoya:** Sorry?

**Hon. Mwangi Mutuse:** In terms of Vipingo, we will also be able to show.

**Mr. Elisha Ongoya:** When?

**Hon. Mwangi Mutuse:** We still have time for submissions.

**Mr. Elisha Ongoya:** Oh, you are going to call more evidence?

**Hon. Mwangi Mutuse:** No, we are not calling evidence. We will just point out to the other documents because we are reading documents in isolation. We will also show other documents that point out to his ownership of the Vipingo Hotel.

**Mr. Elisha Ongoya:** Mr. Speaker, Sir, may I invite my colleague, Mr. Macharia, to pick up from there?

**Hon. Mwangi Mutuse:** Thank you, very much.

**Mr. Elisha Ongoya:** Thank you, too.

**The Speaker (Hon. Kingi):** Would you wish to know how much time is remaining for you?

**Mr. Tom Macharia:** Yes, Mr. Speaker, Sir.

**The Speaker (Hon. Kingi):** Okay, so far you have done one hour, two minutes. So, you have 58 minutes. For the entire cross-examination of this witness and those to come.

**Mr. Tom Macharia:** Most obliged. Hon. Mutuse, you say you are an Advocate of the High Court of Kenya.

**Hon. Mwangi Mutuse:** Yes.

**Mr. Tom Macharia:** When were you admitted?

**Hon. Mwangi Mutuse:** In the year 2018.

**Mr. Tom Macharia:** So, you have been practising for six years?

**Hon. Mwangi Mutuse:** Indeed.

**Mr. Tom Macharia:** According to the Senate website I am reading here, between 2013 and 2022, you were the Chief of Staff at the county government of Machakos. Is that correct?

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**Hon. Mwengi Mutuse:** That is correct.

**Mr. Tom Macharia:** So, from 2018 to 2022, you could not practise law as a public officer. Is that correct?

**Hon. Mwengi Mutuse:** That is true.

**Mr. Tom Macharia:** So, you have not done any conveyancing transactions. Is that correct?

**Hon. Mwengi Mutuse:** That is not correct.

**Mr. Tom Macharia:** How have you done conveyancing transactions as a public officer?

**Hon. Mwengi Mutuse:** I have academic, professional, and experience in conveyancing.

**Mr. Tom Macharia:** Academic, not practical.

**Hon. Mwengi Mutuse:** Professional and practical experience in conveyancing.

**Mr. Tom Macharia:** How did you do conveyancing while working for Machakos County Government?

**Hon. Mwengi Mutuse:** I was not in private practice, but I am involved in many.

**Mr. Tom Macharia:** Yes, name one transaction, for example.

**Hon. Mwengi Mutuse:** Well, maybe I cannot remember now.

**Mr. Tom Macharia:** Maybe what?

**Hon. Mwengi Mutuse:** I cannot remember at the moment.

**Mr. Tom Macharia:** You cannot remember a single transaction in your illustrious law career you have done. Let us move on.

On what party were you elected when you came to Parliament?

**Hon. Mwengi Mutuse:** Maendeleo Chap Chap Party.

**Mr. Tom Macharia:** Were you elected in the year 2022.

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Tom Macharia:** Is it correct to say that Mandeleo Chap Chap Party is a member of the Kenya-Kwanza Coalition?

**Hon. Mwengi Mutuse:** Yes, it is correct.

**Mr. Tom Macharia:** Did you sign a coalition agreement to form part of that Kenya-Kwanza Coalition?

**Hon. Mwengi Mutuse:** Yes, we did.

**Mr. Tom Macharia:** Do you have any specific role in Mandeleo Chap Chap Party?

**Hon. Mwengi Mutuse:** No, I do not have.

**Mr. Tom Macharia:** I want us to deal with grounds, I believe your counsel led you on what he said jointly were grounds one, five and six. They deal with the utterances you stated. Let me get some facts straight from you. You said one of the things that affects you the most about these utterances, you mentioned sensationally Rwanda, Sudan and various countries having problems. Is that correct?

**Hon. Mwengi Mutuse:** Yes, indeed.

**Mr. Tom Macharia:** You said that my client, the Deputy President, was a District Officer (DO) in Molo during the clashes?

**Hon. Mwengi Mutuse:** I said, it is said that he was a D.O. in Molo.

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**Mr. Tom Macharia:** So, this is not a fact? Yes, or no? It is not correct that he was not a D.O. in Molo?

**Hon. Mwengi Mutuse:** I do not know it out of my own information, but it is public information.

**Mr. Tom Macharia:** What do you mean by public information? Either he was a D.O. or he was not. Can you confirm yes, or no? Was he or he was not? Or you do not know?

**Hon. Mwengi Mutuse:** He was a D.O.

**Mr. Tom Macharia:** No, Molo, please, let us not waste time. Was he a D.O. in Molo or was he not, to your knowledge?

**Hon. Mwengi Mutuse:** It is publicly alleged that he was a D.O. in Molo.

**Mr. Tom Macharia:** To your knowledge, not to the public. To you, Mutuse M.P. Kibwezi, was he a D.O. in Molo or not, to your knowledge?

**Hon. Mwengi Mutuse:** I believe so.

**Mr. Tom Macharia:** I am not asking for your belief or imagination. Do you know or do you not know?

**Hon. Mwengi Mutuse:** I do not have it as a matter of fact.

**Mr. Tom Macharia:** Okay, let us move. Now, you confirm that you are a member of the Kenya-Kwanza Coalition?

**Hon. Mwengi Mutuse:** Yes, indeed.

**Mr. Tom Macharia:** Please go with me, if you will to page 417 of Volume 3 of the Deputy President's documents. As you put a finger there, Hon. Mutuse and Hon. Senators, if you will go with me to page six of Volume 1 this is the Special Motion.

**Hon. Mwengi Mutuse:** Volume 6?

**Mr. Tom Macharia:** I said page 417. Keep a finger there, page 417 of Volume 3. These are annexures in support of His Excellency the Deputy President. Then volume one, which is your Motion, at page six of 85.

Let us begin with page six of 85. Are you there on page six?

**Hon. Mwengi Mutuse:** Yes, I am there.

**Mr. Tom Macharia:** This is the allegation you see in the middle there and I will read for you quickly so that we do not get stuck. Which begins with the words, a government is like a company. Can you say that?

**Hon. Mwengi Mutuse:** A government is like a company.

**Mr. Tom Macharia:** I want you to show me where in that paragraph the word tribe, ethnic or *kabila* appears. Even once.

**Hon. Mwengi Mutuse:** It is not there.

**Mr. Tom Macharia:** Go to page seven. Overleaf. Can you see the sentence beginning *haiwezekani mtu ambaye alikuwa akikupiga kelele akichunga---* Can you say that?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** Show me where the word *kabila*, tribe, or ethnicity appears.

**Hon. Mwengi Mutuse:** It is not there.

**Mr. Tom Macharia:** Paragraph 13. A government is like a company. Can you see that at page seven?

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- Hon. Mwengi Mutuse:** Yes.
- Mr. Tom Macharia:** Show me where the word tribe, ethnic or *kabila* appears.
- Hon. Mwengi Mutuse:** It is not there.
- Mr. Tom Macharia:** Let us go to page eight. *Sisi lazima tungeangalia nyinyi. Hii Serikali ni kampuni na hii ni shares. Si ndio?* Can you see that?
- Hon. Mwengi Mutuse:** Yes, I can say that.
- Mr. Tom Macharia:** Show me where the word tribe, *kabila*, ethnic, appears.
- Hon. Mwengi Mutuse:** It does not appear.
- Mr. Tom Macharia:** Paragraph 15, does it appear?
- Hon. Mwengi Mutuse:** What?
- Mr. Tom Macharia:** At paragraph 15, at page eight of 85.
- Hon. Mwengi Mutuse:** What does not appear?
- Mr. Tom Macharia:** The same words, *kabila*, ethnic, tribe.
- Hon. Mwengi Mutuse:** No, they do not appear.
- Mr. Tom Macharia:** Finally, at paragraph 16, at page nine of 85. You can see that?
- Hon. Mwengi Mutuse:** Let me read through. I can see *nimekuwa nikichunga mambo ya watu wa mlima*.
- Mr. Tom Macharia:** Very good. So, is mlima a tribe?
- Hon. Mwengi Mutuse:** It is a region.
- Mr. Tom Macharia:** Can you please name for me the counties in that region?
- Hon. Mwengi Mutuse:** Several.
- Mr. Tom Macharia:** Central is not a county.
- Hon. Mwengi Mutuse:** I have said that severally.
- Mr. Tom Macharia:** There are ten, actually. Read them out.
- Hon. Mwengi Mutuse:** Kiambu, Murang'a, Nyeri, Embu, Tharaka Nithi, Meru, Nyandarua, Nakuru and Laikipia. Which other one?
- Mr. Tom Macharia:** All of them are 10. Now, do all those ten counties have one tribe to your knowledge?
- Hon. Mwengi Mutuse:** Mr. Speaker, Sir, they do not have one tribe.
- Mr. Tom Macharia:** Thank you. Now, would you agree with me that the government, party or coalition that is the majority in the Senate and in the National Assembly is the Kenya Kwanza Coalition?
- Hon. Mwengi Mutuse:** Yes, Mr. Speaker, Sir.
- Mr. Tom Macharia:** So, the ruling party is Kenya Kwanza?
- Hon. Mwengi Mutuse:** The ruling coalition.
- Mr. Tom Macharia:** It is the ruling coalition?
- Hon. Mwengi Mutuse:** Yes.
- Mr. Tom Macharia:** They rule because they are a majority. Do you agree with that?
- Hon. Mwengi Mutuse:** Indeed.
- Mr. Tom Macharia:** Very good. If you go to page 417, to your knowledge, there is a letter. Can you see that? Page 417 of Volume 3 of the Deputy President's documents. Can you see that?

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**Hon. Mwengi Mutuse:** Yes, Mr. Speaker, Sir.

**Mr. Tom Macharia:** It is addressed to the Office of the Registrar of Political Parties and it is signed by our professional colleague, Prof. Kithure Kindike. Can you see that? Counsel for Kenya Kwanza Alliance Coalition.

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** You can see that?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** In the middle is a paragraph beginning with 'subsequently'. Can you please read out for me the parties that were constituent parties of Kenya Kwanza?

**Hon. Mwengi Mutuse:** Subsequently, on 12<sup>th</sup> April 2022, the following political parties were admitted and signed to join the coalition pursuant to Article 24 of the coalition agreement. Chama cha Kazi, Communist Party of Kenya (CPK), Devolution Party of Kenya (DEP), Economic Freedom Party (EFP), Farmers Party, The Service Party (TSP), Tujibebe Wakenya Party, Umoja na Maendeleo Party of Kenya (UMP), Democratic Party of Kenya (DP).

**Mr. Tom Macharia:** Thank you. The first of those coalition agreements is to be found on page 418. Can you see that?

**Hon. Mwengi Mutuse:** Yes, I am there.

**Mr. Tom Macharia:** At the very top there, under the dates, who are the parties that have signed this agreement?

**Hon. Mwengi Mutuse:** United Democratic Alliance Party, Amani National Congress (ANC) Party and Ford Kenya Party.

**Mr. Tom Macharia:** Thank you. On page 420, a few pages from there.

**Hon. Mwengi Mutuse:** Page 420, I am there.

**Mr. Tom Macharia:** Article 5, paragraph C; Please read that out fairly quickly.

**Hon. Mwengi Mutuse:** The validity or legality of this agreement may not be subject to challenge by any founding or future coalition member party or their respective individual party members before any organ of the coalition.

**Mr. Tom Macharia:** Paragraph d?

**Hon. Mwengi Mutuse:** Any constitutional rules, regulations or guidelines, whatever the nomenclature of founding or future member parties which is not inconsistent with this agreement is null and void to the extent of the inconsistency.

**Mr. Tom Macharia:** This is the master agreement of the Kenya Kwanza coalition. Is that correct; yes, or no?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, it is correct.

**Mr. Tom Macharia:** Do you know why these agreements are signed and under what law they are signed?

**Hon. Mwengi Mutuse:** Yes, I know.

**Mr. Tom Macharia:** Kindly tell us.

**Hon. Mwengi Mutuse:** They are signed under the Political Parties Act for various reasons. Number one is---

**Mr. Tom Macharia:** No. I asked you the law. Do you know what specific section requires a coalition agreement and what is to enter into a coalition agreement?

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- Hon. Mwengi Mutuse:** Well, not off the top of my head, but I know.
- Mr. Tom Macharia:** Schedule 3; does that ring a bell for you?
- Hon. Mwengi Mutuse:** Schedule 3 states what the elements of a coalition agreement are.
- Mr. Tom Macharia:** As a member of the Kenya Kwanza coalition, according to you, are these agreements of your coalition drawn in accordance with the law?
- Hon. Mwengi Mutuse:** Yes, they are.
- Mr. Tom Macharia:** So, they are lawful?
- Hon. Mwengi Mutuse:** Yes, indeed.
- Mr. Tom Macharia:** They are enforceable?
- Hon. Mwengi Mutuse:** Yes, indeed.
- Mr. Tom Macharia:** They are the basis upon which Kenya is governed?
- Hon. Mwengi Mutuse:** Basis upon which Kenya Kwanza coalition is run.
- Mr. Tom Macharia:** Is governing the country?
- Hon. Mwengi Mutuse:** The country is governed by the Constitution of Kenya.
- Mr. Tom Macharia:** Correct, but these are the constituent documents of the Kenya Kwanza government that is governing. This is the foundation of Kenya Kwanza.
- Hon. Mwengi Mutuse:** However, they are not superior to the Constitution.
- Mr. Tom Macharia:** I did not ask for an argument. I asked, is this the foundational constitution? You just read about it saying that it is---
- Hon. Mwengi Mutuse:** It is the coalition agreement for Kenya Kwanza, yes.
- Mr. Tom Macharia:** Would you know whether Maendeleo Chap Chap (MCC) Party signed any agreement to enter the Kenya Kwanza coalition?
- Hon. Mwengi Mutuse:** Yes.
- Mr. Tom Macharia:** You did?
- Hon. Mwengi Mutuse:** They signed.
- Mr. Tom Macharia:** Are you familiar with the contents of that agreement?
- Hon. Mwengi Mutuse:** Yes, I am.
- Mr. Tom Macharia:** You are? Are you certain about that?
- Hon. Mwengi Mutuse:** Yes, I know.
- Mr. Tom Macharia:** Very good. Then let us first go to the documents we were reading here. Let us begin at page 426.
- Hon. Mwengi Mutuse:** I am there.
- Mr. Tom Macharia:** Article 19. Can you please read the heading?
- Hon. Mwengi Mutuse:** Article 19; Sharing of county assembly responsibilities/leadership.
- Mr. Tom Macharia:** Sharing?
- Hon. Mwengi Mutuse:** Yes, sharing.
- Mr. Tom Macharia:** Can you read the heading for Article 20 again?
- Hon. Mwengi Mutuse:** Sharing of leadership of parliamentary committees.
- Mr. Tom Macharia:** Sharing?
- Hon. Mwengi Mutuse:** Yes, Mr. Speaker, Sir.
- Mr. Tom Macharia:** Let us go to Article 21.
- Hon. Mwengi Mutuse:** Sharing of national government responsibilities.

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**Mr. Tom Macharia:** Let us start with (a) United Democratic Alliance (UDA) shall nominate the coalition's presidential and deputy presidential candidates in the general elections of 9<sup>th</sup> August 2022. Did UDA provide the President and Deputy President for the Kenya Kwanza coalition?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** They did?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** So that part of the agreement was implemented?

**Hon. Mwengi Mutuse:** Yes, Mr. Speaker, Sir.

**Mr. Tom Macharia:** Article 21(e); the functions of the Deputy President is to chair committees, oversee implementation of cabinet decisions and so on. Would you know whether this particular section was implemented or not?

**Hon. Mwengi Mutuse:** In terms of the functions of the Deputy President?

**Mr. Tom Macharia:** Yes. Would you know?

**Hon. Mwengi Mutuse:** Yes, to the best of my recollection, it was put into effect through an executive order.

**Mr. Tom Macharia:** So that was also implemented.

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** Page 428, can you see (F) at the top there?

**Hon. Mwengi Mutuse:** Yes, I am there. Yes, I can see (F).

**Mr. Tom Macharia:** ANC shall nominate the Prime Cabinet Secretary for appointment by the President of the republic. Was the leader of ANC, nominated and appointed as the Prime Cabinet Secretary?

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Tom Macharia:** That is correct?

**Hon. Mwengi Mutuse:** The Prime Cabinet Secretary and Cabinet Secretary for Foreign Affairs.

**Mr. Tom Macharia:** Can you confirm the name? What is the name?

**Hon. Mwengi Mutuse:** His name is Hon. Musalia Mudavadi.

**Mr. Tom Macharia:** Were the functions you see at (J) and (I), also implemented?

**Hon. Mwengi Mutuse:** Yes, they were implemented.

**Mr. Tom Macharia:** Let us go to page 429, paragraph (L) at the top. Ford Kenya shall nominate the Speaker of the National Assembly for election in accordance with the Constitution. Did Ford Kenya nominate and was the nominee in fact elected as the Speaker of the National Assembly?

