

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 9th December, 2020

Special Sitting

*(Convened via Kenya Gazette Notice
No.10308 of 7th December, 2020)*

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

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

PRAYER

COMMUNICATIONS FROM THE CHAIR

CONVENING OF SPECIAL SITTING OF THE SENATE TO CONSIDER THE PROPOSED REMOVAL BY IMPEACHMENT OF THE GOVERNOR OF NAIROBI CITY COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, it is my pleasure and privilege to welcome you back to the Senate for this special sitting soon after proceeding on recess because we have to fulfill our constitutional mandate expeditiously.

By a letter, Ref: NCCA/SPK/12/2020(1), dated 4th December, 2020 and received in the office of the Speaker of the Senate on Friday, 4th December, 2020, the Speaker of the Nairobi City County Assembly informed the Speaker of the Senate that at a sitting of the Nairobi City County Assembly held on Thursday, 3rd December, 2020, the Nairobi City County Assembly had approved a Motion for the removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

Attached to the letter were the following documents-

(a) Order Paper of the Nairobi City County Assembly dated Thursday, 3rd December, 2020;

(b) Notice of Motion by Hon. Michael Okumu Ogada, MCA, dated 25th November, 2020;

(c) Votes and Proceedings of the Nairobi City County Assembly dated Thursday, 3rd December, 2020; and,

(d) Signatures in support of the impeachment of Hon. Mike Mbuvi Sonko.

The Motion cites the following as the grounds for the removal of the governor-

(a)Gross violation of the Constitution or any other law (Gross violation of the Constitution, County Governments Act, 2012, the Public Procurement and Disposal Act, 2015 and the Public Finance Management Act, 2012);

(b) Abuse of Office; and,

(c) Gross Misconduct.

Further details on each of the particulars are set out in the Motion.

Hon. Senators, Section 33(3)(a) of the County Governments Act, read together with Standing Order No.75(1)(a) provide that within seven days after receiving notice of a resolution from the Speaker of the County Assembly, the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor.

It is on this basis that I accepted and approved the request by the Senate Majority Leader, supported by 17 other Senators, to convene this special sitting.

I subsequently gazetted this special sitting *vide* Gazette Notice No.10308 of 7th December, 2020 contained in a special issue of Kenya Gazette Vol. CXXII-No. 217.

Hon. Senators, in terms of Article 181 of the Constitution, Section 33(3)(a) of the County Governments Act, 2012 and Standing Order No.75(1)(a) of the Senate Standing Orders, the Speaker of the Senate is required and I quote-

“Within seven days after receiving notice of a resolution from the Speaker of a county assembly to convene a meeting of the Senate to hear charges against the governor.”

Consequently, hon. Senators, pursuant to Section 33(3)(b) of the County Governments Act and Standing Order No.75(1)(a) of the Senate Standing Orders, I hereby proceed to read the charges against Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County-

A. Gross Violation of the Constitution or any other law (*Gross violation of the Constitution; The County Governments Act, 2012; The Public Procurement and Disposal Act, 2015; and the Public Finance Management Act, 2012.*)

The particulars cited under this ground are as follows-

(a)The Governor of Nairobi City County has violated Articles 201(a), (d) and (e) of the Constitution of Kenya on principles of public finance management and Section 154 of the Public Finance Management Act, 2012, the County Allocation of Revenue Act, 2015 on the use of conditional grants from the national Government, by the diversion or negligently causing to be diverted, conditional funds.

(b)The Governor of Nairobi City County has violated Article 10, Article 201(b) and (d) of the Constitution by failing, refusing and or neglecting to comply with the provisions of Regulation 20 of the Public Finance Management (County Governments) Regulations, 2015, which failure, refusal and or negligence has compromised the provision of services envisioned under Part II of the Fourth Schedule to the Constitution 2010, *inter alia* most crucial provisions of health services during the raging pandemic;

(c)The Governor of Nairobi City County has violated Article 187(2)(a) of the Constitution and Article 5.2 of the Deed of Transfer, by his continued willful refusal to execute the statutory warrants essential to the release of funds from the County Revenue Fund (CRF), which has grounded the provision of services, of not only the county executive, but of the Nairobi Metropolitan Service (NMS) and its exercise of the transferred functions.

This action violates the provisions of Article 187(2)(a) of the Constitution and Article 5.2 of the Deed of Transfer, whence the county assembly duly adopted the Budget for the Financial Year 2020/2021 and enacted the Nairobi City County Appropriations Bill, 2020.

