

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 16<sup>th</sup> December, 2020

### Special Sitting

*(Convened via Kenya Gazette Notice  
No.10309 of 9<sup>th</sup> December, 2020)*

*The House met at the Senate Chamber, Parliament  
Buildings, at 3.05 p.m.*

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

### CONSIDERED RULING

IMPEACHMENT PROCESS TO PROCEED  
WITHIN CONFINES OF THE CONSTITUTION  
AND LEGAL PROVISIONS ON IMPEACHMENT

**Sen. Olekina:** Mr. Speaker, Sir, I am looking at these documents and this is the Senate of the Republic of Kenya which even under Article 125 has got the power to sit as a High Court.

These documents are not legible and are not certified. It would be important for us to have documents that are certified. My concern is that I cannot see what I am looking at.

**Sen. Olekina:** On a point of order, Mr. Speaker, Sir. It will be proper for us to look at the evidence. Since we have an in-camera session, maybe at that point when we are deliberating, we can listen to such audio and video. It is not fair that our children are listening to this and we do not know the context or have the whole picture.

With a small clip of 30 seconds, we do not know whether it has been edited, so that it suits a certain narrative. We are the jury that is supposed to make the decision. If we are not happy with the way things are proceeding, it is right for us to raise them, so that we do not have to wait until the time when we will be talking.

**Sen. Olekina:** On a point of order, Mr. Speaker, Sir. I want to repeat this. This is a very important process in the Senate of the Republic of Kenya. The question is, should a witness be assisted by the attorney? In every question, the witness is seeking clarification from the lawyer on how to answer the question. Should we proceed like that?

**Sen. Olekina:** Mr. Speaker, Sir, I remember very clearly that you gave a directive that documents be brought to this House. If the counsel of the governor is referring to those documents, then we would like to have the documents. When they made an application, you stated that the documents be brought. If we can be given the documents, he can clarify.

I remember discussing with my colleague, Sen. Orenge and saying that if the Speaker has accepted documents to be introduced in the House, can we have those documents so that we proceed? You allowed the documents to be introduced.

**The Speaker** (Hon. Lusaka): Did I? No.

**Sen. Olekina:** The HANSARD can bear me witness.

**The Speaker** (Hon. Lusaka): Which documents did I allow?

**Sen. Olekina:** Mr. Speaker, Sir, when I listened to the counsel of the governor submitting, they indicated that they were served with the documents at 6.30 p.m., and they requested to be allowed to submit their responses to those submissions.

**Sen. Olekina:** Thank you, Madam Deputy Speaker. I will have a problem with that because this Senate will now be invited to make a determination on whether that evidence which will be provided in-camera will be published. I believe that everything that happens in this House must have a record. This House must have a record. I think in determining whether that witness can be cross-examined in-camera, we must make a determination. Once we receive that information, are we able to keep that information within the precincts of Parliament or is it open to the public?

Madam Deputy Speaker, this is because the threat which is being alluded to by the counsel for Nairobi City County Assembly can only be fully substantiated if there is a way that we can protect that information so that it is not available out in public.

I think we may need to rethink because it is an application that has been made. We have to make a decision whether the counsel without any other witnesses and only the Senators and the Clerk can then call that witness here, put off the cameras so that this process can actually appear to be open.

Madam Deputy Speaker, if we cannot be able to make that decision, then I would advise the Nairobi City County Assembly to withdraw that witness another witness so that this process can be seen to be open and not a process where people leave and say that they are under threat.

This is a matter that we have to consider ourselves in this Parliament, first, on how to treat any in-camera witness testimonies. I remember when we had the Director of Public Prosecutions (DPP) appearing before a Committee. The only thing we did was put off the cameras. We did not make it public. However, it remained as a record of this House so that in future it can be considered.

Madam Deputy Speaker, since it is something new. Although I have heard my sister talk about use of technology, even our own Standing Orders are still very clear. Whichever means we use, they must be secure and accountable.

We cannot just venture into new territories by allowing a witness to appear from wherever they are. This is because you would not know whether that witness would be coached to answer questions in a certain way.

Madam Deputy Speaker, we cannot also take the staff of Parliament because if that threat is imminent you never know who it might take. Even the staff of Parliament

might end up falling victim. I beseech the Assembly to withdraw that witness and bring in someone else.