

**RECORD OF EVIDENCE TAKEN BEFORE THE SENATE SPECIAL
COMMITTEE INVESTIGATING THE PROPOSED REMOVAL, FROM OFFICE
BY IMPEACHMENT, OF THE GOVERNOR OF KIRINYAGA COUNTY, HELD
ON WEDNESDAY, 24TH JUNE, 2020 IN THE SENATE CHAMBER, MAIN
PARLIAMENT BUILDINGS**

SENATORS PRESENT

[The Chairperson (Sen. Cleophas Malalah, MP) – Presiding]

Sen. Abshiro Halake, MP - Vice-Chairperson

Sen. Beatrice Kwamboka, MP		Sen. Judith Pareno, MP
Sen. Paul Mwangi Githiomi, MP		Sen. Philip Mpaayei, MP
Sen. Moses Kajwang' MP		Sen. Stewart Madzayo, MP
Sen. (Dr.) Michael Mbito, MP		Sen. Anuar Loitiptip, MP
Sen. Beth Mugo, MP	-	Attending the Meeting via the Zoom Online Platform

IN ATTENDANCE

THE GOVERNOR'S TEAM

Hon. Anne Waiguru	-	Governor, Kirinyaga County
Mr. Paul Nyamodi	-	Advocate
Mr. Kamotho Waiganjo	-	Advocate
Mr. Andrew Muchigi	-	Advocate
Ms. Selah Bogonko	-	Chief of Staff, Kirinyaga County
Mr. Joseph Carilus Otieno	-	Witness
Mr. Steven Gitengo		

COUNTY ASSEMBLY OF KIRINYAGA TEAM

Mr. Ndegwa Njiru	-	Lead Advocate
Mr. Mwangi Ndegwa	-	Advocate
Mr. Alex Rienje	-	Advocate
Ms. Elizabeth Njoroge	-	Secretariat

MEMBERS OF KIRINYAGA COUNTY ASSEMBLY

Hon. James Murango	-	Majority Leader
Hon. Kinyua Wangui		

SECRETARIAT

Mr. Njenga Njuguna	-	Director, Committee Services
Dr. Johnson Okello	-	Director, Legal Services

Mr. Peter Adika	-	Research Officer
Mr. Mwanate Shaban	-	Clerk Assistant
Mr. Humphrey Ringera	-	Research Officer
Mr. Moses Kenyanchui	-	Legal Counsel
Mr. Mitchel Otoro	-	Legal Counsel
Mr. Simon Muinde	-	Audio Supervisor
Mr. Richard Njoroge	-	Electronics Officer
Mr. Ian Otieno	-	Audio Officer
Ms. Farhiya Ali	-	Serjeant-at-Arms
Ms. Lucy Mwaniki	-	Serjeant-at-Arms
Ms. Sarah Rukwaro	-	Serjeant-at-Arms
Mr. John Pere	-	Serjeant-at-Arms

(The Committee commenced at 9.10 a.m.)

The Chairperson (Sen. Malalah): I wish to call the meeting to order. Just before we start, do we still have Sen. Beth Mugo?

Hon. Members, ladies and gentlemen, I wish to invite you to this meeting and request that we do a prayer first before we commence.

PRAYER

Hon. Members, you are welcome to this meeting. First of all, I want to appreciate the fact that we have kept time. Yesterday, we extended until late in the night. I do not expect that to happen today considering that our programme is very brief. Yesterday, we had a lot of preliminary matters coming up. Today, I do not expect the same.

I just have some few housekeeping issues. First, we shall use this Chamber from now to 12.30 p.m. to allow the technical and parliamentary staff to clean up this Chambers ready for use in the afternoon session. We shall break at exactly 12.30 p.m. then proceed to the County Hall, where we shall have our afternoon session.

In the meantime, we have provided the following spaces as our holding centres. The National Assembly Lounge will be used by hon. Senators in case they want to retreat to make a decision or make a phone call. The new restaurant will be used by both parties. It is partitioned into two. We shall have one side for the Governor's team and the other side for the County Assembly team.

Hon. Members, we shall try and stick to the timelines as provided for in the rules of procedure. Today, we are having hearing of evidence by the Governor. We have three and a half hours, but we shall try to manage the time as things emerge. We will stick initially for three and a half hours, but we will be advised as we move on by our technical team.

Thereafter, we shall have the usual allocation of time of 15 minutes for the examination in chief then ten minutes for cross-examination and five minutes for reexamination. Thereafter, we shall have closing statements on behalf of the County Assembly which we shall only give 30 minutes. In the afternoon, we shall have closing statements on behalf of the Governor.

Hon. Members, my proposal to that is that immediately we finish the hearing of the Governor, we will defer the closing statements on behalf of the County Assembly for the afternoon session, so that we do both closing statements from the other Chamber. Is that okay?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Yes, Mr. Chairman, Sir. I seek your directions as to the most appropriate time of giving this closing address. If I do it before I gather the entire evidence from the Governor, it means then I will not collate or to juxtapose the evidence as opposed to my submissions and evidence that we rendered yesterday. I thought it would be in order or in good procedure if they complete their evidence then we come for the closing statement. Why deliver mine and then the Governor deliver's hers?

The Chairperson (Sen. Malalah): I think that is provided for in the programme. That is why we are pushing it in the afternoon so that you also have enough time.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Much obliged, Mr. Chairman, Sir.

The other issue I wish to seek your direction is that; in our appearances you said that were appearing as counsel. We are also accompanied by three Members of the County Assembly (MCAs). In yesterday's proceedings and most importantly in the cross-examination and in the Governor's address, there were MCAs whom I am with who were adversely mentioned.

You remember the Governor making some allegations as to the chief accuser being part and parcel of the trip that is part and parcel of the issue. They are my instructing clients and today they instructed me to seek your directions as to whether they can have an opportunity to address the Committee on two issues. First is the issue of the imprest and, secondly, the issue of the travel.

Mr. Chairman, Sir, I have that MCA who is the Majority Leader of the County Assembly. I also have the Chairperson of the Committee on Finance and Budget. They sought my intervention to seek for your directions whether they can have an opportunity before, probably, the Governor goes to address the Committee on those two issues.

The Chairperson (Sen. Malalah): Mr. Nyamodi, proceed.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much, Mr. Chairman, Sir. Good morning, hon. Members. I have heard the application that has been made by

my learned colleague and I am taken somewhat by surprise by that application. The Motion for the Governor's impeachment is a Motion by the Assembly. The Governor made an opening statement and she said what she did in the opening statement.

I think the course of proceedings today will be very well guided by the guidance that you gave us yesterday that the person or the office that is on trial or the subject is that of the Governor of Kirinyaga County. I do not think that there is room for people who feel that they were adversely mentioned. If we go in that direction, then we will not finish in the timeframe in which you have. The County Assembly's case is closed. What is for hearing today are the witnesses.

Sorry, Mr. Chairman, Sir. What would happen is that we would then have to call everybody who is adversely mentioned and there would be no time to hear that kind of evidence. Let us focus on the business at hand. We have three witnesses who we wish to testify this morning. The sooner we start the better.

Thank you very much.

The Chairperson (Sen. Malalah): Thank you. I would like to make the following observation on the same. We are guided by the rules of procedure as enshrined in our Standing Orders. The same rules stipulate the manner in which we are supposed to handle this hearing. According to this honorable Committee, the County Assembly case was prosecuted yesterday and closed. Therefore, we do not have any provisions of our rules to open up your case again today. I rule as follows that we will not accept your application for now.

I request the legal team representing Gov. Ann Waiguru to start their bit of giving evidence by Gov. Waiguru.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I am well guided. The last preliminary issue that the County Assembly has is in respect to the witnesses that the Governor is seeking to call. It is on record that the day or time the Motion was launched in the County Assembly; the Governor was invited by the County Assembly to make a response.

That response which she declined would have included her calling witnesses so that then she lays bare her case to the County Assembly. That then means that even as the County Assembly comes to prosecute the case this morning, they would be in a position to be sufficiently informed of what the Governor is bringing forth as her defense.

The Governor never appeared before the Assembly, either by herself or through her representation. However, today, we are bombarded with three and one bulky statement of a witness who was available at the time of prosecuting the Motion at the County Assembly, of a witness who would have been brought forth at that time.

Mr. Chairman, Sir, I am seeking your guidance. I am aware that this Committee is on a fact finding mission. The guidance that the County Assembly is seeking is what probative value do we attach to this evidence?

The other guidance I am seeking, this is on equality of arms, is whether they will still be considered as having not participated in the County Assembly proceedings and hence their worthiness to the process.

The Advocate for the Governor (Mr. Muchigi): Mr. Chairman, Sir, and Hon. Senators of the Committee, I wish to respond briefly.

The Senate will note that the notice that was issued to the client of the governor to appear clearly stated that she was being served with soft copies of the Motion and was supposed to respond to the particulars in the allegations. Therefore, the documents that her client has produced are pursuant to the statements given to her.

Secondly, pursuant to the provisions that we had highlighted yesterday from Article 50 and from Fair Administration Act, she is supposed to give a response to challenge the allegations. She has produced evidence to show that whatever allegations were made against her were not merited.

Lastly, I wish to refer this Senate Committee to the decision of the High Court, we have already supplied this in the response that we had given, in the case of Mwangi Wa Iria and others Vs. the Speaker of Murang'a County Assembly-that is High Court Petition no. 458 of 2015 which I think is very informative of why we are here today. This is because it states:

“The Senate is expected not only to investigate the nexus of the allegations to the first petitioner, which in this case was the Governor who was being impeached. The Senate must also interrogate the entire process as it is carried through the County Assembly.”

I think it is only fair that our learned friend understands that the Senate is carrying out its mandate to find out whether the allegations were valid, whether the process carried out to pass a resolution for the Motion to impeach the governor had met the Constitutional and legal threshold. This process requires that evidence is produced to show that those allegations are not founded. That is all.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Mr. Chairman, Sir, I just want to make a small contribution to the matter.

The issue that my learned colleague, Mr. Ndegwa Njiru, raises goes to the very heart of one of the issues we have been raising about the right to be heard by the governor. Both in the Motion that was submitted to the Senate Speaker and in the documents that were filed on Saturday in further evidence to support the county assembly case, there is no single document that indicates that the governor was invited, given an opportunity and at what the time.

Therefore, as we sit here, there is nothing before you that says that the governor was ever called to sit. There is no information on that issue. Therefore, the Senate is being called upon to accept as a fact that the governor was given an invitation and she could have

called witnesses. There is nothing like that in the documents, unless the Counsel shows us where that is in the documents that he has filed.

From where we sit, that process never happened. If it had happened, the documents would be there in support of that process. It goes to the very heart of an impeachment Motion.

Before we go as to whether the governor is entitled to call witnesses, our position is that the governor was never given a single opportunity to be heard and that is on the record.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, with your permission, I just want to point out one thing.

These proceedings are governed by the proceedings of the Standing Orders of the Senate. Rule 4(a) of part 1 of the Fifth Schedule provides as follows;

“Upon the appointment of a date for the commencement of the hearing of the evidence for the purposes of the investigation, the Committee shall;

- a) Invite the governor to appear and be represented before the special committee during its investigations”

Mr. Chairman, Sir, that provision gives the governor the right to participate in these proceedings. I understand my learned colleague to be saying that because the governor did not appear before the county assembly, then she has no standing here. That cannot be correct, and even if it was, the governor has already participated in these proceedings. We cross-examined witnesses yesterday and what we want to do is a natural follow on what happened yesterday.

The Chairperson (Sen. Malalah): Hon. Members, and the learned friends, I would like to tell you in Parliamentary language that this is what is referred to as anticipating debate. Whatever you guys are trying to canvas can substantially be dealt with in the matter.

Those issues that you are raising about the governor not attending or honouring your summons at the county assembly, those are issues you can raise during cross-examination. Therefore, I would like to assure Mr. Ndegwa that the circumstances of non-appearance by the governor will be part of the Committee’s determination and deliberations when we retreat to do our report.

Therefore, let us allow the governor to give her evidence, then the Committee will later on decide as to whether it was well for the governor not to attend or for the governor to present her evidence before this Committee. Therefore, we shall allow the governor to proceed and table her evidence and prosecute her case as we listen then Mr. Ndegwa, you shall have an opportunity to cross-examine the governor and raise those issues.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I am well guided by your direction.

Yesterday you ruled that we be provided with original copies of the receipt and the original copies of the diplomatic passport and her ordinary passport. We want to confirm that the same has not been served upon us this morning and we shall be using that document in our cross-examination.

The Chairperson (Sen. Malalah): Mr. Nyamodi, is that the case?

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, my apologies to the Committee and to my learned friend. We broke very late yesterday, but the documents are here. I will ask my colleague to pass them over to him.

The Chairperson (Sen. Malalah): That is in order. We shall go straight to hearing of evidence by Gov. Ann Waiguru. You have three and a half hours starting now.

The Advocate for the Governor (Mr. Nyamodi): Thank you, Mr. Chairman, Sir. We have three witnesses to call this morning.

I want to call the first witness. I am not sure what the protocol for getting the witness is.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, kindly allow me to intervene because the extracts of the documents that have been brought are actually what we have in our files.

My application yesterday was not premised on a further extract. It was premised on the provision of the original copy.

The Chairperson (Sen. Malalah): Can we be served the same?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Yes, Mr. Chairman, Sir; the diplomatic passport and the ordinary passport. He has just brought a photocopy that has been blocked. You can hardly tell which travel took place.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, we are producing the documents as evidence. They are evidence in response and not documents that are produced by the county assembly. We have produced legible copies of the document.

The Chairperson (Sen. Malalah): I think the orders yesterday were very clear that you need to produce original copies. Was it original according to the ruling?

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, it was not original.

The Chairperson (Sen. Malalah): Clear legible copies. Could you please give us time to go back to our ruling so that I refer to it?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, even as you go back to your ruling, there is no legible copy. The one that we have is opaque.

There is no legible copy. The one that we have is opaque and well calligraphed to conceal the information that we wanted. That goes on record.

The Chairperson (Sen. Malalah): Mr. Ndegwa, I would like to remind you that our ruling was very clear. The Committee responds to each of the issues that we are under. On the issue of availing clear copies to the County Assembly, the Committee directs that the Governor provides clear copies of the said documents by the end of 24th June, 2020, served to the Assembly's lawyers via email and copied to the clerk of the Senate. What you are raising is that the issue of clarity is subjective.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am well guided, Mr. Chairman, Sir. I will be making an application for the Governor to take the stand so that I can cross examine her on these documents, because the documents that I have are opaque. The information is concealed and you cannot easily discern which travel took place. If the Governor is allowed to take the stand, she will be in a position to produce the original documents. We do not want to touch it. She will be in the custody of the Governor, then we proceed in cross examination.

The Chairperson (Sen. Malalah): Mr. Nyamodi.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, that is a vexatious application. I will repeat that those documents are produced not in support of Mr. Ndegwa's petition, but as a response. The manner in which they are produced is the choice of the Governor. What the Committee had directed, and we have complied with that direction, is that a legible copy be produced.

If Mr. Ndegwa says that the copies are still not legible, perhaps they can nominate a photocopier. Or, if he is able to furnish me with his email address, we can send him a scanned copy. However, as to who testifies for us, it is not his call. He had the opportunity to summon witnesses as the rules provide, and he summoned them. He then cannot insist now that the Governor takes the stand. The person taking the stand today is the Governor's election. She is not taking the stand.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Only having adulterated copies of extracts of the passport, I rest my case.

The Chairperson (Sen. Malalah): We shall note that determination in a short while, but in the meantime, we will allow the defense team to start their presentation immediately, then we shall be communicating our determination in a short while.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much.

Mr. Chairman, Sir, can the first witness be summoned from the waiting room? He is Mr. Joseph Carilus Otieno.

The Chairperson (Sen. Malalah): Serjeant-at-Arms, kindly, facilitate the same.

Mr. Nyamodi, this is your witness. You should be able to get him.

The Advocate for the Governor (Mr. Nyamodi): I do not know where the Senate has seated them. We came together and the Senate put them away. That is why I asked that he be summoned.

The Chairperson (Sen. Malalah): I communicated that they will be seated in the new restaurant. Serjeant-at-Arms, kindly facilitate the same.

You should adopt the County Assembly model of cushioning and securing your votes and witnesses. The County Assembly made sure they facilitated Members of the County assembly (MCAs).

The Advocate for the Governor (Mr. Nyamodi): With tremendous respect, we will only copy that part, but nothing else from the Assembly.

The Chairperson (Sen. Malalah): Next time you should be walking with your witnesses. Are you the one?

The Advocate for the Governor (Mr. Nyamodi): Yes, he is the one, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): I can only see the mask. Joseph Carillus Otieno, right?

Mr. Carilus Otieno: Yes.

The Chairperson (Sen. Malalah): Are you the owner of those boxes behind you?

Mr. Carilus Otieno: Yes.

The Chairperson (Sen.) Malalah): Okay. Serjeant-at-Arms, you will provide a place where--- We shall only allow one extra person who will help him use the documents.

Mr. Otieno, you will have a seat opposite the Chair. Before that, you will be asked to either an oath or affirmation before we begin this process. Will you take an oath?

Mr. Carilus Otieno: I will.

The Chairperson (Sen. Malalah): Okay, proceed.

(Mr. Joseph Carilus Otieno took the oath)

The Chairperson (Sen. Malalah): Thank you. Counsel, before you begin, I would also like to acknowledge the presence of the Committee Members who are here. We will use two minutes to make introductions, starting with my Vice Chairperson.

(The Members of the Committee introduced themselves)

We are also expecting Sen. Mwangi to join us shortly. Using the virtual platform, we shall have Sen. Mugo. I am sure the connection is not yet ready. Is it? Sen. Mugo, can you hear us? There is a delay. We will not wait for a response, but we acknowledge her presence.

Counsel Nyamodi, you may proceed.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much, Mr. Chairman, Sir.

Sen. Mugo: Hello, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Hello, Senator.

Sen. Mugo: Good morning, Mr. Chairman, Sir. I am here.

The Chairperson (Sen. Malalah): Good morning. Introduce yourself, Senator.

Sen. Mugo: Good morning. Hello.

The Chairperson (Sen. Malalah): We can get you. I think there is a problem. We have a delay in communication.

Sen. Mugo: I am Sen. Beth Mugo.

The Chairperson (Sen. Malalah): Thank you, Sen. Mugo. *Karibu sana.*

Counsel Nyamodi, you may proceed.

The Advocate for the Governor (Mr. Nyamodi): Alright. Mr. Otieno, Good morning. Again, for the record, please tell the Committee your name.

Mr. Carilus Otieno: To the Chairperson, my full name is Joseph Carilus Otieno.

The Advocate for the Governor (Mr. Nyamodi): Mr. Otieno, what do you do for a living?

Mr. Carilus Otieno: Through the Chairperson, I am a civil servant, a supplies chain practitioner to be specific, having started my career in the Civil Service at the National Treasury back in 2010.

The Advocate for the Governor (Mr. Nyamodi): What do you currently do?

Mr. Carilus Otieno: I am currently the Director of Supply Chain Management Services at the County Government of Kirinyaga.

The Advocate for the Governor (Mr. Nyamodi): How long have you been in that position?

Mr. Carilus Otieno: It is barely one and a half years since I joined. I was appointed on 9th January, 2018, but I reported on 13th February, 2018.

The Advocate for the Governor (Mr. Nyamodi): Can you briefly share with the Committee what your responsibilities are as the Director of Supply Chain Management Services at Kirinyaga County Government.

Mr. Carilus Otieno: Mr. Chairman, Sir, as the Director of Supply Chain Management Services at the County, I am the head of the supply chain. I oversee the entire public procurement and disposal of assets at the County Government of Kirinyaga.

The Advocate for the Governor (Mr. Nyamodi): Thank you. Have you seen the Motion that is filed before the Senate by the County Assembly of Kirinyaga for the impeachment of her Excellency the Governor?

Mr. Carilus Otieno: Mr. Chairman, Sir, I confirm that I have seen the Motion.

The Advocate for the Governor (Mr. Nyamodi): Have you read and understood the Motion?

Mr. Carilus Otieno: Mr. Chairman, Sir, I have read and understood the Motion.

The Advocate for the Governor (Mr. Nyamodi): Did you write a statement in response to the Motion?

Mr. Carilus Otieno: Yes, Mr. Chairman, Sir. I confirm that.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, the witness's statement appears at page 56-78 of the Governor's response.

Mr. Otieno, do you now wish to produce that statement as your testimony before this Committee?

Mr. Carilus Otieno: Yes, Mr. Chairman, Sir.

The Advocate for the Governor (Mr. Nyamodi): Thank you, very much. Do you also wish to produce the documents that you referred to in your statement as exhibits before this Committee?

Mr. Carilus Otieno: Yes, Mr. Chairman, Sir. I want to confirm that I submit all the documents.

The Advocate for the Governor (Mr. Nyamodi): Mr. Otieno, I want us to go straight into the petition and your responses to some of the issues in the petition. I wish to refer you to page four of the petition if you do have it before you, under the heading; violations under written law. Are we together?

Mr. Carilus Otieno: Mr. Chairman, Sir, I am getting distracted by---

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, is it possible to move the witness's seat around? He might be standing for some time and that is an awkward place for him to stand.

The Chairperson (Sen. Malalah): You may carry the microphone.

The Advocate for the Governor (Mr. Nyamodi): Are you comfortable? Can we proceed?

Mr. Carilus Otieno: Yes, Mr. Chairman, Sir.

The Advocate for the Governor (Mr. Nyamodi): Do you have the petition with you?

Mr. Carilus Otieno: Yes, Mr. Chairman, Sir. I do have the petition.

