

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 6th May, 2021

Special Sitting

*(Convened via Kenya Gazette Notice
No.4196 of 30th April, 2021)*

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

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

PRAYER

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

MOTION

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

The Speaker (Hon. Lusaka): Can we have a Member of the Senate Business Committee move the Motion.

Can we hear from the Senate Majority Leader?

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir---

(Loud Consultations)

The Speaker (Hon. Lusaka): Order, Senators. You are distracting the House. Please take your seats.

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir---

(Sen. Orengo walked into the Chamber amid applause)

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, I beg to move that whereas pursuant to Article 181(1) of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday 27th April, 2021---

The Speaker (Hon. Lusaka): Senate Leader of Majority, give notice of Motion. That is what he was asking.

NOTICE OF MOTION

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

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, I beg to give Notice of the following Motion:

THAT, whereas pursuant to Article 181 of the Constitution and Section 33 of the County Government's Act, 2012 on Tuesday, 27th April 2021, the Wajir County Assembly approved the Motion for the removal from office by impeachment, of hon. Mohammed Abdi Mohamud, Governor of Wajir County;

Further, whereas by letter reference number SPKWCA/Senate/4/2021, dated Wednesday, 28th April, 2021, and received in the office of the Speaker of the Senate on Thursday 29th April, 2021, the Speaker of the County Assembly of Wajir 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 a document in evidence of the proceedings of the assembly.

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 of 11 of its Members to investigate the matter;

Now therefore, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.75(1)(b)(1), the Senate resolves to proceed on this matter by way of establishing a special committee to investigate the proposed removal from office by impeachment of Hon. Mohamed Abdi Mohamud the Governor of Wajir County.

Thank you.

The Speaker (Hon. Lusaka): Next Order.

MOTION

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

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, I beg to move:

THAT, whereas pursuant to Article 181(1) of the Constitution and Section 33 of the County Governments Act 2012, on Tuesday, 27th April, 2021, the Wajir County Assembly---

The Speaker (Hon. Lusaka): Let us observe some social distancing. Please proceed.

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, it means starting all over again.

Mr. Speaker, Sir, I beg to move:

THAT, whereas pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday 27th April, 2021 the Wajir County Assembly approved a Motion for the removal from office by impeachment of the hon. Mohamed Abdi Mohamud, the Governor of Wajir County.

Further, whereas by letter reference number SPK/WCA/Senate/4/20211, dated Wednesday, 28th April, 2021 and received in the office of the Speaker of the Senate on Thursday, 29th April, 2021, the Speaker of the County Assembly of Wajir, 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;

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 of 11 of its members to investigate the matter.

Now therefore, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.75(1)(b)(1), the Senate resolves to proceed on this matter by way of establishment of a special committee to investigate the proposed removal from office by impeachment of hon. Mohamed Abdi Mohamud, the Governor of Wajir County.

Mr. Speaker, Sir, this is one of the most important functions of this Senate. It is a task given to the Senate for the Senate to decide. Particularly today, the Senate is called upon to make a decision on whether we are going to investigate this matter by way of a special committee as proposed or we are going to move in another direction.

The Standing Orders provide for the procedure for removing a governor from office. In particular, Standing Order No.75 (1)(b)(1) and (2) clearly states:

“The Senate may either by resolution appoint a special committee comprising 11 of its members to investigate the matter or investigate the matter in plenary”.

That is our duty today.

I will call upon the Membership, especially the Members and their delegations and the counties to take this matter very seriously in considering where we move and in which direction.

During the term of the 11th Parliament on five occasions, the Senate considered the proposed removal from office by impeachment of governors and deputy governors by way of a special committee and on one occasion, in the plenary.

Further, during the term of the 12th Parliament on two occasions, the Senate has considered the proposed removal from office by impeachment of the governors by way of

special committees and on another two occasions, we have decided to go the plenary way.

At a special meeting of the Senate Business Committee held on 3rd May, 2021, the Members deliberated on the proposed removal from office of the Governor for Wajir County.

They deliberated and resolved that a Motion be moved in the House to allow Senators an opportunity to agree on the procedure to be followed on the proposed removal from office by impeachment of the Governor of Wajir County in accordance with our Standing Orders.

Accordingly, should the House resolve to proceed with this matter by way of special committee, the Senate Majority Leader and the Senate Minority Leader in consultation with the Senate Business Committee will agree on the proposed Membership of the special committee for consideration and approval of the House pursuant to Standing Order No. 181(3).

Mr. Speaker, Sir, this is a very unique Motion today. As you have noticed, this Motion proposes the Committee but the names are not there.

Mr. Speaker, Sir, from experience, it is easier to bring the Motion and agree on it and later find a way of getting the names after we have agreed on whether we are going the Committee way without prejudice or influence regarding anybody who is in that Committee.

That is why this Motion is very unique. It is the first time it is being written this way. That goes to prove that the House does not have any particular interest. It is a fair arbiter that will listen and then allow Members to make a decision.

Accordingly, should the House resolve to proceed with the matter by way of a special committee, the names will be added to the Motion. However, should the House resolve to proceed with this matter in Plenary, the Speaker will advise on the particular days for the hearing of the proposed removal from office by way of impeachment of the Governor of Wajir County.

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

The Senate Majority Leader (Sen. Poghio): I take this opportunity ---

(Loud Consultations)

The Speaker (Hon. Lusaka): Order, Senators. There is a way we even ask for a point of order. You are not on record but just walking around and saying, "point of order."

Sen. Malalah, this is the time you have pressed for an intervention. Proceed.

Sen. Malalah: Mr. Speaker, Sir, is the Senate Majority Leader in order to move a Motion, which has no names and expect us to make a decision? I thought the Membership of the Committee would guide us as to whether we are going to vote for impeachment by way of Committee or Plenary. I request him---

The Speaker (Hon. Lusaka): That is a point of argument.

Sen. Murkomen: Mr. Speaker, Sir, I think he is out of order because when one brings a Motion here, it must have all the details so that we know what we are voting for.

The Speaker (Hon. Lusaka): Order, Senators. It is important to listen.

(Loud consultations)

Order, Senators. It is important going forward that we listen to what a Senator is saying. The Senate Majority Leader has just explained and I am sure Sen. Malalah was not listening.

When you stand to ask a question on the same thing that he has already explained--. Let us listen to each other so that when one stands on a point of order they speak from a point of knowledge.

(An hon. Senator spoke off record)

I am aware and he said why the names are not there.

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, Sen. Malalah has recently retired from the Senate Business Committee (SBC). That informs how he wants to fit wherever he has gone.

I appeal to Members - as I said - that we have a decision to make on whether we are going Plenary or Committee. If we approve the Committee way, we just come up with the names.

We have seen before that names prejudice people and decisions. Let us first of all agree if it is Plenary or Committee which is why we are proposing to move in this direction.

This is not the time we need to say so many words. I appeal to Members that the process of impeachment begins now from the time the Speaker reads the charges and then moves on to how we go about to investigate it.

The choice is upon this House. The destiny of this governor is in the hands of the House. It is up to us to begin the process now and move in whichever direction. We are appealing to Members to be committed to this process because it is a matter that affects a leader, a county and many of our people, including Members from that county.

I move and request the Senate Minority Leader to second.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I beg to second the Motion.

(Loud consultations)

The Speaker (Hon. Lusaka): Please, let us consult in low tones.

The Senate Minority Leader (Sen. Orengo): Including the Attorney-General Emeritus.

In fact, when people are consulting loudly, it seems as if, even the weight of this onerous duty the Senate has is being taken lightly. There is no other institution in the country other than the Senate and the High Court and the Supreme Court that can remove an elected leader from a position. That is power given only to the highest courts in the land and the Senate.