(d)The Governor has violated the provisions of Article 183 of the Constitution as read together with Standing Order No.193 and Section 123 of the Public Finance Management Act, 2012 by undermining the authority of the county assembly, whence the governor has refused and or failed to implement resolutions of the county assembly or forward a report detailing his inability to do so in line with Article 183 of the Constitution, as read together with Standing Order No.193, with respect to county public debt and debt management under the provisions of Section 123 of the Public Finance Management Act, 2012.

Failure of which, the county has been unable to control and manage county public debt. The result is unmitigated accrual of debt which has ballooned the county's overall debt to unmanageable levels, rising from Kshs56 billion when he assumed office in 2017 to Kshs76.794 billion as at 31st December, 2019 hence further violating the provisions of Article 201 of the Constitution.

(e)The Governor has violated Article 227(1) of the Constitution on procurement of goods and services as read together with provisions of the Public Procurement and Disposal Act, 2015 by flouting the principles of public finance management in as far as public procurement of goods and services is concerned.

(f)The Governor violated Section 35(4) and Section 45(1) of the County Governments Act, 2012, as read together with Section 104 and Section 148 of the Public Finance Management Act whence between 2018 and early 2019, and contrary to the law, the Office of the County Executive Committee (CEC) Member for Finance and that of the Chief Officer for Finance were held by the same person, one Ms. Winfred Gathagu, which situation occasioned confusion and inefficiencies at the County Treasury, hence failing to promote good governance, and compromising the doctrine of transparency and accountability within the county government.

The Governor has violated the provisions of Section 104 of the Public Finance Management Act on the responsibilities and powers of the County Treasury, whence through inaction, action, omissions and commissions he continues to preside over a broken public finance management system, whence the County Treasury remains ineffective.

Despite various resolutions of the County Assembly urging the Governor to improve efficiencies by decentralizing the finance function to sectors as required by the provisions of Section 148 of the Public Finance Management Act, 2012, the county continues to operate in contravention of the law.

(h)The Governor has violated the provisions of Article 5.5 of the Deed of Transfer of Functions, by his refusal to hand over the necessary documentation to enable the Kenya Revenue Authority (KRA) to undertake optimal revenue collection under the transferred functions.

(i)The Governor grossly violated Article 201 of the Constitution on the prudent use of financial resources and Section 159 of the Public Finance Management Act, 2012 as read together with Section 7 of the Nairobi City County Tax Waivers Administration Act, 2013 by unilaterally and arbitrarily issuing waivers in total disregard of the law.

(j)The Governor has violated the provisions of Article 201(d) of the Constitution on principles that guide all aspects of public finance in the Republic, and 227(1) on procurement of public goods and services, and the provisions of the Public Procurement and Disposal Act, 2015 by willfully interfering in the award of the tender for the construction of the Dandora Stadium as established by the Public Procurement Administrative Review Board (PPRB), leading to loss of public funds in overseeing payments despite concerns by technical officers;

(k)The Governor has violated the provisions of Article 201 of the Constitution and the Public Finance Management Act, 2012 on principles that guide all aspects of prudent use of public finance where either intentionally or negligently he presided over the massive loss and theft of county public funds in the three years he has been in office, as evidenced by the Auditor-General's Report of 2018/2019, which raised the red flag over the city's stalled Kshs204.2 million projects, as well as failure by the county government to meet its revenue targets.

(l)The Governor has violated the provisions of Article 5 of the Deed of Transfer of functions by sabotaging the transfer of functions. The Governor is yet to provide the Nairobi Metropolitan Services (NMS) with crucial information necessary in aiding the carrying out of the transferred functions.

(Sen. Wako entered the Chamber)

Take your seat, Sen. Wako.

B. Abuse of Office

The particulars cited under this ground are as follows-

(a)The Governor has abused his office by violating Article 75 of the Constitution, as read together with Section 11 and 13 of the Leadership and Integrity Act, 2012 on the conduct of State officers, where he has persistently intimidated, harassed and molested officers of the County Executive, including blackmailing his County Executive Committee, Members and Chief Officers with one-year contracts, whose renewal he has undertaken arbitrarily, leaving the officers jittery about their employment and creating a climate of fear, uncertainty and despondence.

(Loud consultations)

Order Senators. You need to listen to the charges. Listen to this one.

(b)The Governor has abused his office by violating Article 75 of the Constitution as read together with Section 16 of the Leadership and Integrity Act, 2012 by unlawfully using public funds to pay for his daughter's travel to New York, USA, to allegedly attend the County First Lady's Conference, held during the 62nd Session of the Commission on the Status of Women (CSW) in 2018.

C. Gross Misconduct

The Particulars under this charge are-

(a)The Governor has violated Article 73 of the Constitution by failing to promote public confidence in the integrity in the Office of the Governor following his being charged before the Anti-Corruption Court, thus prejudicing and or compromising the

social contract and trust bestowed upon him by the people of Nairobi by virtue of Article 1 of the Constitution.