The Advocate for the Governor (Mr. Nyamodi): I want you to look at page four of the petition under the heading; violations under written law and violations of the Public Procurement and Assets Disposal Act, 2015, and the Public Finance and Management Act, 2012. This is the allegation made in the petition against the Governor. The Governor has violated Section 46 of the Public Procurement and Asset Disposal Act, 2015, by usurping the powers of the accounting officer in establishing an irregular tender evaluation committee. I wish to pose the question to you; is that correct?

Mr. Carilus Otieno: That is not correct, Mr. Chairman, Sir.

The Advocate for the Governor (Mr. Nyamodi): Who has the responsibility for establishing the tender and evaluation committees?

Mr. Carilus Otieno: Mr. Chairman, Sir, the responsibility of establishing tender and evaluation committees is vested in the office of the accounting officer.

The Advocate for the Governor (Mr. Nyamodi): Is it the Accounting Officer who has been establishing tenders and evaluation committees or the Governor?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that the Accounting Officer is the one who has been establishing the evaluation committees.

The Chairperson (Sen. Malalah): Mr. Otieno, you may consider removing your mask and please be audible.

Mr. Carilus Otieno: Okay, Mr. Chairman, Sir.

The Advocate for the Governor (Mr. Nyamodi): I want us to go on with the rest of the complaint where it says that the committee is composed of the Governor's partisan staff, namely, Pauline Kamau and Wayne Gichira. What do you have to say about that? Is that correct?

Mr. Carilus Otieno: Sorry, please, come again.

The Advocate for the Governor (Mr. Nyamodi): I will read it again, the whole paragraph. It reads:

“The Governor has violated Section 46 of the Public Procurement and Asset Disposal Act, 2015 by usurping the powers of the accounting officer in establishing an irregular tender evaluation committee. The Committee is composed of the Governors' partisan staff namely Pauline Kamau and Gichira Wayne, who directly take instructions from the Governor.’

Is that correct?

Mr. Carilus Otieno: That is not correct, Mr. Chairman, Sir.

The Advocate for the Governor (Mr. Nyamodi): I want to point you to a document that is contained in the Governor's response and that document is on page 55 of the response. Do you have the response with you?

Mr. Carilus Otieno: Yes, I do have the response.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, I do hope that the Members of the Committee are okay with that document. It is on page 55 of the Governor's response.

The Chairperson (Sen. Malalah): Are you referring to the appointment summary?

The Advocate for the Governor (Mr. Nyamodi): Yes, Mr. Chairman, Sir. Mr. Otieno, I want you to explain to the Committee what that document is. You should tell the Committee what that document establishes.

Mr. Carilus Otieno: Mr. Chairman, Sir, this document has a summary of the chairpersons who have been appointed on various evaluation committees for three financial years; 2017/2018 2018/2019 and 2019/2020.

I will take you through the appointment of the members of the evaluation committees. Before any member of the evaluation committee is appointed at the County Government of Kirinyaga, the procurement function takes the responsibility of consulting the various heads of departments through memos, and some consultative, to nominate one or two members who are going to be part and parcel of the evaluation committee.

Once we get a full membership or composition of the tender evaluation committee, I recommend the full names which includes the chairpersons, the members and the secretary of the evaluation committee, who has to be a procurement professional in that scenario. Once I recommend a full membership of the evaluation committee, I send it to the accounting officer for his consent and subsequent approval. It is at that point that a full evaluation committee is composed and it is appointed by the accounting officer.

This table does show the chairpersons of the various evaluation committees that we have had and it portrays that we do endeavor to ensure that the chairpersons and all members are appointed on rotational basis and it is on ad hoc basis, meaning that it is tender by tender.

The Advocate for the Governor (Mr. Nyamodi): Thank you, very much. I want us to take the Committee through the document. In the financial year 2017/2018, out of the eight committees that are appointed in this list, how many of them were chaired by Pauline Kamau?

For the eight committees that are appointed in this list, how many of them were chaired by Pauline Kamau?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that for the 12 listed evaluation committee meetings, Pauline Kamau only chaired one. Meaning she was appointed to only one.

The Advocate for the Governor (Mr. Nyamodi): How about in 2018/2019?

Mr. Carilus Otieno: Mr. Chairman, Sir, in 2018, I can confirm that Pauline Kamau was also appointed once.

The Advocate for the Governor (Mr. Nyamodi): What about in 2019/2020?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that Pauline Kamau was never appointed during that financial year.

The Advocate for the Governor (Mr. Nyamodi): What about Wayne Gichira for 2017/2018?

Mr. Carilus Otieno: Wayne Gichira was appointed in two evaluation committees in the FY 2017/2018.

The Advocate for the Governor (Mr. Nyamodi): What about in 2018/2019?

Mr. Carilus Otieno: In 2019, Wayne Gichira was appointed in three evaluation committees.

The Advocate for the Governor (Mr. Nyamodi): Okay. I just want to ask you another question. You said you have had a look at the Petition. Do you recall seeing any evidence in the Petition regarding the allegation about the appointment of Pauline Kamau and Wayne Gichira?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that I did not see any evidence.

The Advocate for the Governor (Mr. Nyamodi): Alright. Thank you very much for that.

Now, I want us to go to the complaint again. I want us to go to page--- Just to finish up on the issue of the evaluation committees, how many members do these committees have?

Mr. Carilus Otieno: The members of the evaluation committees are composed of at least three different departments. Usually, they are between four to 11 members, depending on the particular evaluation in question.

The Advocate for the Governor (Mr. Nyamodi): I want to take you back to the document on page 55. Just for the record, in the FY 2017/2018, please just read out the names and designations of the Chairs as listed in your list.

Mr. Carilus Otieno: Mr. Chairman, Sir, as per the list that I provided, in the FY 2017/2018, we had a rotation of the following Chairpersons to various evaluation committees.

- | | | |
|------------------------|---|------------------------|
| (1) Ms. Maurine Miano | – | Roads Inspector |
| (2) Mr. Anthony Gatimu | – | Ag. Director Revenue |
| (3) Mr. David Chuchu | – | County Commodity Nurse |

- | | | |
|-------------------------|---|----------------------------------|
| (4) Ms. Pauline Kamau | – | Director Administration |
| (5) Mr Wayne Gichira | – | ICT Advisor |
| (6) Mr. Richard Munge | – | Senior Mechanical Officer |
| (7) Dr. Richard Karui | – | Director Agriculture & Livestock |
| (8) Mr. Nicholas Njenga | – | Senior Inspector Building |

The Advocate for the Governor (Mr. Nyamodi): In that year, did Wayne Gichira and Pauline Kamau sit together in any evaluation committee?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that Wayne and Pauline have never sat in one evaluation committee. They have been chairpersons of different evaluation committees.

The Advocate for the Governor (Mr. Nyamodi): Not even as chairperson and member of evaluation committee? You can only have one Chair, is it not?

Mr. Carilus Otieno: You can only have one Chair.

The Advocate for the Governor (Mr. Nyamodi): So, chairperson and member, did they ever sit together in any committee?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that they have never.

The Advocate for the Governor (Mr. Nyamodi): Please read again the list for the FY 2018/2019.

Mr. Carilus Otieno: Mr. Chairman, Sir, the list for FY 2018/2019 was as follows:

- | | | |
|-------------------------|---|-------------------------|
| (1) Dr. Mutiso O. Kitui | – | County Pharmacist |
| (2) Mr. David Chuchu | – | County Commodity Nurse |
| (3) Mr. Wayne Gichira | – | ICT Advisor |
| (4) Ms. Pauline Kamau | – | Director Administration |
| (5) Mr. Samuel Gachewa | – | Store Assistant |
| (6) Mr. Philip Kang'ara | – | Roads Inspector |
| (7) Ms. Juliet Muthoni | – | ICT Officer. |

The Advocate for the Governor (Mr. Nyamodi): In that year, did Pauline Kamau and Wayne Gichira sit together as Chair and member or member and member of any of those evaluation committees?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that in that particular year, Pauline and Wayne Gichira never sat in one committee as Chair and member. They are always chairpersons in different evaluation committees.

The Advocate for the Governor (Mr. Nyamodi): I want us to go quickly to page 9 of the Motion. Midway through page 9, next to (x) is the complaint about procurement from a company known as Velocity Partners Limited. Are we together?

Mr. Carilus Otieno: We are together.

The Advocate for the Governor (Mr. Nyamodi): I want to ask you a question. Yesterday you heard that Velocity Partners Limited was not qualified for this contract. What do you have to say to that?

Mr. Carilus Otieno: Through the Chair, I can confirm to the best of my knowledge that Velocity Partners Limited was qualified.

The Advocate for the Governor (Mr. Nyamodi): What was the nature of the entity? What do you want to tell this Committee about the nature of the entity that bid and won this tender?

Mr. Carilus Otieno: Mr. Chairman, Sir, the nature of the entity is an ICT company. Basically it does ICT related work.

The Advocate for the Governor (Mr. Nyamodi): What else? Was it Velocity Partners Limited alone? What was the nature of the entity?

Mr. Carilus Otieno: I can confirm that the submission of the proposal by Velocity Partners Limited was a joint venture with a company called Comp 21; meaning they bided the tender as a joint venture.

The Advocate for the Governor (Mr. Nyamodi): Is that evidenced in the documents that have been supplied in response to the Motion?

Mr. Carilus Otieno: I am not too sure but I can confirm if that joint venture teaming agreement was inserted.

The Advocate for the Governor (Mr. Nyamodi): When entities bid as a joint venture, how do you assess their eligibility?

Mr. Carilus Otieno: Since the law provides for companies to team in case they want to increase their capacity in terms of qualifications and experience, once there is a joint venture in such arrangements, we look at the qualifications and experience as a joint venture and not a single company.

The Advocate for the Governor (Mr. Nyamodi): There was the allegation in respect of Velocity Partners Limited that certain payments had been made irregularly. Have you seen those allegations?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that I have seen those allegations.

The Advocate for the Governor (Mr. Nyamodi): What is your response to those allegations?

Mr. Carilus Otieno: I can confirm that it is absolutely false.

The Advocate for the Governor (Mr. Nyamodi): How many contracts were awarded to Velocity Partners Limited?

Mr. Carilus Otieno: There were two contracts; one for performance management system and the other one for hospital management system.

The Advocate for the Governor (Mr. Nyamodi): There was evidence that was laid yesterday that suggested that the entities were not the same; there was a difference in the spelling. They were similar but not the same. What is your response to that?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that I was here when those deliberations were taking place. I can confirm as follows.

The contractual company is Velocity. If I have to go back to yesterday's deliberations, the issue which was raised on having two companies, one with an "i" and another without, to the best of my knowledge, it was being pegged on a small typo in one of the paragraphs in the contract document.

If you look at the material statutory documents of the contract, we have an award letter, acceptance letter, and the contract agreement.

Look at all those three documents. It is velocity with spelling 'velocity'. I can confirm there is no two companies. To the best of our knowledge, it is one as I have explained.

The Advocate for the Governor (Mr. Nyamodi): Yesterday, evidence was led to suggest that the---

The Chairperson (Sen. Malalah): Counsel, is it possible we get copies of the award letters, to ascertain? You said the award letter, the contract and the acceptance letter. Can we get the copies supplied to the Members?

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, they are in the documents that we have filed in response. Perhaps what we can do because these are properly filed and paginated, we can refer you to where the document is.

The Chairperson (Sen. Malalah): Kindly. Members, do you have the files?

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, I have noticed the yellow light is on. We will deal with that when the red light is on.

The Chairperson (Sen. Malalah): I am in control, do not worry.

The Advocate for the Governor (Mr. Nyamodi): Thank you.

The Chairperson (Sen. Malalah): So that we move together, let us have the documents first.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much, Mr. Chairman, Sir. If you can perhaps put it on record where the documents are, which file and the document number.

Mr. Carilus Otieno: Mr. Chairman, Sir, once you get the files, we have attached a checklist of all the documents we have submitted inside the files.

The Chairperson (Sen. Malalah): Which specific file are you referring to?

Mr. Carilus Otieno: For Tender No.CGKICT/047/2017/2018, that is the file for the hospital management system. The documents I have referred to are contained on Annex 12M, 12N and 12O.

The Advocate for the Governor (Mr. Nyamodi): 12M to 12O

The Chairperson (Sen. Malalah): Hon. Members, are we in the same page? If you can furnish the Chair we may proceed if we have a copy here.

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm the next file is tender No.CGK/ICT/046 sorry, let me rephrase again; tender No.CGK/ICT.OT.046/2017/2018. On the said file the three documents are contained on annex---

The Chairperson (Sen. Malalah): Is it 046 or 047?

Mr. Carilus Otieno: 046 is the tender for performance management software. 047 is the hospital management software.

The Chairperson (Sen. Malalah): I have one for the hospital management information system. I will request for the other one.

Mr. Carilus Otieno: Mr. Chairman, Sir, in 046 the three documents are contained in annex 12N, 12O and 12B.

The Chairperson (Sen. Malalah): We are together, we may proceed.

The Advocate for the Governor (Mr. Nyamodi): Mr. Otieno, please identify those two set documents again.

Mr. Carilus Otieno: Mr. Chairman, Sir, the two sets are the tender number CGK/ICT.OT/047/2017/2018 is the tender number for hospital management information system. Tender number CGK/ICT/OT/046/2017/2018 is the tender for performance management system.

The Advocate for the Governor (Mr. Nyamodi): In the first document, you have identified it as 12M to 12O.

Mr. Carilus Otieno: In 046, that is the hospital management system. It is 12M, 12N, 12O.

The Advocate for the Governor (Mr. Nyamodi): What document is 12M?

Mr. Carilus Otieno: 12M is the notification of award.

The Advocate for the Governor (Mr. Nyamodi): To whom is it made?

Mr. Carilus Otieno: Mr. Chairman, Sir, the award is made is made to Velocity, which is spelled as ‘velocity’.

The Advocate for the Governor (Mr. Nyamodi): What is document 12N?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that document 12N is the acceptance letter from the consultant.

The Advocate for the Governor (Mr. Nyamodi): Who is it from?

Mr. Carilus Otieno: It is from the company, velocity, with “velocity’

The Advocate for the Governor (Mr. Nyamodi): 12O?

Mr. Carilus Otieno:12O is the contract agreement signed by the County Government of Kirinyaga and Velocity Company, again, ‘velocity’.

The Advocate for the Governor (Mr. Nyamodi): I plead for more time.

The Chairperson (Sen. Malalah): Your time is up but considering that this is a crucial witness and the County Assembly had also requested for him to appear before them, I would give both parties an extra 25minutes but I will give you 15 minutes and then 10 minutes to the County Assembly.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much, Mr. Chairman, Sir. We will try and move on.

Hon. Members, I hope you have been able to find the documents and that you have been able to go through them. In respect of the next set of documents, you had identified them as being marked as in respect of the PMA system.

Mr. Carilus Otieno: In respect of the PMA system, counsel, also advise attorney if I am correct but it is 046 and the three documents are contained in annex 12N, 12O and 12B.

The Advocate for the Governor (Mr. Nyamodi): Please identify what 12N, 12O and 12P are.

Mr. Carilus Otieno:12N is the copy of notification award to velocity, velocity with ‘cty’ at the end.

The Advocate for the Governor (Mr. Nyamodi): 12O?

Mr. Carilus Otieno:12O is the acceptance letter from the said company “velocity with, ‘cty’ at the end.

The Advocate for the Governor (Mr. Nyamodi): 12P?

Mr. Carilus Otieno:12P is the contract agreement signed by the county government of Kirinyaga and Velocity Company.

The Advocate for the Governor (Mr. Nyamodi): I want you to look at the document matters 12O. In the Health Management Information Systems (HMIS) file, could you tell me whether the contract is signed on behalf of the county government?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm the contract is signed on behalf of the county government.

The Advocate for the Governor (Mr. Nyamodi): Who signed the contract on behalf of the county government??

Mr. Carilus Otieno: Mr. Chairman, Sir, I confirm the contract was signed by the Accounting Officer, who is the Chief Officer, Finance.

The Advocate for the Governor (Mr. Nyamodi): And in the other contract?

Mr. Carilus Otieno: Yes, I can confirm that Tender No.046 was signed by the Accounting Officer.

The Advocate for the Governor (Mr. Nyamodi): What about the other tender?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can also confirm that it was signed by the Accounting Officer.

The Advocate for the Governor (Mr. Nyamodi): Thank you, very much.

I want us to move on to another area. There was a suggestion by a witness who testified yesterday, I believe it was Dr. Agnes Gachoki, that there was no need to buy some of these technologies. This is because it is technology that the national Government already had and was available. What do you have to say about that?

Mr. Carilus Otieno: Mr. Chairman, Sir, I will respond as follows; I was present when I heard that allegation. To the best of my knowledge, it got me at a shock. This is because from what I heard from Dr. Agnes Gachoki, if I heard well, she mentioned that the Governor had told her that there was a system in the national Government, which is supposed to be rolled out to the entire 47 county governments.

That system at that particular time--- I can confirm, today or currently, it is a matter which is in litigation. So, if the issue of having a separate system came up because of such a system, which we were expecting to get from the national Government, then is unfortunate to mention that there were two systems. Being the Director of Supply Chain Management Services at the county government, I can confirm that there is no parallel or separate HMS system in the county government. Even the issue of it being activated, I heard it yesterday for the first time.

I am a procurement professional. Before I do any procurement, I know very well all the rules which are required for you to undertake a procurement process. Again, I can confirm, the requisition for that particular software came from the Department of Health.

If there were two parallel systems, how comes it there was there? I have also made a confirmation to the best of my knowledge as a Director of the Supply Chain

Management, before I went ahead and procured this system, I confirmed with the national Government system, that we were not having any system in any place.

The Advocate for the Governor (Mr. Nyamodi): You have said that the system that was possibly discussed between the Governor and Dr. Agnes Gachoki is now in litigation. Are you bale to give the Committee any more details or particulars? Who was the provider? What was it meant to do? What may have happened to it?

Mr. Carilus Otieno: Mr. Chairman, Sir, to the best of my knowledge, being the Director of the Supply Chain Management Services, when I was doing some due diligence about the said software, I can confirm to the best of my knowledge, it is a matter in litigation.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, we have an objection to that line of questioning. Unless the witness is capable of providing the information to us, it is not easy to conduct this trial without removing our hands from the precincts of the assembly and going for other evidence, like the trial and the litigation he is speaking about.

We beg that we be provided with the requisite documents, the content of the trial and the issue of dispute. However, that answer has gone on record. It proves how difficult it is to conduct this trial without having to remove our hands from the only documents that we have. Counsel, I take it.

The Chairperson (Sen. Malalah): Mr. Nyamodi, kindly, respond.

The Advocate for the Governor (Mr. Nyamodi): Mr. Karani will respond for us.

The Advocate for the Governor (Mr. Karani): In a brief response, it is an issue in the public domain. This is because it is an issue that involved the national Government when it was moving for a software to cover all the health centres in the country.

He is commenting on something that this Senate already has judicial notice of. This is because it is one of the issues that has been interrogated by the National Assembly because of issues of accountability. He is just confirming an issue that is the public domain. He is aware of it because of having had to interact with that issue when he was trying to bring up the new system.

The Chairperson (Sen. Malalah): I will guide as follows; we will allow the witness to comment generally on issues affecting procurement and those that may help this Committee make a determination on a number of issues. However, it will be upon the Committee to make a determination whether to admit or to consider whatever he is saying in our eventual report.

The Advocate for the Governor (Mr. Nyamodi): We are guided. Thank you, very much.

The Chairperson (Sen. Malalah): Thank you.

The Advocate for the Governor (Mr. Karani): Guided, Chair.

The Advocate for the Governor (Mr. Nyamodi): Mr. Carilus Otieno, back to your testimony. It is alleged that the entity called Velocity Partners Limited does not exist. Have you come across such allegation?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that I came across that allegation. I can confirm to the best of my knowledge that Velocity Partners Limited actually exists.

The Advocate for the Governor (Mr. Nyamodi): Is there any proof in the documents that you have supplied to the Committee that, that entity exists?

Mr. Carilus Otieno: Mr. Chairman, Sir, yes, there is a document to that effect. That is the certificate of incorporation.

The Advocate for the Governor (Mr. Nyamodi): Where is that document to be found?

Mr. Carilus Otieno: The document is found on file 046, that is the Health Management System file. It is the top most document.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, I am yet to get that. Have you been able to get your hands on that document? File 046, the first document. What is it marked as? We do not have that document.

Mr. Carilus Otieno: Mr. Chairman, Sir, it is file 047.

The Chairperson (Sen. Malalah): File 047, right?

Mr. Carilus Otieno: Yes, Mr. Chairman, Sir.

Mr. Carilus Otieno: It is on Annex 12Q.

The Advocate for the Governor (Mr. Nyamodi): Annexure 12Q in the file for contract No. 047?

The Chairperson (Sen. Malalah): Is it annexure 12Q?

Mr. Carilus Otieno: Yes, annexure 12Q, file 047.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, what we can do to save on time, we can pull out the copy and give it to the Committee.

The Chairperson (Sen. Malalah): I already have it. You may continue.

The Advocate for the Governor (Mr. Nyamodi): Alright. Mr. Carilus Otieno, is there anything else in respect of the Motion facing the Governor, that you wish to share with this Committee?

Mr. Carilus Otieno: Sorry, counsel. Kindly rephrase your question.

The Advocate for the Governor (Mr. Nyamodi): Is there anything else that arises from your response that you wish to share with the Committee?

Mr. Carilus Otieno: Mr. Chairman, Sir, I would like to clear out a very important matter with regards to Velocity Company Limited on both tenders and the current status on each.

If I may start with performance management system; there are documents to show that actually the system was implemented. Those documents contain various supporting documents of minutes, signed registers, User Acceptance Tests (UATs) and even the final report for performance management system.

The Chairperson (Sen. Malala): Do you have the documents here?

Mr. Carilus Otieno: Yes, we do.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much, Mr. Otieno. Anything else or you are done?