I beg you that when you are dealing with a matter of such weight, we treat it with decorum so that anybody looking at the proceedings in this House knows we are taking this matter seriously.

This governor who may eventually be tried by the Senate and those who accused him would want to feel that he is being given a fair chance. I beg that we appreciate the weight of what we are about to do.

To answer Sen. Malalah's question, which I think is critical at this moment, the decision we are making is whether to investigate through Plenary or the Committee. That is a decision, which the Senate itself must make. That is a decision of the Senate comprising of all the Members, particularly the county delegations.

With respect, I do not want anybody to feel that is like a pre-judgment. We are going by the history we have had. There were moments during hon. Wambora's case that almost everybody unanimously felt the correct way to go was through the Committee. I think we have shifted goalposts. One comes and we think the Committee is good, another comes and we think Plenary is the best way to go.

I like what the SBC decided that it is now the Senate - not the SBC - sitting as Plenary to decide whether we go by Plenary or Committee because when the SBC makes that decision and it is brought before the House, you can just get from the air what the feelings of the Members are.

In fact, the last time the Senate Majority Leader declined to move the Motion not because people did not like the Committee but because of the names he saw.

If you want to go the Committee way let us make that decision. We can then come with another Motion with names and you make the decision. If you decide that we are going by way of Plenary, this matter ends here and the Speaker will proceed to read the charges and the trial will be by way of Plenary. This a very democratic process for us to make that decision.

Finally, in my many years in Parliament and from my experience, each Senator has his self-worth when they come before the Senate as a parliamentarian.

I can never be intimidated in my political life because I have seen many powerful people come and go. I have seen presidents come here and go. I have seen people who on their word would leave this House and be locked up on the same day. They have come and gone.

I have seen very respected women in this country like hon. Grace Onyango who was in the committee for the special investigations relating to the disappearance of J.M. That made me very proud because those days there were very few women in politics. She was required to change a report of the National Assembly but she stood firm.

I want to plead with you because we have got a heavy task. People out there feel we can be intimidated. We were brought to this House and we have powers, including trying governors. Next time we may have a Motion for the trial of the president. Will you be intimidated?

(Applause)

For the future of this country and in the performance of your constitutional duties, never be intimidated. If my day comes, I will accept it but I will never sell my conscience because I know of men and women like the late Seroney - one of the most brilliant lawyers - who could have lived longer as parliamentarians, but for his standing for the truth, we are now enjoying some of the privileges. Let us think of those people who sacrificed so much.

In Parliament, people like quoting Martin Luther King. There is another famous French philosopher who we also like his quote; "I disapprove of what you say, but I will defend to death your right to say it". That was Voltaire. It is beautiful when you say it but when that moment comes, we speak a different language.

This is what I would like to say in defense of what we are supposed to do. If you are being violated and I swore to defend the Constitution of this country, however much we disagree, I will stand up to defend you. I also expect you as a patriot to defend me. That is why the word “patriot” is there in Article 10.

So, let us not behave like a nation of beasts or people who live in the animal world. Let us be men and women of honour and distinction.

I thank you and beg to second.

(Applause)

(Interruption of debate on the Motion)

The Speaker (Hon. Lusaka): Hon. Senators, before I propose the question, I have a communication to make on the proposed removal from office, by impeachment, of Hon. Mohammed Abdi Mohamud, the Governor of Wajir County.

COMMUNICATION FROM THE CHAIR

PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HON.
MOHAMMED ABDI MOHAMUD, THE GOVERNOR OF WAJIR COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, by letter Reference No. SPK/WCA/SENATE/4/2021(1) dated 28th April, 2021, and received in my office on 29th April, 2021, the Speaker of Wajir County Assembly informed me that at a sitting of the County Assembly held on Tuesday, 27th April, 2021, the County Assembly approved a Motion pursuant to Section 233(2) of the County Governments Act, for the removal from office, by impeachment, of Hon. Mohammed Abdi Mohamud, the Governor of Wajir County.

The Speaker of the County Assembly also forwarded copies of the following documents-

- (a) The Order Paper of Wajir County Assembly dated Tuesday, 27th April, 2021.
- (b) Notice of Motion by Hon. Abdulahi Isaak, Member of the County Assembly, Elnur/Tula Tula Ward, on the proposed removal from office, by impeachment, of the Governor of Wajir County dated Monday, 19th April, 2021.
- (c) The HANSARD and votes and proceedings of Wajir County Assembly dated Tuesday, 27th April, 2021.
- (d) The Roll Call register indicating the Members in support of the Motion for the removal from office, by impeachment, of the Governor.

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 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.

Hon. Senators, pursuant to Section 33(3)(b) of the County Governments Act and Standing Order No.75(1) of the Senate Standing Orders, I hereby proceed to read the charges against the Governor of Wajir County.

1. Gross violation of the Constitution of Kenya, 2010, the County Governments Act, 2012, the Public Procurement and Disposal Act, 2015 and the Public Finance Management (PFM) Act.
 - (i) Failure to account for the financial resources allocated to the county in disregard to Article 201(a) 183(3) of the Constitution and Sections 149 and 166 of the PFM Act.
 - (ii) Lack of accountability to the County Assembly pursuant to Section 32 of the County Governments Act, 2012.
 - (iii) Misappropriation of resources through corrupt procurement processes, contrary to Section 19 of the Wajir County Disaster Management Act, Sections 82(1)(b), 119(5), 201(a), (d) and (e) of the PFM Act and Sections 45, 46, 47, 48, 53, 54, 57, 71 and 74 of the Public Procurement and Disposal Act, 2015.
2. Abuse of Office/Gross Misconduct, contrary to Article 235 of the Constitution, the County Governments Act, 2012, and the Public Service Act by allegedly constantly reshuffling Chief Officers (COs) at the convenience of the Governor's wife, exercising nepotism, favoritism and other corruption malpractices contrary to Article 73(2)(b) of the Constitution.

Furthermore, the Governor has allegedly usurped the powers of the County Public Service Board (CPSB) by appointing persons to hold office.

Hon. Senators, in terms of the way forward, following the reading of the charges against the Governor, Standing Order No.75 (1)(b) of the Senate Standing Orders gives the Senate two options on how to proceed with the matter.

“The senate may-

- (i) by resolution, appoint a Special Committee comprising eleven of its members to investigate the matter; or
- (ii) investigate the matter in plenary.”

The Senate Majority Leader has just moved the Motion for the establishment of a special committee and the Motion is listed at Order No.3. Should this Motion be carried, the Special Committee will be required, under Section 33(4) of the County Governments Act, 2012, and Standing Order No.75(2) of the Senate Standing Orders, to investigate the matter and to report to the Senate on whether it finds the particulars of the allegations against the Governor to have been substantiated.

If, however, the Motion for the establishment of a special committee does not pass in the Senate, the Senate shall proceed to investigate and consider the matter in plenary. In that case, I will appoint the dates on which the Senate will sit in plenary to hear and dispose of the matter.

Hon. Senators, it is noteworthy and I wish to emphasize to all hon. Senators that when we come to the debate on the Motion to establish the special committee, the debate on the Motion shall be limited to the substance of the Motion, namely, whether or not to establish the special committee.

It will not be a debate on the substance of the impeachment; of its merit, propriety, prudence or even the constitutionality or the legality of the processes that have presided the submission of this matter to the Senate.

Hon. Senators, impeachment is one of the most crucial oversight tools and rules for the Senate to hold State officers accountable. Therefore, in understanding this mandate, the Senate will be sitting as a *quasi-judicial* body and will conduct investigations into the disputed claims and alleged infractions of the Constitution and law and will thereafter make its determination.

In this regard, it shall be out of order, within the meaning of Standing Order No. 117, for any Senator to make comments whether written or spoken in relation to the conduct of the governor or the impeachment process outside the confines of the impeachment proceedings, as such comments may prejudice the just outcome of the process.