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Tom Macharia:** That was also implemented?

**Hon. Mwengi Mutuse:** Yes, Mr. Speaker, Sir.

**Mr. Tom Macharia:** Very good. Now, let us go to N. Please read out for us N.

**Hon. Mwengi Mutuse:** ANC and Ford Kenya shall have 30 per cent share of the positions in the national Government, including Cabinet Secretaries, Principal Secretaries (PS), ambassadors, high commissioners, heads of diplomatic missions, chairpersons of state corporations, directors of state corporations and chairpersons and commissioners of

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constitutional commissions provided that the foreseen 30 per cent share positions in the national Government shall be shared equally between ANC and Ford Kenya.

**Mr. Tom Macharia:** Who would be the appointing authority for those positions?

**Hon. Mwengi Mutuse:** Well, different office orders.

**Mr. Tom Macharia:** Remember you are a lawyer.

**Hon. Mwengi Mutuse:** Some by the President, others by Cabinet Secretaries appointed by the President and others---

**Mr. Tom Macharia:** In fact, all these---

**Hon. Mwengi Mutuse:** Others through Public Service Commission (PSC) by way of competitive---

**Mr. Tom Macharia:** Now, but ANC and Ford Kenya were promised 30 per cent share positions in all these positions. Is that correct?

**Hon. Mwengi Mutuse:** Yes, indeed.

**Mr. Tom Macharia:** They have a 30 per cent share. So, when you hold shares, what are you called?

**Hon. Mwengi Mutuse:** Okay, in a company, they are called shareholders. I do not know what they are called in a political party.

**Mr. Tom Macharia:** I am talking about the English language. When you hold shares, what are you called?

**Hon. Mwengi Mutuse:** A shareholder.

**Mr. Tom Macharia:** Thank you. So, ANC and Ford Kenya are 30 per cent shareholders in Kenya Kwanza. Correct or not?

**Hon. Mwengi Mutuse:** They are 30 per cent---

**Mr. Tom Macharia:** You have just told us when you hold shares, you are a shareholder. Please, Hon. Mutuse, do not fear, speak the English.

**Hon. Mwengi Mutuse:** Okay. They are 30 per cent shareholders.

**Mr. Tom Macharia:** Thank you. Let us go to Article 22---

**Hon. Mwengi Mutuse:** But not in a company.

**Mr. Tom Macharia:** Hon. Mutuse, please, answer the questions when asked. Let us go to Article 22.

**Hon. Mwengi Mutuse:** My apologies.

**Mr. Tom Macharia:** Kindly read the paragraph that begins with pursuant.

**Hon. Mwengi Mutuse:** It reads-

“Pursuant to the principles of equity, national development, and fair allocation of national resources, the Kenya Kwanza Alliance Administration shall endeavour to fulfill the following development obligations in the Amani National Congress (ANC) and Ford Kenya strongholds of Western Kenya, within the electoral period starting 2022 and ending in 2077, on a priority basis.”

**Mr. Tom Macharia:** Stop there. Please tell me what are the ANC and Ford Kenya strongholds in Western Kenya? As a Member of the coalition, please tell us.

**Hon. Mwengi Mutuse:** Come again?

**Mr. Tom Macharia:** What are the Ford Kenya and ANC strongholds in

**Hon. Mwengi Mutuse:** Western Kenya?

**Mr. Tom Macharia:** Read for us the counties.

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**Hon. Mwengi Mutuse:** you want counties?

**Mr. Tom Macharia:** Of course.

**Hon. Mwengi Mutuse:** That would be the following counties- Bungoma, Kakamega, Vihiga--- Which other one?

**Mr. Tom Macharia:** I am the questioner and you are the Motion mover. Please answer.

**Hon. Mwengi Mutuse:** Primarily those ones.

**Mr. Tom Macharia:** These are priority projects for one region, is that correct?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** This is a shareholder's agreement, is that correct?

**Hon. Mwengi Mutuse:** This is a coalition agreement.

**Mr. Tom Macharia:** It says shares. You just told us that.

Now, let us read the projects. Go to (a).

**Hon. Mwengi Mutuse:** It reads:

“Completion of all Existing Incomplete or Stalled Bitumen roads Projects within the aforesaid counties as at 9<sup>th</sup> August, 2022.”

**Mr. Tom Macharia:** Let us stop. These are projects for one region, is that correct?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** Would you say, as you have alleged here, that by Kenya Kwanza focusing on one region, certain projects, what you are accusing the Deputy President of saying must be implemented, how does that cause disunity or ethnic strife? As a member of Kenya Kwanza, you are a member and the ones who signed this. Tell us what you had in mind.

**Hon. Mwengi Mutuse:** This is in promotion of regional inclusivity of all regions in the national development.

**Mr. Tom Macharia:** We are talking about Western here. Can you please show me in this document where other regions are mentioned, please go through it quietly. Take a minute. It starts at page 418; it starts at page 433. Show me one other region mentioned there by name in the whole document.

**Hon. Mwengi Mutuse:** This is a coalition agreement.

**Mr. Tom Macharia:** Please, Mr. Mutuse, answer my question. Is there any other region mentioned by name in this document?

**Hon. Mwengi Mutuse:** There is no other region.

**Mr. Tom Macharia:** Thank you, Mr. Mutuse. Please focus to my question. Is there any other region?

**Hon. Mwengi Mutuse:** Not in this document.

**Mr. Tom Macharia:** Thank you. That was my simple question. Let us go to page 434. Who are the signatories to this agreement?

**Hon. Mwengi Mutuse:** They are several.

**Mr. Tom Macharia:** Name them.

**Hon. Mwengi Mutuse:** They are: William Ruto, Musalia Mudavadi, Moses Wetangula, Veronica Maina, Simon Gikuru and Chrisathanus Wamalwa.

**Mr. Tom Macharia:** Who has witnessed it?

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**Hon. Mwengi Mutuse:** Prof. Kindiki.

**Mr. Tom Macharia:** Do any of these persons bear the blame as you pile on the Deputy President, for causing ethnic strife by focusing on one region in a document?

**Hon. Mwengi Mutuse:** None of them has made pronouncements similar to---

**Mr. Tom Macharia:** They are in the document. This is an agreement, and it has been implemented.

**Hon. Mwengi Mutuse:** None of them has a Motion on the impeachment.

**Mr. Tom Macharia:** Let me understand and be careful with the answer here. Your problem with the Deputy President is that he spoke out aloud what was written in the agreement that formed the government. Please answer, yes, or no?

**Hon. Mwengi Mutuse:** There is no way I have---

**Mr. Tom Macharia:** Please answer yes or no, Mr. Mutuse?

**Hon. Mwengi Mutuse:** The Deputy President has not said the people of Western have not been given---

**Mr. Tom Macharia:** No, he spoke about shares. We have read. He said everybody deserves their share. It is in the agreement. You have confirmed.

**Hon. Mwengi Mutuse:** We have also to be faithful to the agreement.

**Mr. Tom Macharia:** We have to be faithful to an agreement that gives shares.

**Hon. Mwengi Mutuse:** A coalition agreement.

**Mr. Tom Macharia:** However, we must not talk about it.

**Hon. Mwengi Mutuse:** The Deputy President is not accused of saying the people of Western Kenya have not gotten their share.

**Mr. Tom Macharia:** Let us go back to your document, Mr. Mutuse. Go back to page 7 of Vol. 1.

**Hon. Mwengi Mutuse:** Yes, we are there.

**Mr. Tom Macharia:** It says-

“A government is like a company. I did not say it is a company. I said it is like a company.”

In every company, there are shares, preferential shares and ordinary shares. When there is an AGM, non-shareholders do not vote or attend. When there are dividends to be divided, they are divided according to the number of shares.

This is the truth.

A government - and this is the government being formed here. So, Mr. Mutuse, are you saying that the problem is that the Deputy President spoke out aloud what was written in an agreement deposited with the registrar of political parties and which formed the government?

**Hon. Mwengi Mutuse:** I am not saying that because there is nowhere in the coalition agreement we spoke about a company.

**Mr. Tom Macharia:** All right, let us move on. Let us go to the agreement at page 435. Can you see that?

**Hon. Mwengi Mutuse:** Yes, I can see it.

**Mr. Tom Macharia:** What is this agreement? Who are the parties to this agreement?

**Hon. Mwengi Mutuse:** Kenya Kwanza Coalition and the Pamoja African Alliance (PAA) Party, otherwise abbreviated as PAA.

**Mr. Tom Macharia:** Let us go, if you do not mind, to page 438. Can you see Article 7?

**Hon. Mwengi Mutuse:** Yes, I can see article 7.

**Mr. Tom Macharia:** Please read what it says.

**Hon. Mwengi Mutuse:** It reads-

“Priority Projects and Programmes:

Upon winning the presidential election scheduled for 9<sup>th</sup> August 2022, the coalition administration shall ensure the following within the 2022-2027 development cycle.”

Do I need to read all of it?

**Mr. Tom Macharia:** Let me make it short for you.

Between article 7 (a) and 7(i), I would like you to tell me whether any other region other than the coast region is mentioned in those priority projects. This is page 438 of Vol. 3.

**Hon. Mwengi Mutuse:** Do you want me to take a minute to read?

**Mr. Tom Macharia:** No, just please flip through in a second. It should not be long.

Let me help you---

**Hon. Mwengi Mutuse:** There is none.

**Mr. Tom Macharia:** All of them deal with the coast region. Can you see that?

**Hon. Mwengi Mutuse:** number (d) is broad. It says-

“Involve local communities in the management, benefits sharing of the resources associated with the blue economy.”

**Mr. Tom Macharia:** Do you know what blue economy refers to?

**Hon. Mwengi Mutuse:** Yes, I do.

**Mr. Tom Macharia:** Is there a blue economy in Makeni County?

**Hon. Mwengi Mutuse:** There is a blue economy in Kisumu.

**Mr. Tom Macharia:** Very good. So, other than the (d), the rest of it is all coast region.

**Hon. Mwengi Mutuse:** It says-

“Reverse operational changes that have been carried out in the recent past, whose effect has been to relocate some of the core activities.”

Basically, it is the coast region, but also with a national nature.

**Mr. Tom Macharia:** You can read for yourself. They are for coast region. Go with me to Article 8(a) at page 439. It says-

“PAA shall nominate a candidate for the Speaker of the Senate.”

Can you see that?

**Hon. Mwengi Mutuse:** Yes, I can see that.

**Mr. Tom Macharia:** Did the candidate nominated by PAA, in fact, become the Hon. Speaker of the Senate?

**Hon. Mwengi Mutuse:** He did.

**Mr. Tom Macharia:** Let us go to Article 9. Please read Article 9(a).

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**Hon. Mwengi Mutuse:** It states-

“Sharing of Responsibilities in the National Government

Upon the coalition winning the presidency of the Republic of Kenya in the general election scheduled for 9<sup>th</sup>, PAA shall submit one qualified nominee for appointment as Principal Secretary in accordance with the applicable law and procedure for appointment.”

**Mr. Tom Macharia:** So, PAA was allocated one Principal Secretary position as its share of national Government. Is that correct?

**Hon. Mwengi Mutuse:** According to this agreement, yes.

**Mr. Tom Macharia:** Thank you.

Let us go to a very interesting one. Go to paragraph 9(c) and read it.

**Hon. Mwengi Mutuse:** It reads-

“PAA shall be entitled to nominate other qualified persons for appointment for positions in the national Government, including Principal Secretaries, Ambassadors/High, Commissioners, Chairpersons of State Corporations, Chairpersons of Constitutional Commissions, and other appointive officers commensurate with the number of Members of National Assembly and Senators that will be elected on PAA ticket, *vis-a-vis* the total number of elected members under the ticket of other coalition constituent parties.”

**Mr. Tom Macharia:** In simple English, when the number of national Government positions for Principal Secretaries (PSs), ambassadors, state corporations *et cetera*, including constitutional commissions and other appointing offices will be allocated to Pamoja African Alliance (PAA) commensurate with the number of Members of National Assembly and Senators, does that not mean that PAA will be allocated positions based on how well it does in the elections, yes or no?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** Let us go to page 440 again and 441. Can you see that?

**Hon. Mwengi Mutuse:** Yes, I can.

**Mr. Tom Macharia:** Again, you can see it is signed by the party officials. Can you see that?

**Hon. Mwengi Mutuse:** Yes, I can.

**Mr. Tom Macharia:** His Excellency the President, the Prime Cabinet Secretary, the hon. Member of the National Assembly, my villagemate, Sen. Veronica Maina, Simon Gikuru, Chrisanthus Wamalwa, Ibrahim Mutwafi and Benedict Furaha. Can you see that?

**Hon. Mwengi Mutuse:** Yes, I can.

**Mr. Tom Macharia:** Do you confirm that this is an agreement of the Kenya Kwanza Coalition?

**Hon. Mwengi Mutuse:** Yes, between Kenya Kwanza Alliance and PAA.

**Mr. Tom Macharia:** Mr. Speaker, Sir, I would like to play a video. This is Video No.7 in the Deputy President’s documents.

*(A video clip was played)*

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Hon. Mutuse, who was speaking in that video?

**Hon. Mwengi Mutuse:** The President of the Republic of Kenya, Hon. William Ruto.

**Mr. Tom Macharia:** Which words did he use? What did he say to the people of Murang'a?

**Hon. Mwengi Mutuse:** He has appointed many of the locals into his Government.

**Mr. Tom Macharia:** Did he say; "Nyinyi watu wa Murang'a ni shareholders wakubwa wa hii Serikali?"

**Hon. Mwengi Mutuse:** Yes, he did.

**Mr. Tom Macharia:** What among other things is one of the primary duties of the Deputy President?

**Hon. Mwengi Mutuse:** To deputize the President.

**Mr. Tom Macharia:** To assist the President.

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** When the Deputy President assists the President in talking about shareholders, how does that become an impeachable offence that does not attach to his principle, the President?

**Hon. Mwengi Mutuse:** That is not one of the functions assigned to the President by the Constitution.

**Mr. Tom Macharia:** It is one of the functions in your founding documents. So, he is assisting him in that function. It is politics. What is the problem with that? He is the Deputy Party Leader of the United Democratic Alliance (UDA).

**Hon. Mwengi Mutuse:** Well, I would not know that.

**Mr. Tom Macharia:** Let me ask you. Before you filed this Motion of yours, which my colleague Elisha Ongoya called false and used some other words.

**Hon. Mwengi Mutuse:** I can remember them.

**Mr. Tom Macharia:** You can remember them?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** Now that you know what you have done, what are they?

**Hon. Mwengi Mutuse:** I can remember Ongoya's words.

**Mr. Tom Macharia:** What are they? Describe it yourself. Which words did he use?

**Hon. Mwengi Mutuse:** Go ahead. You can ask him for assistance.

**Mr. Tom Macharia:** When you say that the Deputy President used words in support of something the President himself said, how does that become insubordination?

**Hon. Mwengi Mutuse:** I have not said that the Deputy President used words in support of what the President said.

**Mr. Tom Macharia:** So, when the President says to the people of Murang'a and not to the people of, say, Makueni, that "Nyinyi ni shareholders wakubwa wa Serikali", are the President's words likely to incite ethnic hatred and violence? Are the President's words likely to turn us to Rwanda as you suggested?

**Hon. Mwengi Mutuse:** The President is not on trial.

**Mr. Tom Macharia:** I see. So, his assistant, who assisted him do the thing---

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**The Speaker** (Hon. Kingi): Counsel for the Deputy President, you have 30 minutes.

**Mr. Tom Macharia:** I am most obliged, Mr. Speaker, Sir.

Mr. Mutuse, by assisting the President in something the President said, signed and effected in most of the appointments--- Would you confirm that most of these appointments, for example, PSs, were made by the President?

**Hon. Mwengi Mutuse:** Yes, indeed.

**Mr. Tom Macharia:** Cabinet Secretaries were appointed by the President?

**Hon. Mwengi Mutuse:** Yes, indeed.

**Mr. Tom Macharia:** In fact, under the Constitution, does the Deputy President have any power to appoint anybody?

**Hon. Mwengi Mutuse:** Not expressly.

**Mr. Tom Macharia:** No. If it is by insinuation, tell me where? What law are you talking about?

**Hon. Mwengi Mutuse:** The President can sign an instrument for him to deputise; by way of signing an instrument of appointment.

**Mr. Tom Macharia:** Sorry?

**Hon. Mwengi Mutuse:** Maybe the President can delegate some power of appointment.

**Mr. Tom Macharia:** Are you aware of any power delegated in this Government?

**Hon. Mwengi Mutuse:** I am not.

**Mr. Tom Macharia:** Is there any you know of? You are not aware of any?

**Hon. Mwengi Mutuse:** No.

**Mr. Tom Macharia:** Okay. One of the other allegations is that the Deputy President in these utterances, thereby ensured that other regions did not have adequate development. Is that correct?