Mr. Carilus Otieno: For the hospital management system, I can confirm that the system is still on course of being implemented. It got me by surprise when I heard users were not involved. The majority members of the testing in the UATs are from the hospital and are basically specialists at the Department of Health.

The system is still on-going and we are at the User Acceptance Testing II. This means that the issue of Kshs50 million, having awarded a company Kshs24 million and pay Kshs50 million actually shocked me as a very serious professional in supply chain management. That is practically not true and we cannot do that.

I can confirm that Kshs50 million was not paid to Velocity on only one tender. I can confirm hospital management system is still in course of implementation.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much, Mr. Otieno.

Mr. Chairman, Sir, that is all the examination-in-chief that I have for this witness. I wish to make the polite request that if I have any time left in the bank, I carry it over to his reexamination.

The Chairperson (Sen. Malalah): We will not be able to grant you that. We are done with examination-in-chief. We will invite Mr. Ndegwa, the Counsel representing Kirinyaga County Assembly.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, maybe we could ask for water for the witness.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Good morning, Witness.

Mr. Carilus Otieno: Good morning, *Wakili*.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You are a KIMS qualified procurement officer?

Mr. Carilus Otieno: Yes, I am.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have your current practice certificate?

Mr. Carilus Otieno: I can confirm.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am asking whether you have it, not whether you can.

Mr. Carilus Otieno: I can confirm that I do not have---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You do not have it? Good.

I want to take you through the document that you referred to first. That the list of the tenders that were chaired by Wayne, Michira and Pauline. Do you have the document with you?

Mr. Carilus Otieno: Let me get it.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Please do, and be mindful of time.

As you fetch that document, how many tenders took place in the Year 2017/2018 in the entire County Departments?

Mr. Carilus Otieno: Counsel, I cannot put an exact figure because this---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): How many have you cited in that document for that year?

Mr. Carilus Otieno: These are 12 committees.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Conveniently cited.

Mr. Carilus Otieno: Let me make it clear that---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): It is okay; I am okay with the answer. You said that the head of department nominates the members of the evaluation committee, yes?

Mr. Carilus Otieno: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have a letter indicating the members of that particular evaluation committee being nominated by the user department?

Mr. Carilus Otieno: For this particular tender it was---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have it or you do not have it?

Mr. Carilus Otieno: I do not have but---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You do not have; I take that.

I want to take you through Velocity, where the cracks of the matter have and I am now dealing with Velocity, Tender 046. Kindly have your file with you; mindful of time. I want you to open the contract that you gave. Do you have the contract? The page of the contract, not the last page; *fungua hiyo ingine*. I am reading it out for you. Senators, are you with me? It is Annex 12P.

The Chairperson (Sen. Malalah): Contract Agreement between County Government of Kirinyaga and Velocity Partners, File 046.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Yes. I want to read it out to you, Carilus: Contract Agreement between County Government of Kirinyaga and Velocity.

What is the spelling of that Velocity?

Mr. Carilus Otieno: Velocity with “cty” at the end.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): “cty” at the end. Open the next page, Carilus. Read out the recital from this Agreement---

Mr. Carilus Otieno: It says:

“This Agreement made on the 14th day of May 2018 between the County Government of Kirinyaga, P. O. Box 260 10304 KUTUS located at the County Headquarters, Kutus herein after called the Employer---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Yes, and?

Mr. Carilus Otieno: And on the other hand, Velocity.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Velocity. What is the spelling of that Velocity?

Mr. Carilus Otieno: Velocity with “city” at the end.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): That was just a clerical error, correct? Let us proceed to the execution of the Agreement. Who has executed that Agreement?

Mr. Carilus Otieno: County Government of Kirinyaga and Velocity.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Which officer from the County Government has executed it?

Mr. Carilus Otieno: The Accounting Officer.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Which Accounting Officer? Which Department?

Mr. Carilus Otieno: Chief Officer Finance, Economic Planning and ICT.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): For purposes of clarification, Mr. Carilus, each Department has its own accounting officer, correct?

Mr. Carilus Otieno: To the best of my knowledge, Mr. Chairman, Sir, that is not correct. We only have one---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I want you to read Section 46 (2) of the Procurement Act, which you are an expert. Fish it out. Kindly read it out for the Senators.

Mr. Carilus Otieno: Mr. Chairman, Sir, it reads as follows:

“In establishing the ad hoc Evaluation Committee referred to in Sub Section (1), the procuring entity, that is the State Department or a County Department shall do so in consultation with the Cabinet Secretary or the County Executive Committee Member responsible for that entity as the case may be.”

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Did you consult the CEC for Health during these processes?

Mr. Carilus Otieno: I can confirm, yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Are you aware that she was there where you are seated yesterday and she confirmed in evidence and on oath that she was never involved? Let us move on.

Which Velocity has executed this Agreement? Velocity with “city” or the other one?

Mr. Carilus Otieno: To the best of my knowledge, with “cty”

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Good. Move with me to the document establishing or communicating to you about the Evaluation Committee. Kindly, on the same file.

Mr. Carilus Otieno: Which file to be specific?

The Chairperson (Sen. Malalah): Are you talking about the *ad hoc* Tender Evaluation Committee?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Yes.

The Chairperson (Sen. Malalah): I think that it is on page 55, the submission by Gov. Anne Waiguru.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Yes, it is on page 55. Carilus, are you with me?

Mr. Carilus Otieno: Yes, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who are the members of the Tender Committees in that particular tender?

Mr. Carilus Otieno: Mr. Chairman, Sir, let me confirm to you Counsel that these are chairpersons.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who is the Chair of that Tender Committee? Are you looking at the same document that I am looking at?

Mr. Carilus Otieno: Please, clarify because I am on the Table of Summary of Appointments of various---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Okay, I will come back to that later then.

Move with me, on the same file; please do not leave that file. At Annexure 12g

Please, keep holding that file. It is very important. It is Annexure 12G.

Mr. Carilus Otieno: Mr. Chairman. Sir, which file is the Counsel referring to?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): It is 046. Are you there?

Mr. Carilus Otieno: Yes, sir.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am looking at the document of the tender opening Committee. Do you have the minutes with you? It is 12 G. You were very expedient when you were dealing with "Chief".

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, could Counsel stop badgering the witness?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Look at that tender opening Committee in the next page, Entry No.4. No, you have gone *mbali sana*, Carilus. Let me share mine with you.

The Chairman (Sen. Malalah): Mr. Ndegwa, this Committee is guided by our Standing Orders, which say that we shall only use either English or Kiswahili and/or Kenyan sign language. So, you will choose to use one. Do not mix.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am guided. I will use English. Carilus, are you at 12 G? It is a copy of the tender opening committee minutes. Are you there, sir?

Mr. Carilus Otieno: I am there, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Would you kindly open with me the next page? You seem not to be having it. I will share with you. Kindly, confirm that those are authentic tender opening Committee meeting minutes. Do not go further.

Mr. Carilus Otieno: I can confirm.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Look at entry No. 4.

Mr. Carilus Otieno: Yes, I am there, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who is the person appearing on the opening date?

Mr. Carilus Otieno: It is indicated 'Velocity'.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): 'Velocity.' Good. So, at the time of opening the tender Velocity participated? Is that correct?

Mr. Carilus Otieno: Mr. Chairman, Sir, that is not correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Is that correct or not?

Mr. Carilus Otieno: As per the indication---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): No! No! I am asking you about the document I have showed you. Is that entry correct or not?

Mr. Carilus Otieno: The entry is correct---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): We move on. I now want to move with you very fast to Annexure 12 (I). It is the Technical Evaluation Report. Are you there?

Mr. Carilus Otieno: Yes, I am there.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Are you with me hon. Senators. Let us move on, Carilus. Next page. Kindly confirm that that is an authentic report.

Mr. Carilus Otieno: It is on appointment of members of the *ad hoc*---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): On my file, it is 12(I), on 046.

Mr. Carilus Otieno: Is it 12 H or 12 I?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): They could be different, but what I am referring to, hon. Senators, is the Technical Evaluation Report on 046 tender.

Mr. Carilus Otieno: I am there, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Kindly, confirm that it is an authentic document, indicating the evaluation of the companies that participated. Is that correct?

Mr. Carilus Otieno: It is correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Move with me to the next page. Go to the page written ‘technical evaluation.’ Are you there?

Mr. Carilus Otieno: Okay.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Kindly, confirm to us the representation by B1, B2, B4, B5 and B7. What do those represent?

Mr. Carilus Otieno: They represent the bidder numbers.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Kindly, confirm to us that Velocity is bidder No.4, (B4).

Mr. Carilus Otieno: I confirm that is correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Move with me to that technical evaluation report. Are you there? You do not seem to be.

Mr. Carilus Otieno: I am there.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You are not on this page, sir. Read out to us the comments or remarks, which begin with “the bidders who met.”

Mr. Carilus Otieno: “Bidders who met the mandatory requirements were subjected to a technical evaluation as set out in the tender document and scores awarded based on the bidder’s qualification. Only bidders meeting a pass mark of 70 per cent in this stage shall qualify for financial evaluation.”

The Advocate for the County Assembly (Mr. Ndegwa Njiru): So, Velocity is in the technical evaluation because they met the previous requirements? Is that correct?

Mr. Carilus Otieno: Yes, it is correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Move with me to the column written “Specific experience of the firm’s consultants related to the assignment.” Are you in that column?

Mr. Carilus Otieno: Yes, I am.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What score did bidder No. 4 garner? There is a five indicated there. Correct?

Mr. Carilus Otieno: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What does that represent? Does it represent that the company has five years of experience?

Mr. Carilus Otieno: No, it does not.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What does it represent?

Mr. Carilus Otieno: It represents marks.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Which category of marks?

Mr. Carilus Otieno: Five years and above.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): When was the company incorporated? Just to recap, you have mentioned in chief. You said it was incorporated in 2017. Correct?

Mr. Carilus Otieno: Correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Good, we move on. Go to the last column where it is written “attach a company profile and organogram. Company profile two marks, staff employee---.” Have you seen it?

Mr. Carilus Otieno: Yes, I have seen it.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Are you on that column?

Mr. Carilus Otieno: Yes, I am, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What is indicated in that column for Velocity?

Mr. Carilus Otieno: Three marks.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Three marks with an asterisk. Correct?

Mr. Carilus Otieno: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What does the asterisk represent?

Mr. Carilus Otieno: I am not sure, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Just move on to ‘evidence of similar undertakings in institutions at least five assignments.’ On the same page, there is score of six with an asterisk. Correct?

Mr. Carilus Otieno: What does the asterisk represent?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do the other companies and evaluations have asterisks?

Mr. Carilus Otieno: No.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Move with me to the audited accounts for the last three years.

Mr. Carilus Otieno: I am there.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Does the company score three?

Mr. Carilus Otieno: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): For how many years of audited accounts?

Mr. Carilus Otieno: Three marks, one mark per year.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Having provided three years audited accounts. Correct?

Mr. Carilus Otieno: It is only correct as a joint venture.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am not asking about joint venture; I will come to that. Is it correct or not that we are evaluating Velocity and it has three years?

Mr. Carilus Otieno: Correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): When was the company incorporated, just to recap?

Mr. Carilus Otieno: 2017, let me confirm---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): 2017, correct?

Mr. Carilus Otieno: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): When was the tender bid?

Mr. Carilus Otieno: In 2018.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Three years' experience? Marvelous! That is good mathematics.

Mr. Carilus Otieno: As a joint venture.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Move with me to the next page. Look at the comment on the bidders' responsiveness. Are you there?

Mr. Carilus Otieno: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): "Read the comments? "The following are some of the key explanations why the evaluated bidders were not awarded the maximum score of a 100 marks at the detailed technical evaluation stage." Are you there?

Mr. Carilus Otieno: I am there, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Kindly read No.1, 2 and 3.

Mr. Carilus Otieno: Number one is Parity, Performance and Compliance Limited---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): It was a company that bid. Read the remarks why it was not awarded 100 marks.

Mr. Carilus Otieno: Submitted audited accounts for only one year. Work provided does not clearly define the timelines; partial understating of the scope and interpretations of the TORs, no clear documentation on sustainability of the system and service.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): That was why that company could be awarded 100 marks. Is that correct from the procuring profession?

Mr. Carilus Otieno: To the best of my knowledge.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Marvelous! Read Number two.

Mr. Carilus Otieno: Ubora Systems and Solutions Limited.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What are the remarks why it never garnered 100 marks?

Mr. Carilus Otieno: No Masters degree from the team lead, relevant experience of less than 10 years and no proof of qualification and competence.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Now go to the fourth entry.

Mr. Carilus Otieno: Velocity---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Velociti at the technical evaluation stage.

Mr. Carilus Otieno: That is correct, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What is the remark there?

Mr. Carilus Otieno: The remark is, 'Scope and evaluation will be fully understood during the pilot stage or feasibility study phase.'

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am not a procurement professional. What does that remark mean?

Mr. Carilus Otieno: Mr. Chairman, Sir, I do not comprehend this remark at the moment.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You will comprehend the remark because this is your document. What does that mean?

Mr. Carilus Otieno: Mr. Chairman, Sir, to understand the remark, "Scope and evaluation will be fully understood during the pilot stage or feasibility study phase." I would like to refer to the proposals submitted by the document to fully comprehend the remark.

Advocate for the County Assembly (Mr. Ndegwa Njiru): As a professional procurement officer, did you give your professional opinion?

Mr. Carilus Otieno: Mr. Chairman, Sir, yes, I did.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Kindly, open the next page, Annexure 12(h) which is a document on the appointment of the *ad hoc* Committee. Who is the Chair of that Committee?

Mr. Carilus Otieno: The Chairperson is Mr. Wayne Gichira.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What is the qualification of Mr. Wayne Gichira?

Mr. Carilus Otieno: Mr. Wayne Gichira is an ICT advisor.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What is the position of Mr. Wayne Gichira in that Committee?

Mr. Carilus Otieno: Mr. Wayne Gichira is the Chairman of that committee.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Otieno, who appointed that *ad hoc* committee?

Mr. Carilus Otieno: The accounting officer.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who is the accounting officer in this case? Who executed the appointment?

Mr. Carilus Otieno: The Chief Officer Finance.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Are you aware of the provisions of Section 45(3) of the County Governments Act? Can I read it out?

Mr. Carilus Otieno: Please do, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Section 45(3) states that:
-

“A county chief officer shall be responsible to the respective county executive committee member for the administration of a county department as provided under section 46.”

Is it now clear to you who the appointing authority should be?

Mr. Carilus Otieno: It is now clear to me, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Was there a Chief Officer of Finance at that particular time of this tender?

Mr. Carilus Otieno: I can confirm that he was present.

The Chairperson (Sen. Malalah): Mr. Ndegwa, you have five minutes left. However, I will give you an extra five minutes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Otieno, did you give your professional opinion in respect of that tender?

Mr. Carilus Otieno: Yes, I did.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You gave your professional opinion as it appears on the document dated 16th April appearing on Annexure 12(m). Correct?

Mr. Carilus Otieno: Correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Let us move to the Page No.2. Whom were you giving professional about on that page?

Mr. Carilus Otieno: That was a professional opinion I gave about the Velocity Partners Limited.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Which Velocity?

Mr. Carilus Otieno: ‘Velocity’ with a ‘cty’ at the end.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): We are not on the same page. I am referring to your professional opinion in Annexure 12(m) unless you have two opinions.

Mr. Carilus Otieno: ‘Velocity’ with an ‘i’

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who bided for the tender?

Mr. Carilus Otieno: ‘Velocity’ without and ‘i’

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Whose professional opinion is this?

Mr. Carilus Otieno: It is mine.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Let us move on. Read your comments on the last entry of Page 4.

Mr. Carilus Otieno: “In view of the above, the following is my recommendation, I concur with the evaluation, negotiation and demonstration report and hereby recommend ‘Velocity’ with ‘cty’ at the end.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): At the time of giving your professional opinion, were you in possession of the documents relating to ‘Velocity’ or you just gave a professional opinion. Did you peruse through the file relating to that company?

Mr. Carilus Otieno: I can confirm that I did.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Did you confirm that the company was registered in 2017 and bided in 2018?

Mr. Carilus Otieno: Yes, I did.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): And you still went on to give a professional opinion in that respect and confirmed that the company had experience of five years and had three years audited accounts.

Mr. Carilus Otieno: As a joint venture, yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Kindly, give us the joint venture agreement. Did you attach it to your documents?

Mr. Carilus Otieno: It is not among the documents that we submitted.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Has your professional opinion captured that scenario that it is bided as a joint venture entity?

Mr. Carilus Otieno: My opinion did not capture that.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Let us move to tender number CGK/ICT/OT/047/2017/2018. Whom are you contracting in that tender?

Mr. Carilus Otieno: The County Government of Kirinyaga is contracting 'Velocity' with 'cty'

The Advocate for the County Assembly (Mr. Ndegwa Njiru): And the representation of the contract represents Velocity with 'cty' or 'city'?

Mr. Carilus Otieno: It represents Velocity with 'cty'

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Read out the contract.

Mr. Carilus Otieno: That one indicates 'Velocity' with 'city'

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who executed that agreement?

Mr. Carilus Otieno: The accounting officer.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): How much was paid for the contract with Velocity with 'cty'?

Mr. Carilus Otieno: I cannot confirm that because the contract is still ongoing.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Let us move to Annexure (i) that has names of the members of the tender committee. Who chaired that tender committee?

Mr. Carilus Otieno: It was chaired by Mr. Wayne Gichira.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who appointed him?

Mr. Carilus Otieno: The accounting officer.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Which accounting officer?

Mr. Carilus Otieno: The Chief Officer Finance.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Can you confirm that this 'Velocity' is the same company that bided in tender No. CGK/ICT/OT/046/2017-2018.

Mr. Carilus Otieno: It is the same Velocity.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I would like to take you through other averments in your response. I would like you to take out Tender No. CGK/MOW/OT/039/2017-2018 for the Riagicheru Irrigation Water Project.

They are two files. They are South Ngariama Water project as Tender No. 036, Tender No. 038, and Tender No. 039 for purposes of expediency. I will only deal with those files. Are you there Mr. Otieno?

The Chairperson (Sen. Malalah): We do not have the files yet. Just give us time.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): They are Tender Nos. 036, 038, and 039.

The Chairperson (Sen. Malalah): So, you want three files.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Yes, Mr. Chairman, Sir. They are writing the same tender award.

The Chairperson (Sen. Malalah): Which one do you begin with?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I will begin with Tender No. 039. I am just calling for them to be close. Tender No. 039 is on Annexure 8 (h).

The Chairperson (Sen. Malalah): Hon. Members, do we have Tender No. 039? Okay, you may proceed.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, with me is Annexure 8 (h) which is a tender for the proposed--- It is written: Access to Government Procurement Opportunities (AGPO) reserved.

Sen. Kwamboka: Mr. Chairman, Sir, we do not have Annexure 8 (h).

The Chairperson (Sen. Malalah): What is the title?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, the title of the document is "The tender for the proposed waterworks for the Irrigation of Riagicheru." Are we there? Let us go to page one. Are you there, Mr. Otieno?

Mr. Carilus Otieno: Mr. Chairman, Sir, I am there.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Is that a specific tender reserved for a particular group?

Mr. Carilus Otieno: Mr. Chairman, Sir, yes, it is.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Which group is reserved for it?

Mr. Carilus Otieno: Mr. Chairman, Sir, AGPO.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): How do you determine whether a company is AGPO certified or not?

Mr. Carilus Otieno: Mr. Chairman, Sir, by a certificate of AGPO.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who awards that certificate?

Mr. Carilus Otieno: Mr. Chairman, Sir, the National Treasury.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Go with me to Page 2. On Entry No. 2, Eva Trading Agencies Limited is indicated as AGPO certified. Is that correct?

Mr. Carilus Otieno: Mr. Chairman, Sir, that is correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Did you provide the AGPO certification?

Mr. Carilus Otieno: Mr. Chairman, Sir, yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Kindly take us to where it is in your file. First of all, before you say that, confirm that once you are AGPO certified, you must be issued with a certificate. Is that correct?

Mr. Carilus Otieno: Mr. Chairman, Sir, I confirm that.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Marvelous. Let us move on.

Mr. Carilus Otieno: Mr. Chairman, Sir, can I confirm where that document is? We usually get the proposal from the bidders. The winning bidder forms part and parcel of the contract. This document and all other relevant documents that the bidder submitted is in the contract document and that one can be availed.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): For the contract document with you, you knew it would be an issue of trial. Do you have AGPO certificates or you do not have AGPO certificates in your documents?

Mr. Carilus Otieno: Mr. Chairman, Sir, we confirm there is women category AGPO certificate.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Please provide it to us. We need it now and not tomorrow.

The Advocate for Governor Waiguru (Mr. Nyamodi): Mr. Chairman, Sir, if counsel was allowing the witness to answer questions, he was going to answer that question and counsel told him “before you go there”. He must allow him an opportunity to answer questions.

The Chairperson (Sen. Malalah): Counsel, you will need to give the witness time to answer the questions.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I was only conscious of the time that is remaining, but let him answer.

The Chairperson (Sen. Malalah): You have known me as a generous Chairperson. So, you should not be so worried.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, we have enjoyed the generosity with humility.

The Chairperson (Sen. Malalah): Your time is up. How many more files do you want to interrogate?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I have about four more files. However, remember we had also summoned this witness. He is their witness and our witness.

The Chairperson (Sen. Malalah): Let us work with ten minutes first and we see how it goes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I will try to work the scope.

The Chairperson (Sen. Malalah): Okay.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Otieno, I want you to provide me with a certificate of AGPO certification for this company.

Mr. Carilus Otieno: Mr. Chairman, Sir, it can be provided once I get the contract document.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What do you mean by contract document? Is it the tender?