I conclude by urging all Senators to exercise the highest level of responsibility on this matter.

(Resumption of debate on the Motion)

(Question proposed)

Sen. Wetangula: Thank you, Mr. Speaker, Sir. Standing Order No. 75 gives us two avenues to deal with this matter. That is, a Special Committee by resolution of the House or a House sitting as plenary.

As is set out Standing Orders, none of the processes is superior to the other. There are all avenues and highways to justice. This House is now faced with the situation where the Senate Business Committee (SBC) has not been neat on what it has done.

Under Standing Order No.75 (1)(b), the Senate may by resolution appoint a special committee. Does it mean that in dealing with Motion without names, once the House passes that we go to Committee, will we bring another Motion with names for approval? This makes it unnecessarily tedious for the House. This is because in previous cases, we have had names coming with the Motions.

However, I fully understand what is going on. There is a high level of mistrust between ourselves. The level of confidence between each other is fairly low. We want to have the pie of the Committee before adding any additives.

Having gone through several impeachments in this House, we are also informed, as is set out in Standing Order No.1, by precedent and experiences that we have gone through.

Mr. Speaker, Sir, when we started the first impeachment of Sen. Wambora, I was leading the side behind me. The Committee process was popular. Former Sen. (Dr.) Khalwale who chaired the first impeachment Committee did a fairly good job at that time. Sen. Murkomem was the Vice Chairperson of the Committee. When they finished and brought the report, there were no rumours, innuendos or aspersions. Everybody accepted the outcome of the report of the Committee as is, where was.

Then came other situations and the House started to hear strange stories about our own conduct. For example, in the case of Murang'a and Kirinyaga, stories abound. The case of Taita Taveta was a bit different and many others.

Mr. Speaker, Sir, we did one for Kericho county in the last Parliament and it was the fairest process of impeachment that this House conducted. It was unanimous beyond any iota of doubt that Gov. (Prof.) Chepkwony had been maliciously framed. The Committee found as such and the House unanimously agreed. Sen. Orendo would bear

me out that when we acquitted Gov. (Prof.) Chepkwony not even a bird on a tree whispered a dissent.

(Laughter)

We all agreed that the Senate was just, fair, reasonable and the governor got his fair day before the Senate. That is what it should be. If this House lives to its billing, it matters not which avenue we take, whether Committee or plenary. It matters not who sits in that Committee.

Of late, we have had inventions of descriptions of Members of the Committee whose duty is to sit, yawn and vote while few do the work. I urge Members, like Sen. Orenge has said, in the event you are in a Committee, if you feel that you cannot discharge your responsibility, do not accept to serve on the Committee. If you feel you have some vestiges of bias or hang-ups of past relationships, do not accept to serve on that Committee. This is because justice must not only be done but manifestly seen to be done for whoever comes before us. The charges can be bad but we shall convict on evidence. It is easy to say many things.

Mr. Speaker, Sir, I dare say that one of the processes that we did here and the House acted like Jesus before the court of Herod, is the recent impeachment that we did. It is water under the bridge. It is a matter where we are *functus officio*. We do not need to belabor. However, let us not act like those comical characters in Nikolai Gogol's book "*The Government Inspector*" where the mayor says "lock that fellow for theft" and his orderlies say "Mr. Mayor, he has not stolen" but the mayor says "lock him up! He will steal one day, anyway"

(Laughter)

Mr. Speaker, Sir, we should not take that route. We want to have a fair process. I have never sat in a Committee, but have seen justice and fairness done through the Committee system and Plenary.

Each Senator here has a decision to make and you will vote. Vote with your conscience. This is not a trial of the Governor of Wajir County by the people of Wajir County. This is the trial of the Governor of Wajir County for transgressing the law and alleged misconduct, by the people of Kenya represented by all of you here.

The Senators who come from Wajir County may have a special interest. However, the Senators for West Pokot, Kiambu, Garissa and Makueni all have a proprietary interest in the protection of the use of resources of this country. If the governor of any of our counties comes here, we must all behave like nationalists or patriots, as Sen. Orenge said. We should all agree that a shilling stolen in Bungoma is a shilling stolen in Nairobi City County, Mombasa County, Lamu County and so on.

Mr. Speaker, Sir, if the House was to agree to save time, we do not need to belabour the point of whether one is better than the other. After hearing a few of us, we can vote and set the Motion rolling.

Right now, the case of Wajir County is like a swimmer who has dived from the diving board. Even if he changes his mind, he must hit the water. Therefore, you can only change your mind before you dive. Once you leap from the diving board, you must hit the water, and hit the water, the Governor of Wajir will.

From the previous engagements, Senators must think very seriously. We have had very serious allegations of impropriety in certain processes. Whether we want to go through those soiled routes or one where---

I remember one time Sen. (Prof.) Ongeru here, when they were changing Section 2A of the Constitution to remove multipartism. I believe it was Sen. (Prof.) Ongeru, but if it was not, I will apologise to him. He said that removal of multipartism and bringing Section 2A to a *de jure* one-party state reduces stress to the individual. I do not agree, but that is what he said.

We do not want to stress anybody. We want to have fairness and justice. I will be comfortable with whichever route the House unanimously takes. However, let us take a route that gives justice to the Governor of Wajir County. Let him appear before us.

In the American situation – my distinguished nephew can bear me out – they say that when a black man appears before the most liberal white judge, he still thinks he will not get justice. On the other hand, when a black man appears before the most conservative and horrendous black judge, he thinks that he will get justice. He then ends up not getting the justice.

Mr. Speaker, Sir, let us make a decision that helps this House maintain its dignity and standing in this country. I agree with Sen. Orengo that this is the only House that removes people from constitutional offices, apart from the courts.

It is a duty that is not vested even in the ‘Lower House’ of this Parliament. They can only read charges against the President, but cannot try him. Assemblies out there can only read charges against a governor and make a resolution, but they cannot try the governor. This is the only House that can do so.

My brothers and sisters, this House must stand to be counted. As we do so, we are informed by history. They say that cowards will always come back to the scene and say many of them died here, and they are living. The heroes are gone, but left a mark. Let us be the heroes and make a mark. Let us not come back and say many of us died here and we are living.

Thank you.

The Speaker (Hon. Lusaka): Sen. Linturi, proceed.

Sen. Linturi: Thank you, Mr. Speaker, Sir, for this opportunity. I listened to the Senate Majority Leader move this Motion. He did as properly spelt out by the Constitution and especially Standing Order No.75 (1) (b).

My good friend, Sen. Wetangula, did not read the provisions of Standing Order No.75 (2) (b) up to the end. However, my reading and understanding of this provision requires Members of this House to appoint a special committee. It does not end there, but talks about a Special Committee comprising 11 of its Members to investigate the matter. The second option is to investigate the matter in Plenary.

I find the Motion, as presented before this House, quite deficient because it does not have the Members of this Committee. Sen. Wetangula has put it very clearly because of the dishonesty and mischief, and the levels of trust are going down probably.

I am left wondering whether I am able to reconcile my mind to accept to pass a Motion where the Membership is unknown and then we leave the matter to a few people to make a decision and come back again. If that is the position, then I do not understand why this would not have happened.

You probably do not find much interest or hype on this matter because there could be no hand of the Executive or any external interference. The last three impeachments we have dealt with were all State-instigated. In terms of the manner in which we behaved and interrogated these matters, the level of independence and looking at things the way they should have been then, was missing.

Mr. Speaker, Sir, just like Sen. Wetangula has said, there are options provided for under this Standing Order. We will go by the majority of this House, and in whichever way, we expect justice for the Governor of Wajir County. Justice to the Governor of Wajir County does not necessarily mean he is impeached or not. That decision will be made after whichever method we use will have looked at the evidence presented before this House.