(b)The Governor has violated Article 73 of the Constitution and Section 8 and 11 of the Leadership and Integrity Act, 2012 on public trust and professionalism, where he is on record admitting that he was intoxicated and thus not in the right frame of mind when he signed the Deed of Transfer for the transfer of certain functions of the county to the national Government in February, 2020.

(Sen. Murkomen consulted loudly)

Order, Sen. Murkomen.

(c)The Governor has violated Article 73 of the Constitution and the Leadership and Integrity Act, 2012 on the responsibilities of leadership, by failing to professionally perform his constitutionally sanctioned duties owing to his constant absence from office, even before he was formally restrained by the courts from accessing his office due to corruption charges, where he remained constantly unreachable in person or on his phone for inordinately longer periods of time, to the huge detriment of the performance of the functions of the county executive.

(d)The Governor has violated Article 75(1)(c) of the Constitution as read together with Section 11 of the Leadership and Integrity Act, 2012 in respect of conduct of State officers by drawing a salary and hefty allowances and enjoying the privileges of the office he holds, while failing to diligently report to work and being perennially absent, even before he was formally restrained by the courts from accessing his office due to corruption charges.

(e)The Governor has violated Section 8 of the Leadership and Integrity Act, 2012 on public trust, where he has constantly used his position to abuse public trust in the county government, by exercising the powers of his office in a manner detrimental to prudent public service delivery, by persistent use of divisive and unbecoming language which undermines the office he holds and the county administration.

(f) The Governor has violated Articles 73 and 75 of the Constitution on conduct of state officers that is demeaning to the offices they hold and Section 11 of the Leadership and Integrity Act, 2012, by persistently and willfully using, publicizing and publishing abusive and unbecoming words and language, as evidenced by his social media posts and numerous rants, in which he has hurled abuses and conducted himself in a manner that undermines and demeans the Office of the Governor.

D. Crimes under National Law

There are serious reasons to believe that the Governor has committed crimes under national law, specifically the Anti-corruption and Economic Crimes Act, which crimes he has been charged for in the Anti-Corruption Court.

Hon. Senators, Standing Order No.75(1)(b) of the Senate Standing Orders gives the Senate the option of investigating this matter by appointment of a Special Committee comprising 11Members or in Plenary.

The resolution of the Senate on the Motion by the Senate Majority Leader in today's Order Paper will, therefore, determine the manner in which this matter shall henceforth proceed.

It is noteworthy, and I wish to emphasize to all hon. Senators, that the debate on the Motion shall be limited to the substance of the Motion. It is not a Motion on the propriety, prudence or even the constitutionality or the legality of the processes that have preceded the submission of this matter to the Senate. It is not a debate on the facts of the matter or their merits. It is, therefore, not permissible to deviate to any other matter than the Motion before the Senate.

Finally, hon. Senators, the hearing of charges for the proposed removal from office of a governor is one of the most important functions of the Senate under the Constitution. I, therefore, urge that the Senate exercises the highest level of responsibility on this matter.

I thank you.

(Applause)

I deserve more than that!

(Prolonged applause)

(Laughter)

(Sen. Omanga walked slowly into the Chamber)

Sen. Omanga, you can walk faster than that.
Let me move on to the next Communication.

HOLDING OF A HYBRID SITTING OF THE SENATE

Hon. Senators, I have another Communication to make on the holding of a hybrid Sitting during the Special Sitting of the Senate, to consider the proposed removal from office, by impeachment, of the Governor of Nairobi City County.

Hon. Senators, the Sitting today is special in several ways. It is special because it is a sitting convened after we have gone on recess. Secondly, it is special because this is the first sitting where we will hold a hybrid sitting, as provided for in the Senate Standing Orders, Part XXIXA.

According to the interpretation of the Standing Orders, a hybrid virtual sitting is one that entails a sitting or meeting consisting of Senators who are physically present at the location of the sitting or meeting and Senators who participate in the sitting or meeting virtually from a remote location through the use of technology.

Hon. Senators, the prevailing COVID-19 pandemic has affected each one of us in one way or the other. Noting that its prevalence continues to increase, and in line with the COVID-19 guidelines on keeping safe, I have determined that it is, indeed, imperative that we hold a hybrid virtual sitting to accommodate our colleagues who are not in a position to attend and participate physically.

In order to ensure decorum, effective and efficient conduct of the hybrid sitting, I hereby wish to give the following guidelines-

On logging-in-

(1) The online platform to be used during the sitting will be Zoom Video Communications.