Mr. Carilus Otieno: Mr. Chairman, Sir, the contract document I refer here is a well bounded contract document which has the bidder proposal and the contract agreement form.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Let us move on. I take it that you do not have it now. Is that correct?

Mr. Carilus Otieno: Mr. Chairman, Sir, that is correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Move on to the members of the tender evaluation committee on page three.

Mr. Carilus Otieno: Mr. Chairman, Sir, I am there.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who is the chairperson of that tender committee?

Mr. Carilus Otieno: Mr. Chairman, Sir, Ms. Pauline Kamau who is the director of administration.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Move with me to the last page, Page 9, where it is given a recommendation. Is that correct? Are you there?

Mr. Carilus Otieno: Mr. Chairman, Sir, yes, I am there.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Kindly, read it out.

Mr. Carilus Otieno: Mr. Chairman, Sir, from the foregoing evaluation, the evaluation committee recommends bidder No.2, that is, Eva Trading Agencies Limited having submitted the lowest responsive evaluated bid be considered for the award of the tender for the proposed waterworks for Riagicheru Water Project.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What is the cost?

Mr. Carilus Otieno: Mr. Chairman, Sir, it is a total cost of Kshs9,942,022.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Correct. Move on with the reading.

Mr. Carilus Otieno: Mr. Chairman, Sir, a list of directors of Eva Trading Agencies Limited are Ms. Mary Mumbi Gichobi, a Kenyan by birth who has 100 shares; Mr. Jackson Ndathi Gichobi, a Kenyan by birth with 100 shares; Ms. Evangeline Wakaria Nyaga, a Kenyan by birth with 200 shares; and Mr. Edwin Gichobi Ndathi, a Kenyan by birth with 300 shares.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You said you were there yesterday when evidence was being taken. Is that correct?

Mr. Carilus Otieno: Mr. Chairman, Sir, correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You were there when the Chief Officer for Finance was testifying. Is that correct?

Mr. Carilus Otieno: Mr. Chairman, Sir, correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You heard him say that Mr. Edwin Gichobi Ndathi is his brother. Is that correct?

Mr. Carilus Otieno: Mr. Chairman, Sir, correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Good. Move on to the next file. Tender No. 038 is a tender for Mwea Makina Water Project. Honorable Members, I will be dealing with Annexure No. 7. I will begin from Annexure 7 (i).

The Chairperson (Sen. Malalah): Do we have Tender No. 038?

Sen. Kwamboka: Mr. Chairman, Sir, I do not have.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Otieno, we are not dealing with that file. We are dealing with this file. I do not know what you are fetching from that file. We have this and not what you have.

The Advocate for Governor Waiguru (Mr. Nyamodi): Mr. Chairman, Sir, “that” and “this” only makes sense to somebody standing next to counsel.

The Chairperson (Sen. Malalah): You should furnish the witness with the correct file.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, they are the ones that were filed.

The Chairperson (Sen. Malalah): The Chair has No. 038. SO, we may proceed.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Otieno, again, move with me. It is Annexure No. 7 (i), Senators. Mr. Otieno, are you comfortable with the file?

Mr. Carilus Otieno: Mr. Chairman, Sir, yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Look at Annexure No. 7 (i). What is the nature of that tender?

Mr. Carilus Otieno: Mr. Chairman, Sir, it is Kenya National Highways Authority (KeNHA) tender for waterworks and reserved for AGPO.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Entry No. 2 is tender opening results. Is that correct?

Mr. Carilus Otieno: Sorry, counsel. Where are you?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Senators, you are with me at annexure 7(i)? Are you there, Mr. Otieno? That is your file, you know it better than I do.

Mr. Carilus Otieno: I am there, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Are you with me at page 2?

Mr. Carilus Otieno: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What is the presentation in page 2, table 1.

Mr. Carilus Otieno: Tender opening results.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What is entry No.2?

Mr. Carilus Otieno: Eva Trading Agency Limited.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Ever Trading Agency Limited, Correct?

Mr. Carilus Otieno: Correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Move with me to issues of recommendations in page 9.

By the way, who is making these recommendations?

Mr. Carilus Otieno: The Evaluation Committee.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Move with me to 6.0 on recommendations.

What is the presentation of that recommendation?

Mr. Carilus Otieno: It says: "In view of the above, I concur with the evaluation report and hereby recommend that Eva Trading Agency Limited be awarded the tender for the

proposed water works from Mwea-Makima Water Project having submitted the lowest responsive evaluated bid of cash Kshs.3,552,910.”

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Read the representation in the list of directors of companies. Are they the same with the one which you have just read?

Kindly confirm.

Mr. Carilus Otieno: I confirm that they are the same.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Confirm to me the tender evaluation Committee on page 10.

Of my interest is the Chair of the Committee. Who is the chairperson of that tender Committee?

Mr. Carilus Otieno: The chairperson is Pauline Kamau.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What is her designation in the county government?

Mr. Carilus Otieno: She is the Director of Administration.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Take the Motion. Let us move to the next file, that is tender no.036, hon. Senators. It is South Ngariama Water Project.

Then we move to annexure no. 9(i). What is the nature of that tender?

Mr. Carilus Otieno: Water works project reserved for Access to Government Procurement Opportunities (AGPO).

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Reserved for AGPO, correct?

Mr. Carilus Otieno: Correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Go to page 2. Are you looking at entry No.3 on Table No.1, tender opening?

Mr. Carilus Otieno: I am there, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Eva Trading Agency Limited is there?

Mr. Carilus Otieno: Yes, it is.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Look at page 3. Who chaired that Committee?

Mr. Carilus Otieno: Pauline Kamau.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who are the directors of that company in page 9?

The annexure is page 9(i). That has a page 9 of the same annexure.

Mr. Carilus Otieno: Annexure should be an evaluation report. That is what the counsel is looking at.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Yes, the evaluation report. What is the recommendation of that evaluation Committee?

Mr. Carilus Otieno: For going evaluation, the evaluation committee recommends bidder no. 3; Eva Trading Agency Limited.

Having submitted the lowest responsive evaluated bid be considered for the award of tender for proposed water works for South Ngariama Water Project.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): At what cost?

Mr. Carilus Otieno: At a cost of Kshs11,943,820.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who are the directors of the company?

Mr. Carilus Otieno: I can confirm the same as before.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Read them out.

Mr. Carilus Otieno: Mary Mumbi, Kenyan by birth, 100 shares; Jackson Ndathi, Kenyan by birth, 100 shares; Evanjeline Wakara, Kenyan by birth, 200 shares and Edwin Gichubi, Kenyan by birth, 300 shares.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): The same directors, correct?

Mr. Carilus Otieno: Correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Move on to annexure 9(h) on the same file. Tender evaluation committee appointment letter.

It is an internal memo, correct?

Mr. Carilus Otieno: Correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who is designated as the chair of the committee?

Mr. Carilus Otieno: Pauline Kamau, the Director of Administration.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who appointed Pauline Kamau?

Mr. Carilus Otieno: The accounting officer.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Which accounting officer?

Mr. Carilus Otieno: The Chief Officer of Finance.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): The witness we had yesterday, correct?

Mr. Carilus Otieno: Correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Senators, as I conclude, kindly move with me to tender no.013.

The Chairperson (Sen. Malalah): Secretariat, kindly, furnish us with the file, tender no.013.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): And tender no.037.

The Chairperson (Sen. Malalah): Counsel, you will start with tender no.013. Kindly proceed.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): We will go to annexure 6(i) titled tender for the construction of Kagio Matatu Parking Phase no.1, Lot no.3 in Mutithi Ward.

Mr. Otieno, are you there? What is the nature of that tender?

Senators, are you with me?

Hon. Senators: Yes.

The Chairperson (Sen. Malalah): Mr. Ndegwa, your time is up.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I was remaining with two files. I beseech the Committee to be kind with me so that I can make out this case for purposes of factfinding.

The Chairperson (Sen. Malalah): I give you an additional five minutes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I will try to work within that time.

Mr. Otieno, we have five minutes to work this out. Are you on that tender?

Mr. Carilus Otieno: Yes, I am.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Is that tender an AGPO reserved tender?

Mr. Carilus Otieno: Yes, it is.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Move on to page 9, tender evaluation Committee. The same annexure.

Mr. Carilus Otieno: I am there.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who is the chair of that Committee?

Mr. Carilus Otieno: Pauline Kamau.

Move to annexure 6(h), tender evaluation committee. Who is the chair?

Mr. Carilus Otieno: Pauline Kamau.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who appointed Pauline Kamau?

Mr. Carilus Otieno: The accounting officer who is the chief officer of finance.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Which company was awarded that tender?

Mr. Carilus Otieno: Taphes & Nitram Enterprises Limited.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Was it AGPO certified?

Mr. Carilus Otieno: To the best of my knowledge, yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Knowledge or facts?

Mr. Carilus Otieno: Facts.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Where is the certificate?

You do not have it, correct?

Mr. Carilus Otieno: It is under 6(q).

The Advocate for the County Assembly (Mr. Ndegwa Njiru): During the appointment of that tender committee, was the Ministry of Water represented by a chief officer? Was there a substantive chief officer to appoint the committee?

Mr. Carilus Otieno: Yes, the accounting officer.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Senators, I am done with that file.

Let us move on to tender no.037.

The Chairperson (Sen. Malalah): Hon. Senators, are you there? Is it supply and delivery of assorted Unplasticised Polyvinyl Chloride (UPVC) pipes for Kenera Water Project in Murinduko Ward? Is it that?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Yes, move on. I specifically want to go to the question of who was awarded the tender from your document. Who was awarded the tender?

Mr. Carilus Otieno: Humfel Limited.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Confirm that it was an open tender.

Mr. Carilus Otieno: I confirm that it was an open tender.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Go to the certificate of the incorporation of that company. You can guide us to the annexure if you fish it out first.

Mr. Carilus Otieno: I can confirm the certificate of incorporation. It should be in the bounded quarter---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): No, we have it. We have brought it. Do you not have it?

Mr. Carilus Otieno: I can confirm that it is in the contract, bounded---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Did you know that you had issues of when the company was registered when you were answering your response in respect to this tender? Were you aware or not?

Mr. Carilus Otieno: I was aware.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Did you make any attempt to rebut the decision that the company was registered?

The Advocate for the Governor of Kirinyaga County (Mr. Nyamodi): Mr. Chairman, Sir, I want to object to that. The counsel is obviously fishing for evidence. It is apparent that whatever evidence they have brought is deficient. He should be discouraged from that fishing expedition. It is not that anybody knew anything.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I will refer you to the Motion, with your permission. Kindly look at the Motion charging Gov. Waiguru. You have said that you looked at it, and you are here in her defense.

The Chairperson (Sen. Malalah): Can we respond to Mr. Nyamodi's, request? I think that there is a thin line separating Mr. Otieno as a witness for Gov. Waiguru and as a witness summoned by this Committee. I think that is where we are having discrepancies. There is a very thin line, that is why we are treading on a very delicate balance. However, we wish to allow him to complete, and then you may want to realign things according to your submission during your re-examination.

The Advocate for the Governor of Kirinyaga County (Mr. Nyamodi): Thank you, I am guided.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Well guided, Mr. Chairman, Sir. Look at the Motion, and most importantly the charge containing that particular file. Do you have the Motion with you?

Mr. Carilus Otieno: Yes, I do.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Did you understand the content of the allegations?

Mr. Carilus Otieno: Yes, I did.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Was it alive to you that we alleged that the company was incorporated on 28th December, 2017?

Mr. Carilus Otieno: That is correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Did you have a duty of rebutting that preposition?

The Advocate for the Governor of Kirinyaga County (Mr. Nyamodi): Mr. Chairman, Sir, again. In respect of that allegation, there is no evidence.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Counsel, why do you not allow me---

The Advocate for the Governor (Mr. Nyamodi): In respect to that allegation, there is no evidence. He must stop.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Counsel, do not protect the witness. He is also my witness. I made application to this witness to be brought---

The Advocate for the Governor (Mr. Nyamodi): He was summoned with a specific request to produce specific documents.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): He is on cross examination. He has the Motion with him.

The Chairperson (Sen. Malalah): Mr. Ndegwa, we want to correct something. He is not your witness. We summoned him as a Committee. He is not your witness. So, be guided accordingly.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am well guided. I withdraw that remark.

Mr. Chairman, Sir, the witness being the Committee's witness to help us meet the objective of Section 33, the Counsel cannot then purport to immune him. When I am questioning him, I am questioning him as witness provided to me by the Senate, and not the Governor. He is here to help the Senate look into the matter. So, the Counsel has no ability of objecting when I am cross-examining him. I know that he is a well-grounded practitioner, he knows the rules of cross-examination.

The Chairperson (Sen. Malalah): Mr. Ndegwa, let us concentrate on the real issue and avoid the sideshows.

The Advocate for the County Assembly (Mr. Ndegwa Njiru) : Sorry.

I am looking at Humfel Limited. When was that company incorporated? If you know, say you know. If you do not know, say you do not know.

Mr. Carilus Otieno: I can check. I do not know off head.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Okay. Did you provide a professional opinion in respect to that company?

Mr. Carilus Otieno: Yes, I did.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Was it within your power and jurisdiction to confirm all these details?

Mr. Carilus Otieno: Yes, it was.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Did you confirm?

Mr. Carilus Otieno: Yes, I did.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I then put it to you that the company was incorporated on 28th December 2017. What do you say?

Mr. Carilus Otieno: It was incorporated in 2017, however, it an AGPO company.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Let us go to the tender. Was that tender a reserved or an open tender? Go to the tender document.

Mr. Carilus Otieno: It was an open tender.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): It was an open tender, not reserved for AGPO company, correct?

Mr. Carilus Otieno: Correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): So, I catch you. Let us move on. Look at the same annexure, annexure 10 (i).

Hon. Senators, I want us to look at page 14 of annexure 10 (i). What is the recommendation of the Evaluation Committee?

Mr. Carilus Otieno: From the forgoing evaluation, the evaluation committee recommends that No.037, Humfel Limited, having submitted the lowest responsive evaluated bid, be considered for the award of the tender for supply and delivery of assorted UPVC---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Of how much?

Mr. Carilus Otieno: A total cost of Kshs5,421,000.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am okay with that. Move on to page 15.

Mr. Carilus Otieno: I am there, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who is the Chair of the Evaluation Committee?

Mr. Carilus Otieno: Pauline Kamau.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who appointed Pauline Kamau? Move on to Annexure 10 (h).

Mr. Carilus Otieno: I am there.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who appointed Pauline Kamau?

Mr. Carilus Otieno: The Chief Officer (CO) of Finance and Accounting.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): The Chief office of?

Mr. Carilus Otieno: The Chief Officer, Finance.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Confirm to us that there was a substantive chief officer in charge of water at that particular time.

Mr. Carilus Otieno: There was.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Good. Mr. Otieno, as a sum up, I put it to you that you have lied before this Committee that Ms. Pauline Kamau participated in only two tenders from your earlier submissions.

Mr. Carilus Otieno: Mr. Chairman, Sir, I want to clarify that. I am not a liar. I explained that it was an Evaluation Committee meeting. One appointment can have several tenders in it. I clearly said Evaluation Committee meetings.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): So, what exactly are you saying? Are you saying that Ms. Pauline Kamau did not participate in the two tenders as you said? Our evidence here shows that she participated in several tenders and that the tenders she participated in are questionable.

Mr. Carilus Otieno: Through the Chairperson, kindly, rephrase your question, Counsel.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Are you rebutting your earlier statement by saying that Ms. Pauline Kamau participated in several tenders, as opposed to your previous proposition?

Mr. Carilus Otieno: Ms. Pauline Kamau participated in evaluating several tenders.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Marvelous. I take that.

The Chairperson (Sen. Malalah): I think your time is now up.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, you have been lenient to me. I am humbled and most obliged.

The Chairperson (Sen. Malalah): Thank you. I will invite Mr. Nyamodi to do reexamination. You are supposed to use five minutes. Do you have any requests?

The Advocate for the Governor of Kirinyaga County (Mr. Nyamodi): No, not until the red light comes on.

The Chairperson (Sen. Malalah): Five minutes, Mr. Nyamodi.

The Advocate for the Governor (Mr. Muchigi): I have only two questions for you on my part. First, you had said that you were able to read the Motion when preparing your responses. The Motion that has brought us here today is against who?

Mr. Carilus Otieno: The Governor of Kirinyaga County.

The Advocate for the Governor (Mr. Muchigi): From the questions that you have been asked by my learned friend, Mr. Ndegwa, is there any question that you have been asked touching on the Governor in person?

Mr. Carilus Otieno: To the best of my knowledge, so far, no.

The Advocate for the Governor (Mr. Muchigi): I want you to look at folder No. 047, the one for Velocity. Let me just call it Velocity so that I do not struggle with the pronunciation.

Mr. Carilus Otieno: Yes, I am there.

The Advocate for the Governor (Mr. Muchigi): I want you to look at the exhibit marked as D, that is the tender document.

Mr. Carilus Otieno: Yes, I am there.

The Advocate for the Governor (Mr. Muchigi): I want you to go to page 12 of that tender document, and more particularly to Clause 2.20.3.

Mr. Carilus Otieno: Yes, I am there.

The Advocate for the Governor (Mr. Muchigi): Just read that provision. From your reading of that provision, I want you to tell us whether the errors concerning the typos of the name to the root of the award of the tender? Are they errors that are curable, based on that document? Just that.

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that the errors made are to the best of my knowledge so far immaterial. There might be typos but the most important and crucial documents starting from the professional opinion actually captured that error.

The Advocate for the Governor (Mr. Muchigi): From that provision, there is discretion to overlook those kinds of errors. Is that true?

Mr. Carilus Otieno: Yes, Mr. Chairman, Sir. To the best of my knowledge.

The Advocate for the Governor (Mr. Muchigi): Based on the tender document itself?

Mr. Carilus Otieno: Yes, Mr. Chairman, Sir. Based on the tender document itself.

The Advocate for the Governor (Mr. Muchigi): Thank you very much.

The Advocate for the Governor (Mr. Nyamodi): Mr. Otieno, is whether or not you have a current practicing certificate as a procurement professional an issue in the impeachment of Governor Anne Waiguru?

Mr. Carilus Otieno: Sorry, just repeat that.

The Advocate for the Governor (Mr. Nyamodi): Is whether or not you have a certificate to practice supply chain management or procurement an issue in this impeachment?

Mr. Carilus Otieno: Mr. Chairman, Sir, to the best of my knowledge, I do not think it is.

The Advocate for the Governor (Mr. Nyamodi): In respect of the allegations in the petition for Eva Trading Agencies Limited, I just want you to have a look at the motion again quickly and tell me whether there is anything in the allegation there that will require you to respond with a copy of an Access to Government Procurement Opportunities (AGPO) Certificate.

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that there is no requirement to produce an AGPO certificate.

The Advocate for the Governor (Mr. Nyamodi): In respect of Humfel Limited, in the Motion, there is an allegation that it was incorporated on a particular date. Is there any evidence that was attached to that Motion to evidence the date when that company was incorporated?

Mr. Carilus Otieno: Mr. Chairman, Sir, I did not see any.

The Advocate for the Governor (Mr. Nyamodi): The other clarification that I would like you to make is in respect of the appointment of evaluation committees. Do they evaluate just one tender or do they evaluate several tenders?

Mr. Carilus Otieno: Mr. Chairman, Sir, they do evaluate several tenders. I want to put this into the perspective of this particular financial year. I joined the County Government in February and the budgets were passed in June but I can confirm that. I went into County Government and they had not procured anything for development. We summed up so as to take the shortest time to ensure that procurement process is done well and within the law. There were so many tenders that were advertised. If you look at the advertisement document, we have more than 40 tenders.

Counsel, if I may go back to your question, that clearly shows that one appointed evaluation committee can evaluate several tenders within one appointment letter and that was the case in that financial year.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, I note that my time is up. May I plead for at least three minutes?

The Chairperson (Sen. Malalah): Yes, I grant you three minutes.

The Advocate for the Governor (Mr. Nyamodi): Thank you, Mr. Chairman, Sir. Mr. Otieno, can an AGPO company bid in an open tender? Are they excluded or precluded from taking part in open tenders?

Mr. Carilus Otieno: Mr. Chairman, Sir, I confirm that an AGPO company can bid.

The Advocate for the Governor (Mr. Nyamodi): How do you evaluate joint venture bids?

Mr. Carilus Otieno: Mr. Chairman, Sir, joint venture bids are evaluated as a consortium and not as one. It is looked as the consortium in that joint evaluation bid. Therefore, qualifications and experiences of that particular entity is looked as a joint venture.

The Advocate for the Governor (Mr. Nyamodi): Therefore, the ability of each member of the joint venture counts towards the final score.

Mr. Carilus Otieno: Yes, Mr. Chairman, Sir. Each member counts and that is why they add the credibility by teaming up.

The Advocate for the Governor (Mr. Nyamodi): I will ask you about the spelling mistakes that my learned colleague asked you about. This is a bit of a repetition but are they material?

Mr. Carilus Otieno: Mr. Chairman, Sir, to the best of my knowledge, they are not material.

The Advocate for the Governor (Mr. Nyamodi): Are they purposely done for the purposes of some sinister purpose?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm here that it is not done with any sinister purpose.

The Advocate for the Governor (Mr. Nyamodi): In the appointment of tender evaluation committees, does the Governor play any role?

Mr. Carilus Otieno: Mr. Chairman, Sir, the Governor does not play any role---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I need your direction. Can the Counsel in evidence, lead the witness in reexamination? The questions that he is asking are leading questions.

The Chairperson (Sen. Malalah): We gave that direction yesterday. We agreed that we may not require leading questions during re-examination.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, with this witness, it is sometimes difficult to find out who he is. Yes, he has come from the County Government but he is also summoned by the Committee at the request of the Assembly. Therefore, there is evidence that he has given that seems adverse which can only be tested by way of cross-examination.