**Hon. Mwengi Mutuse:** They have the potential to discriminate.

**Mr. Tom Macharia:** Potential?

**Hon. Mwengi Mutuse:** To discriminate.

**Mr. Tom Macharia:** Let me ask you something. This is a question not just about this allegation, but about the companies and all the things you have said here.

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** Before you filed your Motion, did you write to the Deputy President to ask him to explain himself?

**Hon. Mwengi Mutuse:** I was not under obligation to do so. So, I did not.

**Mr. Tom Macharia:** I want you to go with me to page 431.

**Hon. Mwengi Mutuse:** Page 431 of which volume?

**Mr. Tom Macharia:** Volume 1, the same volume we are reading here.

**Hon. Mwengi Mutuse:** I am on page 431.

**Mr. Tom Macharia:** Can you see Article 26?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** It deals with dispute resolution. Does Kenya Kwanza Alliance have a dispute resolution mechanism?

**Hon. Mwengi Mutuse:** I believe so.

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- Mr. Tom Macharia:** Did you attempt to invoke that mechanism?
- Hon. Mwengi Mutuse:** This is not a coalition dispute.
- Mr. Tom Macharia:** Okay. I am asking this question because I asked you whether you asked the Deputy President why he said any of these things or whether he was acting on presidential instructions. Did you ask?
- Hon. Mwengi Mutuse:** I did not.
- Mr. Tom Macharia:** You did not ask him?
- Hon. Mwengi Mutuse:** I did not.
- Mr. Tom Macharia:** Did you ask him about these companies you are saying what he does with them?
- Hon. Mwengi Mutuse:** I did not.
- Mr. Tom Macharia:** You did not. Did you ask him about these companies and parcels of land? Did you invoke Article 35 rights to find out the truth?
- Hon. Mwengi Mutuse:** I did not.
- Mr. Tom Macharia:** So, you just jumped straight into these allegations with a Motion that has animated the whole country with rumours?
- Hon. Mwengi Mutuse:** There is no requirement for me to write to the Deputy President to ask for any clarification.
- Mr. Tom Macharia:** Let me get this right. You are saying there was no obligation for you to verify the facts before filing the Motion?
- Hon. Mwengi Mutuse:** I verified them with the necessary organs of the state.
- Mr. Tom Macharia:** What are the necessary organs of the state you verified them with?
- Hon. Mwengi Mutuse:** Registration of companies liable to verify ownership with the business registration services and others.
- Mr. Tom Macharia:** Alright. Let us go to another area. I want you to go with me to page 497 of Volume 3. Are you there with me?
- Hon. Mwengi Mutuse:** Yes, I am.
- Mr. Tom Macharia:** Can you read at the top there what it is called?
- Hon. Mwengi Mutuse:** North Eastern Development Initiative (NEDI) Mission Aid; 27<sup>th</sup> March to 6<sup>th</sup> April, 2023.
- Mr. Tom Macharia:** As far as you are aware, does the Deputy President come from North Eastern Kenya?
- Hon. Mwengi Mutuse:** No, he does not.
- Mr. Tom Macharia:** If you go with me, you can see this is about frameworks for how that area will be developed.  
I want you to go with me to pages 500 and 501. Can you see that?
- Hon. Mwengi Mutuse:** Yes.
- Mr. Tom Macharia:** You can see there are 28 programmes that were being undertaken. Can you see that?
- Hon. Mwengi Mutuse:** Yes, I can.
- Mr. Tom Macharia:** Go with me then to pages 502 and 503.
- Hon. Mwengi Mutuse:** A list of participants.
- Mr. Tom Macharia:** You can say that?

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**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** The top 10 participants are from which office?

**Hon. Mwengi Mutuse:** Office of the Deputy President.

**Mr. Tom Macharia:** There are also many other leaders of Kenya there. Can you see that in page 502 and 503?

**Hon. Mwengi Mutuse:** I can see they are people from different communities.

**Mr. Tom Macharia:** You can see that?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** I want you now to go with me to page 505. Can you see Annex (2) at the top there?

**Hon. Mwengi Mutuse:** Active needy projects data.

**Mr. Tom Macharia:** You can see that?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** It lists a name and then it has World Bank funding financing US\$ million. Can you see that?

**Hon. Mwengi Mutuse:** Yes, I can.

**Mr. Tom Macharia:** Can you see the needy share in US dollars?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** If you could get your assistant as I lead you in another area to the totals and confirm that the total for the World Bank funding is US\$3.8 billion. The total World Bank funding for the country. Okay? Your assistant there can help you with a computer which is Kshs514 billion. Okay: The needy share being supervised by the Deputy President in that column, he can confirm as we go on over something else, is 1.99 billion dollars. The percentage of dollars allocated to the needy area is 52 per cent of the national figure. Would you say that is marginalization by the Deputy President's Office?

**Hon. Mwengi Mutuse:** This is not a programme by the Deputy President. It is a programme by the Government of Kenya.

**Mr. Tom Macharia:** Fantastic, you raise a very important point. You know Government has no money. Government has tax payers' money.

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Tom Macharia:** The question is how it uses it. It borrows money and taxes.

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** his programme is run by the Deputy President's Office. So, all I am asking is, is a programme run by the Deputy President where 52 per cent does not go to the region he comes, is that likely to cause ethnic hatred? Is that discrimination? That is my question to you.

**Hon. Mwengi Mutuse:** No, it is not.

**Mr. Tom Macharia:** Thank you very much. Go with me now to another area, page 410. Hon. Mutuse, you have said that the Deputy President acted beneath his office and violated his oath of office by criticizing the Director General of NIS in public.

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** You say that is a terrible thing?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** It is the worst thing that a Deputy President can do?

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**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** Okay. Now, if you go with me to the constitutional provisions that deal with security, I believe that is Article 238. Please, read if you will, Article 239. Do you have the Constitution there with you?

**Hon. Mwengi Mutuse:** I do not have at the moment.

**Mr. Tom Macharia:** I will lend you mind. Please read Article 239(3)

**Hon. Mwengi Mutuse:** Article 239(3) National Security Organs -

“In performing their functions and exercising their powers, the national security organs and every member of the national security organs shall not—

(a) act in a partisan manner;

(b) further any interest of a political party or cause; or

(c) prejudice a political interest or political cause that is legitimate under this Constitution.”

**Mr. Tom Macharia:** Thank you. Therefore, if a senior member of any security agency was to engage in that activity, would that be unconstitutional?

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Tom Macharia:** It would be worthy of criticisms?

**Hon. Mwengi Mutuse:** Indeed.

**Mr. Tom Macharia:** Now, Hon. Mutuse, you are a lawyer and a leader in this country. Are you familiar with Kenya’s first director of NIS, Mr. James Kanyotu?

**Hon. Mwengi Mutuse:** I have heard much about him.

**Mr. Tom Macharia:** Are you familiar with a saga in Kenya called the Goldenberg Commission?

**Hon. Mwengi Mutuse:** Yes, I am familiar with the Goldenberg Commission.

**Mr. Tom Macharia:** Was Mr. Kanyotu brought before the Commission to explain his role in that commission and his role in that saga?

**Hon. Mwengi Mutuse:** But not when he was in office.

**Mr. Tom Macharia:** I am asking, was he brought there?

**Hon. Mwengi Mutuse:** Yes, indeed.

**Mr. Tom Macharia:** Thank you very much.

**Mr. Tom Macharia:** Are you familiar with the former Director of Intelligence called Brigadier Gichangi?

**Hon. Mwengi Mutuse:** Yes, indeed.

**Mr. Tom Macharia:** During the Waki Commission, was Brigadier Gichangi called to give evidence before the Waki Commission to explain the role of the security agencies in post-election violence?

**Hon. Mwengi Mutuse:** Yes, in a commission. He was summoned; summoned by a commission.

**Mr. Tom Macharia:** Public commission.

**Hon. Mwengi Mutuse:** Public commission that was formed pursuant to the laws of Kenya.

**Mr. Tom Macharia:** Okay. Number six. Now, are you with me at Page 410?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** You can see that that is a newspaper article?

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**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** What is the headline?

**Hon. Mwengi Mutuse:** Mr. Speaker, Sir, on the face of it---

**Mr. Tom Macharia:** It can only be on the face of it, Hon, Mutuse, we do not need to use extra adjectives to explain obvious things. What does it say?

**Hon. Mwengi Mutuse:** “Ruto: I was locked out of Security Council meeting three years ago.”

**Mr. Tom Macharia:** Thank you. What is the date of that article at Page 410? It is on the extreme right.

**Hon. Mwengi Mutuse:** This is on 7<sup>th</sup> of July.

**Mr. Tom Macharia:** Yes. Let us go to page 411. Please read that article in full.

**Hon. Mwengi Mutuse:** It says: “UDA presidential candidate William Ruto on Thursday said he was excluded from attending the National Security Council meeting three years ago. The National Security Council brings together the President, Deputy President, Defense, Foreign Affairs and Internal Security Cabinet Secretaries, the Attorney General, Chief of Defense Forces, the Director of National Intelligence Service. Ruto made the revelations while explaining his take on the on-going extrajudicial killings in the country.”

**Mr. Tom Macharia:** Stop right there. When you played your video, you said that the problem was that the Deputy President had discussed issues of security at a time when we were having what were called the Gen Z protests. Is that correct or not?

**Hon. Mwengi Mutuse:** That is one of the problems.

**Mr. Tom Macharia:** That is one of the issues.

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** Now, the Cabinet Secretary for Interior and National Administration was before the National Assembly last week, or the other week, and he said that 42 people died during those protests. Do you recall?

**Hon. Mwengi Mutuse:** I do not have that, but we will take it as you put it.

**Mr. Tom Macharia:** He said 132 people are missing.

**Hon. Mwengi Mutuse:** Okay.

**Mr. Tom Macharia:** Are you aware that cases have been filed in court, including one where the Inspector General of Police was cited for contempt over allegations that the security agencies were abducting Kenyans?

**Hon. Mwengi Mutuse:** I am aware of the matters in court.

**Mr. Tom Macharia:** Are you aware that during these protests property of immense value was lost?

**Hon. Mwengi Mutuse:** Yes, I am aware.

**Mr. Tom Macharia:** Did the President of the Republic of Kenya dismiss his entire Cabinet as a consequence of those protests?

**Hon. Mwengi Mutuse:** Yes, he did.

**Mr. Tom Macharia:** Are you aware, as a Member of Parliament, that the World Bank and the IMF, as early as January 2024, sent a document to the government, a public document available on the website, indicating that the introduction of the reforms in the Finance Bill, 2024 would lead to protests. Are you aware of that?

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**Hon. Mwengi Mutuse:** I am not aware.

**Mr. Tom Macharia:** Now, if the World Bank and the IMF had warned the government in January, 2024 that there would be protests, what should a responsible government have done in the intervening period?

**Hon. Mwengi Mutuse:** The Government is not on trial, Rigathi Gachagua is.

**Mr. Tom Macharia:** That is not my question. My question was: What should a responsible Government and security agencies have done?

**Hon. Mwengi Mutuse:** I cannot tell because I am not part of them. I am not in the executive.

**Mr. Tom Macharia:** I see. Let us go back to my article at Page 411. There is a sentence beginning: "At the same time." Start there.

**Hon. Mwengi Mutuse:** It is further says:

"At the same time, the Deputy President also revealed that the Director of the National Intelligence Service no longer picks up his calls."

This, he said, has made him unable to play a key role in ensuring an end to the judicial killings in the country, as well as the runaway insecurity in some parts of the country.

**Mr. Tom Macharia:** Stop right there. Go to page 412. In the middle, there is a sentence beginning with the words, "he reiterated".

**Hon. Mwengi Mutuse:** He reiterated that the remarks he made in a campaign rally in Moyale, that he will ensure---

**Mr. Tom Macharia:** Read. Finish.

**Hon. Mwengi Mutuse:** ---that he will ensure an end to judicial killings.

**Mr. Tom Macharia:** The Deputy President at the time is criticizing the entire National Security Council. He is even disclosing and Kenyans did not know this, that the Director of National Intelligence is no longer picked up his calls. This is being made at a rally in Moyale. Between that and the Deputy President addressing a national crisis that was foreseen, please explain to me what the difference between those two situations is.

**Hon. Mwengi Mutuse:** There is a huge difference. Number one, he begins by saying he has been locked out of National Security Council meetings. Hon. Rigathi Gachagua has not said that he has been locked from National Security Council meetings.

Number two, he goes ahead and says the Director General of the National Intelligence Service no longer picks his calls. Hon. Rigathi Gachagua does not say the Director General of the National Intelligence Service no longer picks his calls.

**Mr. Tom Macharia:** I see but they are talking about the Director of National Intelligence.

**Hon. Mwengi Mutuse:** Our case is that---

**Mr. Tom Macharia:** They are discussing things the public do not know yet, correct? Yes or no, Mr. Mutuse?

**Hon. Mwengi Mutuse:** The context is---

**Mr. Tom Macharia:** No. It is yes or no, Mr. Mutuse?

**Hon. Mwengi Mutuse:** The Context is distinguishable?

**Mr. Tom Macharia:** Yes or no, Hon. Mutuse?

**Hon. Mwengi Mutuse:** The context is very different.

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**Mr. Tom Macharia:** Very good. You say that at his speech, the Deputy President revealed secrets. What specific secrets did he reveal?

**Hon. Mwengi Mutuse:** He said in the clip that was played that he has been told in confidence by officers of the National Police Service that the officers did not receive advance security intelligence on the planned protests.

**Mr. Tom Macharia:** This is subject to the Official Secrets Act? You can confirm this?

**Hon. Mwengi Mutuse:** In the oath of office, if issues are revealed to you in secrecy, you are not supposed to make them public.

**Mr. Tom Macharia:** When you made this allegation, who are these officers you are saying gave these secrets?

**Hon. Mwengi Mutuse:** The Deputy President from his own mouth in the clip that you played says, "I have received confidential information from officers of the National Police Service."

**Mr. Tom Macharia:** Let us play for you a Video No.6, Hon. Speaker.

*(A video clip was played)*

Play the second one.

*(A video clip was played)*

Hon. Mutuse, you can stop there. Do you recall in the two years the Deputy President has been in office?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** Do you recall in the two years the Deputy President has been in office?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Tom Macharia:** Where he called any public servant in the security sector *awache ujinga*?

**Hon. Mwengi Mutuse:** I do not recall but I also know---

**Mr. Tom Macharia:** I just asked a simple question.

**Hon. Mwengi Mutuse:** This was on a campaign trail.

**Mr. Tom Macharia:** So, you do not recall any?

**Hon. Mwengi Mutuse:** I do not recall.

**Mr. Tom Macharia:** Do you recall him ever speaking in that tone to any officer?

**Hon. Mwengi Mutuse:** I do not and there is no Motion on that.

**Mr. Tom Macharia:** Thank you, Mr. Speaker, Sir. I will hand over this to my colleague, Mr. Victor Swanya Ogeto.

**The Hon. Speaker** (Hon. Kingi): Counsel, you have nine minutes for this witness and the other witnesses that are going to be called.

**Mr. Swanya Ogeto:** Thank you, Mr. Speaker, Sir and hon, Senators, I will be very brief. I will refer the hon. Mutuse to his Motion No. 45 (i) Can you read it for us?

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**Hon. Mwengi Mutuse:** Additionally, H.E Rigathi Gachagua used his office of Deputy President to exert influence and connive with the unscrupulous Ministry of Lands officials to issue an allotment letter to Wamunyoro Investments Limited, a company that he owns, to acquire L.R.209/12077 and L.R.90923 situated at Embakasi in Nairobi, whose value is estimated at Kshs1.5 billion or thereabouts. After that, this company used the fraudulently acquired documents to support a court case at the expense of the legitimate owner of the property.

**Mr. Swanya Ogeto:** Very good. In your allegation, you have alleged that the Deputy President connived with unscrupulous officials at the Ministry. Have you placed any evidence to this House or anywhere in the bundles naming those officials?

**Hon. Mwengi Mutuse:** I did not place, but as far as I can remember, there is information that came through public participation.

**Mr. Swanya Ogeto:** Hon. Mutuse, please, because of time, I want you to answer yes or no, so that we can proceed. Have you placed any evidence?

**Hon. Mwengi Mutuse:** In my Motion, no, but in the documents containing the public participation, yes.

**Mr. Swanya Ogeto:** How many letters of allotments were given to Wamunyoro Investments?

**Hon. Mwengi Mutuse:** I do not know.

**Mr. Swanya Ogeto:** You do not know? Have you placed to this House any letter of allotment as evidence?

**Hon. Mwengi Mutuse:** I have not.

**Mr. Swanya Victor Ogeto:** I want to refer you to Volume 3, 107, of our documents. There is the National Land Commission (NLC) determination.

**Hon. Mwengi Mutuse:** I can see a letter from the National Land Commission.

**Mr. Swanya Ogeto:** So, do you identify with this determination.

**Hon. Mwengi Mutuse:** Yes, I do.

**Mr. Swanya Ogeto:** From who?

**Hon. Mwengi Mutuse:** This is from the National Land Commission, signed by the then Chair, Professor Mohamed Swazuri, PhD, OGW, Chairman, National Land Commission. When was it signed? It was signed on the 24<sup>th</sup> day. I presume these three mean March of 2016.