(2) Earlier on today, I issued guidelines on the hybrid virtual sittings where I informed Senators who intended to participate in the sitting virtually to contact the Office of the Clerk of the Senate, at least 30 minutes before the sitting commences to enable the Secretariat to facilitate them with the log-in credentials.

(3) Senators participating virtually must log-in using their full names and their video must be on.

What we mean is that you must be seen.

On powers and privileges-

(1) A Senator shall enjoy and exercise the powers, privileges and immunities bestowed on Parliament by the Constitution, the Parliamentary Powers and Privileges Act, 2017 and any other written law.

On attire and decorum-

(1) Pursuant to Standing Order No.251(d)(2), a Senator participating virtually shall adhere to the standards set out under the Speaker's Rules on attire and decorum.

(2) A Senator participating in the sitting virtually shall participate from an environment which is non-political, professionally appropriate and not distracting to other Senators.

What we mean is that you may appear dressed half-naked and start distracting people from concentrating.

(3) A Senator shall not participate in a virtual sitting of the House while in the Chamber.

(4) A Senator participating virtually must have their microphone on mute, and unmute only when called upon by the Presiding Officer to speak.

(5) A Senator shall be visible to the Presiding Officer in order to be counted for the purpose of establishing a quorum, taking a decision or voting on a matter.

(6) A Senator experiencing a technical problem while participating in the proceedings---

(Sen. Olekina walked into the Chamber while the Speaker was on his feet)

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! Sen. Olekina, that privilege may be withdrawn! Take your seat!

(Laughter)

Hon. Senators, a Senator experiencing a technical problem while participating in the proceedings virtually shall inform the Presiding Officer through the Clerk on mobile number: +254722453239.

On quorum and voting, pursuant to Standing Order No.251E, whenever a sitting of the Senate is held virtually, the quorum requirements shall be as specified under the Constitution and the Standing Orders, and a Senator who has accessed the sitting virtually shall be deemed present for purposes of establishing a quorum, taking a decision or voting on a matter.

Voting during a virtual sitting shall be as specified under Part XVI (Voting and Divisions). Notwithstanding this, voting shall be by Roll Call.

On transmission of documents, pursuant to Standing Order No.251H(1), any document required to be tabled, issued or submitted during the sitting, will be tabled, issued or submitted electronically, through senatableoffice@gmail.com.

On broadcasting, pursuant to Standing Order No.251I(1), a virtual sitting of the Senate will be live-streamed and the proceedings published by the HANSARD and broadcasted pursuant to Standing Orders No.237 and No.239.

I urge all Senators participating in this sitting to adhere to these guidelines strictly and wish us all a successful first hybrid virtual sitting.

I thank you.

POINT OF ORDER

CLARIFICATIONS ON MANAGEMENT OF HYBRID SITTING OF THE SENATE

Sen. Kang'ata: On a point of order, Mr. Speaker, Sir. I have two issues to raise. First, will your Communication regarding virtual participation apply in the next sitting concerning this impeachment? Secondly, can you allow an intermediary to do the letter that is supposed to be addressed to the Clerk of the Senate?

The Speaker (Hon. Lusaka): I see another point of order by Sen. Murkomen.

Sen. Murkomen: Mr. Speaker, Sir, thank you for the opportunity. I know that we amended the Standing Orders some three months ago. The issue I really would like to confirm is that at what stage---

(Loud consultations)

The Speaker (Hon. Lusaka): Order, hon. Senators. I need to get what Sen. Murkomen is communicating.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. You know that this has been a cause of controversy in many county assemblies. I know we will not go to the merits of the case that is before us, but we know that it was reported all over the media that one of the controversies was the electronic voting and virtual participation of Members of the County Assembly of Nairobi City, just like many other county assemblies across the country on this issue.

To ensure that there will be no situation where this House will be reduced to the chaos that we have seen in county assemblies; at what stage will you communicate? For example, in this situation, you gave us a notice before 1.30 p.m. for Senators who wanted to participate virtually. When the sitting convenes, as we have done today, at what point will you communicate to the Senate that apart from those of us who are sitting in the Chamber, So-and-So is already participating virtually? The reason for this is so that we do not find ourselves in a situation where at some point we will be told that So-and-So was part of the proceedings, but we cannot verify the results of those proceedings. I really hope that can be done.

Secondly, when it comes to the voting, can a Senator participating virtually vote electronically, or he or she will vote by a voice vote? The reason for this, again, is because sometimes even here, if you vote electronically, Senators press “No” when they meant “Yes” and vice versa, or they wanted an abstention. They have an opportunity to appeal to you and it is corrected. A Member participating virtually, if he or she was to vote electronically, may not have the benefit of confirming whether the vote reflected “No”, “Yes” or “Abstention,” as it may be. Will the Member voting virtually be allowed to vote electronically or might it not be better to vote by a voice vote?