The Chairperson (Sen. Malalah): That is why I said that it is a delicate balance considering that he is putting on two hats at the same time.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I hear you but the Counsel cannot purport or seem to be having his cake and eating it. When it suits him, he is okay and when I cross examine vigorously, then he owns the witness.

The Chairperson (Sen. Malalah): Mr. Ndegwa, I gave you the opportunity to juggle both ways. Therefore, I will also give the opportunity to Mr. Nyamodi and it is the same privilege to juggle both ways. I do think that you are within the borders of the case. Your request has been overruled.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Well guided, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Thank you.

The Advocate for the Governor (Mr. Nyamodi): Does the Governor play any role in the appointment of those committees and in the evaluation of tenders?

Mr. Carilus Otieno: Mr. Chairman, Sir, the Governor does not play any role.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, we only have two more questions for the witness.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Mr. Otieno, let us do this very quickly. You have been taken through a long cross-examination on several contracts. I am now taking advantage of the delicate balance that the Chairperson talked about. Is there, in any of those allegations, any allegation that there was a loss to the County Government?

Mr. Carilus Otieno: Mr. Chairman, Sir, there was no loss to the County Government.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Is there any allegation in those questions that there was failure of performance in any of those contracts?

Mr. Carilus Otieno: Mr. Chairman, Sir, I can confirm that there is no failure in performance. Actually, the company called Humfel Limited was among the first people to deliver the project and were one of the best performers in that financial year. They were actually accorded with that information during a meeting.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Is there any allegation that any of those contracts were overpriced or were not performed?

Mr. Carilus Otieno: Mr. Chairman, Sir, there was no single issue of overpricing.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Thank you. Your time is up. I will now take this opportunity to welcome my colleagues. Hon. Senators, do you want to seek for any clarification? I will start with my friend, Sen. M. Kajwang'.

Sen. M. Kajwang': Thank you, Mr. Chairman, Sir. I wish to thank the witness for being candid. I wish to draw his attention to page 73 which contains his statement. I do hope that he is looking at it. I particularly want to look at 17613. Are we on the same page?

You have said in your statement that payments were done after ascertaining that work was done thus justified. Is that correct?

Mr. Carilus Otieno: That is correct, Mr. Chairman, Sir.

Sen. M. Kajwang': Let us look at page 74 where you have given a breakdown of the invoices and payments for the project management monitoring and evaluation systems. Could you confirm when the last payment was done for that system?

Mr. Carilus Otieno: For the Hospital Management System?

Sen. M. Kajwang': No, the Project Management System (PMS).

Mr. Carilus Otieno: The last payment was done on 16th August, 2018.

Sen. M. Kajwang': Was that the final payment for full delivery of the project?

Mr. Carilus Otieno: Yes, that was full delivery of the project.

Sen. M. Kajwang': When was the User Acceptance Test (UAT) done for the PMS?

Mr. Carilus Otieno: Hon. Senator, I cannot remember the exact date---

Sen. M. Kajwang': It is there in your statement. You have talked of Annexure 12(e) which is the copy of signed User Acceptance Test.

Mr. Carilus Otieno: Can I get that one?

The Chairperson (Sen. Malalah): It is on the same page 74.

Sen. M. Kajwang': On page 73, you have referred to Annexure 12(e), even though in your pack, I think it is 12(q), which is Copy of User of Acceptance Test. When was UAT done?

Mr. Carilus Otieno: The UAT was signed on 20th October, 2018.

Sen. M. Kajwang': 20th October, 2018, yet payment in full was done on 16th August, 2018. What comes first, payment in full or UAT?

Mr. Carilus Otieno: Hon. Senator, UAT comes first.

Sen. M. Kajwang': So, you paid in full before UAT was signed off for the PMS?

Mr. Carilus Otieno: Hon. Senator, that is not the case. Maybe---

Sen. M. Kajwang': That is the evidence that we have. You have said that payments were done after work was verified after the UAT and you have attached the UAT certificate, which comes a month or so after payment was done in full.

It takes me back to the question by *Wakili* Kamotho. Would this then bring about a case of loss of public funds if you are paying in full before you have gotten certification of the work?

Mr. Carilus Otieno: Hon. Senator, in that scenario, yes.

Sen. M. Kajwang': Okay. Back to the Hospital Management System, the contract for the two were signed on the same day and executed by the same parties because it was the same company doing the work; whether it is Velocity or Velocity. Is that so?

Mr. Carilus Otieno: Yes.

Sen. M. Kajwang': But the two were signed on the same day.

Mr. Carilus Otieno: Yes.

Sen. M. Kajwang': When was UAT done for the Hospital Management System for the Outpatient Module? You have listed it on page 73.

Mr. Carilus Otieno: The second UAT for the Hospital Management System was signed off on 5th December, 2018.

Sen. M. Kajwang': How many months down the line? You could easily say 18 months.

Mr. Carilus Otieno: Yes.

Sen. M. Kajwang': There was a witness who said that the Hospital Management Software does not exist. From an end user perspective, if UAT was done 18 months ago, would that witness be right to say that the system does not exist because the system only exists when it is presented to the users?

Mr. Carilus Otieno: Hon. Senator, the system does exist and the implementation is still ongoing.

Sen. M. Kajwang': You did the first UAT and then kept it in the cooler for 18 months. When Kirinyaga County Assembly says that the system does not exist, how would they know which compartment of the cooler that system has been kept?

Mr. Carilus Otieno: I think the issue coming out is that there was a substantial delay of around 18 months.

Sen. M. Kajwang': Could it be going back to *Wakili* Kamocho's question, that there was failure in performance?

Mr. Carilus Otieno: There was no failure in performance.

Sen. M. Kajwang': And UAT has been going on for 18 months?

Mr. Carilus Otieno: I can confirm that the process of customization took quite a bit of time. There was a particular time we had issues with Kerugoya County Referral Hospital and the doctors' strike, among others. So, there were various reasons.

Sen. M. Kajwang': What percentage has been paid for the Hospital Management System?

Mr. Carilus Otieno: It is 60 per cent.

Sen. M. Kajwang': So, 60 per cent has been paid but 18 months later, the system has not been delivered.

The charge against the Governor was that she is running a corrupt county tendering policy. In all these, what was the involvement of the Governor? Was she involved at any point in the Hospital Management System or the PMS procurement, testing and utilisation? Where is her footprint in this?

Mr. Carilus Otieno: Hon. Senator, the Governor did not participate in the tendering process. To the best of my knowledge, where she comes in is in the implementation.

Sen. M. Kajwang’: So, the people who paid before UAT was done should carry their own cross?

Mr. Carilus Otieno: Yes.

The Chairperson (Sen. Malalah): Are you one of those people who should carry their own cross?

Mr. Carilus Otieno: No, Mr. Chairman, Sir.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Mr. Chairman, Sir, allow me to make an important intervention. I am sorry for making a break here because it is an important issue.

We are looking for the original UAT documents to be clear that this is not an issue of the wrong year indicated. This is because it is not possible to have the software delivered midyear and the first payment made in 2019, and then the second payment made in August 2018. That is not possible.

I think the reality is that the final column for 16th August, 2018 should be 2019 but I do not want to confirm that. We should get the files to confirm that because it is an important issue. If these payments were made before delivery, that goes to fraud. Therefore, on that point, we should check the actual documents to confirm the position.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): May I have my voice on that? My teacher, Mr. Kamotho, is quite aware that in any proceedings, a party is bound by its pleadings. This is a House of procedure. When questions are asked, he cannot start exposing the issues that the County Assembly is complaining about and all of a sudden, he realises that the documents he brought fixes the case. We must stick to one lane. Parties must be bound by their evidence and pleadings.

I had most of the opportunities to appear before the Rtd. Justice Madzayo, who is now a Senator. He will confirm that he could not allow any party to sneak in documents. Parties must be bound by their pleadings and these are the pleadings that we have. It is not our pleadings. They actually brought them. It is his testimony, unless you want to decapitate that.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Chair, let me just clarify something. This document is a schedule prepared. It is an extract of a document and mistakes can occur. Since it is factfinding mission, why would you have a problem in looking for the primary documents?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): But who extracted the documents, the County Assembly or the Governor?

The Chairperson (Sen. Malalah): Order! I will rule as follows. First, Mr. Kamotho, this is your document. You are the one who supplied us with this document. Therefore, we will consider it as it is. If you feel that you want to make supplementary submissions and clarify on the same, you are free to do that but what Mr. Ndegwa is raising is valid.

We would like to proceed with the concerns raised by the Senators.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): With your permission, allow me to place this into proper context. My teacher, Mr. Kamotho, has been allowed to bring documents that do not form part of the proceedings. In that position, we need to go back.

The Chairperson (Sen. Malalah): We have not allowed him to bring new documents--

The Advocate for the County Assembly (Mr. Ndegwa Njiru): He is trying to sanitize the process. He is sanitizing the process with these documents.

The Chairperson (Sen. Malalah): We have said he has opportunity later on to make clarifications through their closing remarks they can clarify; maybe the dates were not put. It is upon the Committee to make the determination as where we shall---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I do not want to question your wisdom. However, that will prejudice the case for the County Assembly. How shall we rebut that preposition that shall be created at the submission stage?

The Chairperson (Sen. Malalah): Mr. Ndegwa, that will be a matter to be determined by the Committee later on.

Sen. M. Kajwang': Mr. Chairman, Sir, let me yield my time to my colleagues.

The Chairperson (Sen. Malalah): Sen. (Dr.) Mbito and then Sen. Pareno.

Sen. (Dr.) Mbito: Thank you, Mr. Chairman, Sir. Mr. Otieno, as the procurement expert and Director of Procurement in Kirinyaga County, do you do any due diligence on companies before you award them a tender? For example, Velocity, did you conform that they had done similar jobs previously in order to find them fit to execute such a big contract? I am hoping you will not be looking at the hanging on to a very experienced company in name of a joint venture yet they have absolutely no experience on any similar job.

Secondly, I have looked at so many of your contract tenders. Are you aware that a company before undertaking a contract must furnish a performance bond? Do you have such a policy in Kirinyaga County? I am yet to see one single performance bond to protect the procuring entity. You seem to be dealing with very new companies whom you are engaging and, probably, paying them advance money without having the people of Kirinyaga protected in terms of performance bond.

You have also told us about Pauline Kamau having chaired just two evaluation committees, one in 2017/2018 and 2018/2019. What is the procedure? When somebody is appointed to chair an evaluation committee, there is an appointment letter. I have seen so many letters appointing Pauline Kamau to sit in various committees yet it is your statement that she has only sat in two evaluation committees. Please, explain that to us.

Finally, you have said you do not have a practicing certificate. Please, tell us why you do not have that certificate. Is there anything that has stopped for lack of a certificate in procurement? Without the certificate, can you sign a professional opinion? Are you allowed to sign a professional opinion? Those are my questions.

The Chairperson (Sen. Malalah): Can you respond to those questions?

Mr. Carilus Otieno: Mr. Chairman, Sir, if I may start with the first question of the due diligence. Yes, I can confirm to this Committee that we do undertake due diligence before we award contracts. However, due diligence sometimes takes different forms. We can do it from the office, actual visit to the premises of the bidder who is recommended for the award. In this particular tender in question, I can confirm to this Committee I did due diligence in two forms.

The first one is through the demonstration which was held at the County headquarters, where all the bidders who had proceeded to the financial evaluation stage were given an opportunity to present to the County Government; their company, relevant experiences and to confirm that the proposals they had submitted reflect the true position of the same. Thereafter, they were subjected to presentation of the software they intended to deliver to the County Government.

Mr. Chairman, Sir, I can confirm as a procurement professional that I took this initiative to get facts before award that this company is going to undertake the said contract and effectively.

To the best of my knowledge the developer is Velocity. Having done three software, I confirm to various institutes of the same magnitude or capacity at the County Government; I can confirm due diligence were duly undertaken.

On the issue of performance bond, I can confirm to this honorable Committee that we do request for performance bond before signing of the contracts. However, not all tenders have performance bond as a requirement. It depends with the cope and the magnitude of the work. I can confirm as the County Government of Kirinyaga, we usually take performance bond and we have a whole file where we keep all performance bonds.

Sen. (Dr.) Mbiti: You have not shown us even one performance bond for these tenders that are being challenged by the County Assembly. Show us one for the tenders.

Mr. Carilus Otieno: Mr. Chairman, Sir, since, they are domiciled in one file, I can avail one performance bond, if given the time.

The Chairperson (Sen. Malalah): Did you respond on the last issue, Sen. (Dr. Mbito raised)?

Sen. (Dr.) Mbito: On Pauline Kamau and your professional license.

Mr. Carilus Otieno: On Pauline Kamau, I wish to reiterate what I said earlier that these were based on appointments on evaluation committee meetings where one appointment had several tenders in place. I can confirm the reason why I had indicated as one, means that it is one appointment letter. If you can look across on the columns, it has the reference numbers.

If you go to that particular appointment letter you will clearly see all the tenders that the particular committee was supposed to deliberate on. The shape we take our appoint letter, as you have seen everyone is listed there, but to save on paper and be economical on consumables, we put on letter and then tick the relevant person and it is delivered to that person so that it forms as a formal appointment letter.

The Chairperson (Sen. Malalah): Do you have a practicing license?

Mr. Carilus Otieno: Currently, my practicing license is being validated at the Kenya Institute of Supply Management. I can give a reason to this as follows; the issue of procuring professionals having mandatory practicing certificates. To the best of my knowledge, last year is when it was required. Most professionals including me took the initiative to apply for it. I can give evidence of documents and receipts of money paid way back, 6 or 8 months ago for the said certificate. The reason why I took some time, I was still undergoing some qualifications. I thought it would hold more weight if I had submitted this application together. In between I had paid and was in contact with Kenya Institute of Supply Management (KISM) I told them to hold on until I had some more so that I get a certificate.

Sen. (Dr.) Mbito: Even without a license, you can sign an opinion?

Mr. Carilus Otieno: Without a license, I cannot sign an opinion. Once this came effectively, my deputy applied and she is the one who signs currently until I get mine.

The Chairperson (Sen. Malalah): Sen. Pareno then Sen. Halake.

Sen. Pareno: Thank you, Mr. Chairman, Sir. Just a few issues for clarification. There was an allegation yesterday, and I am happy that you were in attendance, that Wayne Gachera and Pauline Kamau are directly under the Governor's office as personal staff and are not supposed to be involved in tendering. This is one of the submissions by one of the witnesses.

I wanted to hear from you, being the Director of Procurement, whether it is normal and allowed since there was an indication that they are not allowed; they are supposed to report to Chief of Staff, who reports directly to the Governor. We want to know whether they are allowed to deal with tenders.

The other one is a concern on the same Ms. Pauline Kamau. When we were going through the documents and the files, Ms. Pauline Kamau chaired tenders and evaluation committees that dealt with water works for South Ngariama Ranching Scheme, Kagio Matatu Parking Works, the assorted UPVC pipes of Kerera Water Project and many others. To me, these are different sittings. It is like it was not one sitting and you went through all these. They are different sittings on different days. I do not know whether you consider this to be contradicting your position, which you gave us earlier in your statement, that Ms. Pauline Kamau chaired only one sitting in 2018, and another one in 2019. So, I want to hear whether that is a contradiction, or you have something to say about that one.

Finally, Mr. Chairman, Sir, on this Velociti and Velocity Partners Limited, it is becoming more complicated. I have seen your statement, and I want you to look at your statement, on page 38 of this document that contains your statement. Are you there?

Down the page, allegations raised as No. 10, the second last line, you say:

“Re-advertised and awarded to Velociti Partners Limited at a cost of Kshs50 million.’ This is your statement. In this case you refer Velociti.

On the next page, that is page 39, you go ahead and on the first line there, County Government of Kirinyaga and Velocity Partners Limited in the month of May, 2018. You refer to it as Velocity.

Down the page, (i) “vide and invoice dated 9th August, 2018, amount invoiced totaling to over Kshs30 million was paid on the day of the invoice to Velocity Partners Limited.

In the next paragraph: “The total amount paid to Velocity Partners Limited---” However, you contradict yourself in the next paragraph, the sub-heading is: “Response to allegations”; Under (ii) the company name is ‘Velocity Partners Limited’ and not Velocity Partners Limited and was in existence by the time the tender was advertised, as it is incorporated on 5th May, 2017.

You go on at (iii) to mention management systems, which were awarded to Velocity Partners Limited. Why all this confusion? Looking at what you produced earlier as a certificate of incorporation that shows that actually there is a registration of Velocity Partners Limited, but in almost the two pages of your statement that I have referred, I have not read the rest of the statement, you refer to the wrong Velocity Partners Limited. If it was a typo, I want a clarification on that.

Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): You may respond to those questions and then we move to Sen. Halake.

Mr. Carilus Otieno: Through the Chair, thank you, so much, Sen. Pareno.

On question about Wayne Gichira and Pauline, to the best of my knowledge, these are not personal staff to the Governor. This is because when I go the county government, there is the Human Resource (HR), which gives the list of the organogram.

As a procurement professional, I applied the regulations with regard to appointment of evaluation committees to recommend to the accounting officer the composition of the same. Pursuant to the relevant regulation, it is clearly indicated that the composition should be from at least three departments and the Secretary to that meeting must be a procurement professional.

It further says that two other departments, apart from the user department, have to be nominated in order to be part and parcel of the evaluation committee. It is said that the accounting officer may appoint heads of user departments to this said evaluation committees, but again, it goes ahead and says, "or their representatives."

In my capacity as the Director of the Supply Chain Management Services, I recommended the names for the composition, which include Wayne and Pauline. This is because Pauline is actually a head of a department, that is, Director of Administration. Significantly, Wayne Gichira equally holds a relevant position as an Information Communication Technology (ICT) advisor, which is the same as the Director, ICT in terms of the job group.

So, if you look at these requirements, then, they meet the threshold of being appointed in evaluation committees, not as personal staff to the Governor, but because of responsibilities they hold within the county government.

Therefore, I can confirm that they are allowed, to the best of my knowledge and to the facts that have presented, to be part and parcel of evaluation committees.

On to the second question, about the tenders, the relevant appointment letters and the relevant evaluation committees, I wish to clarify to this honourable Committee that I did not know that, that table can be interpreted in another way. So far, what I meant by that table is that if you look at the furthest end of the column, it has a reference number. That reference number is a reference number to an appointment letter. That appointment letter has several tenders to evaluate, which includes the tenders you mentioned.

Yes, the tenders are undertaken one after another, but we had one appointment letter. I also wish to draw you back to my previous justification that this particular financial year, we had to really think outside the box and ensure that public money is spent wisely and within law, and that by the end of the financial year, we should show the people of Kirinyaga that we did not return money, or--- We had one appointment letter having several evaluation committees. However, they were done separately.

On the issue of Velocity and Velocity, as the Hon. Senator has put it across, I wish to respond as follows: I want to admit that there is that typo still reflected there. However, to justify why or the reason it is there, so that within the relevant provision we can seek leniency or something else, the document was drawn by our legal team and, probably, they might have also captured that error. But I can confirm to the honourable Committee that, that is something which we overlooked, probably because of the time and the volumes of documents. Just to be on record, the actual company which should be referred in my statement is Velocity Partners Limited.

The Chairperson (Sen. Malalah): Thank you. Is that okay, Sen. Pareno?

Hon. Vice-Chairperson, Kindly, proceed.

The Vice Chairperson (Sen. Halake): Thank you very much, Mr. Chairman, Sir. Thank you, Carilus. I think a lot of the questions I had on my notebook have been asked by other Senators and answered. When exactly did you join the Kirinyaga Government?

Mr. Carilus Otieno: 13th February of 2018.

The Vice Chairperson (Sen. Halake): My question then relates to the Health Information Management System that was procured and we were told yesterday by one of the witnesses that there was actually or there is even now a National Government Health Information Management System that counties could have taken advantage of.

Are you aware of that and what were the reasons for which you opted to go ahead with the procurement if that was there? I just want to crosswalk and crosscheck with the witness that was before you?

Let me just finish all of them. Also, obviously there seemed to be quite a number of errors with regards to the Velocity and the Velocity issue and at that point, you have assured this Committee that, that is really not of material significance and that it is a typo error. Are you confirming that? And you say that there is discretion to overlook it. Whose discretion is it to overlook it, yours or the accounting office?

I would like to know whose discretion it was, and in this case, is it just coming to your attention now that you are presenting here or is that something that came to your attention but you took the discretion to overlook it?

Mr. Carilus Otieno: On to the first question about the National Hospital Management System, at a capacity of the director of supply chain management, I have the responsibility to also, for lack of a better word, do due diligence on requisitions from these departments. So, this was one clear example of the same.

There was approved budget which was passed, and there was a requisition emanating from the Chief Officer for Health at that particular time. Since it was in the media and it was in the public domain that the National Government had an intention of implementing a National Hospital Management System which is supposed to be deployed to the various counties, I went to further get the details with regards to that particular information. At that particular time, the information I got so far was that the software itself was still in the initial stage. It was like an idea supposed to be deployed and we had a need at the county for a Hospital Managing System. So, we just agreed that in case the national Government comes with the software, we had indicated to the service provider that it should be able to readily integrate with the national system or any other system, so to say. So that is why I took the responsibility to proceed on with the procurement of the said system.

On the second question, Mr. Chairman, Sir, I regret the fact that the Velociti with an 'i' and a Velocity with a 'y' is emanating to become an issue. However, as a professional with high integrity, let me make it clear and it can be on the record that the correct company is Velocity with 'cty' and I did not overlook it.