I urge and request Members to be alive to the fact that we have a serious duty to make a decision on this matter. It is for the best interest of this country and not only for the people of Wajir County. If I have to quote Sen. Wetangula, when that time comes to make a decision in whichever route, then I will vote on the route that we should take.

Sen. Mutula Kilonza Jnr.: Thank you, Mr. Speaker, Sir. I must confess that I threw the spanner in the works in the Senate Business Committee about this Motion. From my past experience as the Senate Minority Whip, the onerous duty of picking five Committee Members from my side and six Committee Members from the other side has always put us into cross hairs with our Members.

That is because we always appear to have decided on the court that is going to decide on the case. If the Plenary decides on the Committee, both sides will sit and pick the names as opposed to the Senate Majority Whip and the Senate Minority Whip sitting in a corner and making that decision. That will help remove the idea that it is one person making the decision.

We have heard impeachment cases in plenary. I sat here during the last impeachment and I saw heaps of papers. I can bet that most Members did not even open one file. There were many files here and one could not even remember the file that they had read. At the end of the impeachment, the desk outside had six to 10 files that had not been collected. Those were bundles that had not been read by anybody.

The accused persons in this Senate have been charged for various offences. Sen. Cherargei has about seven cases and I am sure that there are others. Every accused person wants to feel innocent. We must make every accused person feel innocent.

This Act was prepared by a Committee where Sen. Murkomen sat and we must blame it if there is a problem. They put a clause where if the Committee acquits a governor, they do not bring their report for a vote. That is the only problem.

We are saying that a Committee cannot convict in the same way that the plenary can convict yet we convicted Governor Wambora twice. We have acquitted in plenary and we have convicted in plenary. The only problem is that we have never set a clear precedent on how we are supposed to proceed.

I hope that you will make a determination as to whether this is a matter concerning counties or whether it does not concern counties. We have to be consistent for people to know what they are going to do and what they are going to face.

The period when we go into camera during the impeachment hearing is weird. It is like a walk in hell. We close ourselves in a room, discuss amongst ourselves in a room

and when we go into open camera, we say the same things that we were saying off camera.

We want to tell the people of Wajir County that Senators got arrested for defending the money that they are losing; Kshs2.7 billion. It is an embarrassment to those of us who fought in 'Team Kenya' for Wajir County not to lose money. To bring impeachments that if you read them on the face of it, is weird.

Article 96 of the Constitution states that the Senate must protect the counties. Therefore, we must protect the counties from politicians, thieves and what appears like a decision that has been made politically, to remove a governor or not to remove a governor.

I sat in the Committee that listened to the impeachment case of Governor Chepkwony. The Senator did not complain. In fact, we gave the Senator for Kericho who is the current Cabinet Secretary in charge of the Ministry of Energy a mandate to reconcile the County. It is no wonder that the County is doing so well. It is the only County that has a complete data bank of all their information. It is very quiet.

Like we determined in the Chepkwony case, impeachment is also a way of regularizing things that are irregular. I said this about Taita Taveta County. Resolutions were read here which we never voted on. What happened to those resolutions about pursuing this or the other?

Allow me to commend the Committee on Health. I rarely commend them but in the investigation of the use of Covid-19 funds by counties, I saw a Committee that is determined to get to the bottom of the misuse of Covid-19 funds in Makueni County. The discussion was led by Sen. Outa.

In both cases, we do have a solution. My position has always been that we should make a decision that can stand the test of justice whether we are acquitting or convicting.

Let us go to the vote. This proposal was ours for the Members to make the decision. Once they have made the decision on how people are going to vote in terms of the technical issues and the procedural issues, then we can make a decision and commence the trial of this Governor as quickly as possible. I am told that there is another Governor who is coming. We better clear the deck as quickly as possible.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. I have served as a Member of a Committee investigating the removal of a Governor and as a leader in this House, hence I know the merits and demerits of a Committee process.

I do agree with Sen. Mutula Kilonzo Jnr. I served in the taskforce on devolved government that was constituted by the Minister of Local Government, Hon. Musalia Mudavadi. Sen. Orengo who was then the Minister of Lands asked for my curriculum vitae under the instructions of the former Prime Minister. The Prime Minister had asked that I be a member of that committee.

We sat through and thought of the removal of a governor. You will be interested to know that the Secretariat was headed by our own Ms. Eunice Gichangi, who was my lecturer, and is a member of staff in this House. We served in the same committee with judges such as Justice Pauline Nyamweya, Prof. Mutakha Kangu and the first Governor of Kitui, Governor Julius Malombe and we are proud of what we achieved.

We borrowed directly from Article 145 of the Constitution which is on the impeachment of the President and that is why we decided that it was important to

conclude the matter in the Committee and not bring it in the plenary if the person is not found guilty.

Article 145(6) of the Constitution states that:

‘If the special committee reports that the particulars of any allegation against the President—

(a) have not been substantiated, further proceedings shall not be taken under this Article in respect of that allegation;’

We had the Clerk of the Senate, Mr. Jeremiah Nyegenye, in our drafting team. This was well thought out.

Sen. Wetangula has captured the history. In Governor Wambora’s impeachment one and two where I served as the Vice-Chairperson, there were no allegations. We have a big report explaining how we made our decision.

Our final decision at Windsor Hotel was not even known to the staff because we made our decision in the Golf field. We asked the secretariat to write the report and inserted the last sentence ‘not found guilty’ on the last day. Even when we brought the report to the Chamber, Members were not sure whether we found the Governor guilty or not guilty.

Mr. Speaker, Sir, the advantages of a committee are many. This is not the first committee to be constituted. You have constituted standing committees in this House and nobody has questioned the legitimacy of the existing committees. Therefore, it would be erroneous to argue that a special committee is wrong for the impeachment of a governor, but the rest of the committees are good.

I agree with my colleagues that let us look at it from the merits. Is it good for us to deal with it through a committee? You remember I kept standing even in the case for the Governor of Kiambu. I insisted that the committee was the best way, but there was a problem. With regard to the Members of the Committee, whom I had selected, people formed an opinion that it was outrightly a committee to save the Governor. It was because of what was orchestrated by the likes of Sen. Sakaja that we ended up throwing out the whole Committee.

One of the greatest advantages of this Motion, and I totally understand the Senate Business Committee--- The reason they brought the Motion without the names is that every time a Motion is brought with the names and it is defeated, the integrity of the individual Senators who are in the Motion is questioned. This is because out there, the public will conclude that the reason we did not go the committee way is because it was biased and, therefore, there was an outright decision of the Senate to say, “we will not go to the committee”.

The advantage with this one is that if the Senate decides that we are not going to committee, then nobody suffers any prejudice. No Member of the Senate will feel like they are being disenfranchised or their name is being besmirched outside there.

The other thing that I would like to say is that if the House decides that we are going to Plenary - because the House is supreme and can make that decision - we will now have to think about how to hold that Plenary in the current pandemic situation. It will be that as the Speaker and Chair of the House, you have to consult with your brother in the National Assembly because maybe the National Assembly Chamber would be a better venue for us, so that we can exercise social distance even as we make our decision

about whether or not to impeach the Governor. Either way, we must find ways of dealing, if it is Plenary or committee because both ways have their advantages.

I want to commend the Senate Majority Leader here and the Senate Business Committee for taking a very ingenious decision of bringing the Motion without the names because if we throw out the Motion, none of the Senators will feel that we are targeting them.

If we decide to use the committee method, I totally agree with Sen. Mutula Kilonzo Jnr. when he said that let us go a more liberal and democratic way, where the Majority side will sit down, and in the Majority side we have two camps. We will go and make our decision and say each camp will give two or three people. It is common knowledge in the public. Even the Minority side will also sit in the same manner.