The Speaker (Hon. Lusaka): There is a point of order from Sen. M. Kajwang’. I will respond to all of them.

Sen. M. Kajwang’: Mr. Speaker, Sir, I have been one of those advocating for virtual and hybrid sittings. I am glad that today, on a very important matter, we will put it to the test.

I have looked at Standing Order No.251F on Voting, particularly when we are doing the virtual or hybrid sittings. It leaves a lot of room for interpretation because Standing Order No.251F(2) says-

“Where a decision is to be made by way of secret ballot, a Senator shall cast their vote by-

(a) roll call; or

(b) electronically, as shall be determined by the Speaker.”

The problem with that is that if a Senator is sitting behind a computer screen somewhere and they have logged into the *Zoom* Platform that we have adopted, it is possible that they can be online, but not physically present at the time of voting. This is such that if the voting is electronic, anybody else close to that device can cast that electronic vote.

Mr. Speaker, Sir, could you just tighten those gaps and make it clear that the vote on this particular subject for which the Senate has been called back into a Special Sitting shall be by Roll Call? This means that a Senator sitting and voting virtually must be physically present, and be seen rather than it being an electronic vote.

The Speaker (Hon. Lusaka): There are points of order from Sen. Cheruiyot, Sen. Olekina, Sen. Linturi, and then we are done.

Sen. Cheruiyot: Mr. Speaker, Sir, as a long serving Member of the Committee on Information, Communication and Technology (ICT), we appreciate this development. However, I wish to bring to your attention at this particular point, that Standing Order No.251F(2) that Sen. M. Kajwang’ has brought to your attention, still needs further interpretation.

Decisions of Parliament are sometimes very controversial and one must ascertain. One of the reasons we insist on Members being present within the precincts of Parliament is because it is a secure space. Apart from reasons beyond the control of Members, many a times, they cast their votes at free will. We have no way of ascertaining two things with this system that is being proposed now.

Mr. Speaker, Sir, the first on is what Sen. M. Kajwang’ has raised. At a particular time, it is actually the person who logged in that is voting. This is because we are using this on the *Zoom* platform. Secondly, that this person is exercising their democratic right in a free manner, free of any form of intimidation. It is important for Members to note what the Parliamentary Service Commission (PSC) has done. That is why I thought, perhaps, you may want to delay this decision. The PSC is in its final stages of procuring

an e-parliament system that will take care of the fears that Sen. M. Kajwang' is raising. This is where at the point of decision-making the biometric passwords that have been input into the system ascertain that the vote is actually coming from the particular Member who is casting that vote.

Mr. Speaker, Sir, therefore, without having a more secure system other than the Zoom platform, I would really wish to plead with you that perhaps you reconsider some of these decisions and make it that it shall not be at the free whims of Members to either choose to participate here or on an online platform. There must be unique circumstances that demand the same.

Thank you.

The Speaker (Hon. Lusaka): Sen. Olekina, proceed, then Sen. Wetangula.

Sen. Olekina: Mr. Speaker, Sir, let me thank you for your Communication. I also rise under Standing Order No.251F(3)(c).

It says-

“The technology is simple, accurate, verifiable, secure and transparent”.

In this country, we have had serious cases of cyber security. Would it be in order for me to request that before we can implement what is in these new Standing Orders, we run a mock session, so that we know that everyone is comfortable and that they can use that virtual service properly for them to represent their counties?

I am asking this because many a times when we are sitting even in our committees and doing virtual sittings, the network is not stable. I think that parliamentary procedures should not be taken lightly.

I have read Article 123 on the power to vote by this House. I am just a little bit concerned that when we allow the Parliament of the Republic of Kenya to allow virtual sittings on matters when our technology is not verifiable or secure, we will be making a mockery of parliamentary procedures. I would like you to give a detailed ruling on this matter, so that when we progress, we know this is secure and verifiable.

I share the concerns of Sen. M. Kajwang' and the Senator for Nandi County. I would like to beseech you to suspend the operationalization of that Standing Order and the new changes in the Standing Orders until we can carry out a mock exercise and make sure all Senators have secure gadgets to use. When I read this, I see a lot of room for mischief.

The Speaker (Hon. Lusaka): Order, let us keep it short.

Sen. Olekina: Mr. Speaker, Sir, let me finalise. I was not particularly happy with what I saw happening at the Nairobi City County Assembly.

The Speaker (Hon. Lusaka): Order, I said that we should not get into that. That is a subject of--

Sen. Olekina: It had everything to do with the issue of virtual voting.