**Mr. Swanya Ogeto:** 2016?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Swanya Ogeto:** At that time, was the Deputy President in office?

**Hon. Mwengi Mutuse:** No, he was not in office.

**Mr. Swanya Ogeto:** He was not in office. Okay, so he would not have influenced the Ministry officials to give an allotment, correct?

**Hon. Mwengi Mutuse:** Not as Deputy President.

**Mr. Swanya Ogeto:** Not as Deputy President. Very well. I also want to refer you - Before I refer you to the judgement on that matter, I want you to read the dissemination of the Commission, which is on the last page, just the previous paragraph. Can you read it?

**Hon. Mwengi Mutuse:** The commission having listened to both parties and scrutinized the evidence adduced before it hereby, directs as follows –

The list held by Monyoro Investments Limited, LR No. 209-12077, LR No.909-23, is upheld subject to adoption by the plenary.

**Mr. Swanya Ogeto:** Is upheld.

**Hon. Mwengi Mutuse:** Subject to---

**Mr. Swanya Ogeto:** But it is upheld.

**Hon. Mwengi Mutuse:** Subject to – we read it as a whole. Subject to adoption by plenary.

**Mr. Swanya Ogeto:** Very well. But the determination of NLC has already determined ---

**Hon. Mwengi Mutuse:** It is upheld subject to adoption by plenary.

**Mr. Swanya Ogeto:** Very well. Let me refer you to the judgement of ELC case number E242 of 2022, which is page 116.

I want you to go to the judgement of the judge, that is 177. But I want you to look at 176. Paragraph 440, right? Can you read paragraph 440(i)?

**Hon. Mwengi Mutuse:** A declaration be and is hereby issued that the plaintiff is the lawful registered absolute owner of all that parcel of land known as LR No. 20912077 IR No. 90923.

**Mr. Swanya Ogeto:** Who is the plaintiff? Who is the plaintiff?

**Hon. Mwengi Mutuse:** Wamunyoro Investments.

**Mr. Swanya Ogeto:** Wamunyoro Investments. Okay. Therefore, the judge has determined who the rightful owner of that property is, right?

**Hon. Mwengi Mutuse:** Yes, the judge has determined.

**Mr. Swanya Ogeto:** Okay. Now, do you want the Senate to further arbitrate on the ownership of this property after that? Is that your position?

**Hon. Mwengi Mutuse:** Indeed. We claim that you have referred us---

**Mr. Swanya Ogeto:** Is that your position?

**Hon. Mwengi Mutuse:** Yes.

**Mr. Swanya Ogeto:** It is your position?

**Hon. Mwengi Mutuse:** It is our position.

**Mr. Swanya Ogeto:** Even after you have seen the determinations from both the court and the NLC?

**Hon. Mwengi Mutuse:** The NLC determination was not plenary adopted. Subsequently, we have made allegations that prove the letter of allotment came long after. It is the letter that was used to support and lead the court to make this decision.

**Mr. Swanya Ogeto:** Very well. That is all. Thank you so much.

**Hon. Mwengi Mutuse:** I thank you.

**The Speaker** (Hon. Kingi): Counsel for the National Assembly, you may have reexamined the witness. But just to remind you, you have 40 minutes to conclude your entire case.

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, we have no questions in re-examination for this witness, so we propose to call our next witness. That is Mr. Andrew Mulwa. Could the clock be frozen while we call him, please.

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**The Speaker** (Hon. Kingi): Yes. Counsel, before you call your next witness, the Hon. Senators may want to seek for clarification from the witness, so I will allow them to do that. When they are done, then you can usher in your second witness.

**Dr. Muthomi Thiankolu:** Much obliged, Mr. Speaker, sir.

**The Speaker** (Hon. Kingi): Now, Hon. Senators, you have two minutes to do that. I will allocate 20 minutes for that exercise.

Sen. Joe Nyutu? Not present. Proceed, Sen. Osotsi.

**Sen. Osotsi:** Thank you, Mr. Speaker, Sir. I have two clarifications. The first clarification to the counsel for the Deputy President is on the matter of the first charge on the issue of shareholding. Can the Counsel, based on Rule 10 of the Standing Orders, explain the specific relevance of the Kenya-Kwanza Coalition Agreement as a piece of evidence?

My second question is to the Counsel for the National Assembly on the Ground Number 8, where it is alleged that the Deputy President, violated Section 132 of the Penal Code. So maybe we can be told a lot more about whether there were any reports made to the relevant authorities as far as this charge is concerned.

**The Speaker** (Hon. Kingi): Sen. Nyutu?

**Sen. Joe Nyutu:** Thank you, Mr. Speaker, Sir. I rise to seek some clarifications from the Hon. Mutuse. First of all, what led him to, if he did, to think of auditing the wealth of the Deputy President? Was he an auditing institution? If he was auditing the Presidency, would he kindly tell us also about the wealth of the President?

Secondly, who did this particular Motion for Hon. Mutuse? I ask that because every time he is asked a question, he says, I think so, I believe so. He does not give convincing reasons, in my view.

He has listed several companies. Upon close examination, he has said repeatedly for each of them that he has no problem apart from saying that he thought, that there was an intention to use them for money laundering and some other corrupt activities. Is it a crime - in his understanding - for the Deputy President or any other Kenyan to own companies?

When you look at the affidavit made by one Mr. Jomo about acquisition of Olive Gardens Hotel, with a promise, it is alleged that the Deputy President would buy the same later---

**The Speaker** (Hon. Kingi): Proceed, Sen. (Prof.) Tom Ojienda.

Hon. Senators, condense your thoughts. You only have two minutes within which to seek your clarifications. Both teams kindly note down the questions, so that once the Senators are done raising them, we will come to you.

**Sen. (Prof.) Tom Ojienda Odhiambo, SC:** Thank you, Mr. Speaker, Sir. Hon. Mutuse, you have been taken to great lengths on the ownership or shareholding of the 22 companies that you have associated the Deputy President with. I would like you to clarify why you included the 22 companies in your impeachment. You set out allegations to several companies. You referred to Olive Gardens Hotel and Vipingo Beach Resort in Kilifi County. You set out the CR-12 of both.

Clarify the significance of the inclusion of these two companies. On the ownership of Queens Gate Serviced Apartments; you also seem to raise a number of

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issues. I want you to also clarify the ownership of these apartments and why you attribute--- You were asked several questions by the counsel on these apartments. I want you to make a clarification.

Hon. Mutuse, let us go to the other question. In Charge one, you have referred to the obligation---

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

**Sen. Mungatana, MGH:** Asante, Bw. Spika. Mhe. Mutuse, Mbunge wa Kibwezi mashariki, tufafanulie swala hili. Wakati ambapo Makamu wa Rais alikuwa anazunguka akisema anapigania haki za ‘Murima’ wewe kama Mbunge wa Kibwezi Mashariki unayetoka Gatuzi la Makueni, je ulihisi kama unabaguliwa katika nchi hii ya Kenya? Tueleze vizuri ile tuelewe.

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

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. I have two clarifications to seek from Hon. Mutuse. My leader Governor James Orengo opened this session with a verse from the Bible. I will also read one. Exodus 23:1 says-

“You shall not spread a false report. You shall not join hands with a wicked man to be a malicious witness”

Hon. Mutuse, is this Impeachment Motion really and truly your Motion? I ask because on all accounts the witness is unable to prove anything. Is this your Motion or were you called to just sign a Motion and come and defend it here?

Secondly, in the oath of office for the Deputy President, it is required of him to diligently serve the people of the Republic of Kenya in the office of the Deputy President of the Republic of Kenya. The people that reside in the Mt. Kenya region are Kenyans. What is wrong with the Deputy President, a state officer, in defending people from a certain region in this country, then coming to defend other people in Nairobi and other regions? What is wrong and impeachable about that defense?

I thank you.

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

**Sen. Veronica Maina:** I would like Hon. Mutuse to clarify a few issues. One, are there any charges for money laundering that have been preferred against the Deputy President?

Secondly, I would like him to confirm whether the case of the Asset Recovery Agency that was before Justice Esther Maina, was fully resolved using the Consent Order.

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

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I would like to seek two clarifications.

One of them is from the Counsel of the Deputy President. This is in regards to the allegation on ground four, in terms of the consent that was reached upon for the Kshs200 million. I heard that there was a consent after the Deputy President filed an appeal of the case, whose judgment I believe, still stands. Do we have that consent? What circumstances led to that consent being agreed upon and the Kshs200 million returned to the Deputy President, yet the High Court had already determined that money was proceeds of corruption? Was it threats?

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Secondly, I would like to seek some clarification on the concept of shareholding. Is a coalition agreement a company? Is Kenya Government a company? I was still not clear about those two issues. We have been invited to interpret the coalition agreement of Kenya Kwanza, yet every time, based on the evidence presented, all I could hear is the Deputy President talking about people. So, are people now part of the coalition agreement? Is the coalition agreement a company, or is it a coalition agreement registered with the Registrar of Political Parties?

**The Speaker** (Hon. Kingi): Sen. Methu, the floor is yours.

**Sen. Methu:** Thank you, Hon. Speaker, Sir.

I would like to get a clarification from Hon. Mutuse on the accusation that you say-

“His Excellency Rigathi Gachagua acquired a dairy farm in Nyandarua County.”

Is there any evidence in record that he has a dairy farm in Nyandarua County, either the title number of the land or even a photograph? I have you putting photographs of hotels. Do you have either a photograph of cows on record?

Secondly, I would also like to know from the Hon. Mwengi Mutuse, on this matter that you say that people of Kenya feel that they have been left out. Is there is any evidence on record of people who have complained to the National Coalition and Integration Commission (NCIC), complaining against the conduct of the Deputy President in, as far as the issues that you have raised are concerned?

Finally, there is one property of the estate of Nderitu Gachagua that is referred to as Kuruwitu. You have adduced the list of the directors in your submissions. You said that the only person who is an executor and is a beneficiary would be Deputy President Rugathi Gachagua.

In that Will, did you see that part of the people who are beneficiaries are the executors? All the three executors are also beneficiaries. In regards to what you have adduced in the Kuruwitu property, it is actually one of the executors, not the Deputy President who actually bought that particular property.

**The Speaker** (Hon. Kingi): Sen. Crystal Asige, please proceed.

**Sen. Crystal Asige:** Thank you so much, Mr. Speaker, Sir. I am very glad that the Bible has been cited because I have a couple of verses of my own that I would like to also start my contribution with. I take it to Proverbs 17, which I read yesterday. Verse 14 and 15 of that Book says that-

‘Starting a quarrel is like breaching a dam;

so drop the matter before a dispute breaks out.

Acquitting the guilty and condemning the innocent-  
the Lord detests them both.’

Instead of the Lord, I would like to insert the Senate, so that it reads, ‘the Senate detests them both.’

We have an uphill task. My question goes to the witness. In his Motion, he has used the Oxford Advanced Dictionary to define gross misconduct. I was just curious to find out why the Oxford Dictionary and not maybe a relevant Kenyan law, which defines the same word, if he has one, or perhaps Black's Law Dictionary, which I know all legal counsels rely upon. Thank you.

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**The Speaker** (Hon. Kingi): Proceed, Sen. Gataya Mo Fire.

**Sen. Gataya Mo Fire:** Mr. Speaker, Sir, I seek clarification from the Counsel for the Deputy President. I have seen a parade of photos and utterances of the President. I did not get the relationship between what is before us and the President on this matter. Can he explain the relationship between what he has paraded on the President and what is before us, as a House?

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

**Sen. Thang'wa:** Thank you, Mr. Speaker, Sir. My question is directed to *Mheshimiwa* Mutuse. Welcome to the Senate, the 'Upper' House. You said the Deputy President is tribal because he spoke Kikuyu in Nairobi. Are you aware of Article Seven of the Constitution that says the state should promote local languages?

Are you also aware of Article 27 that says no one should be discriminated on the language they speak? Are you also aware of Article 44 of the Constitution that says that every person has the right to use the language of their choice? Would you have made the same complaint if he spoke in sign language?

The Deputy President has been talking about shares in Government, *serikali*. We have been shown that the shareholding and the shares were signed by Government officials who are in Government. He never talked about the nation, which is *taifa*, on shareholding of the country. I would want you to tell me whether you know the difference between the two.

Lastly, you have given us many documents, including bank statements and even payment vouchers. I know you as an hon. Member of Parliament (MP) and not necessarily a Government agency. How did you access these documents? You know the Supreme Court of Kenya has indicated that it is wrong to steal evidence or to unlawfully obtain evidence. We would want you to give us that indication.

You also say that the Deputy President was in the company of Senators in Nairobi County. I was one of them. Kindly refer to Article 96 of the Constitution---

**The Speaker** (Hon. Kingi): Proceed, Sen. M. Kajwang'.

**Sen. M. Kajwang':** Mr. Speaker, Sir, my clarification is on paragraph 47 on the charge sheet. The National Assembly alleges that the Deputy President has several proxy companies and one of them is Agrobriq Investment Limited.

In paragraph 48, the National Assembly alleges that Bhavika Nathalal Hirani is a proxy of His Excellency Rigathi Gachagua. Could the National Assembly provide some evidence because ground number seven is framed as serious reasons to believe that the Deputy President has committed a crime? Could there be some evidence to convince the House that there could be reasons to believe so?

Finally, on paragraph 74, the National Assembly alleges that the Deputy President has openly sabotaged the State's efforts in agriculture. I am a Member of the Committee on Agriculture, Livestock and Fisheries. I would be interested to get the evidence that there has been connivance, cartelism and an association between the Deputy President with the cartels that have frustrated the development of the tea sector, because the tea sector goes beyond the mountain. It goes all the way to Kisii and areas that neighbour Homa Bay County.

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Finally, which is this cooperative society whose name has been withheld? Could that information be provided to the Senate?

I thank you.

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

**Sen. Orwoba:** Thank you, Mr. Speaker, Sir. My clarification is to His Excellency the Deputy President on the issue of the property of the deceased. Does the deceased have any children? Are they of sound mind? It appears as though they are not involved in any of the management of the estate of the deceased. That is the big question and possibly a clarity that we would like to have from you.

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

**Sen. Omogeni:** Thank you, Mr. Speaker, Sir. I want to seek clarification on what is on page 15, paragraph 41. There is the allegation being made that in the past two years, H.E the Deputy President has amassed a humongous property portfolio, estimated at Kshs5.2 billion.

I was trying to follow your answers during cross-examination and I do not know whether you were trying to drop this allegation or if you want to still maintain it. I want you to give a proper clarification that links the person against whom you have brought the Motion that is the Deputy President, with that allegation of Kshs5.2 billion.

I did not quite see you make a clear clarification in support of that allegation. You could kindly clarify it for me. Thank you.

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

**Sen. (Dr.) Murango:** Asante sana, Bw. Spika. Ningetaka kumuuliza Mhe. Mutuse swali kwa sababu kampuni nyingi ambazo ameorodhesha pale kama ushahidi ni kwamba ni za watoto wake Naibu wa Rais, Rigathi Gachagua.

Kwa sababu umesema umefanya kazi kama wakili, lazima ulikuwa unafanya kazi kupitia kampuni. Je, ilikuwa ni kwa ajili ya ulaghai ukiwa na baba yako na kwamba wale watoto ambao umewaorodhesha pale, wote walitengeneza kampuni ili kulaghai pesa kupitia zile kampuni?

Swali langu la pili ni kwamba, katika stakabadhi ambazo zimewekwa pale, zinaonyesha kwamba waliokuwa wanafaa kupata mgao wa *shares* katika kampuni, kuna wale walikuwa wanafaa kupata asilimia 30 na ile miradi ilikuwa inafaa kwenda *western* Kenya, haikuwa imeorodheshwa kuja Nairobi ama pahali pengine popote. Unasikia kwamba ulikuwa umegatuliwa kwa sababu umetoka Makueni na ile miradi haikuwa inakuja Makueni?

Asante sana, Bw. Spika.

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

**Sen. Sifuna:** Mr. Speaker, Sir, unfortunately I hear that the Bible verses have been exhausted. However, I seek a clarification from my friend, Counsel Macharia, who has helped me to understand complex legal issues before.

Counsel, because you have presented a coalition agreement to explain this issue of shareholding, where does that coalition agreement leave members of political parties that are not signatories to the Kenya Kwanzaa agreements? That is the first question I would want clarification to.

Number two, what would be the place of a coalition agreement that is manifestly unconstitutional or illegal? The page that you referred us to includes securing positions that are supposed to be competitively filled, for instance, the position of Principal Secretaries (PS). Is it your position that in fact these advertisements that we see in the newspapers are just a charade to cover up things that have already been concluded in coalition agreements such as the Kenya-Kwanza agreement that you have exhibited here?