I am completely touched by the speech of the Senate Minority Leader, Sen. James Orenge, and I wish he were here. As I said, he played a role for me to serve in the Taskforce on devolved governments, and that is why I made a decision to run for Senate. Even when I studied Law, Sen. Orenge was one of the people that I looked up to.

I am extremely impressed by what he said here. It is that kind of conviction that will help us to make decisions that are for posterity. It will help us to look even at the case of Wajir, not with the eyes that have concluded that the Governor is guilty. Some people walked up to me and said: "That guy is guilty, he must go home. The people of Wajir have said that he must go home." That is not the duty of the people of Wajir.

This House---, as the Speaker communicated, is for us to look at the facts. If the facts say we must convict, we must convict. In the OJ Simpson trial, the issue was whether the gloves that were found at the scene were actually for OJ Simpson and so, at the trial he was told to try on the gloves and the gloves did not fit. The lawyer said: "If it does not fit, you must acquit."

It is our duty here to look at the facts and evidence, and make a conclusion that will make the people of Wajir and this Republic proud of the Senate. We should not have preconceived positions and prejudices. We must conduct a trial that will make everybody proud of this Senate.

Whatever decision we make today, it is in the best interest of this country. I conclude by saying that the decision to bring the Motion without the names is a genius one. If we decide to go for committee, we must sit back and make a decision on how to constitute that committee for fairness and in the best interest of the country, and also, to ensure that those who have served in similar committees in the past can give way to others, who have never served in similar committees.

The principle should be that those who have not served in this committee are given an opportunity. Those who do not also perhaps hold positions in the House should also get an opportunity to participate in the committee. Now that two others are coming, then we can share. These people can go for this committee and others go for the other committee.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. (Dr.) Ochillo-Ayacko by virtual.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker, Sir, for giving me an opportunity to address the Senate on this matter virtually.

This is one of the most important decisions that the Senate has to make. Outside and inside this Chamber, I have heard one, two or three of us being very skeptical about

either arrangement; whether it is through committee or plenary. This kind of suspicion has been causing deterioration of the image and standing of committee in the eyes of right-thinking members of society.

If we show that we have no faith or belief in the Senate by starting to undermine our own reputations, it becomes problematic. Out there, we become bad marketers of our image and confidence. I believe that whether it is committee or plenary, let us give a good image to both the Senate collectively and individual Senators.

There have been remarks made by us on the Floor of the House that undermine our dignity. Some of us have attributed bad faith to Members of this august House, and I think it goes a very long and deep way in terms of giving us a very image. I believe that a lot of work of the Senate is done through committees. Currently, I am chairing a committee, and the Speaker is chairing the Liaison Committee and the entire House. If we have belief and confidence in ourselves individually and collectively, it would not be a problem choosing the options that we prefer.

I know for a fact, as a lawyer, that when you pursue this matter through a committee arrangement, there is normally more time and opportunities offered to both the person who has been brought before the Senate and the Senate panelists, who are investigating the matter at hand.

My preference would be for the committee to be able to look at the matter on our behalf in a detailed and organized way. The committee on our behalf would be able to receive and make rulings on objections, if any, but when the matter comes to Plenary, it becomes restrictive.

Mr. Speaker, Sir, I am in support of going the committee route. This is the time we need to rise to the occasion. The Senate is about the input, process and the output. If the input is based on evidentiary inquiry and the process is based on fair and just disposition by ourselves, I believe we will come out with an output that is acceptable to both the Senate and the public. That is what we need to do to preserve, defend and protect the dignity of the House, and earn the title of honourable Senators. I prefer, recommend and request many of us to go the committee way and stop casting aspersions on the behaviour of individuals because those aspersions also affect how the public appreciates us.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): I can see there is a lot of interest, and I prefer to give everybody a chance. I will give five minutes and then reduce the number of people.

Sen. (Eng.) Hargura.

Sen. (Eng.) Hargura: Thank you, Mr. Speaker, Sir, for allowing me to contribute to this Motion on deciding which way to go; Plenary or Committee. As you have clearly said, it is not the substance of the impeachment itself, but the procedure.

Our procedure in the Standing Orders is clear which way to go; either plenary or committee. We have seen that we borrowed from the Constitution on how to do it, but the Senate has done it both ways before; the committee and plenary. As a person who sat in two committees that investigated the proposed removal, by impeachment, of Governor Wambora--- The Senate works through committees, which is the effective way to work. The problem I have is that once the committee does its work, since it was working for the Senate, that report either way, should be discussed by the Senate and voted on.

Lately, there has been a tendency of going the Plenary way because of the Senate not being able to debate the report of the committee, if it says the charges have not been substantiated. So long as we have that in Standing Order No. 75(4) (a), then we will not be able to, as a Senate, do justice to what the committee has done. At the end other day, that is a Senate and not a committee decision. Committees work for the Senate, but it is for the Senate to make a decision.

So long as we have that paragraph there in our Standing Orders, I would want to go the Plenary way, until we amend our Standing Orders to remove that paragraph which says that once the committee has found issues not substantiated, then there is no further debate. That way, it is as if the committee will have usurped the powers of the Senate to make that decision fully. For now, I think there has been a move towards Plenary because of that restriction. It is something we can see.

If we look at the same Constitution, that is why we are still grappling with the issue of what happens if a matter is brought to Parliament and we do not have that ability to make a decision on it. This is live on the issue of the Constitution of Kenya (Amendment) Bill, 2020. This is because of these kinds of laws, which limit Parliament from making decisions.

Mr. Speaker, Sir, let us go the Plenary way because the committee findings sometimes restrict Senators from exercising their powers.

Thank you.

Sen. Wambua: Thank you, Mr. Speaker, Sir. Before I give my views on which way to go, allow me to join Sen. Murkomen in congratulating and applauding Sen. Orendo for his submissions a few minutes ago and his guidance to some of us, who are young legislators.

The Sen. Orendo I listened to this afternoon is the one that I used to read about when I was in school; fearless and a man who says it as it is. For that, I salute you, Sen. Orendo.

On the matter of the Motion before us, yes, we must appreciate the need for innovation and doing things differently. All the time that Impeachment Motions have been brought to this House, especially the establishment of committees, they have been accompanied by names. An explanation has been given why there was a departure from that tradition in this case.

Although I am not convinced by the argument put forward, I will be bound by that decision. At the impeachment process of Hon. Waiguru, the Governor of Kirinyaga County, I said then and I say today, that the people of Wajir and the Governor of Wajir expect justice from the Senate of the Republic of Kenya. Whatever happens, it is our responsibility as the Senate to serve that justice to both the Governor and the people of Wajir. I have been very consistent and will not break that trend.

I have always argued in all impeachment proceedings that Plenary is the way to go because through Plenary, we afford the people of the county affected an opportunity to follow proceedings against their own governor.

There has been an argument here, and I want to disabuse ourselves of the notion that when we go through the committee way, people are more likely to read documents presented before them. Nothing could be further from the truth. If you are not attuned to read, whether you are appointed to a committee or in Plenary, you will not read. That argument flies in the face of facts.

I plead and urge my colleagues that we go the Plenary way. Going the Plenary way is not to say that there is more likelihood of the Governor either being acquitted or nailed. It gives an opportunity to all of us to participate in this debate and for the people of Wajir and the country to follow the proceedings live from the Senate of the Republic of Kenya.

I submit.

The Speaker (Hon. Lusaka): Let us have Sen. (Dr.) Langat via the Zoom platform.

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir, for giving me this opportunity to add my voice to this very important Motion that helps the Senate to determine how governors are handling resources in our counties. Both avenues are important to the Senate.

I tend to think the perception outside there that the fairest way is the Plenary, was a creation of ourselves recently. Some people used to think that when we took the issue to the plenary, it appears as if the plenary is a lynching ground.