If you allow me, my plea to you is this, let us suspend the operationalization of this until the Parliamentary Service Commission (PSC) procures secure gadgets that can be used by Members, so that when we are here representing our counties we are sure that the views of our people are taken seriously.

The Speaker (Hon. Lusaka): Proceed, Sen. Wetangula.

Sen. Wetangula: Mr. Speaker, Sir, thank you for your Communication that has elicited these points of order. Standing Order No. 251F(3) ---

(A mobile phone rung)

The Speaker (Hon. Lusaka): Order! Whose phone is that?

Sen. Wetangula: Mr. Speaker, Sir, Standing Order No. 251F(3) reads as follows-

“Where technology is used to make a decision, measures shall be put in place to ensure that –

(a) the system is capable of verifying the votes cast either electronically or manually;

(b) the integrity and confidentiality of the vote is maintained; and

(c) the technology is simple, accurate, verifiable, secure and transparent.”

Part (c) is what the distinguished Senator for Narok County has read. We would be interested as a House to know what measures have been put in place to ensure that the system is capable of verifying the votes cast and the integrity and confidentiality of the vote.

Mr. Speaker, Sir, you have recalled this House from recess. Every Member has been obligated and, indeed, they are all present to participate in this debate. Like the Senator for Narok County has said, we have not even carried out any mock trial on this system to test its efficacy. We do not want to start experimenting on a matter that is going to determine the life, politics and future of an individual whose constitutional guarantees are very clear.

It is unfortunate that when this new Standing Orders came into effect, unlike in the past, the House was never called together to be walked through and to be told that these are possibilities as we go to the future. The only measures that have been taken by Parliament to help Members participate virtually is that we are routinely sent some airtime without caring whether you are going to put it on your phone or not. We do not even know whether every Member here has a smartphone in the first place.

Mr. Speaker, Sir, I urge that we go to the old system. Even if we vote electronically, which we have done before, it must be a Member physically present and voting.

The Speaker (Hon. Lusaka): Order, Senators. Sen. Kibiru has logged in. Let us hear how it works. Be patient.

Sen. Kibiru: Thank you, Mr. Speaker, Sir. I am speaking from Kirinyaga County. It is good that we are embracing technology. I have listened to the various points of order with regard to your Communication. I want to say it is high time we embraced technology.

We do not have to fear. I just decided to be part of the people who would want to use technology for purposes of conducting business. I am on and in the event that you rule otherwise, I will be disadvantaged.

The Speaker (Hon. Lusaka): Thank you. I will make another Communication. However, you have heard him.

Sen. Linturi, proceed.

Sen. Linturi: Thank you, Mr. Speaker, Sir, for this opportunity.

I have heard my colleagues speak to this matter. With tremendous respect, I invite you to apply your discretion to determine this matter. This is because of the seriousness of the debate that is before this House today.

Mr. Speaker, Sir, I have a problem with the combination. First, having heard the directions that you gave in regard to the area where a Member sits and how they should be dressed so that they can contribute to the matter before the House, I am left wondering whether we have the capacity to establish if the particular area where one is seated complies with your directions.

Secondly, Mr. Speaker, Sir, the matter before this House today is not simple. It is less than two years ago when this country was almost going into war. For those who listened to Sen. Orengo in the election Petition between the current President and hon. Raila Odinga, there was a problem of access to servers when verification of votes was required because they were transmitted electronically. People can take control of a system.

Like Sen. Murkomen asked, we have had opportunities where if, for example, in the wrong way your ballot was counted either a 'yes' or 'no,' there is an opportunity to reject. If it is being done electronically today, it may end up being very difficult for us to ascertain. Even for the person who is in a remote place where the network is not stable, he or she may miss out.

Mr. Speaker, Sir, considering that this system has not been tested before, I appreciate the extent which we have gotten in terms of technology, but we cannot forget the fact that some complaints have been raised here about the use of technology, especially on the matter in which the impeachment was done. As a House, I do not want us to get ourselves into a situation where we will also end up in such a problem.

Mr. Speaker, Sir, I beseech you to apply your discretion and allow the Members to participate physically on this matter, to safeguard the integrity of this process because you may have been abducted by people who have interest in this matter and told what you must do. We cannot rule it out.

Mr. Speaker, Sir, please, apply your discretion to guide this House specifically on how we must deal with this matter because it is the first time.

The Speaker (Hon. Lusaka): Sen. Halake, you just logged in.

Sen. Cheragei, kindly take your seat. Do not raise your hand.