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

**Sen. Munyi Mundigi:** Asante, Bw. Spika. Swali langu ni kwa Mhe. Mwengi Mutuse. Kila mtu ako na uhuru wa kuenda kortini, kuita wazee, ama kutumana. Je kuna kitu ambacho Jaji Maina alimfanyia Naibu wa Rais ndipo tuweze kuelewa mbona Naibu wa Rais aliongea kuhusu ubaya wa Jaji Maina?

**The Speaker** (Hon. Kingi): The Senator for Kilifi County.

**Sen. Faki:** Asante, Bw. Spika. Nina swali ambalo ningependa kufafanuliwa na wakili wa Naibu Rais. Katika kosa la kwanza ambalo ni *gross violation*, liko katika kipengele cha 15 katika the particulars of the allegation. Kinasema ya kwamba-

“Mimi mnanijua msimamo wangu. Ya kwamba watoto wakiwa wengi, kuna wale kwanza wa kuangaliwa. Si mnajua? Chakula kiko jikoni, karibu kuiva. Watoto ni wengi, chakula ni kidogo. Tuko na watoto wa nyumbani na watoto wa jirani. Iko namna hiyo”.

Ningependa afanue Kiswahili hiki kinamaanisha nini kutoka kwa client wake.

**The Speaker** (Hon. Kingi): Hon. Senator, now allow the parties to respond to those clarifications starting with the team from the National Assembly and then we move to the team from the Deputy President.

Proceed.

**Hon. Mwengi Mutuse:** Thank you, Mr. Speaker, Sir. If I may, the Hon. Sen. Osotsi had no question directed to me.

Sen. Joe Nyutu asked what led me to audit the wealth of the Deputy President. I am just doing my work as a Member of Parliament. Under Articles 94 and 95 of the Constitution, part of my work is to oversight state officers. The Deputy President is one such State officer. I set myself to draft and present an Impeachment Motion and I needed to support that Impeachment Motion with information, nothing else.

Why did I not also audit the President? I was not intending to bring an Impeachment Motion against the President. If in the future another Member wants to bring an impeachment Motion against the President, I believe they will be at liberty to also do their work in the manner they deem fit.

Who did this particular Motion? Yours truly speaking before you, Hon. Mwengi Mutuse, the Member of Parliament for Kibwezi West Constituency. “You have listed several companies.” Yes, indeed, we have listed several companies. Just to clarify, there are those companies that I was led by advocates for His Excellency Rigathi Gachagua. I said we have no problem with them. However, there are companies that we have issues with, and we have stated the companies that we have issues with.

You would know because you have handled Impeachment Motions in the past, we do not have an issue with one particular company does not mean that those that have been proven also fall with it.

Also importantly, we listed these companies to demonstrate character in the sense that if you have one construction company, why do you have three others that are dormant? Why do you not use just that one construction company to do your construction work? It was to demonstrate an intricate web of activity to hide and conceal. That is why we listed those companies.

We did not complete the affidavit of Mr. Njomo because it was time bad. I do not know what to respond because you just began mentioning about the affidavit of Mr. Njomo.

Senator for Kisumu County on shareholding of the 22 companies; yes, we have appended the CR-12s for the 22 companies to show that His Excellency the Deputy President has been owning Special Purpose Vehicles (SPVs) in the name of companies either by himself or his children or other proxies. It is part of a character of a web, which is also consistent with the Esther Maina decision. You can see those companies listed in the Esther Maina decision are not consistent with the normal way of doing business.

In the normal way of doing business, you would imagine if, for example, Safaricom that is a telecommunication company had under it another 20 other telecommunication companies. For what purpose? Ordinarily, a business person would concentrate on one company until it succeeds. Then, if you have a different investment that is completely different from what you are doing, is when you open a different company. However, if you look at the objects of all these companies, they are all made to do the same thing.

The question is why? Remember, the offence here is reasons to believe that the Deputy President is committing crimes. We believe this is a good basis to show that these companies are not formed for a legitimate purpose.

Senator, in terms of Vipingo Beach Resort Limited and Olive Gardens Hotels, we have been able to demonstrate that two of His Excellency Rigathi Gachagua's children are part of the directors of Vipingo Beach Resort Limited. In terms of Olive Gardens Hotel, we have been able to demonstrate through the affidavit of Mr. Njomo that, indeed, he was acting for the Deputy President in the purchase.

As much as we refer to a future promise of refunds, all of us would know that offences of corruption and money laundering are not straightforward offences. As much as we want to rely on technicality, it is this technicality that has made it impossible to fight corruption in this country. If we look at it and all of us know how these things have been done, you would definitely see that Mr. Njomo is saying in black and white that he was a conduit for that purchase.

We go to the clarification sought by the hon. Sen. Mungatana, the Senator for Tana River County kuhusu haki za mlima. Ni kama nilijihisi kubaguliwa. Ni kweli kwamba watu tunaowawakilisha mimi na wewe, na Wakenya wengi wanahisi kwamba Naibu Raisi anayehitajika kuongea masuala ya Kenya nzima, atazingatia masuala ya sehemu fulani, basi wale Wakenya wengine wote, nikiwa ndani, tunajihisi kubaguliwa. Sio tu wale waliotoka sehemu tofauti na mlima, bali hata wale wa mlima, you are setting them against the rest of Kenyans.

Sen. Wambua on Exodus 23. Thank you. I will keep it to myself. However, I am not participating in any conspiracy against anyone. I am just doing my civic duty as a

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citizen of the Republic of Kenya and exercising my mandate as a Member of the National Assembly, which is a constitutional mandate. I believe Senators here have done in the past, and even now and in the future, will also bring issues in line with their mandate and their responsibilities as citizens of the Republic of Kenya.

“Is this Motion, your own Motion?” Yes, it is my Motion and in saying so you say, I have proved nothing and that is not factual. Just to say the least, if you go through the Motion’s 11 grounds and you look at each ground, most of the grounds have sub-grounds. You will see that we have given clear evidence in many of them.

There have been incidences where we have been able to admit like, for example, on the tea issue and the Mathira SACCO that, by the time of presenting the Motion, I had not gathered enough evidence. However, the rules do not permit that I present new evidence, I have conceded. I have conceded, but only on those two. That does not mean that I have not proved anything. I have actually proved most of the grounds.

Mr. Speaker, Sir, I would urge my Senator for Kitui to also be fair to my case and find that even if only one ground is proved, he should vote for the approval. This is because one of the videos that are presented before this House is a speech by the Deputy President at AIC Church, Kitui which I believe the Senator represents.

**The Speaker** (Hon. Kingi): Two more minutes.

**Hon. Mwangi Mutuse:** In that video, you will see the Deputy President telling the people of Kitui kwamba nyinyi Wakamba, hamna shares. Hata napigana na huyu Rais sana kwa nini anawapea viti katika Serikali. Those are the people that Senator Enoch represents whom the Deputy President told that they do not have a right to be in the Cabinet. It was done right in Kitui town.

In terms of the oath of office - diligently serve the people of Kenya. Yes, that is where the problem is. He swore to serve the people of Kenya, not the people of a region. That is where the problem is.

On Sen. Veronica’s question on charges of money laundering, I am not aware of any ongoing proceedings in respect of the DP in terms of money laundering, but I am aware Justice Maina’s decision has not been annulled on merit and, therefore, still remains good law.

Sen. Ledama Olekina’s question was to DP’s lawyers. For Sen. Methu, my good friend from Nyandarua County, I concede I have not presented evidence on Nyandarua County Diary because of the limited timelines in terms of working on this.

The question was whether there has been any complaint to the NCIC about the Deputy President's remarks. I would not know because I do not work for NCIC. Just to be fair.

On Kuruwitu and CR12, Kuruwitu was bought at Kshs250 million, money that has not been disclosed its source. The owner of Kuruwitu is the Vipingo Beach Resort and we have also demonstrated who the owners of Vipingo Beach Resort are. You know with money laundering is that you hide; it is a web. That is why it has become very difficult to even investigate money laundering. There is also no dispute that the two sons of H.E Rigathi Gachagua are directors of that company. That has not been disputed.

Sen. Asige’s question on why we are using the Oxford dictionary and not the Black’s law dictionary, law has now also delved to the place of the common citizens to

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also understand what it is and not the jargon of the past. So, Oxford dictionary also offers plain English definitions. We thought it would be good to use plain English definitions because not all of us are lawyers. It is not disputed that the definition we have given is wrong in terms of what constitutes gross misconduct.

On Sen. Karungo's question, my very good friend, speaking in the Kikuyu tribal language and whether that is not permitted in Article seven, 27 and 44. Clearly, the Deputy President is a State officer and has taken an oath to promote national unity. Nairobi is our capital city. All communities are here. It cannot be said that Nairobi belongs to the Akamba, much as we border here, the Luhya or the Kikuyu. When you speak in Nairobi, you must be sensitive; it is just like speaking in mother tongue in the Senate.

On shares and company, the Deputy President has talked about Kenya as a company for shareholders. He did not say that Kenya is led by the Kenya Kwanza Coalition, a political coalition of shareholders. So, let us not twist facts. This is an afterthought.

There has never been anywhere where the Deputy President said, "*Naongea kuhusu* Kenya Kwanzaa coalition." He has consistently said that Kenya is a company and that it will benefit its shareholders. So, the coalition agreements that have been adduced before you are an afterthought, just a diversion, in my view.

How did I access these documents, including accounts? I called the services of whistleblowers. When people knew that I wanted to do this, I got their services. I got a lot of information from whistleblowers, whom I do not intend to disclose their identities because they are protected under the Witness Protection Act.

Sen. M. Kajwang, my Counsel will be talking about the issue of Aprobique and how the particular director is connected as well as the nexus between that particular director and His Excellency Gachagua.

In terms of agriculture, I did admit that I did not present evidence of the sabotaging of the tea matches. I have information, but I leave it at that: We have not presented adequate evidence of sabotaging. However, Kenyans would know that that role is domiciled in his office and the price of tea has not become any better. In fact, it is still oscillating up and down.

On the cooperative society, I also conceded we have not presented evidence.

Sen. Orwoba, the question was to the Deputy President's legal team. Sen. Omogeni, page 15, paragraph 41, whether I can tabulate and whether we will be able to answer this question during our closing remarks.

**The Speaker** (Hon. Kingi): Hon. Mutuse, conclude. Your two minutes are over.

**Hon. Mwangi Mutuse:** At our concluding remarks, we will answer this question. However, just for your information, the land acquired through Wamunyoro Investments is Kshs1.5 billion. The Aberdares, when we added them, came to about Kshs1 billion. When you add Kuruito, it comes to Kshs250 million, and others that will be showing. Also, a sum of Kshs412 million for Olive Gardens Hotel will come to the figure that we are talking all there about.

**The Speaker** (Hon. Kingi): Now allow your legal team to respond to the question directed to them. If at all there are any questions directed to them.

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**Dr. Muthomi Thiankolu:** Mr. Speaker, I believe the question was about whether there has been a complaint with regard to Ground No.8. Any report to the relevant authorities. I believe there was a question about whether the Deputy President has been subjected to any prosecution for money laundering or related offences.

We are not aware of any complaint under Section 132 of the Penal Code to the police or any other relevant authority. Equally, we are not aware of any prosecution that the Deputy President has been subjected to. Nonetheless, we will be showing you during our opening and closing. It is immaterial whether there has been such a complaint or prosecution because when we get there.

We will be showing you the Supreme Court has said times without number. The Court of Appeal has said times without a number. That impeachment is about political hygiene. It is about political responsibility. It is not about whether there is criminal liability or civil liability. We will be hoping we can persuade with lots of humility that nothing turns on whether, as a matter of fact, complaints have been launched or prosecutions have ensued. Those are not my words. They are the words of our Supreme Court, not once or twice, but several times.

Thank you.

**The Speaker** (Hon. Kingi): The legal team of the Deputy President.

**Mr. Tom Macharia:** Thank you, Mr. Speaker, Sir. I will speak to the questions on the shareholder questions. Hon. Senators, please permit me to answer in omnibus, but I will attempt to do my level best on this.

The first question was why is the President relevant in these proceedings as regards shareholders? He is relevant in two capacities, three actually. Firstly, under the Constitution, the Deputy President assists the President. So, when the President tells the people of Murang'a and elsewhere that they are the biggest shareholders of the Government and signs a contract that forms the Government, the Deputy President is bound to assist the President in moving that shareholders issue.

Secondly, Article 73(2)(c)(i) talks about honesty being a foundation principle for leadership. It is well known and I think I can say it here. My client, the Deputy President, is known as the truthful man. It is pursuant to this that he is truthful.

Thirdly, covenants in a contract must be performed. If indeed any contractor worthy of their name and signature is to be believed in the future. The President and partly leaders all signed the contract with the intention that it should be complied with.

You will note that in the sections we read out for you here today, the Deputy President is insisting that the promises made to the people of Western Kenya should be complied with to the letter. The promises made to the people, of course, in an agreement, should be complied to the letter. Equally, all other regions that had agreements signed or promises made in the coalition agreements ought to have those promises implemented. That is the basis upon which he said it is important that we keep our words.

Fourthly, coalition agreements were, in fact, executed. The President and the Deputy President came from UDA, as the agreement said. The Speaker of the National Assembly came from FORD Kenya as promised in the agreement. The Speaker of this honourable House, and a learned friend and colleague, was, in fact, elected as the Speaker of this House. All the other promises that had been made were being implemented.

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More importantly, as a matter of law, agreements that underpin coalition building are actually a legal consequence. They draw their force from the law. I think Hon. Mutuse here mentioned it broadly, but I cannot tell you exactly where it is.

The Third Schedule of the Political Parties Act requires every coalition to draw a coalition agreement. That is number one. Number two, it prescribes what is to go in that agreement. Among the things that the Third Schedule of the Political Parties Act prescribes that must be in an agreement is the sharing of power and responsibilities. So, it is a matter of the law.

When hon. Members here retire, you will find that Article 108 of the Constitution delineates power to both the National Assembly and the Senate on the basis of coalition agreements and who has the majority, or the largest shareholder if you wish, in each of the two Houses.

Fifthly, I think we have said this before. The Deputy President had no power to appoint or implement any of those things. All he could do was to speak to the agreements that had been signed by the party leaders. He was expressing what was in the agreements saying that they ought to keep their word and do what they promised in these documents, which they filed with the Registrar of Political Parties.

Sixthly, in the statements that were read to you in the videos, there are two things to note. Number one, the Deputy President is talking about the Government. He is very clear. He does not say the nation, national cake or resources.

Just to read for you one example, at page six of 85, he says that a government is like a company. He is not talking about resources, but government. That is all it was.

It is important for Members to recall that these provisions of the law I am sharing with you here, followed the infamous National Alliance Rainbow Coalition (NARC) Memorandum of Understanding (MOU) which became very litigious. I had the privilege of participating in that case. It was set aside because it had no anchoring in law. That was corrected and it is what these agreements are about.

Seventh, I will combine this although I will come back to that later. The Deputy President in the videos says – if you listen keenly – that the President needs to work with people who believe in his policy, manifesto and who will implement what he had in mind when he campaigned on a specific platform. That is all he is saying. It is very simple. If you do not believe in my policies or manifesto, how will you be the one I appoint to implement that?

It was not about tribes, but about manifesto, policy and specific issues set out in agreements. Political rhetoric might use certain words. Politicians use all manner of words. The party I represented in the last election was called “mganga” many times in the election trail, but we all know it is not. It is political talk.

Eighth, these agreements were not limited to Kenya Kwanza because they are part of the law. The Jubilee Government that preceded had similar agreements deposited to the Registrar of Political Parties. Azimio la Umoja, One Kenya Alliance (OKA) had a similar agreement. It is only that they never came to power. Even internationally, these agreements are known as power sharing agreements. There is no magic to it. That is what elections are about; the division of power.

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These agreements, in fact, do the opposite of what Hon. Mutuse is saying they did. He stated they cause disunity. In fact, they are a source of unity when the diverse sectors of the Kenyan society can get together. For example; Kenya Kwanza had 16 parties while Azimio la Umoja, had 25.

The different characteristics of the Kenyan society are captured in all those parties. That is what coalition building is all about. It not only works at the national level, but even at the devolved level we have negotiated democracy agreements like these ones, which take into account clans and that sort of thing.

My good learned friend Sen. Sifuna asked a question about what happens to the others who are not mentioned in these agreements. We have a practical example. Members of his party, the Orange Democratic Movement (ODM) are now in Government. The contracts left room for accommodation---

*(Loud consultations)*

**The Speaker** (Hon. Kingi): Order. You cannot raise a point of order on the Counsel. You cannot!

Counsel, you have three minutes to conclude.

**Mr. Tom Macharia:** Thank you. I just want to state the point, that the agreements were dynamic and politics is too. These things have a way of settling themselves and they do.

The next point. I was asked a question about the Constitution requiring the Permanent Secretaries (PS) and other positions to be advertised. I cannot speak to how Kenya Kwanza intended to implement that, but as I have demonstrated, it was implemented. They found a way to do it. I do not know how they did it, but we are just speaking to what they did.