The same perception is supported by what has been happening; that of late, governors whose charges are heard in the Plenary have not been lucky. However, those whose charges are heard in the committees have been acquitted no matter the magnitude or the gravity of the issues.

I have seen some changes today, especially bringing to the Senate a Motion without names. That is progress. Another thing that will help this House in future to clear any doubt is introducing an alternative method. If this time we go the plenary way, next time we should go the committee way because both avenues are in our Standing Orders.

I have no problem whichever way it goes; whether committee or plenary. As Sen. Orendo said, it is high time we put our feet on the ground and made sure that whichever way, justice to the people, the governor and the county assembly is done.

I have also heard some governors say that it would be easier to deal with the MCAs than coming to the Senate because some of them believe that there is no justice. It is high time we did not fear any quarter or received any instructions from anybody. We should act independently as Senators, in whichever way, to ensure that justice is done. All of us should make sure that we do the right thing, so that Kenyans receive justice.

I support whichever way it goes. If it goes the committee way, I am happy that the names are not there. In case some people are taken as not to be trustworthy, we will have an opportunity to select them. I also discourage the idea that some particular people keep on appearing. That is casting aspersions and the people out there will start questioning why so-and-so and not so-and-so.

Mr. Speaker, Sir, following what I have seen today, I would not mind if this particular case is handled by a select committee because I do not have any problem with that.

I thank you.

Sen. Wako: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I will not go into the history because that has been outlined clearly by Sen. Wetangula, Sen. Mutula Kilonzo Jnr. and others. We have had an experience of this House sitting in Plenary to investigate a matter. We have also had the experience of going by a special committee report.

Speaking as a lawyer, I am more inclined towards a special committee delving into this matter. This is because in situations where we have had special committees delving into the matters, at least, the House has had a full report on each and every allegation that has come before us, the evidence seen and what they decided. We do not get full reports when it comes to plenary way by the very nature of the plenary. There is also a tendency of issues being highly political when it is plenary rather than a committee.

As a Senior Counsel, former Chairman of the Law Society of Kenya (LSK), former Chairman of the African Bar Association (AFBA), former Secretary-General of the International Bar Association (IBA) and, of course, Attorney-General *emeritus*, I am inclined towards a committee.

That is why we, as a House, should consider making some slight amendments to our Standing Orders. I detect a fear that if the matter goes before a committee and it decides that the allegations have not been substantiated, that is the end of the matter and the rest of the Senators will not have a say. In other words, it is possible that the matter can be killed at the special committee.

Mr. Speaker, Sir, in future, in order to remove that fear, we should allow this House either to approve or disapprove the recommendations of a special committee and not give it the wherewithal, where they can kill the investigations. As long as the Standing Orders remain as they are, we should be more careful.

I have heard people say that most Members do not have the habit of reading. Whether a matter is in a committee or Plenary, they will not read but just go by the wave. Let us appoint people to the committee who are prepared to read, work and give us a good report, and not just have one or two Members of the committee working so hard and the rest are there to just approve whatever the one or two hard workers say.

Mr. Speaker, Sir, as a lawyer, I am inclined to go the committee way. I thank you.

The Speaker (Hon. Lusaka): We will have Sen. Olekina virtually.

Sen. Olekina: Thank you, Mr. Speaker, Sir, for giving me an opportunity to make my contribution in regards to this issue of the impeachment of the Governor of Wajir. The issue here is whether to go plenary or committee way.

Let me put it this way from the outset. Our Standing Orders are quite clear that the Senate should take 10 days to investigate the allegations. Article 96 of the Constitution tasks us, Senators, with one key mandate, which is to protect the interests of the counties and their governments. In this case, it means we are protecting the interests of the citizens and the County Government of Wajir.

During the previous two impeachments, we saw different kinds of things unfolding. I sat during the impeachment process of the former Governor of Nairobi City County, hon. Mike Mbuvi Sonko. To tell you the truth, I was perplexed because the lawyers came in with volumes of documents, which we were supposed to read so that we give justice to the people and the former Governor of Nairobi City County. At that point, I was convinced that plenary is the worst form of procedure that someone can expect to be given justice.

A large amount of money was used by the county assembly to make copies that were brought. In my view, the preliminary objectives were just wish-wash. We did not give the county government justice, and neither did we give the then Governor of Nairobi City County any form of justice because we were quick to conclude the matter. I do not

believe that I will be fulfilling my mandate as a Senator if I just wish away a matter without even looking at the allegations.

I know that an impeachment procedure in the Senate is not really a legal procedure, but more of a political procedure.

Since we are a House that makes the law, we should implement them. I am of the view that if this Senate of the Republic of Kenya had concluded the drafting of the Impeachment Procedure Bill, we would not have this debate of whether to go plenary or committee way. Therefore, since there are various things that will come up, I am 100 per cent sure that we will have a court injunction.

We are still wishy-washy on which way to go and whether to tell the court that they cannot interfere with the constitutional body and proceed with our timelines. A Committee would look at those issues, so that in the event that this matter proceeds to the courts of Kenya, the Senate of the Republic of Kenya, which makes laws, can be seen to abide and implement the laws fully. It would be a little bit ludicrous, in my view, to say that we are the House that makes the laws. However, when we are told that there is a court order stopping the proceedings from going on, we disregard them because we do not want anyone to injunct Parliament.

Mr. Speaker, Sir, for us to do good a job, we need to stay firm and---

The Speaker (Hon. Lusaka): Your time is up.

Sen. Olekina: Mr. Speaker, Sir, I finalize by pleading with my colleagues to support the committee way, so that we can firmly stand with Standing Order No.76, which gives the accused person the right to be heard and finally Standing Order No.75, that will make sense of the 10 days that we are given to investigate.

I thank you and hope that we will go the Committee way.

Sen. Faki: Asante Bw. Spika. Yangu yatakuwa mafupi sana. Tumefanya baadhi ya *impeachment* kutumia Kamati na nyingine tukafanya kupitia Bunge nzima la Seneti. Bunge nzima la Seneti linatoa uwazi zaidi kuliko kujifungia katika Kamati. Tuliona katika *impeachment* ya Taita Taveta na Kirinyaga, Kamati ilitoa uamuzi wake. Kwa hivyo, haina uwazi.

Ninapendekeza impeachment ifanywe kupitia Bunge lote Seneti kwa sababu tutaonekana wazi na kila mtu. Makosa yatasomwa paruwanja. Kinyume na wale wanaosema kwamba gavana apewi nafasi nzuri ya kujitea---

(Sen. Wako consulted loudly)

Bw. Spika, ninaomba unilinde kutokana na jirani wangu, Sen. Wako.

The Speaker (Hon. Lusaka): Sen. Wako, please, consult in low tones.

Sen. Faki: Bw. Spika, huwa tunampa heshima yote Sen. Wako anapozungumza.

Sen. Were: On a point of information, Mr. Speaker, Sir. I would like to inform Sen. Faki that the Committee procedure is also open to the public. Both processes are open to the public.

The Speaker (Hon. Lusaka): Okay.

Proceed, Sen. Faki.

Sen. Faki: Bw. Spika, zote ziko wazi kwa wananchi. Lakini, ikiwa tumekaa Bungeni maelezo yale yatakuwa yanapeperushwa moja kwa moja kupitia runinga hadi Wajir ambako watu hawataweza kuja hadi Nairobi kusikiza kesi ambayo iko dhidi ya

gavana wao. *Justice must not only be done, but seen to be done.* Kwa hivyo, haki itatendeka wakati Bunge lote la Seneti litakapo kaa kuchunguza madai ambayo yameletwe mbele ya Bunge hili kuhusiana na gavana yeyote yule.