Sen. Halake: Thank you, Mr. Speaker, Sir. I am at a loss as to how we are questioning the use of technology and how the use of technology can affect the integrity of the decisions of this House. For the last eighty months or so, we have been conducting business virtually. If that has been the issue, is it in order to decide for us to sit, pass resolutions and draw our sitting allowances on virtual meetings throughout the entire time? Why is today special?

To allege that technology impacts on the integrity, it is not true. Unless there are other reasons as to why this is being questioned, I do not think we should be questioning Standing Order No.251A. We have been conducting our business even before we made changes to the Standing Orders.

Mr. Speaker, Sir, we have to be honest with ourselves. We must embrace technology. There is no two way out unless there are other considerations.

I submit, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Hon. Senators, I seek your indulgence because we must make progress. We have ventilated on this issue and let me say the following. First, the Secretariat is able to know who have logged in. That answers the question asked by Sen. Murkomen.

Secondly, we are the ones who passed these Standing Orders. We must start somewhere. Let us see how it works. It may not be perfect, but we will make certain changes as we go ahead. Let us have confidence in what we have done as Senators, so that we move forward.

Next Order.

MESSAGE FROM THE NATIONAL ASSEMBLY

PASSAGE BY THE NATIONAL ASSEMBLY OF THE TEA BILL (SENATE BILLS NO. 36 OF 2018)

The Speaker (Hon. Lusaka): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.41(3), I have received the following Message dated 7th December, 2020 from the Speaker of the National Assembly regarding the passage, by the National Assembly, of the Tea Bill (Senate Bill No.36 of 2018). Pursuant to the said Standing Order, I now report the Message-

“Pursuant to the provisions of Standing Order No.41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

WHEREAS, the Tea Bill (Senate Bill No.36 of 2018) was passed by the Senate on Wednesday, 12th June, 2019 with amendments and referred to the National Assembly for consideration;

AND WHEREAS, the National Assembly passed the said Bill on Thursday, 3rd December, 2020 with further amendments attached herewith;

NOW THEREFORE, in accordance with the provisions of Article 110 of the Constitution and Standing Orders No.41(1) and 144 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

Hon. Senators, Article 112(1)(b) of the Constitution provides that if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration.

Hon. Senators, in this regard, I direct the Standing Committee on Agriculture, Livestock and Fisheries to deliberate on the National Assembly amendments and report to the Senate. Further, pursuant to Standing Order No.159(1) of the Senate Standing Orders, I direct that the National Assembly amendments to the Tea Bill (Senate Bill No.36 of 2018) be circulated to all Senators.

I thank you.

Sen. Kang’ata: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Kang’ata?

Sen. Kang’ata: Thank you, Mr. Speaker, Sir, for that very good communication. I rise on a point of order seeking your directions, taking into account that I come from a county where 80 per cent of our core business is tea. This Bill is very important to tea farmers. The Committee has only seven days to report back to the Plenary on its deliberation of those amendments. If those directions are given, we will go home and give a Christmas gift to the tea farmers of Murang’a and other tea growing areas. There is no need to procrastinate this very important Bill that was passed by this Senate. We know

that it is going to empower millions of tea farmers in the entire Republic of Kenya, and most importantly, my County of Murang'a.

The Speaker (Hon. Lusaka): Sen. Cheruiyot, kindly proceed.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. I want to appreciate your Communication. This is a very important Message to the tea farmers of this country because their day of freedom is nearing.

Mr. Speaker, Sir, I have seen Sen. Njeru Ndwiga, the Chairperson of the Committee on Agriculture, Livestock and Fisheries has logged in. As proposed by Sen. Kang'ata, it is possible for them to meet and within seven days iron out any issue that may arise out of the amendments by the National Assembly.

Mr. Speaker, Sir, the National Assembly did a lot of work and public participation on this Bill. It points out to the fact that part of the things that we need to do in enlarging democracy and the participation of colleagues in this House, is to ensure that when we have a Bill such as this that is crosscutting, to have Members of both Houses participate in ways other than what is currently being provided.

Mr. Speaker, Sir, I had the chance to join our colleagues from the National Assembly in public participation. I listened to how passionately tea farmers were pleading with us to conclude this particular exercise.

I know that there are one or two issues raised by our colleagues. For example, Sen. Moi has spoken to me in his private capacity as a player in the tea industry on certain concerns that certain players will have. I believe that those issues can be resolved at the Standing Committee on Agriculture, Livestock and Fisheries chaired by Sen. Ndwiga. They can put their concurrence and give safety measures so that investors in the tea sector do not feel as if we are stifling their rights as we pursue those of ordinary citizens.

Please direct so, so that we can hasten the process.