Hon. Sen. Madzayo asked a question about *chakula kikiiva*. You will note that many of the videos that were played here today were made in Nandi or Kericho counties. There was a very specific reason for that and the Deputy President himself will be addressing that question today. The only other thing I can tell you about those videos is that whenever the Deputy President raises that question either in Nandi or Kericho counties, he is cheered wildly. It is a very popular issue in those two counties.

Finally, on a question that was asked about how hon. Mutuse and others would feel. Even regions that did not overwhelmingly vote for Kenya Kwanza, including Machakos, Makueni and Kitui counties actually got two Cabinet Secretaries in the Cabinet in the fullness of time. So, no one was discriminated against. This was not about tribes.

I think the confusion has been brought about by hon. Mutuse's Motion. This was about sharing of government and those who believed in the policies of this government. I hope I have attempted to address all the questions that you have raised.

**The Speaker** (Hon. Kingi): Conclude by responding to Sen. Olekina's consent issue.

**Mr. Tom Macharia:** If you could remind me of the question, I am sorry.

**The Speaker** (Hon. Kingi): The question about the consent.

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**Mr. Tom Macharia:** The consent has been addressed by my learned friend, Mr. Elisha Ongoya.

**The Speaker** (Hon. Kingi): Counsel, please proceed.

**Mr. Elisha Ongoya:** Thank you, Mr. Speaker, Sir, and distinguished Senators.

The distinguished Senator for Narok County has asked succinct questions. If you look at the Petition, it claimed two things. That the Deputy President has no respect for the Judiciary, which is why he made the allegations that he made against Justice Esther Maina.

Secondly, that the Deputy President lied when he said he was going to file a complaint before the Judicial Service Commission (JSC). So, you respond to the Motion as presented. To respond to that, there was no necessity to file this consent because the consent does not address itself to the claim by the Deputy President (DP), that he is going to file a complaint against the Judge. The witness came here and then began taking this court through the judgment of Maina, altering the claim as presented in the Motion, which is why we had now to take him through the issue of the consent.

So, we have not presented the consent before this Senate because the Motion as framed did not require the consent to respond to it. However, having said that, my learned colleague, the Mover of the Motion, makes a false statement that a consent does not determine the merits of the matter. In fact, a consent determines the merits of the matter.

When you enter a consent and say that the judgment that was rendered by the trial court, you are entering a consent to state a different state of affairs. You are actually vacating that judgment. The trial court had taken the money in question from the DP to the Asset Recovery Agency. The consent took the money from the Asset Recovery Agency back to the DP. That is the substance of the matter. So, the argument by the Mover of the Motion before you, that a consent does not settle the matter on the merits is law upside down. Law upright is that a consent settles the merits of the matter that it addresses.

Thank you.

**The Speaker** (Hon. Kingi): Hon. Senators, can I get an indication from the Counsel for the National Assembly? How many witnesses do you intend to call beyond Hon. Mutuse?

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, we have three more witnesses. While on it, at that point, we stopped examining the Hon. Mutuse, you said we had 45 minutes. However, when I went there, you said 40, so we were a bit alarmed.

**The Speaker** (Hon. Kingi): No, you have 45 minutes.

**Dr. Muthomi Thiankolu:** I am much obliged, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): The team for the Deputy President, you have exhausted your time, but there was 10 minutes that has been occasioned by the technicality on the videos. So, you need to utilize that with the remaining three witnesses.

Hon. Senators, hon. Mutuse will not leave. You will stay on as we hear the three witnesses. If there are other clarifications that Hon. Senators wish to direct to you, please be available.

Kindly usher in the second witness.

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**Hon. Paul Muite, SC:** Mheshimiwa Spika, we, as counsels for the Deputy President, would wish to borrow from the time you allocated us tomorrow, so that we can effectively cross-examine the witnesses that the National Assembly will call now. We do not want to go outside our time, but we need---

**The Speaker (Hon. Kingi):** How much time do you want to borrow from your tomorrow's time, keeping in mind that we are rising by midnight?

**Hon. Paul Muite, SC:** One hour will be adequate from the three hours that we have tomorrow.

**The Speaker (Hon. Kingi):** One hour will overshoot the runway. One hour is a bit too much. We will go beyond midnight.

**Hon. Paul Muite, SC:** Thirty minutes?

**The Speaker (Hon. Kingi):** Yes. Very well.  
Quickly swear in the witness.

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

*(Mr. Andrew Mulwa was sworn in)*

**Dr. Muthomi Thiankolu:** Sir, would you tell the Senate who you are and your professional background?

**Mr. Andrew Mulwa:** My name is Mr. Andrew Mulwa, a medical doctor by profession. I work in the Ministry of Health. I previously worked as the Acting Chief Executive Officer (CEO) of Kenya Medical Supplies Agency (KEMSA).

**Dr. Muthomi Thiankolu:** Please confirm whether you are the one that swore the affidavit on page 67 of volume one?

**Mr. Andrew Mulwa:** Yes, I am.

**Dr. Muthomi Thiankolu:** In respect of which allegation in the Motion did you swear this affidavit?

**Mr. Andrew Mulwa:** I have sworn an affidavit on issues raised on paragraph 45J, 78C, in Grounds 7 and 11 of the Motion for the removal from office by Impeachment of His Excellency, the Deputy President, Rigathi Gachagua.

**Dr. Muthomi Thiankolu:** What does paragraph 78 of the Motion say? 78A, that will be page 37 of 85.

**Mr. Andrew Mulwa:** Paragraph 78A to illustrate His Excellency Rigathi Gachagua bullied KEMSA agency officials into awarding tender for the supply of mosquito nets to Crystal Limited, his proxy company. Crystal Limited had submitted a fake document with the sole intention to fraudulently acquire public property.

**Dr. Muthomi Thiankolu:** Dr. Mulwa, did Crystal submit a tender in this procurement for the mosquito nets?

**Mr. Andrew Mulwa:** Crystal did not submit a tender for this procurement, but was the local agent for a company called Shapika Impacts Limited, which submitted bids and part of the local documents like the Pest Control Products Board certificates, were actually submitted by Crystal in the tender document.

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**Dr. Muthomi Thiankolu:** So, Crystal was actually the one submitting the bids.

**Mr. Andrew Mulwa:** There was reference to Crystal in some of the local documents that the bidder had to submit.

**Dr. Muthomi Thiankolu:** I want to refer you to Volume 8A of the Assembly's document, page 18 of 19. Are you there, sir?

**Mr. Andrew Mulwa:** Yes, I am.

**Dr. Muthomi Thiankolu:** What is the title of that letter?

**Mr. Andrew Mulwa:** It is appointment as local agent for Duranet Long Lasting Insecticidal Net (LLIN) in Kenya.

**Dr. Muthomi Thiankolu:** Is this Duranet the mosquito net that was being procured or is it a different one?

**Mr. Andrew Mulwa:** Duranet was a company and changed to Shobikaa, and I think in this letter it is Shobikaa writing to confirm that they have appointed Crystal Ltd as their sole local agent in the country.

**Dr. Muthomi Thiankolu:** What does it say in the second paragraph?

**Mr. Andrew Mulwa:** We are pleased to appoint Crystal Kenya Ltd at State House Avenue, Liaison House, 3<sup>rd</sup> Floor of P.O. Box given in Nairobi, Kenya as our exclusive agent in Kenya for promotion, marketing and sales of Duranet Long-Lasting Insecticide Nets (LLINS) manufactured by Shobikaa Impex.

**Dr. Muthomi Thiankolu:** Page 17 of that document, what does the second paragraph say?

**Mr. Andrew Mulwa:** There was the change of ownership for Duranet LLIN.

**Dr. Muthomi Thiankolu:** Read it loud.

**Mr. Andrew Mulwa:** There is change of ownership for Duranet LLIN, which is Alphacypermethrin 0.55 per cent, WW registration number, PCB CR 0189.

**Dr. Muthomi Thiankolu:** I am referring to Volume 8A, page 17, what does the second paragraph of that letter say? Can you read it in full?

**Mr. Andrew Mulwa:** We have taken note of the change in ownership of Duranet LLIN from Clarke Mosquito Control of United States of America (USA) to Shobikaa Impex Pvt Ltd, India and appointment of new agent Crystal Kenya Ltd.

**Dr. Muthomi Thiankolu:** The documents we have, so far, read in Volume 8A, Sir, do they show a link between Shobikaa and Crystal Ltd?

**Mr. Andrew Mulwa:** Yes.

**Dr. Muthomi Thiankolu:** Is Crystal Ltd to the best of your knowledge, connected to the Deputy President?

**Mr. Andrew Mulwa:** From my affidavit, I did not know initially that there was a connection, but through a phone call from His Excellency the Deputy President and conversations between myself and his son.

**Dr. Muthomi Thiankolu:** We will come to those phone calls and conversations, but for now---

**Mr. Andrew Mulwa:** I was able to establish that there was a connection.

**Dr. Muthomi Thiankolu:** There is a connection. Let us go to page 10 of 19 of Volume 8A. Who has authored that letter at page 10 of 19?

**Mr. Andrew Mulwa:** Page 10 of 19 is a letter from the Ethics and Anti - Corruption Commission (EACC) to myself as the acting Chief Executive Officer (CEO), dated 21<sup>st</sup> August, 2023.

**Dr. Muthomi Thiankolu:** Is this a body that would authoritatively speak to matters of corruption in public procurement?

**Mr. Andrew Mulwa:** Yes, it is.

**Dr. Muthomi Thiankolu:** Is it authorized to investigate such matters?

**Mr. Andrew Mulwa:** To the best of my knowledge, yes.

**Dr. Muthomi Thiankolu:** Now, what was this letter asking you to do at page 10 of 19?

**Mr. Andrew Mulwa:** The letter was giving recommendations for administrative action against procurement officers, Cosmas Rotich, Anthony Chege and Caroline Mugo, who are officers working in Kenya Medical Supplies Authority (KEMSA) and participated in the procurement of mosquito nets.

**Dr. Muthomi Thiankolu:** Towards the bottom of that letter (i), what does the EACC tell you?

**Mr. Andrew Mulwa:** It I read:

“The Technical Evaluation Committee (TEC), recommended the award of tender to Shobikaa Index Private Ltd, yet their bid was paginated in pencil and was not sequentially paginated contrary to instructions to tenderers Clause 20.3, which provided documents to be paginated using indelible ink and marked sequentially.”

**Dr. Muthomi Thiankolu:** Does that paragraph you just read show there was corruption or wrongdoing of any type in processing this tender?

**Mr. Andrew Mulwa:** It does, Mr. Speaker, Sir.

**Dr. Muthomi Thiankolu:** Who was benefiting from this manipulation of the tender?

**Mr. Andrew Mulwa:** Shobikaa.

**Dr. Muthomi Thiankolu:** Is that the same company that the Deputy President's company Crystal Kenya Ltd is the local agent?

**Mr. Andrew Mulwa:** Yes.

**Dr. Muthomi Thiankolu:** Given those series of events, would it be fair for anyone to suggest the Deputy President did not have a hand in the procurement irregularities for this tender?

**Mr. Andrew Mulwa:** I think I would say Shobikaa had irregularly been recommended for award of a tender without meeting the set criteria.

**Dr. Muthomi Thiankolu:** Would you say it is just coincidental, that a company connected to the Deputy President was awarded a Kshs3.7 billion tender?

**Mr. Andrew Mulwa:** I was not in KEMSA at the time and I would imagine that KEMSA, being a procurement entity whose core function is to procure the technical teams, would have a proper understanding of procurement procedures and, therefore, would not recommend award of a tender to a company where there are glaring failure to meet the criteria.

**Dr. Muthomi Thiankolu:** Given the contents of your Affidavit and the phone calls we will come to from the Deputy President at this sense, would it be fair for anyone

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to suggest this matter in page 10 was just another coincidence that the company irregularly awarded the tender was the one connected to the Deputy President?

**Mr. Andrew Mulwa:** I do not think it would be.

**Dr. Muthomi Thiankolu:** You do not think it would be fair?

**Mr. Andrew Mulwa:** I do not think it would be a coincidence.

**Dr. Muthomi Thiankolu:** It is not a coincidence. In your estimation, would a fair-minded person faced with the facts you have so far taken as true think it was a coincidence that a company linked to the Deputy President of the Republic was irregularly awarded a tender for Kshs3.7 billion?

**Mr. Andrew Mulwa:** Mr. Speaker, Sir, and hon. Senators, I think having had the advantage of interacting with the documents that are before us, I think I would say from the record the bid bond that is being referred here was delivered as a mail and not as part of the tender document.

**Dr. Muthomi Thiankolu:** Page 8 of 19 of still Volume 8A, towards the bottom, (i) again, does it show yet another irregularity involving this Shobikaa Impex, the company linked to the Deputy President?

**Mr. Andrew Mulwa:** Which page, Counsel?

**Dr. Muthomi Thiankolu:** That would be page 8 of 19(i) towards the bottom. Does it disclose another procurement irregularity besides the one we saw on the other page?

**Mr. Andrew Mulwa:** Here it says and this is a letter from the EACC, that the director procurement interacted with the bid security for Shobikaa Impex Pvt Ltd on 24<sup>th</sup> February, 2023 prior to the tender opening date, which was on 10<sup>th</sup> March, 2023, contrary to tender instructions for tender number 21.3.

**Dr. Muthomi Thiankolu:** Please, confirm whether the Deputy President in his public address on the 7<sup>th</sup> confirmed to the Republic that he placed phone calls to you with regard to this tender?

**Mr. Andrew Mulwa:** Yes, he did and in my Affidavit I have as well alluded to the same that he called me to follow up on the release of the bid pot.

**Dr. Muthomi Thiankolu:** Do the duties of the Deputy President of the Republic extend to placing calls on junior government officers about tenders?

**Mr. Andrew Mulwa:** To the best of my knowledge, no.

**Dr. Muthomi Thiankolu:** But did the Deputy President also admit in that public address that his son equally called you?

**Mr. Andrew Mulwa:** Yes, he did.

**Dr. Muthomi Thiankolu:** Are those the phone calls alluded to in paragraph four of your Affidavit?

**Mr. Andrew Mulwa:** Yes.

**Dr. Muthomi Thiankolu:** You have also said besides the phone calls, the son of the Deputy President sent you WhatsApp messages. Have you annexed any of those WhatsApp messages?

**Mr. Andrew Mulwa:** Yes, I have in my Affidavit at Page 70 of 85.

**Dr. Muthomi Thiankolu:** In those Affidavits, in that page 70, who is the person indicated as sending you the message.

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**Mr. Andrew Mulwa:** Dr. Ikinu Rigathi.

**Dr. Muthomi Thiankolu:** Who does he say he is contacting you on behalf of?

**Mr. Andrew Mulwa:** He asked me to contact him when possible. There is a document for His Excellency that he is trying to collect.

**Dr. Muthomi Thiankolu:** Was this document in your possession?

**Mr. Andrew Mulwa:** The document was investigating the anomalies of the procurement of the LLINs.

**Dr. Muthomi Thiankolu:** So, the Deputy President and his son are pressuring you to surrender a procurement document under active investigation by the EACC.

**Mr. Andrew Mulwa:** Yes, Mr. Speaker, Sir.

**Dr. Muthomi Thiankolu:** Would that be interfering with active criminal investigations?

**Mr. Andrew Mulwa:** From where I sat as acting CEO, I felt pressured because the documents were not within our custody. I had to make effort to follow up with the EACC for the documents to be released.

**Dr. Muthomi Thiankolu:** Have you placed any evidence before the Senate to confirm that the documents the Deputy President and his sons were harassing you to surrender were actually under the custody of the EACC.

**Mr. Andrew Mulwa:** Yes, Mr. Speaker, Sir. I have submitted my letter to the CEO of the EACC, asking for the bid documents for Shobikaa.

**Dr. Muthomi Thiankolu:** On page 73 of 85; can you read the relevant part, which I believe is 72 of 85 Volume 1?

**Mr. Andrew Mulwa:** Mr. Speaker, Sir, the one that I wrote to the EACC is at page 73. The one on page 72, I had written to Shobikaa, telling them to---

**Dr. Muthomi Thiankolu:** Let us begin with the one on page 72. What did you tell Shobikaa?

**Mr. Andrew Mulwa:** Mr. Speaker, Sir, in paragraph two-

“We would like to inform you that the subject tender is currently under investigations and all the documents related to this tender are not under our custody. We have, however, written to the EACC to read the original bid bond to facilitate your request”

They had requested for release of the bid bond through a letter dated 12<sup>th</sup> June, 2023.

**Dr. Muthomi Thiankolu:** What about the one on page 73, in summary, what were you trying to do?

**Mr. Andrew Mulwa:** Mr. Speaker, Sir, I was requesting the CEO of the EACC for the bid bond for Shobikaa Impex Private Limited for the Malaria net tender. I had informed him of the letter that we had received from Shobikaa, requesting for the bid bond.

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, given the magnitude of this tender and the national crisis it stoked, would anyone expect the Deputy President, when he was harassing you, to know that the matter was under active investigation?