Kanuni zetu zinafaa zibadilishwe. Gavana akipatikana na hatia, anatakikana aje kujitetea lakini madai yasipothibitishwa, Bunge halitapata fursa ya kujadili ripoti ile. Kwa hivyo, Bunge itakuwa kama *conveyor belt*. Tutasomewa mashtaka, alafu iende kwa Kamati na baada ya hapo, hatuna jukumu lolote isipokuwa kunyamaza. Hii ni kinyume na kukaa hapa kama Maseneta wote wa Jamhuri ya Kenya kuchunguza na kuhakikisha haki inatendeka.

Mimi naunga mkono Bunge nzima la Seneti kuchunguza swala hili la Wajir.

Sen. (Dr.) Ali: Thank you, Mr. Speaker, Sir. I am surprised by Members. There are people who want to be angels here. Nobody is an angel; we are all human beings and we all make mistakes. You cannot say that when things are taken to the committee, it will be done in a better and proper way.

I believe that it should be done in the Plenary, when all Members are sitting. There are no Senators who are more special than others. Senators were brought here by their respective counties and others were nominated by their parties. We are all equal. That is why I disagree with what Members are saying that we should go to the committee way because we have seen what happens when we do that.

I do not want to cast aspersions on anybody. No governor who has been taken to a special committee has ever been impeached. Why is that so? The ones that were brought to Plenary have all gone home. There is a reason for that.

If the Senate is sincere and wants Kenyans to believe it, let impeachment be done in Plenary, where everybody can see and all of us can hear what the county assembly alleges and how the governor defends himself. In that way, we will know the truth.

Most Members do not attend committees. We are brought what the committee decides on and told how it is, and that is the end of the story. That is not fair or right. Senators should think about the people of Wajir. Whether the governor survives or not, as the Senator of Wajir County, I plead with this House to allow for Plenary. If we are colleagues, the Senators of the concerned counties should be put into consideration.

Someone talked about politics because everything in Kenya is about politics. That is why we are here. Nothing is wrong with politics. We have been elected because we are politicians. There is no shame in people talking about politics.

The county assembly voted 37 to 10. If anybody has any concern and wants to know what is happening in Wajir, let us allow for Plenary, so that the county assembly will say what they have to say.

As the Senator of Wajir, I will say what I have to say. If we want to hide behind committees, it will not be fair or good for the people of Wajir. They might even curse the Senate because it is not the right way to go.

I have heard many stories and so, let us not shame this Senate. As Sen. Wetangula has said, let it be open for Members to decide and let them hear what people are being told. Committee hearings are open, but how many people attend them? Some Members have decided that the leadership does not have a right to appoint Members of the Committee.

Mr. Speaker, Sir, a Motion has been brought without the membership of the Committee and people have said that it is good. There is nothing good about it. What is

being hidden? Why were the names not brought here? I do not agree with whatever the Senate Business Committee (SBC) agreed on. I think that was wrong.

What will happen next time when names are brought in the Motion? It has to come to the House again and be decided on. Otherwise, it is something done in *kichochoro*, and it will not be good for this House. I plead with all Senator to, please, support the Plenary way.

Thank you.

The Speaker (Hon. Lusaka): Finally, Sen. Farhiya and then I will call the Senate Majority Leader to reply.

Sen. Farhiya: Thank you, Mr. Speaker, Sir. From the outset, I support the Plenary route. This House has so far carried out four impeachments. Of those, two happened through Plenary and two through the Committee. For the two that happened through Committee, there were allegations that the Committee Members were comprised and those governors were, therefore, acquitted. There were allegations.

Therefore, the people of Wajir County have spoken through their representatives, where 37 voted in favour of the removal of the Governor. That is 76 per cent of the MCAs in that County. There is no dispute that, that is what happened.

Mr. Speaker, Sir, I heard rumours last night that today we will end up with a Committee and the Governor is already acquitted. People are already celebrating in Wajir County. I do not know whether this House wants to confirm that assertion or make an independence decision.

As Sen. Wako has said, if the Committee was to acquit the Governor and then that decision is subjected to the whole House, that would be a fairer process. However, as long as there are few people who will make that decision and there is an assertion out there that if it goes through a Committee, the Governor is acquitted--- If the Committee then comes up with a verdict that the Governor is acquitted, what will the people of Wajir County think about that process?

The Speaker (Hon. Lusaka): You are anticipating the results, when a decision has not even been made. Please, do not anticipate the outcome.

Sen. Farhiya: Mr. Speaker, Sir, it is already anticipated in Wajir County. I am just confirming what they have said. Last night, people called me saying that the Governor's people are celebrating because the Senate will end up with a Committee, which will acquit the Governor. I am just reporting verbatim what I have heard from my people. If that assertion is confirmed, it will be a big shame to this House. There are also allegations that money has already changed hands. Let us not confirm that.

Thank you, Mr. Speaker, Sir, for the opportunity.

The Speaker (Hon. Lusaka): Sen. Cherargei, you have three minutes.

Sen. Cherargei: Mr. Speaker, Sir, I appreciate the fact that Sen. Farhiya is so passionate about this issue. She comes from that region although she is also a Member of Delegation of Nairobi City County.

The decision will lie with us whether we go the Plenary or Committee way. However, I plead with my colleagues, led by the Senate Majority Leader and my sister, that let us also tell Kenyans Parliament works through either Plenary or Committee. There are many aspersions being cast out there. Many things are said daily with regard to us, politicians.

I appreciate the fact that the genius of the Majority side bringing the Motion without names. Whether we agree or not, it is individual Senators who will vote. That is why it is important not to preempt any vote on either side.

Kenyans should know how this House works. I have an obligation, as Chairman *emeritus* of the Justice, Legal Affairs and Human Rights Committee, to inform the country that Parliament operates through either Committee or Plenary. I remember we formed a Committee that investigated the Managed Equipment Services (MES) and no one raised a query. We have also had select Committees formed out of our decisions.

Mr. Speaker, Sir, many governors have come here through the Plenary, and there is a lot that needs to be done. I challenge Senators that even if we go the Plenary way, then the Senate must be ready to sit and sieve through. The impeachment of Gov. Waiguru was live on television and other media platforms.

As I conclude, my interest is to assure the people of Wajir County and the Governor who is facing impeachment, that they will receive justice, fairness and equity in either process that this House will adopt.

Thank you.

The Speaker (Hon. Lusaka): I now call upon the Mover to reply.

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, I beg to reply. In a matter like this, as the person who moves the Motion, you try to remain balanced and stay in the place where Members are left to make the decision as to whether or not we will support this Motion.

I know the process is yet to be finished because even if Members decided to go the Committee way, it will still be subjected to provision of names. Therefore, I want Members to stay in tune, so that if Members then decide it is not the Committee, then the process stops right there.

May I ask Members to conscientiously make the decision. "Conscientious" because many people accuse Members of Parliament of various things, as though their conscience does not matter here. I believe when people voted or parties nominated Senators to come to this House, they did so knowing the quality of people coming to this House. Therefore, casting aspersions will not help. I believe that Members in this House are credible and will make a decision based on their conscience, and they we will make a decision.

Mr. Speaker, Sir, I am glad you have steered people clear of the merits or demerits of the case. You have made it very clear that the decision here, which should not take long, is to only vote on whether or not we support the process of Committee. This is the moment to vote.

Mr. Speaker, Sir, I beg to reply.

The Speaker (Hon. Lusaka): Hon. Senators, we will proceed to vote. I now ask that the Division Bell be rung for five minutes.

(The Division Bell was rung)

The Speaker (Hon. Lusaka): Take your seats. I am giving you 30 seconds. I will give an additional minute to allow those who are outside to come in.

(Several Senators walked into the Chamber)

Take your seats. Why do you make your lives difficult by walking when I am on my feet? That means that you will have to freeze.

Can we get the tellers?