The Speaker (Hon. Lusaka): Order, hon. Senators. This was just a message from the National Assembly. I have already directed that the Standing Committee on Agriculture, Livestock and Fisheries takes up the matter and concludes it. We are not opening a discussion because it is just a Message. It is a Message from the National Assembly. Sen. Cherargei, we do not debate Messages.

Let us proceed. I have already given a ruling.

Next Order.

NOTICE OF MOTION

ESTABLISHMENT OF A SELECT COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF NAIROBI CITY COUNTY

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Wednesday, 3 December 2020, the Nairobi City County Assembly approved a Motion for the removal from office by impeachment, of the Honourable Mike Mbuvi Sonko, Governor of Nairobi City County;

AND FURTHER, WHEREAS by letter Ref. No. NCCA/SPK/12/2020(1), dated Friday, 4 December 2020, and received in the Office of the Speaker of the Senate on Friday, 4 December 2020, the Speaker of the County Assembly of Nairobi City informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.75(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b)(i), the Senate resolves to establish a special committee comprising-

- (1) Sen. Samson Kiprotich Cherarkey, MP;
- (2) Sen. Charles Reubenson Kibiru, MP;
- (3) Sen. (Eng.) Hargura Godana, MP;
- (4) Sen. (Dr.) Abdullahi Ibrahim Ali, CBS, MP;
- (5) Sen. (Dr.) Alice Chepkorir Milgo, MP;
- (6) Sen. Christine Zawadi Gona, MP;
- (7) Sen. Eric Okong'o Mogeni, SC, MP;
- (8) Sen. Mwinyihaji Mohamed Faki, MP;
- (9) Sen. Judith Ramaita Pareno, MP.
- (10) Sen. Petronila Were Lokorio, MP; and
- (11) Sen. Fredrick Otieno Outa, MP;

to investigate the proposed removal from office by impeachment of the Governor of Nairobi City County and to report to the Senate within ten (10) days of its appointment, pursuant to Standing Order No.75(2), on whether it finds the particulars of the allegations to have been substantiated.

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, for the convenience of the House, I propose that we skip that Order. I am not going to give Notice.

The Speaker (Hon. Lusaka): He says we skip it.

(Notice of Motion withdrawn)

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! That is why I am saying it is important to listen. He has declined to give the Notice. In the absence of a Notice of Motion, this is what I want to communicate.

COMMUNICATION FROM THE CHAIR**WITHDRAWAL OF NOTICE OF MOTION FOR THE ESTABLISHMENT OF A
SELECT COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM
OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF NAIROBI CITY COUNTY**

I know that the Senate Majority Leader in whose name the Notice of Motion at Order No.3 in today's Order Paper has failed to give Notice of the Motion set out under Order No.4. As a result, both Orders become the subject of Standing Orders No.56 and 59, respectively.

Standing Order No.56(1) provides as follows-

"A notice of Motion may be withdrawn by the Senator who gave the notice."

Standing Order No.59(1) on the time for moving Motion provides as follows-

"The Senate Business Committee shall allot the time and sequence of the publication in the Order Paper of every Motion approved by the Speaker."

Standing Order No.59(2) states that-

"Save for a Special Motion, a Senator who has a Motion in his or her name may authorize, in writing, another Senator to-

(a) move that Motion in the Senator's stead; or

(b) on conclusion of debate and before the Question is put, to reply in the Senator's stead."

Standing Order No.59(3) states that-

"Where no Senator moves a Motion at the time specified by or under these Standing Orders, such Motion shall not be published again in the Order Paper during the same Session except with the leave of the Speaker."

Hon. Senators as earlier explained, Standing Order No.75 provides only two options for the Senate when it has to investigate the matter of a proposed removal from office by impeachment of a governor of a county. The two options are either by a special Committee appointed by the Senate by resolution or the Senate in Plenary.

A resolution is required only if the Senate seeks to proceed by way of a special Committee. Otherwise, the default is the Plenary, for which Standing Order 75 does not require a resolution.

The Majority Leader having withdrawn or otherwise abandoned the Notice of Motion, therefore the Motion---

(Loud consultations)

Order, Senators! That is not parliamentary language.

The Majority Leader having withdrawn or otherwise abandoned the Notice of Motion, the route of Committee is, therefore, abandoned and that now means that the Senate will investigate this matter in Plenary.

At its meeting held yesterday, the SBC agreed on provisional dates for this investigation in the event that the matter was to be investigated in Plenary.

I, therefore, wish to inform you that I will be gazetting Thursday, 17th December, 2020 and Friday, 18th December, 2020 as the dates on which the Senate shall undertake the investigations of this matter in Plenary.

ADJOURNMENT

Hon. Senators, this being a Special Siting and there being no other Business, the Senate stands adjourned.

The Senate rose at 3.31 p.m.