The mention of material was whether that issue - when I realized it at the professional opinion stage - warranted me to cancel the entire tender and restart. So, I looked at it as

material and I confirmed earlier but that was corrected by the very relevant pertinent documents which are the award, the acceptance and the contract document. However, I wish to reiterate, I apologize on behalf of the rest. Even on the statement the ‘i’ is still there but I regret it. I confirm it is Velocity with ‘cty’.

The Chairperson (Sen. Malala): Thank you. Hon. Members, we are remaining with exactly 15 minutes. So, I will allow only one question per person because we need to prepare this Chamber for the afternoon Session.

Sen. M. Kajwang’: Chair, could I propose humbly through you because we, as Senators, have taken quite substantial time that when you are counting time for the Governor’s defense, we find a way of making good the long time you have taken so that we do not put them at a disadvantage but it also allows Senators to probe the particulars of the allegations?

The Chairperson (Sen. Malalah): Well advised, hon. Kajwang’. That is well considered. Hon Mpaayei. So if we can use two minutes or three minutes per person so that we can try and wind up before 12.30.

Sen Mpaayei: Thank you, Mr. Chairman, Sir. I have two questions and a clarification on an issue that has come up. For you to be awarded a tender for a company or for a company to be awarded a tender, a certain person must be a chairman of the evaluation committee. I would like to know why.

Secondly, you being the Director of Supply Chain Management, do you agree that there were procurement flaws? And a final one is a question that was raised yesterday by my friend, Sen. Kajwang’, on conflict of interest, we noted that a brother to the Chief Officer Finance, Mugo Ndathi, was or had been awarded contracts. Could it be what the Assembly was saying like conflict of interest? If yes, what action has the Governor taken on the issue to ensure that the officers, who are working with the County Government, are not doing business in development reserve?

Thank you.

The Chairperson (Sen. Malala): I will take Sen. Loiptip’s question, then you will answer collectively.

Sen. Loiptip: Thank you so much, Mr. Chairman, Sir, and also thank you Mr. Joseph Carilus Otieno. I have heard you briefly speaking about your responsibility as the Head of Supply and Chain Management, who oversees the entire disposal; true or false?

Mr. Carilus Otieno: True.

Sen. Loiptip: Definitely, in your profession, you know the Public Procurement and Asset Disposal Act, right?

Mr. Carilus Otieno: True.

Sen. Loiptip: If I read it to you quickly due to the constraints of time, in Section 66, of the Public Procurement and Asset Disposal Act, it states:

“A person to whom this Act applies shall not be involved in any corrupt, cursive, obstructive, collusive or fraudulent practices or conflict of interest in any procurement or asset disposal proceedings.”

Sub Section 8 states: “For the purposes of this Section, a person has a conflict of interest with respect to procurement if the person or relative of the person:

- (a) Seeks or has a direct or indirect pecuniary interest in other persons who seeks or contrary of the procurement. Lastly,
- (b) Owns or has a right to any property or has a direct or indirect pecuniary interest that results in the private interest of the person conflicting with his duties with respect to the procurement.

Are you aware of a Chief Officer known as Joseph Ndathi Gichovi who happens to be a brother to Edwin Gichovi Ndathi? Is Pauline Kamau and Edwin Gichovi Ndathi, business associates and political associates?

Thank you so much.

The Chairperson (Sen. Malalah): Mr. Calirus, you may consider to answer those two and then lastly, I will give hon. Mugo and my good friend, retired judge, Sen. Madzayo, will wind up.

Mr. Carilus Otieno: Mr. Chairman Sir, I do not know if I got the hon. Senator’s question right, that certain persons seem to chair evaluation committees. I did not get it correctly so---

Sen. Loitipit: For somebody to be awarded a tender, a certain person, maybe Pauline Kamau, must be a chair of that evaluation committee.

Mr. Carilus Otieno: According to my practice, we do not recommend or consult on chairpersons by who they know, how or whoever, but with the relevant qualifications with regards to that tender.

With regards to this financial year, you may see that Pauline Kamau and Winnie Gichira chaired quite a number of evaluation committees. I refer back to my earlier justification. Remember this financial year most of the procurement started in February so, definitely we had to do it within the law to ensure that procurement is done in a timely manner. So, that is why you can see Gichira and Pauline having chaired quite a number of tender evaluation committees, but it was never an appointment on favoritism or who knows what.

The Chairperson (Sen. Malalah): Make your responses brief.

Mr. Carilus Otieno: On the second question on public procurement flaws, as I said earlier I hold a lot on integrity. I do not allow such and so I confirm there are no flaws in the County Government of Kirinyaga.

On conflict of interest, again, just for justification purposes, I refer you to the FY 2017/2018 when I joined in February 2018. It was very hard to know even who was who. So, I know Pauline Kamau as a Director --- and Wayne Gichira as an ICT advisor.

Sen. Loitiptip: Mr. Chairman, Sir, he has not answered part (b) of the question. It was: What action has the Governor taken to ensure that the officers in her government are not doing business in the government that they serve?

Mr. Carilus Otieno: To the best of my knowledge, I may not know the Governor's action. However, I can talk of my action now that I am quite conversant or have settled in well in the County Government of Kirinyaga. So, it is my initiative to implement such, but about the Governor I am not sure of the actions especially at this time.

The next one is on Section 66. Just as I responded to the Senator, it was very hard for me to know who is related to who or whose interest in business. I was just objectively awarding and recommending through the procurement process as I see the fact.

Sen. Loitiptip: That is not all. He has not answered my second question. I was very precise. I have asked him simply: Is he aware of the conflict of interest of Pauline Kamau and the brother of the chief officer known as Edwin Gichobi Ndathi? Are they political and business associates? Yes or no?

Mr. Carilus Otieno: No, I do not.

The Chairperson (Sen. Malalah): Proceed, retired judge Sen. Madzayo. Kindly note we have less than 10 minutes.

Sen. Madzayo: Thank you Chair. Mine will be very short questions.

Mr. Otieno, you told us in your evidence that you have not signed any of those professional opinions except to allow your deputy to do so.

Mr. Carilus Otieno: Yes, currently.

Sen. Madzayo: Incidentally, we have noticed so many recommendations in this file. All these recommendations are opinions so that a tender can be awarded or you recommend them to the Chief Finance Officer or something. Is that the position? You have recommended and signed some of these tender documents?

Mr. Carilus Otieno: That is the correct position, hon. Senator.

Sen. Madzayo: Is a recommendation a professional opinion?

Mr. Carilus Otieno: Yes, to the best of my knowledge.

Sen. Madzayo: Okay. Finally, every profession has its society such as the Law Society of Kenya (LSK). I believe all the various senior counsel sitting behind you belong to the LSK. You stated that for some reason or another you are still getting your papers and you have paid for your practicing certificate, but you have told them to wait a bit so that you can finish up tying up your papers.

Is that the position?

Mr. Carilus Otieno: That is the position, but I may wish to clarify more.

Sen. Madzayo: Have you paid the amount required or stipulated in your society for you to acquire a practicing certificate?

Mr. Carilus Otieno: Yes, I paid the required amount to the professional body.

Sen. Madzayo: Is it possible for you to ask the Society to stop issuing, “Wait a bit I finish up my certain subjects so that once I am through, I get those papers I come back to you.” Would I do the same when I got my certificate from the LSK? Is it possible for you to stop the Society from issuing a certificate after you have paid?

I would even demand that I get that practicing certificate. If they delayed, I would ask them the reason yet I have already paid. You have told them to hang on after you have paid? This year is running and now we are in June almost in July and you are still making recommendations. You are treading very dangerously in this matter.

I thank you, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Before I give Sen. Mwangi an opportunity to speak, I would like to remind Hon. Senators that the person on trial is Gov. Ann Mumbi Waiguru and not the witnesses. The questions you are asking should connect to one, Ann Mumbi Waiguru. We will use our House Committees to interrogate them in other forums, but not this one.

Kindly proceed, Sen. Mwangi.

Sen. Mwangi: Mr. Chairman, Sir, I have a problem with tender NO. CGKKICT0T046, 2017/2018 and Tender No.CGK/ICT/OT/047/2017-2018. The information we have is that the tenders were supposed to be awarded to those who had registered their companies five years or more before. However, from the evidence that we have received, it is clear that the tenders were awarded to Velocity Partners Limited which was registered in 2017 and the tenders were awarded in 2018. Why did that happen? It makes me believe that there is somebody you wanted to award the tenders and that is why you could not even remember that this company had only been registered a year earlier and not five years as is stipulated.

Mr. Carilus Otieno: Mr. Chairman, Sir, as I said earlier, Velocity Partners Limited had bid in both tenders as a joint venture. The joint venture they entered was with Comp 21 which was incorporated in the year 2000. For implementation of such tenders, we usually

encourage teaming to improve the qualification and experience because we are dealing with a software. Therefore, the more the merrier, but within the qualification. I duly recommended the award for this particular tender on the basis that it was bided as a joint venture.

The Chairperson (Sen. Malalah): Did you award the tender as a joint venture or individually as Velocity?

Mr. Carilus Otieno: Mr. Chairman, Sir, I awarded the tender individually to Velocity because one of the clauses in the agreement states that Velocity would be the main contractual and lead partner.

The Chairperson (Sen. Malalah): Therefore, considering the prerequisites of the tender, you used the qualifications of a joint venture, but at the point of awarding, you separated and awarded the tender as an individual company. Is that right?

Mr. Carilus Otieno: Mr. Chairman, Sir, that is right.

Sen. Mwangi: Mr. Chairman, Sir, I cannot settle for that answer. It is clearly stipulated in the tender document that for a company to be awarded the tender, it needs to have been in operation for more than five years. I believe that is the reason the Director of Administration by the name Ms. Pauline Wairimu Kamau, is appointed to chair most of the tenders as well as Mr. Wayne Gichira, who is a brother to the Finance Officer, who is also awarded most of the tenders because of their relationship. I can see an issue that is not right. Can you clearly tell us the reasons the tenders were awarded to Velocity? Do not hide behind the excuses that you are giving us.

Mr. Carilus Otieno: Mr. Chairman, Sir, I am not hiding anything. I would like to go on record that I am not hiding anything. I am responding in my capacity as a professional. I was very new to the office at the time of the tender. I did not know Ms. Pauline Wairimu Kamau or Velocity. I was objectively undertaking my duties. I am not hiding anything. I awarded that tender objectively based on the joint venture.

The Chairperson (Sen. Malalah): Kindly proceed, Sen. M. Kajwang.

Sen. M. Kajwang: Mr. Chairman, Sir, I thank you for your indulgence. This should not take more than a minute. I have a question on Tender No.CGK/MOE/OT/036/2017-2018 for the proposed waterworks for South Ngariama Water Project, March 2018, reserved for AGPO category. The tender was awarded to Eva Trading Agencies Limited, at a cost of KShs11.9 million. Who recommended the members of evaluation committee?

Mr. Carilus Otieno: Mr. Chairman, Sir, I did.

Sen. M. Kajwang: Mr. Chairman, Sir, who appointed the members of the evaluation committee?

Mr. Carilus Otieno: The Accounting Officer, who is the Chief Officer, Finance.

Sen. M. Kajwang: What is the name of the Chief Officer, Finance?

Mr. Carilus Otieno: The Chief Officer Finance is called Mr. Patrick Mugo Ndathi.

Sen. M. Kajwang: Who chaired the evaluation committee subsequently?

Mr. Carilus Otieno: It was chaired by Ms. Pauline Wairimu Kamau.

Sen. M. Kajwang: Who signed the letter of award?

Mr. Carilus Otieno: The Accounting Officer who is Mr. Patrick Mugo Ndathi.

Sen. M. Kajwang: Who signed the contract on behalf of the county?

Mr. Carilus Otieno: The Accounting Officer, Chief Officer, Finance.

Sen. M. Kajwang: The bid was won by Eva Trading Agencies Limited. However, in your recommendation, you listed the directors of Eva Trading Agencies Limited and there was one Mr. Jackson Ndathi with 100 shares whom we were told yesterday is a brother to the Chief Officer.

Mr. Carilus Otieno: Yes, he is.

Sen. M. Kajwang: Mr. Chairman, Sir, there needs to be Chinese walls between accounting officers and people who bid in counties. In your submission, you have conveniently referred to Section 55 rather than Section 66 of the Public Procurement and Assets Disposal Act where you say that related parties are wife or child. However, it is further expanded in Section 66 to include brothers and parents. If the County Assembly of Kirinyaga was to prove that this tender was awarded to the brother of Chief Officer Finance, in your view, would that constitute a breach of the regulation?

Mr. Carilus Otieno: Mr. Chairman, Sir, that would definitely be a breach.

Sen. M. Kajwang: Mr. Chairman, Sir, there seems to be a network where someone chairs while someone else signs letters of awards. Where is the Governor in all these? The charge against the Governor is that she has implemented a corrupt county tendering policy. Is it a policy that relatives will get jobs or should this be treated as a one off?

Mr. Carilus Otieno: Mr. Chairman, Sir, there is no policy with regards to such.

Sen. M. Kajwang: Mr. Chairman, Sir, can we conclude that if there were infractions of the law, then it would have been at the level of the officers involved?

Mr. Carilus Otieno: Mr. Chairman, Sir, I do not agree with that conclusion. In my capacity as the Head of Supply Chain Management, I was not privy to such information at the time. To respond to your question on whether the Governor has appointed a corrupt tendering policy, I would not agree to that. There is no policy of corrupt tendering.

Sen. M. Kajwang: Mr. Chairman, Sir, I thank you.

The Chairperson (Sen. Malalah): Lastly, Mr. Otieno, in your introductory remarks, you alluded that you were here yesterday and you heard witnesses testifying on various issues. Were you here when the Chairperson of the County Public Service Board (CPSB) was testifying?

Mr. Carilus Otieno: Mr. Chairman, Sir, yes, I was here.

The Chairperson (Sen. Malalah): Are you aware of the controversial appointment of one Ms. Pauline?

Mr. Carilus Otieno: Mr. Chairman, Sir, now I am aware.

The Chairperson (Sen. Malalah): Is she the same Ms. Pauline that is controversially mentioned in these evaluation committees?

Mr. Carilus Otieno: Mr. Chairman, Sir, yes, I can confirm it is her.

The Chairperson (Sen. Malalah): Is it a deliberate and well-orchestrated chain connecting events from a controversial appointment to now a further controversial appointment to chair certain and specific evaluation tender committees, which will eventually give specific companies tenders? Is it a web that is well-orchestrated to achieve a certain goal in Kirinyaga County Government?

Mr. Carilus Otieno: Mr. Chairman, Sir, I wish to respond as follows. As a professional, and as a Head of the Supply Chain Management, my capacity as the current one, if I start inclining towards such webs or networks, definitely I could not be standing here. Maybe I could be somewhere else with other investigating bodies.

So, I wish to clearly respond as follows. I am not aware of any web or network. My capacity then as the Head of Supply Chain ended once I knew Ms. Pauline Kamau is a Director, Administration. However, for all the other underlying factors, I can honestly say I am not aware.

The Chairperson (Sen. Malalah): So, you are alluding to this Committee that you are just a member of a food web, but you do not know those people?

(Laughter)

Mr. Carilus Otieno: Mr. Chairman, Sir, I would not agree with that.

The Chairperson (Sen. Malalah): That is well put. I want to give you 30 seconds or one minute to give your valedictory remarks. In conclusion, would you say anything?

Mr. Carilus Otieno: Thank you so much, Mr. Chairman, Sir and the entire hon. Committee. I wish to conclude as follows. First, all the information I have said and submitted is the truth and nothing but the truth.

Secondly, I wish to draw your attention also to my previous experience. My first employment was at the National Treasury where I worked until 2018. I hold a lot of experience and qualifications through my years. I want to tell this hon. Committee that there might be some issues which look glaring. However, if you dig through the facts, then you will find the plain truth.

Lastly, thank you everyone. I am yet to see more, but you objectively look at it.

The Chairperson (Sen. Malalah): Thank you, Mr. Carilus Otieno, for your valuable time with us.

(Mr. Carilus Otieno withdrew from the witness stand)

Hon. Members, in the interest of time, we will not proceed with other witnesses. We shall defer them to the afternoon session. However, I have got a ruling to make. Remember at the beginning of this session, the counsel representing Kirinyaga County Assembly made some application.

I would like to make a ruling on the application by the advocate for the County Assembly of Kirinyaga on production of original passport used for travel by Kirinyaga County Governor, Her Excellency Anne Mumbi Waiguru and whether she should be taken to stand over the same. I direct as follows-

Hon. Senators, ladies and gentlemen, you will recall that on 23rd June, 2020, that was yesterday, upon request by the counsel for the County Assembly, this Special Committee directed that the counsel for the Governor provide clear copies of the passport and the same be copied to the Clerk of the Senate by the end of the day. That was yesterday.

Hon. Members, this morning, the counsel for the County Assembly informed this hon. Committee that the said copies of the passport had not been provided as directed by this Committee. He further applied that the said documents be supplied in original form.

In response, Mr. Nyamodi, the counsel for the Governor handed over copies of the documents to the counsel for the County Assembly, Mr. Ndegwa. The counsel for the Assembly, however, holds that the copies of the documents provided were not clear and further requested that he be allowed to take the Governor to the stand over the same issue.

Having listened to the counsel for both parties, I direct as follows. First, as per the Committee directions on 23rd June, 2020, counsels for the Governor were directed to provide clear copies of the passport to the counsel of the Assembly. Therefore, if the copies provided this morning are not clear, counsel for the Governor should forthwith provide clear copies of the documents to the satisfaction of this Committee and not Mr. Ndegwa. I repeat, to the satisfaction of this Committee. This is because we do not want it to be a ping-pong game whereby you are given a document and you say it is not clear. This Committee will determine whether the documents are clear or not. The same may be provided in either soft or hard copies.

On the issue of whether the Governor should be taken to the stand over the copies of the passport, the Committee notes that the County Assembly never requested for the Governor to be summoned to give evidence. It is also instructive to note that rules of fair hearing do not allow persons accused to be compelled to give evidence against themselves.

This is also enshrined in our Constitution that we promulgated in 2010 specifically under Article 52 (1) that provides that every accused person has the right to a fair trial which includes and not limited to the rights to remain silent and not to testify during the proceedings.

Hon. Members, the Committee, therefore, dismisses the request by the counsel for the County Assembly. That being said, counsel for the County Assembly may cross examine the matter when the documents are uttered by a witness. The Committee will take all these matters into consideration when it retreats to consider its report.

Thank you.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, we are most obliged by that judicious thinking.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much, Mr. Chairman, Sir, for that ruling.

The Chairperson (Sen. Malalah): Good. Lunch will be served for both parties where you have been having your holding room yesterday at the Red Cross Building. For hon. Members, you will follow your Chairperson for your lunch!

(Laughter)

Thank you and may God bless you. We reconvene at the County Hall mini Chamber at exactly 2.00 p.m.

(The Committee adjourned temporarily at 12.45 p.m.)

(The Committee resumed at 2.00 p.m. at the County Hall Mini Chamber)

PRAYER

The Chairperson (Sen. Malalah): I think we have a quorum. Therefore, we can begin our afternoon session.

Hon. Members, we have a balance of 45 minutes in the submissions by the defense team. However, due to the break, I rule that we accord them one hour to finalise their submission. They have two more witnesses. Counsel, you will have one hour to present.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, with your permission, allow me in preparation of the two other witnesses that are coming, to make an application. My application is premised on a repealed law, which is the Transitional Authority Act, 2012.

This Committee is alive to the fact that, that law was instrumental in the transfer of functions from the national Government to the county governments. That Transitional Act created an organ that was called the Transition Authority (TA) that had its powers stipulated under the said repealed Act.

Most importantly, under that Act, Section 3 of the Act provided for the Objects and Purpose of the Act. Among them, it stipulated that the TA pursuant to Section 15 of the Sixth Schedule of the Constitution for the transfer of powers and functions to the national and county governments.

Along the process of transition, the said TA for smooth operation and progressive perpetual transfer of functions generated several advisory opinions. Those advisory opinions were instrumental in managing the manner in which the county governments were to take over from where the defunct municipalities had left.

In that regard, the TA, on the 2nd September 2013, issued an advisory opinion on management of human resource in the counties. The said opinion was sent to all governors, county speakers and all Principal Secretaries. It clearly indicated the purpose of that opinion. In prophesies of sources of law, and my teacher, Mr. Kamotho, can confirm this - that we have hierarchy of sources of laws. Among those sources of laws is the Constitution of the Republic of Kenya and any legislation that is done by a legislative body.

In the hierarchy of laws, we have subsidiary legislations. We also have the case laws and distinguished legal opinions like the one I am addressing to. This distinguished legal opinion finds itself, was domiciled or found its footings in the Transitional Authority Act.

Mr. Chairman, Sir, as such, it is a source of law to the Republic of Kenya. It still has a binding effect as and when we are interrogating the constitution of the human resource management in the county governments. With that effect, I would like to seek leave to be allowed to rely on the same as source of law during the proceedings.

Why did I make this application? It is to help me dispel any doubt or any imagination that this is a mere document. That is the ground upon which I have made this application.

Hon. Members, I would still have brought it out even without making this application. However, for purposes of doubting Thomas, I was obliged to make the same.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, I am taken by surprise by the submission by my learned colleague who starts his submission by stating that what he seeks to rely on was prepared under a statutory authority that no longer exists.

He then goes on to state that that notwithstanding, it then remains a source of law and then makes the application that seeks to rely on it as a source of law. If it is a source of law, which I submit it is not, then he requires no leave to rely in it.

We are enjoined as advocates and you as the Committee are enjoined by the Constitution to follow the Constitution and the law.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): May I just have a brief rejoinder?

The Advocate for the Governor (Mr. Nyamodi): I have not finished. I wanted to make sure that I had the Chair's attention because I want to make an important point.

If he acknowledges that the law upon which that document or the authority that prepared that document no longer exists, the Act was repealed, then there is no statutory authority for that document to then be relied on as a source of law or an interpretation of the law.