**Mr. Andrew Mulwa:** I would believe so.

**Dr. Muthomi Thiankolu:** Lastly, claims have been made on this Floor that the allegations against the Deputy President transcend the false to the ridiculous, to the embarrassing. This material you have taken us through, is it consistent with the narrative that in Ground 11 of this Motion is false, ridiculous and embarrassing.

**Mr. Andrew Mulwa:** Mr. Speaker, Sir, what I have presented before this House is the truth, nothing but the truth and verifiable by document presented.

**Dr. Muthomi Thiankolu:** Lastly, I want you to read from your paragraph what you told the National Assembly bringing us here. Can you read Paragraph 6 of your affidavit, on page 69 of 85 of Volume 1?

**Mr. Andrew Mulwa:** It says-

“Given the status, power, threat and influence of the people involved in the interference with the investigations and cover of irregularities surrounding the procurement of treated mosquito nets, I was constrained to surrender the original bid bond to Mr. Ogola Wilson Okulo, and in short, I was caught in a tricky situation. There was nothing I could do as a junior government officer against a sitting Deputy President of the Republic of Kenya.”

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, that is all for purposes of the examination-in-chief of this witness.

**The Speaker (Hon. King):** Counsel for the Deputy President, you may proceed.

**Mr. Ndegwa Njiru:** Good evening, Mr. Mulwa.

**Mr. Andrew Mulwa:** Good evening.

**Mr. Ndegwa Njiru:** My name is Mr. Ndegwa Njiru. I will be asking you several questions in respect to the testimony that you have just delivered.

**Mr. Ndegwa Njiru:** When did you join the KEMSA?

**Mr. Andrew Mulwa:** I joined KEMSA on 17<sup>th</sup> September, March, 2023.

**Mr. Ndegwa Njiru:** Before that, who was the CEO of the organization?

**Mr. Andrew Mulwa:** Mr. Terry Ramadhan

**Mr. Ndegwa Njiru:** Were you there as and when the alleged tender processes were taking place?

**Mr. Andrew Mulwa:** No?

**Mr. Ndegwa Njiru:** Who was in charge of that process as at then?

**Mr. Andrew Mulwa:** Mr. Terry Ramadhan

**Mr. Ndegwa Njiru:** Therefore, the issues that you are testifying before this Senate, are they issues that you saw, perceived, or they are issues that you are told?

**Mr. Andrew Mulwa:** They are issues that---

**Mr. Ndegwa Njiru:** Were you told or you saw? It is a simple question.

**Mr. Andrew Mulwa:** Mr. Speaker, Sir, I was not told, neither did I see.

**Mr. Ndegwa Njiru:** You were not told and you neither saw?

**Mr. Andrew Mulwa:** I was involved.

**Mr. Ndegwa Njiru:** You were involved in the investigations.

Okay. At the time you joined the organization, what stage of the tendering process was it?

**Mr. Andrew Mulwa:** The tender had just been terminated and there were investigations.

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**Mr. Ndegwa Njiru:** The tender had just been terminated. Therefore, you never participated in that particular process whatsoever for whatever purpose, yes?

**Mr. Andrew Mulwa:** I participated in a very big way.

**Mr. Ndegwa Njiru:** Alright. Would you then lead this Senate to understand your participation in that tender?

**Mr. Andrew Mulwa:** Mr. Speaker, Sir, this matter was a matter that had to be dealt with---

**Mr. Ndegwa Njiru:** What exactly did you do that relates to this tender?

**Mr. Andrew Mulwa:** I participated in the investigations on this tender by PPR, by the Senate, by the National Assembly---

**Mr. Ndegwa Njiru:** By the time when the bidding was alive, you had not joined.

**Mr. Andrew Mulwa:** I was not in KEMSA.

**Mr. Ndegwa Njiru:** Therefore, the issues you are testifying before this Senate are not issues that you witnessed.

**Mr. Andrew Mulwa:** Not issues that I executed.

**Mr. Ndegwa Njiru:** Thank you. Now, what was the status of the tender at the time you joined?

**Mr. Andrew Mulwa:** I joined KEMSA because of this tender---

**Mr. Ndegwa Njiru:** I am not asking why you joined. I asked what was the status.

**Mr. Andrew Mulwa:** Mr. Speaker, Sir, the tender had been terminated.

**Mr. Ndegwa Njiru:** Do you know of any company that is associated with the Deputy President that succeeded in this particular tendering process?

**Mr. Andrew Mulwa:** For the purpose of---

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

**Mr. Andrew Mulwa:** Yes, Shobikaa had been recommended for award, but since it was granted, it did not proceed.

**Mr. Ndegwa Njiru:** Was the award granted to Shobikaa?

**Mr. Andrew Mulwa:** No.

**Mr. Ndegwa Njiru:** Do you know why the award was not granted?

**Mr. Andrew Mulwa:** Yes, I know.

**Mr. Ndegwa Njiru:** Yes.

**Mr. Andrew Mulwa:** Mr. Speaker, Sir, it was because Global Fund does a pre-award review of every evaluation of Global Fund funded tenders. After doing a pre-award review, they did not agree with the Technical Evaluation Committee that had evaluated the tender and recommended for cancellation of the tender---

**Mr. Ndegwa Njiru:** Thank you, you have answered. So, as a result of the review of all the bids that culminated into the cancellation of the tender. Correct?

**Mr. Andrew Mulwa:** Yes.

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

**Mr. Andrew Mulwa:** I cannot remember, maybe 79 or 77.

**Mr. Ndegwa Njiru:** You cannot remember because you never participated. Yes or no, Mr. Witness?

**Mr. Andrew Mulwa:** If I get the record, I would remember.

**Mr. Ndegwa Njiru:** Show him the record. Show him his affidavit in Volume 1. Hon. Senators, it is in the National Assembly's Volume 1, on pages 67 and 68.

Did you indicate the companies that participated in that process?

**Mr. Andrew Mulwa:** Mr. Speaker, Sir, I did not indicate the companies.

**Mr. Ndegwa Njiru:** You chose to conveniently refuse to indicate them, correct?

**Mr. Andrew Mulwa:** Mr. Speaker, Sir---

**Mr. Ndegwa Njiru:** Is it correct or not correct? I do not need an explanation.

**Mr. Andrew Mulwa:** Not correct.

**Mr. Ndegwa Njiru:** Why did you not indicate the companies that participated in that particular process?

**Mr. Andrew Mulwa:** My affidavit---

**Mr. Ndegwa Njiru:** Has your affidavit explained it?

**Mr. Andrew Mulwa:** My affidavit is premised on---

**Mr. Ndegwa Njiru:** Okay, I know your affidavit, I have read it several times, but my question is very specific. Why did you leave out the other companies that participated in the process?

**Mr. Andrew Mulwa:** For purposes of my affidavit, I did not find it necessary.

**Mr. Ndegwa Njiru:** Confirm that Shobika Impex Company was never ever awarded the tender.

**Mr. Andrew Mulwa:** The tender was cancelled.

**Mr. Ndegwa Njiru:** Did the Republic of Kenya lose any money as a result of the award not being granted to Shobikaa Impex?

**Mr. Andrew Mulwa:** Yes, it did.

**Mr. Ndegwa Njiru:** Did the Deputy President have anything to do with it?

**Mr. Andrew Mulwa:** I would not say the Deputy President.

**Mr. Ndegwa Njiru:** We are here because of the Deputy President. Did he have anything to do with it?

**Mr. Andrew Mulwa:** A company related---

**Mr. Ndegwa Njiru:** Did he have anything to do with it? It is a simple question. Yes or no?

**Mr. Andrew Mulwa:** I already have---

**Mr. Ndegwa Njiru:** Yes and you will furnish me with an answer.

**Mr. Andrew Mulwa:** I have said yes, because the company that is associated with him had been irregularly awarded.

**Mr. Ndegwa Njiru:** Do you know that this matter was subject of investigation by Parliament?

**Mr. Andrew Mulwa:** Yes, I am.

**Mr. Ndegwa Njiru:** Did you participate in that investigation?

**Mr. Andrew Mulwa:** Yes.

**Mr. Ndegwa Njiru:** Hon. Senators, refer with me to page 183, Volume 3 of the Deputy President's bundle. That is the report. Go with me to page 220. On page 220, Mr. Witness---

**Mr. Andrew Mulwa:** Can I get the document?

**Mr. Ndegwa Njiru:** Can you confirm that those were the companies that participated in that particular tender, yes?

**Mr. Andrew Mulwa:** Yes, there are some 17 bidders.

**Mr. Ndegwa Njiru:** How many are they?

**Mr. Andrew Mulwa:** 17.

**Mr. Ndegwa Njiru:** Go to page 221. Can you see where it is written 100?

**Mr. Andrew Mulwa:** Yes.

**Mr. Ndegwa Njiru:** Can you read out that statement?

**Mr. Andrew Mulwa:** It reads:

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

**Mr. Ndegwa Njiru:** How many bidders did not meet the minimum requirements?

**Mr. Andrew Mulwa:** For purpose of this report, what Global Fund is talking about are the 17.

**Mr. Ndegwa Njiru:** Therefore, Shobikaa Impex was not an exception, correct? It never qualified, correct?

**Mr. Andrew Mulwa:** Yes.

**Mr. Ndegwa Njiru:** Look at where we have paragraph 105. Can you see where we have (b)?

**Mr. Andrew Mulwa:** Yes.

**Mr. Ndegwa Njiru:** Can you read what (b) says?

**Mr. Andrew Mulwa:** It reads:

“The Global Fund document reported that the bid bond for Shobikaa Impex was not paginated and the management of KEMSA argued that the bid bond was not part of the bid, but was rather an accompaniment.”

**Mr. Ndegwa Njiru:** What does that mean?

**Mr. Andrew Mulwa:** I think---

**Mr. Ndegwa Njiru:** Not thinking, reading and understanding.

**Mr. Andrew Mulwa:** It means and I had say exactly the same, that this document was not submitted as part of the tender document, but was brought in as ordinary mail, while in normal procurement bid documents should be part of the procurement.

**Mr. Ndegwa Njiru:** Can you go to page 222 and look at paragraph 106?

**Mr. Andrew Mulwa:** It reads:

“Notwithstanding KEMSA reservation in a letter dated 4<sup>th</sup> May, the Acting Director of Procurement recommended the termination of the process. The Chief Executive Officer (CEO) approved on the 5<sup>th</sup> and termination was communicated to all the bidders.”

**Mr. Ndegwa Njiru:** So, there was a termination of the bidding process, correct?

**Mr. Andrew Mulwa:** Yes.

**Mr. Ndegwa Njiru:** As a result of non-responsiveness of all the bids, correct?

**Mr. Andrew Mulwa:** Yes, after Global Fund differed with the KEMSA Technical Evaluation Committee.

**Mr. Ndegwa Njiru:** Did the Deputy President have anything to do with that?

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- Mr. Andrew Mulwa:** I would not say.
- Mr. Ndegwa Njiru:** Would you associate that to the Deputy President?
- Mr. Andrew Mulwa:** I am not competent to talk about that.
- Mr. Ndegwa Njiru:** Do you associate that process with the Deputy President?
- Mr. Andrew Mulwa:** I cannot comment on that.
- Mr. Ndegwa Njiru:** You will comment.
- Mr. Andrew Mulwa:** I do not know.
- Mr. Ndegwa Njiru:** Daktari, we are not in a hospital, we are in a court seeking to save the life of a man who is going to be impeached. Do you associate that with the Deputy President?
- Mr. Andrew Mulwa:** I am saying, I do not know.
- Mr. Ndegwa Njiru:** What do you not know?
- Mr. Andrew Mulwa:** I do not know whether this has everything to do with the Deputy President because the bids were terminated by Global Fund as a result of irregular evaluation.
- Mr. Ndegwa Njiru:** Irregular evaluation of how many companies?
- Mr. Andrew Mulwa:** They are 17 companies.
- Mr. Ndegwa Njiru:** Thank you. Look at paragraphs 107 at page 22 once again.
- Mr. Andrew Mulwa:** It says:-  
“It was further a testimony that the Authority had struggled to maintain autonomy owing to undue interference from the Cabinet Secretary for Health.”
- Mr. Ndegwa Njiru:** Whose testimony is this?
- Mr. Andrew Mulwa:** I do not know.
- Mr. Ndegwa Njiru:** Go to page 219. Can you see where we have (c), submissions by Ms. Terry Ramadhani?
- Mr. Andrew Mulwa:** Yes.
- Mr. Ndegwa Njiru:** Therefore, these are his statements, correct?
- Mr. Andrew Mulwa:** I would not say whether they are correct or not.      **Mr. Ndegwa Njiru:** Read.
- Mr. Andrew Mulwa:** They are Terry Ramadhani’s.
- Mr. Ndegwa Njiru:** So, we understand who is now speaking at paragraph 107, correct?
- Mr. Andrew Mulwa:** Yes.
- Mr. Ndegwa Njiru:** Read it then.
- Mr. Andrew Mulwa:** It says:  
“It was further a testimony that the Authority had struggled to maintain autonomy owing to undue interference from the Cabinet Secretary for Health.”
- Mr. Ndegwa Njiru:** The Authority had failed to maintain autonomy due to the interferences by?
- Mr. Andrew Mulwa:** Yes, that is Terry's statement.
- Mr. Ndegwa Njiru:** Read it.
- Mr. Andrew Mulwa:** It says:  
“By the Cabinet Secretary for Health.”

**Mr. Ndegwa Njiru:** Have you seen from the report anything that indicates that the Deputy President of the Republic of Kenya interfered with the process?

**Mr. Andrew Mulwa:** I have not and I cannot own or disown it because it is not my statement.

**Mr. Ndegwa Njiru:** Have you seen that statement speaking to the person of the Deputy President?

**Mr. Andrew Mulwa:** It is not.

**Mr. Ndegwa Njiru:** Thank you. It speaks as to who was interfering with the processes, correct?

**Mr. Andrew Mulwa:** That is not my statement.

**Mr. Ndegwa Njiru:** Read.

**Mr. Andrew Mulwa:** It is not mine.

**Mr. Ndegwa Njiru:** Yes, I know, it is not yours.

**Mr. Andrew Mulwa:** I cannot own a statement that is not mine.

**Mr. Ndegwa Njiru:** I have not asked you to own it. I have asked you a simple thing; to read the statement as indicated. Who was interfering with the processes and the autonomy of KEMSA according to that statement?

**Mr. Andrew Mulwa:** According to the statement, it is the Cabinet Secretary for Health.

**Mr. Ndegwa Njiru:** What is the name of that Cabinet Secretary then? **Mr. Andrew Mulwa:** It is not indicated.

**Mr. Ndegwa Njiru:** Let us proceed. As I finish up, let us go to page 226. At paragraph 136, what is the Parliament saying?

**Mr. Andrew Mulwa:** It says:

“In the late April, he learnt from the Global Fund.”

**Mr. Ndegwa Njiru:** Who learnt?

**Mr. Andrew Mulwa:** I do not know.

**Mr. Ndegwa Njiru:** Look at the submissions at page 225.

**Mr. Andrew Mulwa:** Myself.

**Mr. Ndegwa Njiru:** Who learnt?

**Mr. Andrew Mulwa:** The acting CEO, which is me.

**Mr. Ndegwa Njiru:** Who was that?

**Mr. Andrew Mulwa:** Me.

**Mr. Ndegwa Njiru:** What did you learn?

**Mr. Andrew Mulwa:** I learnt in late April that the Global Fund pre-award review reported that the Long Lasting Insecticidal Nets (LLIN) tender was to be cancelled on account of inconsistencies in the bid evaluation.

**Mr. Ndegwa Njiru:** Do you still maintain the position that you gave or you want to---

**Mr. Andrew Mulwa:** It is exactly what I said.

**Mr. Ndegwa Njiru:** That is exactly what you said.

**Mr. Andrew Mulwa:** Yes.

**Mr. Ndegwa Njiru:** Therefore, that does not link or has no nexus with the Deputy President whatsoever, correct?

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**Mr. Andrew Mulwa:** I think you are wrong.

**Mr. Ndegwa Njiru:** What did you say?

**Mr. Andrew Mulwa:** You are not right on that one.

**Mr. Ndegwa Njiru:** Read, what does the statement say? What did you say in Parliament?

**Mr. Andrew Mulwa:** It says:

“The Global Fund pre-award review that LLIN tender was to be cancelled on account of inconsistencies in the evaluation.”

It is the inconsistencies in the evaluation that recommended an award to a bidder that had not paginated documents, which was a mandatory requirement.

**Mr. Ndegwa Njiru:** I have not asked you the question that you are attempting to answer. I have simply asked you to read what you stated before Parliament, then a question will follow and you read in verbatim.

**Mr. Andrew Mulwa:** I learned that the Global Fund pre-award review report that the LLN tender was to be cancelled on account of inconsistencies in the bid evaluation.