Yes, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, this is just in relation to the voting that is about to take place. In accordance with Chapter Six of the Constitution, Article 73, I want to declare a conflicting interest. Although the Standing Orders and the Constitution do not quite apply, at least Article 73 would assist me on this matter.

I happen to have acted against the Governor that is to be impeached in a petition before the Supreme Court. For that reason, at the time when my name will be called upon, I will abstain; on the basis of having acted against the Governor at the Supreme Court.

The Speaker (Hon. Lusaka): Okay, let us have the tellers.

The Teller for the 'Ayes' is Sen. Farhiya and the Teller for the 'Noes' is Sen. Kwamboka.

You can start the voting. I hope the other Members are online. Those who are virtual, we must see you.

(The Senators proceeded to vote)

DIVISION

ROLL CALL VOTING

(Question, that the Senate establishes a Special Committee to investigate the proposed removal from office, by impeachment, of the Governor of Wajir County (Hon. Mohammed Abdi Mohamud) put and the Senate proceeded to vote by county delegations)

AYES: Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. (Prof.) Ekal, Turkana County; Sen. Kajwang' M., Homa Bay County; Sen. Kavindu Muthama, Machakos County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. Malalah, Kakamega County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Onger, Kisii County; Sen. Outa, Kisumu County; Sen. Poghisio, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wako, Busia County; and, Sen. Wario, Tana River County.

Teller of the Ayes: Sen. Fahriya

NOES: Sen. (Dr.) Ali, Wajir County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Haji A., Garissa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kibiru, Kirinyaga County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbiti, Trans

Nzoia County; Sen. Moi, Baringo County; Sen. Omogeni, Nyamira County; Sen. Wambua, Kitui County; and, Sen. Wetangula, Bungoma County.

Teller of the Noes: Sen. Kwamboka

ABSTENTIONS: Sen. Orengo, Siaya County.

The Speaker (Hon. Lusaka): Hon. Senators, these are the results of the Division-

AYES: 28

NOES: 14

ABSENTIONS: 1

The “Ayes” have it.

(Question carried by 28 votes to 14)

Hon. Senators, the Motion having been carried and considering the timelines for the impeachment process, the House shall proceed to consider a further Motion with proposed names of Senators to serve in the Special Committee. In this regard, and for the convenience of the House, I will forthwith suspend the sitting for 30 minutes to allow preparation and circulation of a supplementary Order Paper.

I thank you.

(The Senate adjourned temporarily at 5.02 p.m.)

(The Senate resumed at 5.40 p.m.)

The Speaker (Hon. Lusaka): Order, Senators. We now have a supplementary Order Paper.

I welcome you back. I hope that you have consulted and we are now able to move forward.

Let us move on to the next Order.

NOTICE OF MOTION

APPOINTMENT OF SPECIAL COMMITTEE TO INVESTIGATE
THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT,
OF THE GOVERNOR OF WAJIR COUNTY

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, I beg to give notice of the following Motion-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday, 27th April, 2021, the County Assembly of Wajir approved a Motion for the removal from office by impeachment, of Hon. Mohamed Abdi Mohamud, Governor of Wajir County;

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;

FURTHER whereas, by a resolution made on Thursday, 6th May, 2021 (Afternoon Sitting), the Senate resolved to proceed on this matter by way of a special Committee, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No. 75(1)(b)(i),

NOW THEREFORE, pursuant to Standing Order No. 189, the Senate resolves to appoint a special committee comprising the following Senators -

- (1) Sen. Sakaja Johnson, CBS, MP;
- (2) Sen. Mwangi Githiomi, MP;
- (3) Sen. Christine Zawadi Gona, MP;
- (4) Sen. Susan Kihika, MP;
- (5) Sen. Mithika Linturi, MP;
- (6) Sen. (Eng.) Hargura Godana, MP;
- (7) Sen. Okong'o Mogeni, SC, MP;
- (8) Sen. Fredrick Outa, MP;
- (9) Sen. Agnes Muthama, MP,
- (10) Sen. Petronilla Were, MP; and
- (11) Sen. Issa Juma Boy, MP;

to investigate the proposed removal from office by impeachment of the Governor of Wajir County and to report to the Senate within 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 Speaker (Hon. Lusaka): Next Order.

MOTION

APPOINTMENT OF SELECT COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF WAJIR COUNTY

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, I beg to move the following Motion-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday, 27th April, 2021, the County Assembly of Wajir approved a Motion for the removal from office by impeachment, of Hon. Mohamed Abdi Mohamud, Governor of Wajir County;

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;

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- (4) Sen. Susan Kihika, MP;
- (5) Sen. Mithika Linturi, MP;
- (6) Sen. (Eng.) Hargura Godana, MP;
- (7) Sen. Okong'o Omogeni, SC, MP;
- (8) Sen. Fredrick Outa, MP;
- (9) Sen. Agnes Muthama, MP,
- (10) Sen. Petronilla Were, MP; and
- (11) Sen. Issa Juma Boy, MP;

to investigate the proposed removal from office by impeachment of the Governor of Wajir County and to report to the Senate within 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.

Mr. Speaker, Sir, this is a continuation of where we were in the afternoon. The names are there and we have tried to balance parties and regions. We have also made sure it is a serious Committee. It is a Committee of people of conscience and most of them have not been in this kind of committee before. The names are straightforward and I commend them to the Senate.

I, therefore, move and ask the Senate Deputy Minority Leader to second.

Sen. Madzayo: Mr. Speaker, Sir, allow me to support and second the Senate Majority Leader on the names provided to the Senate. Senators who have been named here, starting with Sen. Sakaja all the way down, are quite capable of investigating this matter of the Governor of Wajir County.

Let me single out Senators like Sen. Linturi who is basically doing his masters on impeachment of governors. I believe his knowledge up to now will go a long way in helping this Committee. We also have a senior counsel here in the name of Sen. Omogeni who is a renowned lawyer. We expect they will come up with a proper finding.

The basic approach to the whole Committee is that we want to establish ourselves as people who will be fair as a House, to ensure that proper justice is not only done, but also manifestly seen to be done.

I second.

(Question proposed)

The Speaker (Hon. Lusaka): I will now put the question, it is a voice vote.

(Question put and agreed to)

The Speaker (Hon. Lusaka): Hon. Senators, the Special Committee having been established, I urge the Committee to move with speed as the timeline is already running out. I also urge the Special Committee to table its report within the stipulated period of 10 days.

Let us move to the next Order.

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

(Sen. Poghisio on 28.4.2021)

*(Resumption of debate interrupted
on 6.5.2021-Morning Sitting)*

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I move that this Order be now---

(Several Senators stood up in their places)

The Speaker (Hon. Lusaka): Order, Senators. Take your seats.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I move that the debate on the Constitution of Kenya (Amendment) Bill, 2020 be deferred and adjourned to the next sitting of the House.

Many people did not anticipate that we will come back to this business. It is already 6.00 p.m.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, we agreed that we will adjourn debate on this Bill at 12.30 p.m. to next week. That is on record. I am not sure if Sen. Wako concluded his contribution. All the people who were on the list at 12.30 p.m. have left.

(A Member spoke off record)

The Speaker (Hon. Lusaka): Allow him to finish.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, most of the Members who are here have contributed to the Bill unless Sen. Sakaja wants to raise a point of order on something. It is in good order that you defer this debate to next Tuesday.

(Question, that debate on the Bill be adjourned, proposed)

(Question, that debate on the Bill be adjourned, put and agreed to)

(Debate on the Bill was adjourned)

ADJOURNMENT

The Speaker (Hon. Lusaka): Hon. Senators, there being no other business, the House, therefore, stands adjourned until Tuesday, 11th May, 2021 at 10.00 a.m.

The Senate rose at 6.02 p.m.