Secondly and perhaps more importantly, the County Assembly's case closed very late yesterday. There is no room for today's proceedings for the County Assembly to introduce any new evidence or law. There is an opportunity for parties at the conclusion of this afternoon's testimony to make submissions. If he believes it is in law, then it is in those closing arguments or submissions that it belongs.

If he brings it up again, I will repeat my objection. It is not law and he acknowledges that it is not. He has no ability to rely on it.

At this point in time, he does not have any room in these proceedings.

Thank you.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, in brief rejoinder to what my learned friend has submitted on, the document reads: "That the Transitional Authority is established under the transition to devolution to Cap 12 pursuant to Section 15 of the Sixth Schedule of the Constitution."

This document that I am referring to is premised on the Constitution. Section 15 of the Transitional Clauses to the Constitution. That means that this document is still alive. There is no other manual that has been generated by any other organ or institution that can guide the question of the Constitution of the human resource.

As such, this is not bad law. It is good law simply because it is the manual that is in operation currently and it is premised on Section 15.

Unless the transitional Clauses of Section 15 of the new Constitution have been revealed or ceased to have the force of law, then the Counsel can submit and have some backing. As long as the opinion I am seeking to rely on is premised on that Section, this is good law.

The Chairperson (Sen. Malalah): Thank you. Counsel, I wish to direct as follows on the application made by Counsel Ndegwa. Counsel, you should remain alert to the fact that the case for Kirinyaga County Assembly was closed yesterday, but you still have an opportunity, through cross-examination, to refer to any document that you want. You may want to refer to the Constitution, rulings made by the High Court and Supreme Court, or whatever source of law. That does not stop you from referring to any document.

However, while retreating to make its report, the Committee will consider the matter as to whether this advisory made by the Transition Authority is a valid source of law or not. You only have a window during the cross-examination to refer to whatever you want to refer to, including newspapers and whatever documents will be available for you. Relax, I will give you time to flex your muscles around and refer to any document that you may wish to.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am well guided and humbled by the directions.

The Advocate for the Governor (Mr. Nyamodi): Thank you for that guidance, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): We have one hour to hear the two witnesses. The one hour starts running now.

The Advocate for the Governor (Mr. Nyamodi): Thank you, Mr. Chairman, Sir. I would like to call the next witness for the Governor, Mr. Joe Muriuki.

The Chairperson (Sen. Malalah): Is he around?

The Advocate for the Governor (Mr. Nyamodi): Yes, he is. As we wait for this witness, his statement is on pages 79-84 of the Governor's response.

Sorry, Mr. Chairman, Sir. This witness's statement is from pages 85-87.

The Chairperson (Sen. Malalah): Joe Muriuki?

The Advocate for the Governor (Mr. Nyamodi): No, not Joe Muriuki. Joe Muriuki will testify next. This is Kepha Kariuki.

*(Hon. Kepha Kariuki (MCA Representing Youth,
Kirinyaga County Assembly) before the Special Committee)*

The Chairperson (Sen. Malalah): Mr. Kariuki, you have the option of taking an oath or an affirmation. You will take an oath? That is okay.

Proceed.

(Hon. Kepha Kariuki took the oath)

The Chairperson (Sen. Malalah): You will sit directly opposite the Chair.

The Advocate for the Governor (Mr. Nyamodi): Please, introduce yourself to the Committee.

(Hon. Kariuki spoke off record)

The Chairperson (Sen. Malalah): Please, put on your microphone.

Hon. Kepha Kariuki: Mr. Chairman, Sir, my name is Kepha Mugambi Kariuki. I am a Member of County Assembly (MCA) of Kirinyaga, dully nominated to represent the youth in the great County of Kirinyaga.

The Advocate for the Governor (Mr. Nyamodi): You are a Nominated MCA. When you speak, look at the Chairperson. Do not look at me.

The Chairperson (Sen. Malalah): If the hanging mask is making you uncomfortable, you may remove it, because it looks like an earring.

The Advocate for the Governor (Mr. Nyamodi): Hon. Kariuki, for how long have you been a Member of the Kirinyaga County Assembly?

Hon. Kepha Kariuki: I have been a Member of the Kirinyaga County Assembly since the 2017 general elections. We were sworn into office in September, and so, I have been serving as a Member of the Kirinyaga County Assembly since then.

The Advocate for the Governor (Mr. Nyamodi): Which political party do you belong to, if you belong to a party at all?

Hon. Kepha Kariuki: I belong to the Jubilee Party; whose party leader is Uhuru Muigai Kenyatta.

The Advocate for the Governor (Mr. Nyamodi): I want to ask you whether you have had an opportunity to have a look at the Motion that was filed in the Assembly, where you are a member, for the impeachment of the Governor of your county.

Hon. Kepha Kariuki: The Motion was tabled. We were all served with the Notice of Motion---

The Advocate for the Governor (Mr. Nyamodi): Just one step at a time. Have you seen the Motion?

Hon. Kepha Kariuki: Yes.

The Advocate for the Governor (Mr. Nyamodi): Have you written a statement in opposition to that Motion?

Hon. Kepha Kariuki: Yes.

The Advocate for the Governor (Mr. Nyamodi): Would you like to produce that statement as your evidence in chief, or part of your evidence in chief before this Committee?

Hon. Kepha Kariuki: Affirmative.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, I will state again that that is the statement that runs from pages 85-87.

Back to the Motion, Hon. Kariuki, what would you like to tell this Committee about the manner in which the Motion was prosecuted before the Kirinyaga County Assembly?

Hon. Kepha Kariuki: Being a Member of the County Assembly of Kirinyaga, I am always present in whatever happens there. When this Motion was brought, I vividly remember that we raised some issues. I personally raised my reservations towards the mode in which the Motion was being brought.

I remember that on the day before the Motion was brought, I was seated enjoying my lunch at the County Assembly cafeteria with other hon. members, and all of a sudden, a discussion arose that someone is to bring something to sign. I was not fully aware of what was to be signed. Immediately the documents to be signed arrived with one of the Members, I was sought to go ahead and sign. I said that I could not append my signature on something that I was aware of what I am attesting to. I said that I would not sign, but the other Members were coerced to proceed to the back of the County Assembly to sign the Motion.

The Advocate for the Governor (Mr. Nyamodi): Who coerced them to go to the back of the Assembly and sign the Motion?

Hon. Kepha Kariuki: The person who brought the papers to be signed started whipping the members at the back of the County Assembly to go ahead and sign the papers, which he had come with.

The Advocate for the Governor (Mr. Nyamodi): Do you recall the person who was whipping the other members?

Hon. Kepha Kariuki: The person who asked me to sign was the MCA from Tebere Ward.

The Advocate for the Governor (Mr. Nyamodi): Was he a member of the Assembly?

Hon. Kepha Kariuki: Yes, he is a Member of the County Assembly of Kirinyaga.

The Advocate for the Governor (Mr. Nyamodi): By whipping you and your other colleagues to go to the back and sign the Motion, was he carrying out his duty as an MCA?

Hon. Kepha Kariuki: I do not think so because him, not being a chief whip, he is not allowed to whip Members of the County Assembly.

The Advocate for the Governor (Mr. Nyamodi): Do you recall the date when this happened?

Hon. Kepha Kariuki: I may not be able to recall the exact date when the signing document was brought, but it was before the Notice of the Impeachment Motion was issued.

The Advocate for the Governor (Mr. Nyamodi): It was before the notice of the impeachment Motion was issued?

Hon. Kepha Kariuki: Yes.

The Advocate for the Governor (Mr. Nyamodi): Do you recall when the notice of impeachment Motion was issued?

Hon. Kepha Kariuki: Yes, I do recall when the Notice of the Impeachment Motion was issued.

The Advocate for the Governor (Mr. Nyamodi): When was it issued?

Hon. Kepha Kariuki: I might need to look at my calendar to remember the exact date when the Notice of Motion was issued.

The Advocate for the Governor (Mr. Nyamodi): As a Member of Kirinyaga County Assembly, do you recall how the Notice of Motion was issued and how it was processed or prosecuted in the County Assembly?

Hon. Kepha Kariuki: Mr. Chairman, Sir, normally, when there is an issue of discussion before the House in the County Assembly, depending on the weight of the substance of discussion, the Motion is first brought to the relevant committee and the committee makes sure that the matter is prosecuted and that includes public participation. When the impeachment Motion was issued, it was not duly subjected to the correct mechanism of public participation and that was the reservation that I raised.

The Advocate for the Governor (Mr. Nyamodi): What do you mean when you talk of the correct mechanism of public participation for an important Motion such as this?

Hon. Kepha Kariuki: Mr. Chairman, Sir, the County Assembly of Kirinyaga has some practices and customs. There are ways in which we do prosecute issues that come before the house. First, the Clerk of the County Assembly publishes a notice in the dailies. He also highlights the date, time and venue of the when a matter will go for public hearing in all the 20 wards. My issue was that this is a weighty issue yet it was not subjected to

public hearings given that the issue was about removing from office a Governor, who was duly elected by the members of the public. My issue was that the members of the public were not included.

During public hearings, the Clerk does assign each Member of County Assembly (MCA) a clerk who records minutes of the presentations made by the members of the public. Those minutes form part of the substantive report that is tabled in the County Assembly.

In the normal practices and customs of the County Assembly, the members of the public do get involved in public participation. It does not matter whether they understand the national language or not. Some of them submit their memorandum in writing and those who cannot submit their memorandum due to one issue or another, participate in the public hearings and all those documentations are encompassed in the substantive Motion before the house.

The Advocate for the Governor (Mr. Nyamodi): Thank you. Mr. Kariuki, it is your evidence that Kirinyaga County Assembly did not subject this Motion, for the impeachment of your Governor, through public participation.

Hon. Kepha Kariuki: Yes, Mr. Chairman, Sir.

The Advocate for the Governor (Mr. Nyamodi): Do you recall when the Motion of impeachment was dealt with by the Assembly?

Hon. Kepha Kariuki: Yes, Mr. Chairman, Sir. I do recall.

The Advocate for the Governor (Mr. Nyamodi): What was the date?

Hon. Kepha Kariuki: Mr. Chairman, Sir, it was on Tuesday. I am not good with the actual dates, but I remember that the Motion was prosecuted in the House on Tuesday.

The Advocate for the Governor (Mr. Nyamodi): I want you to tell the Committee whether there was anything unusual about the happenings in the Assembly the night before this Motion was considered.

Hon. Kepha Kariuki: Mr. Chairman, Sir, it was a very funny day in Kirinyaga County. On that day, which was a Monday, the Members, who were in support of this Motion, slept in the Assembly Chambers. I was not supporting the Motion thus I do not know how the Members slept in there having in mind that they were both men and women who were supporting the Motion.

Their action raised a lot of eyebrows. According to our African culture, something that is done during the night does not augur well with our usual customs. We are used to doing our things in broad daylight when we can see each other as long as those substantive issues are things that are of common benefit.

On the material day, when the impeachment Motion was duly laid on the floor of the County Assembly, some of the Members who were not in support of the Motion rose on a point of order. I was actually the first one to rise on a point of order since there was an existing court order that had issued some conservatory orders with regards to how the Motion was to be prosecuted, given that we are in the COVID-19 period. I also rose on a point of order because I felt that the Governor had not been given a fair hearing now that she was the one who was being prosecuted.

The matter was prosecuted on Monday and they decided that they will go ahead and debate the Motion. The other parties were not informed and despite the existing court orders, they decided to proceed with the Motion the next day. It is for that reason that I rose on a point of order to say that it was our duty, as a County Assembly, to give notice to the Governor that we have overruled the court order and that we will be prosecuting the Motion instantly, that is tomorrow.

When I rose on a point of order, other Members, who were not in support of the Motion, rose on points of orders. They rose because they realized that their names had been included at the back page together with the names of the Members who were in support of the impeachment Motion despite them not supporting that Motion. Those Members rose on points of orders, but there were disruptions in the House and the Speaker did not allow them to raise their points of orders. The frustration of the Members, who were unhappy because of the fact that their signatures had been included yet they did not support the Motion brought what we saw on television. The Members protested because they were not happy of being subjected to something that they are not party to.

The Advocate for the Governor (Mr. Nyamodi): What happened on the night before the impeachment Motion was dealt with was not a usual occurrence. It is not something that ordinarily happens in Kirinyaga County Assembly.

Hon. Kepha Kariuki: Mr. Chairman, Sir, I have never experienced such an issue. It was out of ordinary for the Members to choose to spend the night at the chambers.

The Advocate for the Governor (Mr. Nyamodi): I want us to move the last part of your testimony-in-chief this afternoon. I want to show you a part of the Governor's response. The Governor has filed a response to the Motion against her.

Mr. Chairman, Sir, I am showing the witness Tab 14 (L) in the file marked "Travel Documents".

The Chairperson (Sen. Malalah): Is it the USA trip?

The Advocate for the Governor (Mr. Nyamodi): Yes. In that tab, there are documents. At the end of the documents, there is a series of photographs. I want to ask this witness a few questions about those photographs.

The Chairperson (Sen. Malalah): We do not have the photographs. You may furnish the Chair with copies.

The Advocate for the Governor (Mr. Nyamodi): I want you to look at those photographs that are provided by the Governor as part of her response to the allegation that she did not make certain trips. That is not what I want you to speak to. Kepha what I would like you to do is to look at the photographs and tell the Committee who you see and recognise.

Hon. Kepha Kariuki: Through the Chair, I can recognise my Governor of Kirinyaga County, hon. Anne Mumbi Waiguru. I can also fully recognise my Majority Leader, Kirinyaga County Assembly, hon. James Murango. I can tell that they are very happy and smiling.

The Advocate for the Governor (Mr. Nyamodi): Alright. How many photos are they? That is the first photo. Go to the next photograph.

Sen. Mwangi: Can we be told where these photographs are? Some of us do not have the photographs.

The Advocate for the Governor (Mr. Nyamodi): They are under Tab 14 (L) marked "Italy Trip".

The Chairperson (Sen. Malalah): Members, are we there?

Sen. Mwangi: Yes, Mr. Chairman, Sir. We have seen them.

The Chairperson (Sen. Malalah): If Sen. Mwangi is there, then everybody is there. Is that right? You may proceed.

The Advocate for the Governor (Mr. Nyamodi): What about the second photograph?

Hon. Kepha Kariuki: Through the Chair, in the second photograph, I can still see the Governor. I can also see the Majority Leader, hon. James Murango. They are well dressed in some white coats.

The Advocate for the Governor (Mr. Nyamodi): And the next photograph?

Hon. Kepha Kariuki: Mr. Chairman, Sir, in the next photograph, I can still recognise hon. James Murango and Her Excellency Governor Anne Mumbi Waiguru.

The Advocate for the Governor (Mr. Nyamodi): How many other photographs are they with your colleague and Governor?

Hon. Kepha Kariuki: Repeat please.

The Advocate for the Governor (Mr. Nyamodi): How many photographs are they? Please just identify all the photographs that you can see. How many are there and who do you recognise?

Hon. Kepha Kariuki: Mr. Chairman, Sir, I can recognise three more photos. I can still recognise James Murango, the Majority Leader and Anne Mumbi Waiguru, Governor Kirinyaga County.

The Advocate for the Governor (Mr. Nyamodi): Alright. Is James Murango known to you?

Hon. Kepha Kariuki: Yes. He is an MCA and the Majority Leader of Kirinyaga County Assembly.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much. Mr. Chairman, Sir, nothing else for the witness.

The Chairperson (Sen. Malalah): Thank you. I will invite Mr. Ndegwa to do cross-examination.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): How are you *Mheshimiwa*?

Hon. Kepha Kariuki: I am fine and you?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am well. I do not know whether I gathered correctly your educational background?

Hon. Kepha Kariuki: I can furnish you with the information. I am Kepha. I hold a certificate from the College of Insurance. I am a CPA and currently I am enrolled at the University of Nairobi, School of Law.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): We shall be welcoming you soon. Do you know how many Members voted for the Motion that day?

Hon. Kepha Kariuki: I can consult my---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Let me just remind you. They were 23. Did you vote yourself?

Hon. Kepha Kariuki: No, I did not.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Were you in the County Assembly?

Hon. Kepha Kariuki: Yes, I was.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Were you supporting the Motion?

Hon. Kepha Kariuki: No, I was not supporting the Motion.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What did you do? Did you abstain?

Hon. Kepha Kariuki: I did not abstain. What I did---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am satisfied with the answer. Let us move on. How many Members abstained?

Hon. Kepha Kariuki: Four.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Were those who abstained supporting the Governor or the Motion?

Hon. Kepha Kariuki: I cannot talk on behalf of other Members.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): It is your testimony that a document was brought to you for signature? Is that correct?

Hon. Kepha Kariuki: *Enhee!*

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Did you have a look at that document?

Hon. Kepha Kariuki: No, I did not.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you know the content?

Hon. Kepha Kariuki: No, I do not.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Was it a Motion or a Bill? What was it?

Hon. Hon. Kepha Kariuki: I said it was a paper.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You never had a look at it?

Hon. Kepha Kariuki: I was required to sign. So, I had to sign on a paper.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have that paper with you?

Hon. Kepha Kariuki: Of course I was not the person who took the paper to the County Assembly.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Other than you complaining that you never signed, is there any other Member who is complaining that their signature was fraudulently obtained?

Hon. Kepha Kariuki: Yah, the Members who were protesting that day during the Impeachment Motion.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Their signatures were fraudulently obtained?

Hon. Kepha Kariuki: That is what they were protesting.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Have they recorded any statement in any police office?

Hon. Kepha Kariuki: I was not among them.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Have they recorded any complaint?

Hon. Kepha Kariuki: I was not among the Members who were complaining that my signature was among them.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You came here to testify on that perspective. Is that correct?

Hon. Kepha Kariuki: I came here to testify that during the Impeachment Motion, Members rose on points of order saying that their signatures were on the Impeachment Motion, but they did not append them.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have that Member who complained before the Committee?

Hon. Kepha Kariuki: The Members who complained---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am asking whether they are before the Committee, not whether they were in the television.

Hon. Kepha Kariuki: I am not sure whether they were---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Okay, thank you. Let us move on.

Are you conversant with Section 91 of the County Governments Act?

Hon. Kepha Kariuki: Please read it to me.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I will give it to you to read. Please proceed.

Hon. Kepha Kariuki: Establishment of modalities and platforms for citizen participation.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Which is the first platform?

Hon. Kepha Kariuki: Information Communication Technology, town hall meetings---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Just a moment, I am leading you. There is an established statutory requirement that public participation can be done through the establishment of a web. Is that correct?

Hon. Kepha Kariuki: That is just one---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am asking you. Just a moment please.

Hon. Kepha Kariuki: That is just one.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): A moment please. That is one of the statutory requirements, correct?

Hon. Kepha Kariuki: Correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Does the County Assembly of Kirinyaga have a website?

Hon. Kepha Kariuki: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): How often do you visit the website?

Hon. Kepha Kariuki: Not often.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): The next issue?

Hon. Kepha Kariuki: Town hall meetings.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What is that?

Hon. Kariuki: Town hall meeting is organizing public meetings.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Within the COVID-19 circumstances, that could not be done?

Hon. Kepha Kariuki: That could not be done.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): But it is not the only way public participation can be done?

Hon. Kepha Kariuki: It is one of the key ways depending---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): It is not the only way. I am asking you whether it is the only way public participation can be done.

Hon. Kepha Kariuki: It is one of the main ways when the matter and the nature of the Motion before the House.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Hon. Kariuki, I hear you. It is one of the main ways. You have the Act with you, read for me the word 'main'.

Hon. Kepha Kariuki: You need to understand what I am saying.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I know the law; you will not teach me the law. Read for us that, 'town halls are one of the main way.'

Hon. Kepha Kariuki: Shall facilitate the establishment of structures for citizen participation including town hall meetings.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Including social platforms. Correct?

Hon. Kepha Kariuki: Including town hall meetings, budget preparation, validation fora, notice boards announcing job appointments.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have a notice board at the Assembly?

Hon. Kepha Kariuki: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have notice boards within the Kerugoya town and Kirinyaga county?

Hon. Kepha Kariuki: I am a resident of Mwea, so I am not sure whether in Kerugoya we have---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I move on. You have satisfied that point. Hon. Kariuki, as a Member of the County Assembly of Kirinyaga County, are you privy to the correspondences that are exchanged between the office of the Clerk and any other office?

Hon. Kepha Kariuki: It is the duty of the clerks to furnish us with the documents that pertains to the Members.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): But not all the documents?

Hon. Kepha Kariuki: Of course, not all documents.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Can you authoritatively speak to the matter on whether the Speaker issued any correspondence to the Governor or not?

Hon. Kepha Kariuki: I am not privy to what you are saying.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You are not privy to the circumstances?

Hon. Kepha Kariuki: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Marvelous! You have imputed an improper motive on the part of the Hon. Members of the Kirinyaga County?

Hon. Kepha Kariuki: No.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): By saying that they slept both women and men together.

Hon. Kepha Kariuki: No!

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Are you trying to paint them in bad light?

Hon. Kepha Kariuki: No.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Were you there that night?

Hon. Kepha Kariuki: No. You need to understand that I said---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Listen, I am asking you questions and not you asking. Was there a minor within the precinct of the County Assembly on the alleged night?

Hon. Kepha Kariuki: I did not sleep in the County Assembly during the night, so I cannot tell who slept there.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): So, were they adults?

Hon. Kepha Kariuki: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You mentioned that there was a court order. Were you privy to the content of the court order?

Hon. Kepha Kariuki: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Which court issued that order and in which case was the order issued from?

Hon. Kepha Kariuki: It was Justice Korir.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you know the number of the case? I remind you; it was 123 of 2020 which I argued.