**Mr. Ndegwa Njiru:** What was the reason for the cancellation?

**Mr. Andrew Mulwa:** Inconsistencies in evaluation.

**Mr. Ndegwa Njiru:** Who was evaluating that tender?

**Mr. Andrew Mulwa:** The technical evaluation committee.

**Mr. Ndegwa Njiru:** Does the Deputy President sit in that tender committee for evaluation?

**Mr. Andrew Mulwa:** No, he does not.

**Mr. Ndegwa Njiru:** Let us look at paragraph 138.

**Mr. Andrew Mulwa:** Paragraph 138 says:

“He further maintained that the advisory to the Principal Secretary (PS), State Department of Public Health and Professional Studies on the alleged inconsistency in the technical specification neither passed through his office or the head of department for the strategic health programmes, but was forwarded directly to the PS by one Dr. Omar, the Head of Malaria Programme.”

**Mr. Ndegwa Njiru:** Mr. Witness, you are aware why we are here. Do you understand the charge in respect to this matter that the Deputy President is facing?

**Mr. Andrew Mulwa:** I understand.

**Mr. Ndegwa Njiru:** You understand that you allege that you were intimidated and bullied by the Deputy President, correct?

**Mr. Andrew Mulwa:** Yes, I understand.

**Mr. Ndegwa Njiru:** That is contained in your evidence, correct?

**Mr. Andrew Mulwa:** Yes.

**Mr. Ndegwa Njiru:** Why were you being bullied, if at all it ever happened?

**Mr. Andrew Mulwa:** I want to believe---

**Mr. Ndegwa Njiru:** Not to believe. We are not dealing with beliefs here. We are dealing with facts.

**Mr. Andrew Mulwa:** I was bullied to submit bid documents.

**Mr. Ndegwa Njiru:** When was the tender cancelled?

**Mr. Andrew Mulwa:** In late April.

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- Mr. Ndegwa Njiru:** As at that time, had you joined KEMSA?
- Mr. Andrew Mulwa:** I had not.
- Mr. Ndegwa Njiru:** When were you purportedly called by the Deputy President?
- Mr. Andrew Mulwa:** In August.
- Mr. Ndegwa Njiru:** At that time, was the tender alive or had it been cancelled?
- Mr. Andrew Mulwa:** It had been cancelled?
- Mr. Ndegwa Njiru:** What happens upon the cancellation of a tender to bidders who had submitted their documents?
- Mr. Andrew Mulwa:** Bid books are returned, as a routine process.
- Mr. Ndegwa Njiru:** Therefore, it is usual for someone or a company, that has bid to make follow-ups with the bids, correct?
- Mr. Andrew Mulwa:** Yes.
- Mr. Ndegwa Njiru:** Following of those bids for purposes of returning them to their rightful owner does not violate the Public Procurement and Disposal Act?
- Mr. Andrew Mulwa:** I was in KEMSA.
- Mr. Ndegwa Njiru:** Does not violate, Mr. Witness.
- Mr. Andrew Mulwa:** Does not violate.
- Mr. Ndegwa Njiru:** That is the question.
- Mr. Witness, you understand that you wrote several letters that you have annexed in your affidavit. The first letter is the one that is appearing in Volume 1 of the National Assembly's bundle of documents at page 70. What document is that?
- Mr. Andrew Mulwa:** These are WhatsApp conversations between I and Dr. Ikinu Rigathi.
- Mr. Ndegwa Njiru:** How would you ordinarily be able to tell that this conversation has come from this particular platform? One, which platform was this?
- Mr. Andrew Mulwa:** It was the WhatsApp platform.
- Mr. Ndegwa Njiru:** Which number is there and I want you to specifically look?
- Mr. Andrew Mulwa:** The number is already saved in my phone that is why it is written 'Dr. Ikinu Rigathi.' Therefore, it cannot show the number. If I had not saved the number, you probably would have gotten the number.
- Mr. Ndegwa Njiru:** When I receive a message on my WhatsApp, when you send me a message, does it indicate a source?
- Mr. Andrew Mulwa:** Yes.
- Mr. Ndegwa Njiru:** Does it also indicate the recipient?
- Mr. Andrew Mulwa:** Whether a number or the saved contact.
- Mr. Ndegwa Njiru:** So, in these circumstances, where is your number that indicates that you are the recipient of this message?
- Mr. Andrew Mulwa:** There is none.
- Mr. Ndegwa Njiru:** Therefore, this is a concoction of the truth, a fabrication and a forgery of documents.
- Mr. Andrew Mulwa:** I have sworn this under oath. My phone is still with me. It can be availed to competent agencies of law to investigate.
- Mr. Ndegwa Njiru:** Okay, what explanations do you give for the lack of your print of your phone number in this conversation?

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**Mr. Andrew Mulwa:** I am not a technical person, so I cannot configure how my phone displays messages.

**Mr. Ndegwa Njiru:** However, you confirm that this is not usual.

**Mr. Andrew Mulwa:** This is what is on my phone. If I give you my phone and I open the conversation, it will appear as it is here.

**Mr. Ndegwa Njiru:** Was a certificate showing the source of this information extracted?

**Mr. Andrew Mulwa:** You will need to clarify. I am a doctor, remember? I do not know what a certificate is.

**Mr. Ndegwa Njiru:** When you generate a printout from your phone, your advocate is required to certify that this document has been generated or eliminated from a particular gadget. Do you see that certificate incorporated in these proceedings?

**Mr. Andrew Mulwa:** I said I do not know what that is, unless my advocate shows.

**Mr. Ndegwa Njiru:** I, therefore, put it to you that this never originated from your phone, nor did it originate from my client's son, Dr. Ikinu Rigathi.

**Mr. Andrew Mulwa:** That is a lie and is not true.

**Mr. Ndegwa Njiru:** So, what did you find intimidating in this message? Would you read out what the message states?

**Mr. Andrew Mulwa:** It reads:

“This is Dr. Ikinu Rigathi here. Kindly contact me when possible. There is a document for His Excellency, we are trying to collect.”

**Mr. Ndegwa Njiru:** What is Dr. Ikinu telling you?

There is a document he is trying to collect.

**Mr. Andrew Mulwa:** How is that intimidating or how did you get intimidated by that statement?

**Mr. Andrew Mulwa:** I am the one who received the message, Counsel, and I am the one who felt intimidated. I am stating before this honourable Senate that I felt intimidated.

**Mr. Ndegwa Njiru:** Let us go to the next paragraph, page 71. What document is that and what is it dated?

**Mr. Andrew Mulwa:** Notification for tender for LLN, 12<sup>th</sup> June, 2023.

**Mr. Ndegwa Njiru:** What does the statement read? What is the content of the letter?

**Mr. Andrew Mulwa:** It says:

“Reference is made to the above tender, which we participated in and were unsuccessful. We wish to collect the original bid documents for the same tender.”

**Mr. Ndegwa Njiru:** Who is the source of that letter?

**Mr. Andrew Mulwa:** Shobikaa. He is saying, “kindly issue the original bid bond to the bearer of this letter.”

**Mr. Ndegwa Njiru:** Is there anything unusual by an unsuccessful bidder seeking to have the refund?

**Mr. Andrew Mulwa:** Nothing unusual.

**Mr. Ndegwa Njiru:** Let us go to the next page 72. Again, when is it dated?

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**Mr. Andrew Mulwa:** It is dated 30<sup>th</sup> June.

**Mr. Ndegwa Njiru:** What is the content of the letter?

**Mr. Andrew Mulwa:** It is signed by me to Shobikaa. I was replying to their letter. I am telling them that we want to inform them that the subject tender is under investigation and all the documents related to the tender are not in our custody. Therefore, I also informed them that we wrote to the EACC to release the original bid bond.

**Mr. Ndegwa Njiru:** Was the bid returned?

**Mr. Andrew Mulwa:** It was not immediately returned.

**Mr. Ndegwa Njiru:** Did you get the communication from the EACC in that respect?

**Mr. Andrew Mulwa:** Not immediately.

**Mr. Ndegwa Njiru:** What did the EACC indicate?

**Mr. Andrew Mulwa:** They indicated way later. They responded, but I had to personally follow up.

**Mr. Ndegwa Njiru:** Was the bid returned?

**Mr. Andrew Mulwa:** I personally picked it after the calls.

**Mr. Ndegwa Njiru:** When you were forwarding the bid to Shobikaa, in your letter dated the 11<sup>th</sup> July, what did you indicate at the footnote?

**Mr. Andrew Mulwa:** I indicated that 'you may, however, be required to provide the same document as and when required.'

**Mr. Ndegwa Njiru:** For what purpose?

**Mr. Andrew Mulwa:** I informed them that the EACC had handed over the documents.

**Mr. Ndegwa Njiru:** Have you made any attempts to seek the return of that bid from Shobikaa?

**Mr. Andrew Mulwa:** I am no longer in KEMSA.

**Mr. Ndegwa Njiru:** Finally, where and what became of your predecessor?

**Mr. Andrew Mulwa:** Terry Ramadhani was discharged from the authority.

**Mr. Ndegwa Njiru:** I now understand that she is serving as an ambassador in New Delhi, correct?

**Mr. Andrew Mulwa:** I cannot confirm.

**Mr. Ndegwa Njiru:** Do you live in this country?

**Mr. Andrew Mulwa:** Yes, I do.

**Mr. Ndegwa Njiru:** No further questions.

**The Speaker** (Hon. Kingi): Counsel for the National Assembly, you may proceed with re-examination.

**Dr. Muthomi Thiankolu:** Mr. Mulwa, you were referred to certain aspects of the Deputy President's response. I want to direct you to Volume 6. I believe in Volume 6 of the Assembly's documents, beginning on pages 10 of 534 and 10 of 534. It ends on page 13.

Mr. Mulwa, looking at those pages, that is, the Deputy President's response to the allegations that you have come to testify. In that response, has he disputed that he owns the number you claim he used to make phone calls to you?

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**Mr. Andrew Mulwa:** No.

**Dr. Muthomi Thiankolu:** In that response, has he disputed that his son, Ikinu, owns the mobile phone that was used to contact you?

**Mr. Andrew Mulwa:** No.

**Dr. Muthomi Thiankolu:** If those two numbers do not belong to him and his son, is that a matter I would have expected him to expressly refute in that response?

**Mr. Andrew Mulwa:** Yes.

**Dr. Muthomi Thiankolu:** In his response, you were also shown several companies that participated in that tender; correct or incorrect?

**Mr. Andrew Mulwa:** Correct.

**Dr. Muthomi Thiankolu:** Has the Deputy President intervened for any of those others except Shobikaa, which is linked to him?

**Mr. Andrew Mulwa:** Not a single one for the whole period that I was in KEMSA, except for that one.

**Dr. Muthomi Thiankolu:** Should we retake it that it is a coincidence out of several international companies that the one he was harassing you about was the one linked to his own company, Crystal?

**Mr. Andrew Mulwa:** It is not a coincidence.

**Dr. Muthomi Thiankolu:** I am trying to open the clause. Clause 4.3 of his response, on page 11 of 534. What does the Deputy President say in his response to the charge you have come to testify?

**Mr. Andrew Mulwa:** He says:

“I am aware of a foreign company known as Shobikaa Impex Private Limited, domiciled in India, which appointed Crystal Kenya Limited, where my son is a managing director, as its agent in Kenya in 2014. To date, Crystal Kenya Limited has complied with agency terms between itself and Shobikaa Impex Limited. There is Annexed RG18, an appointment agency letter by Shobikaa Impex Limited.”

**Dr. Muthomi Thiankolu:** Is that an admission by the Deputy President himself, that there is a link between Crystal his company and Shobikaa?

**Mr. Andrew Mulwa:** Yes.

**Dr. Muthomi Thiankolu:** The EACC asked you about the confiscation of the bid bond. Do you recall those questions?

**Mr. Andrew Mulwa:** Yes.

**Dr. Muthomi Thiankolu:** Was Shobikaa the only bid bond the EACC was holding?

**Mr. Andrew Mulwa:** No.

**Dr. Muthomi Thiankolu:** Which other bid bonds was it holding?

**Mr. Andrew Mulwa:** They were holding all the bid bonds for the 17 companies that bid in the tender.

**Dr. Muthomi Thiankolu:** So, in his response, as the Deputy President explained why it was necessary for all the bid bonds to be confiscated for the one for Shobikaa to be released?

**Mr. Andrew Mulwa:** Not any that I have seen.

**Dr. Muthomi Thiankolu:** Of those 17 companies, Sir, which one was recommended for the award of the tender?

**Mr. Andrew Mulwa:** Shobikaa Impex.

**Dr. Muthomi Thiankolu:** Which one was awarded after the cancellation and the repeat?

**Mr. Andrew Mulwa:** The tender was cancelled and the procurement was done, was directed to---

**Mr. Ndegwa Njiru:** Mr. Speaker, Sir, we want to object to that line of questioning. That never came in my cross-examination. He is opening new grounds. He has to limit himself to the content of my cross-examination.

**The Speaker** (Hon. Kingi): Objection overruled. Counsel for the National Assembly, proceed.

**Dr. Muthomi Thiankolu:** Mr. Speaker, Sir, I even lost my thoughts on---

**Mr. Andrew Mulwa:** The procurement was done by the Global Fund in Geneva through their global system, WAMBO.ORG. The tender was awarded to one of the companies that bided, based in Tanzania. I cannot remember the name. I cannot remember another one from India through the Global Fund system.

**Dr. Muthomi Thiankolu:** You have been told, Sir, that your testimony is a concoction. Is your testimony and your affidavit before the Senate a concoction?

**Mr. Andrew Mulwa:** What I have submitted before the Senate is the truth, supported by documentary support.

**Dr. Muthomi Thiankolu:** Has any basis been laid in the response by the Deputy President or in his cross-examination to warrant the conclusion that you have concocted your testimony?

**Mr. Andrew Mulwa:** Not any of my---

**Dr. Muthomi Thiankolu:** But daktari, would you have any reason or motivation, remembering your own oath, to concoct lies against the Deputy President of the Republic?

**Mr. Andrew Mulwa:** No.

**Dr. Muthomi Thiankolu:** Has any reason been proffered for you to concoct any lie against the Deputy President?

**Mr. Andrew Mulwa:** No.

**Dr. Muthomi Thiankolu:** Lastly, Sir, has any material been placed on record to show any of the averments in your affidavit is a concoction or inaccurate?

**Mr. Andrew Mulwa:** No.

**Dr. Muthomi Thiankolu:** That is all for the purpose of re-examining. My colleague will pose just one question, then we will rest this witness. Mawira will do it now that he is next to me.

**Mr. Boniface Mawira:** Mr. Speaker, Sir, my name is Boniface Mawira. Daktari, just one question. You were asked whether Kenya lost money as a result of that tender cancellation. What is your response?

**Mr. Andrew Mulwa:** Yes.

**Mr. Boniface Mawira:** How did Kenya lose money?

**Mr. Andrew Mulwa:** KEMSA, as a Government agency, gets its revenue from fees charged for procurement, warehousing and distribution of products that it procures on behalf of partners. In this particular case, Kenya lost procurement fees, which totaled about Kshs55 million.

**Mr. Boniface Mawira:** Thank you. That is all for this witness, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): Counsel for the National Assembly. Are you done with the witness?

**Mr. Paul Nyamondi:** No, Mr. Speaker, Sir. We still have a further two witnesses.

**The Speaker** (Hon. Kingi): This particular witness?

**Mr. Paul Nyamondi:** Yes, we are done with this particular witness.

**The Speaker** (Hon. Kingi): Good. Now, hon. Senators, it is time for you to seek clarification. However, you may have noticed that we have had such a long day. It has been indicated to me that the Deputy President does not intend to call any witness tomorrow. Is that the position?

**Mr. Tom. Macharia:** Not, entirely, Mr. Speaker, Sir. He is the witness.

**The Speaker** (Hon. Kingi): Other than him, I mean.

**Mr. Tom. Macharia:** Yes, of course. I just wanted to be clear on the language. Yes, he is the witness.

**The Speaker** (Hon. Kingi): Of course, that is what I meant. Meaning, we will have some latitude tomorrow. You are very tired. The teams are tired. The Senators will seek clarification from the two witnesses; the main witness and the second witness, first thing in the morning. We will clear them then take the two other witnesses. After which, we will hear the Deputy President.

*(Loud consultations)*

There can never be just one because everyone would wish to talk. You will have that round tomorrow morning.

*(Sen. Cherarkey spoke off record)*

Hon. Senator for Nandi County, you will speak because the witness will be available. All these two witnesses will be available. So, you will be able---

*(Sen. Cherarkey spoke off record)*

Senator for Nandi County, when the Chair is talking, you keep quiet. You are out of order. You know exactly what happens when a Senator is out of order.

*(Sen. Cherarkey spoke off)*

Senator for Nandi County, when I am speaking, you keep quiet. I am cautioning you.

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As the Chair, I direct that the hon. Senators will have an opportunity to seek clarifications from these two witnesses first when we resume tomorrow at 9.00 a.m. Once the hon. Senators are done seeking clarification from these two witnesses, we will hear the remaining two witnesses by the National Assembly. Thereafter, we will move to hear the Deputy President. That is the direction.

### ADJOURNMENT

**The Speaker** (Hon. Kingi): Hon. Senators, it is now 11.12 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Thursday, 17<sup>th</sup> October, 2024, at 9.00 a.m.

The Senate rose at 11.13 p.m.