Hon. Kepha Kariuki: I need to confirm that with the correct petition.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I then put it to you that it was 123. Do you know the content of that order?

Hon. Kepha Kariuki: Furnish me.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you know the content or not? You were the one who was going to raise a point of order on the existence of an order.

Hon. Kepha Kariuki: They were conservatory orders which were issued.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you know the contents? Are you privy to the content?

Hon. Kariuki: I am privy to the orders which were issued.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You were privy to the fact that there was a provision on the order that the Motion shall stay pending until the hearing of the Petition or until COVID-19 was to maintained? You are aware of that?

Hon. Kepha Kariuki: That is part of the verdict.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Are you aware that the Governor later went to court when the Motion was being discussed to get further conservatory orders?

Hon. Kepha Kariuki: On that note, I am not.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Are you aware that Justice Korir dealt with that issue and said that, that order was not violated in that particular order?

Hon. Kepha Kariuki: I am not aware.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Kephas, during the subsistence of this meeting did you find---

The Chairperson (Sen. Malalah): Is it Kephas of Kepha?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): It is Kepha for record purposes. Did you during the subsistence of the Motion attempt to stop the County Assembly from deliberating over the same?

Hon. Kepha Kariuki: During what?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): The subsistence or incubation of the Motion. Do you recall, you and a nominated MCA called Maureen attempting to stop the process?

Hon. Kepha Kariuki: Not stopping.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you recall?

Hon. Kepha Kariuki: I do recall rising on a point of order.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Not at the Assembly, but at the court. Did you file petition No.119 of 2020?

Hon. Kepha Kariuki: The petition I filed was not to stop the Motion, but to seek that my rights of an enabling environment given that the COVID-19 issue was here with us and by then the County Assembly had not provided---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What was ruled in that petition? Was it dismissed or upheld?

Hon. Kepha Kariuki: It was dismissed.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): It was dismissed. I take you to the photos. The ones you have just shown us. Who took the photos and when were they taken?

Hon. Kepha Kariuki: These photos have been shown to me---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who took the photos and when were they taken?

Hon. Kepha Kariuki: I do not know.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You do not know. Can you testify upon those photos?

Hon. Kepha Kariuki: I was asked to identify the people in the photo.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Did counsel tell you who took the photos?

Hon. Kepha Kariuki: No.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Did he tell you where they were taken from?

Hon. Kepha Kariuki: No.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Was it in Italy, India, Kenya or America? From the Photos?

Hon. Kepha Kariuki: From the photos, I can tell that this is not in Kenya.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): That is interesting because you will take on a geographical tour of Kenya, beginning now. What makes you discredit the photo from having been taken in Kenya? Give us a geographical tour. I want to look at the one in the file not the one you are looking at.

Hon. Kepha Kariuki: This is in the file.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Ours is not colored. That is colored. What makes you think the photo was not taken in Kenya?

Hon. Kepha Kariuki: What makes me think the photo was not taken in Kenya, is because number one, apart from the Governor and the Majority Leader I can see 'white men'.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I hope you are not racist.

Hon. Kepha Kariuki: No, I am not.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Let us proceed. Is it all trips that the Governor travelled that are in scrutiny in this case?

Hon. Kepha Kariuki: I am not privy.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You are not privy?

The Chairperson (Sen. Malalah): Mr. Ndegwa, your time is up. However, Hon. Kariuki is a student of law and he will soon be joining you in the law practice. So, I will add you five more minutes so that you may have acquaintance with one another. Is that okay? Five more minutes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): We are humbled by your guidance. Hon. Kariuki, you are not able to tell where that photo was taken from. Correct?

Hon. Kepha Kariuki: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You are also not able to tell whether we are scrutinizing all the travels that the Governor took?

Hon. Kepha Kariuki: Correct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Are you aware that we are scrutinizing that she gained personal benefit from some of the trips?

Hon. Kepha Kariuki: I am not.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Did the counsel show you a receipt dated 17th April, 2020?

Hon. Kepha Kariuki: No.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What more do you have that can help your case?

Hon. Kepha Kariuki: I do not have a case.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): No further questions.

The Chairperson (Sen. Malalah): Thank you. I will handover to lead counsel to do re-examination. You have five minutes only.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much, Mr. Chairman, Sir. Just a few issues in re-examination. Hon. Kariuki, you said you have had a look at the Petition or the Motion. Have you seen any evidence of public participation of any kind?

Hon. Kepha Kariuki: No.

The Advocate for the Governor (Mr. Nyamodi): When public participation is carried out by the Assembly, would there be any use or any utility in notices being put on the notice boards with the county assembly?

Hon. Kepha Kariuki: Come again, please.

The Advocate for the Governor (Mr. Nyamodi): When public participation is being carried out by the Assembly, would it be effective, or would it be of any use if notices of public participation were to be put up within the Assembly?

Hon. Kepha Kariuki: Not really.

The Advocate for the Governor (Mr. Nyamodi): Thank you. My colleague, Mr. Karani will ask you a few questions.

The Advocate for the Governor (Mr. Karani): Hon. Kepha Kariuki, just a few questions. The first question I wanted to ask is, you read Section 91 of the County Governments Act, it talks about use of internet platforms. I want to ask, based on the usage of internet in the county, can that be an effective tool of communication in Kirinyaga County?

Hon. Kepha Kariuki: It cannot be an effective tool in Kirinyaga County.

The Advocate to the County Assembly of Kirinyaga (Mr. Ndegwa Njiru): Mr. Chairman, Sir, the question is speculative, we object.

The Chairperson (Sen. Malalah): That objection is sustained.

The Advocate for the Governor (Mr. Karani): No problem, I will rephrase the question. Based on the people you represent, let us focus on your ward, the youths, the population that you represent, what tool of public participation would be effective with them, based on ---

The Advocate to the County Assembly of Kirinyaga (Mr. Ndegwa Njiru): Speculative objection.

The Advocate for the Governor (Mr. Karani): From the two years that you have been a Member of a County Assembly (MCA) and holding that portfolio, what forum have you relied on for effective communication with the youths?

Hon. Kepha Kariuki: We have always relied on public meetings, where they can orally present their views, record their views and then take them to the assembly for consideration.

The Advocate for the Governor (Mr. Karani): From the issue of the Motion to impeach the Governor, were those forums utilized?

Hon. Kepha Kariuki: Those forums were never utilized.

The Advocate for the Governor (Mr. Karani): Thank you. The other question I wanted to ask is that Article 50 of the Constitution imposes a duty for there to be an impartial body when determining anything that may affect the rights of a person. Was the County Assembly impartial based on what happened during those proceedings?

Hon. Kepha Kariuki: I am privy to the rules of natural justice that you cannot be a judge in your own case. The rules were never followed.

The Advocate for the Governor (Mr. Karani): Thank you, very much.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Just a few questions before you finalize. In the normal process of public participation for the County Assembly, is it the practice that there is a report on the public participation proceedings?

Hon. Kepha Kariuki: Yes.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Was there a report on the public participation for this Motion?

Hon. Kepha Kariuki: No.

The Advocate for the Governor (Mr. Kamotho Waiganjo): The photos that have been shown to you, you have been asked on whether you can identify those photos and where they were taken. Have you ever seen those photos anywhere before this day?

Hon. Kepha Kariuki: At some point, I saw these photos being circulated on WhatsApp groups.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Who was circulating the photographs?

The Advocate to the County Assembly of Kirinyaga (Mr. Ndegwa Njiru): Mr. Chairman, Sir, that is opening another new line of cross-examination. That never came in my cross examination. We object.

The Advocate for the Governor (Mr. Kamotho Waiganjo): So, you have seen the photos before?

Hon. Kepha Kariuki: Yes.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Alright. Hon. Kepha, on the final issue on the right of the Governor to appear, to your knowledge, was any report made in the House about the Governor having been called to appear before the House, for the purposes of this Motion?

Hon. Kepha Kariuki: To my knowledge, no, I cannot remember.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Alright. Thank you, very much.

The Chairperson (Sen. Malalah): Thank you. I will now open up to Hon. Members to raise any concerns pertaining to the presentation. Just before that, I would like to acknowledge the presence of a representative of the African Parliamentarian Network Against Corruption. Sen. Rose Nyamunga is here with us as an observer. She will not contribute, but we just acknowledged her presence.

Karibu sana, Sen. Nyamunga.

We will start with Sen. Judith Pareno.

Sen. Pareno: Thank you, Mr. Chairman, Sir. Hon. Kariuki, I just have two issues. The issue of public participation is a very pertinent one when it comes to issues that touch the citizens of this county. It is in the Constitution that we must have public participation.

Yesterday, a witness told us that they did indirect public participation. As an MCA who is sitting in that Assembly, are you aware of any public participation, not necessarily town halls? Are you aware of any public participation as an MCA?

Hon. Kepha Kariuki: Mr. Chairman, Sir, Hon. Senator, I am only aware that the Clerk issued a notice in the dailies requiring Members to submit their written memorandum. However, I have not seen them on the Floor of The House.

Sen. Pareno: So, you have seen nothing like memorandums submitted to that effect?

Hon. Kepha Kariuki: Yes.

Sen. Pareno: In your evidence this afternoon, you said that the Governor was not given a fair hearing. Can you elaborate to us what you meant, or what understand by not being given a fair hearing? What happened that you ended up concluding that the Governor was not given a fair hearing?

Hon. Kepha Kariuki: Mr. Chairman, Sir, Hon. Senator, there was a Motion to impeach the Governor and there were grounds which had been attached on the Motion.

The normal procedure would have been to invite the Governor, or to invite an independent body to investigate the issues before discussing and voting for the impeachment Motion.

Sen. Pareno: Are you saying that the Governor was not invited, or what are saying about that?

Hon. Kepha Kariuki: What I am saying is, the allegations were never substantiated on the Floor of The House.

Sen. Pareno: Are you aware whether the Governor was ever given these allegations?

Hon. Kepha Kariuki: No.

Sen. Pareno: Finally, you raised a very important issue about proceedings of the Assembly, that there are those who were opposed, but found their names listed among those that were supporting the Motion. Are you able to name any of them? Are you able to give evidence to that effect?

Hon. Kepha Kariuki: I was present the day when the impeachment Motion was being discussed in the House. The Members who were raising point orders in protest of having their names being part of the Impeachment Motion signing, included the Hon. Member from Karumandi Ward, nominated MCA to represent Gender; Hon. Lucy Njeri, Hon. Member for Kabare Ward, Hon. Beatrice Mitaru and Hon. Fredrick Fudi protested towards having their signatures appearing in the Motion.

Sen. Pareno: How many would you say were shouting in the Assembly in an effort to express their opposition that their names were listed?

Hon. Kepha Kariuki: Mr. Chairman, Sir, Hon. Senator, I would not say they were shouting. They were rising on point of orders, but they were not being accorded that chance. They were around four Members.

Sen. Pareno: Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Thank you. Maybe, on the issue of Members trying to remove their signatures from the Motion, do your Standing Orders allow Members to remove signatures? Once you append your signature, can you remove your signature from the Motion?

Hon. Kepha Kariuki: Yes.

The Chairperson (Sen. Malalah): Are you sure they allow?

Hon. Kepha Kariuki: Yes, I am sure they allow.

The Chairperson (Sen. Malalah): Okay.

Hon. Kepha Kariuki: Yes, I am sure that they allow.

The Chairperson (Sen. Malalah): We shall be referring to the Standing Orders to make that determination, whether they allow---

Hon. Kepha Kariuki: Mr. Chairman, Sir, with your permission, this came during the COVID-19 times. You remember the explanation I gave about the signing issue and how it happened. The Members told me in protest as they were presenting their issues, that

they have been looking and they have been trying to follow the Standing Orders to have their signatures removed from the Impeachment Motion to no avail.

The Chairperson (Sen. Malalah): So, you will furnish the Chair with a copy of your Standing Orders so that we ascertain that as we proceed?

Counsel, you may furnish me with your Standing Orders.

Sen. Mwangi: Thank you, Mr. Chairman, Sir. First, I have perused the photographs in this document. There is nothing to suggest that the photographs were taken either in Italy or Britain.

Secondly, on the stamping of the passport, the stamps which were done here in Kenya are clear and another one in Dubai is also partly clear. However, the other one is not clear. So, we need to actually know where this stamping was done.

The Chairperson (Sen. Malalah): I made a ruling earlier on requesting clear copies of the passport. I believe that Counsel, you are still on your way coming.

The Advocate for the Governor (Mr. Nyamodi): I will be with you shortly.

The Chairperson (Sen. Malalah): Thank you. Any other issue?

The Vice Chairperson (Sen. Halake): Thank you, Mr. Chairman, Sir and Hon. Kepha Kariuki. Hon. Kepha Kariuki, are you one of the people that voted against the Motion?

Hon. Kepha Kariuki: No, I did not vote.

The Vice-Chairperson (Sen. Halake): You did not vote for it either?

Hon. Kepha Kariuki: Yes.

The Vice-Chairperson (Sen. Halake): You abstained or what was the constraint?

Hon. Kepha Kariuki: After I rose on point of orders, I just felt not being in place to continue sitting in the Assembly so, I excused myself.

The Vice-Chairperson (Sen. Halake): So you abstained, more or less? We should take that as abstention?

Hon. Kepha Kariuki: Yes.

The Vice Chairperson (Sen. Halake): I think that we have the HANSARD from the County Assembly, which the Committee will make reference to with regard to some of the things that you told us. However, how many people did you say that had their names appeared to have voted for the Motion against Hon. Waiguru?

Hon. Kepha Kariuki: I said that I am not sure since I excused myself.

The Vice Chairperson (Sen. Halake): I think that we will then refer to the HANSARD. Do we have the HANSARD?

Hon. Kepha Kariuki: Yes.

The Vice Chairperson (Sen. Halake): Okay; no further questions. Thank you.

Sen. (Dr.) Mbiti: A quick one Hon. Kepha Kariuki, tell me, you have mentioned that there were Members of County Assembly (MCAs) who wanted signatures expunged from the list? Is there a reason why they did not send statements? Is there a reason why they have not made it public or rather even sent a statement to this Committee on the same?

Hon. Kepha Kariuki: Sorry, come again.

Sen. (Dr.) Mbiti: You are saying that there are some MCAs who signed the Impeachment Motion and wanted their signatures expunged. Why have they not put statements?

Hon. Kepha Kariuki: They were raising it on point of orders during that material day.

Sen. (Dr.) Mbiti: After that, have they done any statements to that effect?

Hon. Kepha Kariuki: I do not know.

The Chairperson (Sen. Malalah): Is that all? Sen. Githiomi?

Sen. Mwangi: Thank you, Mr. Chairman, Sir. I can see there are about eight trips which were made. I can see one for the United States of America (USA), France, USA, China, Germany, United Kingdom, USA, UK and Italy. The only trip that we have been guided on is the one on Italy and the UK. What happened to the other seven trips?

The Chairperson (Sen. Malalah): Is that a question to him?

Sen. Mwangi: Yes to Hon. Kepha Kariuki; he is the witness before us.

The Chairperson (Sen. Malalah): No. I do not think Sen. Githiomi your question is well directed. Though you can direct that question through the Chair, the place where it belongs.

Sen. Mwangi: Let me save Hon. Kepha Kariuki, but ask this question; what happened to the other six trips? Did the Governor travel to the other countries or not, because the only indicator we have is that she went to UK and Italy, which we have also not proved because of the stamps?

The Advocate for the Governor (Mr. Kamotho Waiganjo): Mr. Chairman, Sir, if the Senator, with your permission, wants a response from us as Counsel for the Governor, that can be responded to immediately, including the issue of the passport that he raised.

The Chairperson (Sen. Malalah): I would hold that question for now because we are having a witness here. We are raising issues concerning his testimony before this Committee. So, kindly restrict yourself to the borders of his testimony.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Hon. Githiomi, stand guided.

Sen. Mwangi: I stand guided, but I will still demand an answer.

The Chairperson (Sen. Malalah): I will give you an opportunity later to ask directly the question to the Counsel.

Sen. Mpaayei: Thank you, Mr. Chairman, Sir. First of all, I must congratulate Hon. Kepha Kariuki for being nominated to represent the Youth. Hon. Kepha Kariuki, the Jubilee Party nominated you to represent youth, correct?

Hon. Kepha Kariuki: Yes.

Sen. Mpaayei: Can you say, in your own statement, are the youth well represented in Kirinyaga County?

Hon. Kepha Kariuki: Yes.

Sen. Mpaayei: Thank you.

The Chairperson (Sen. Malalah): A question is a question; the relevance of the question is subjective again. So as the Chair, I will admit that question that Hon. Kepha Kariuki is representing the youth of Kirinyaga ably.

Hon. Kepha Kariuki: Yes, Mr. Chairman, Sir.

Sen. M. Kajwang’: Thank you, Mr. Chairman, Sir; I will pick it up from where my brother Sen. Mpaayei has left it. I know it was a very loaded question, but first of all Hon. Kepha Kariuki, congratulations.

Hon. Kepha Kariuki: Thank you.

Sen. M. Kajwang’: Article 1 of the Constitution is on Sovereignty of the People. All sovereign power belongs to the people of Kenya. I believe that must be the background why you are saying that the people should have been consulted.

Hon. Kepha Kariuki: Correct.

Sen. M. Kajwang’: I have looked at your witness statement; it does not address the allegations and charges against the Governor even though I agree with what Counsel said early in the morning that there is nothing that stops us from checking how the Motions carried through the Assembly. So, I would assume that what you are doing is relevant.

How many Motions have you sponsored in the Assembly so far?

Hon. Kepha Kariuki: Around two.

Sen. M. Kajwang’: Any Bills?

Hon. Kepha Kariuki: No.

Sen. M. Kajwang’: You are there in your capacity as the representative of the youth of Kirinyaga?

Hon. Kepha Kariuki: Yes.

Sen. M. Kajwang’: In those Motions you sponsored, how did you get the views of the youth? How did you engage the youths that you represent?

Hon. Kepha Kariuki: I organized public meetings.

Sen. M. Kajwang’: Were they specifically for the youth or for the entire population?

Hon. Kepha Kariuki: What happens on the ground is, you will invite the youths, but at the end of the day, you will end up having members of public coming for the meetings.

Sen. M. Kajwang’: I have seen in the HANSARD, you put up a very spirited fight and I must say you are a strong man. I have seen despite shouts of sitting down, points of order, you were present in the County Assembly.

Hon. Kepha Kariuki: Thank you.

Sen. M. Kajwang’: When you are making those comments, did you go to consult the youth so that you can say them on their behalf?

Hon. Kepha Kariuki: Yes. Okay, I am representing the youth; I am a youth, through the Chair. First, there are those instances as a normal human being that you will react towards an issue before you.

Sen. M. Kajwang’: Article 1(2) of the Constitution says-

“The people may exercise Sovereign power either directly or through their democratically elected representatives.”

When you speak on behalf of the youth, it is in pursuit of that Article. Is that not so?

Hon. Kepha Kariuki: Correct.

Sen. M. Kajwang’: The sovereign power can be exercised directly or delegated.

The Chairperson (Sen. Malalah): I will allow retired Judge, Sen. Madzayo.

Sen. Madzayo: I have no question for this witness.

The Chairperson (Sen. Malalah): Do we have any other concern? Hon. Kepha, you have one minute to sum up your testimony and remind the youth of Kirinyaga that you represent them ably.

Hon. Kepha Kariuki: Thank you, Mr. Chairman. I am happy to be in this House and thank you for according me the chance to be in front of this hon. Members and present my views. My assurance to the youth of Kirinyaga is that I will always ensure they are accorded a fair hearing and that what is dully supposed to be theirs will always be theirs.

The Chairperson (Sen. Malalah): Thank you, may God bless you. We shall now allow the last witness from the defense side to come.

Hon. Members, ladies and gentlemen in the spirit of power sharing and recognizing the position of women in leadership, I wish allow my able Vice Chairperson to come and take over from me as I retreat as a Member of this Committee.

Hon. Halake, you now take up the role of Chair. I also direct the Serjeant-at- Arms to ensure that the respective seats are sanitized so that we can facilitate the exchange.

[The Chairperson (Sen. Malalah) left the Chair]

[The Vice- Chairperson (Sen. Halake) in the Chair]

The Vice Chairperson (Sen. Halake): Since we have quorum, we will let the Chairman get comfortable as we continue. He will join us.

We will allow in the next witness. Is it Joe Muriuki.

The Advocate for the Governor (Mr. Nyamodi): Yes, Madam Vice Chairperson. He is the next and last witness. His Statement is on page 79 to 84 of the response that has been filed on behalf of the Governor.

The Vice Chairperson (Sen. Halake): Hon. Members, please be advised the Statement is on page 79 of the Governor's response to the charges. Welcome Mr. Muriuki. You may take an oath or an affirmation.

(Mr. Joe Muriuki took oath)

Welcome *bwana* Muriuki. We have your witness Statement and we are going to allow the same rules to apply. We will have 15 minutes of examination-in-chief, 10 minutes of cross examination and 5 minutes of reexamination, if necessary. If not, counsel may waive and cede that as well.

So, you are welcome. Counsel, you may proceed.

Mr. Joe Muriuki: Thank you, very much Madam Vice Chairperson.

The Advocate for the Governor (Mr. Nyamodi): Please introduce yourself to the Committee.

Mr. Joe Muriuki: My name is Joe Muriuki, County Secretary Kirinyaga County.

The Advocate for the Governor (Mr. Nyamodi): Please tell the Committee what your responsibilities are as County Secretary.

Mr. Joe Muriuki: My responsibilities are clearly spelt out in Section 44 of the County Government Act. Besides handling Cabinet related matters, I am also the head of County Public Service.

The Advocate for the Governor (Mr. Nyamodi): Are you aware that a Motion for impeachment of the Governor of the County, where you are the County Secretary has been files before the Senate?

Mr. Joe Muriuki: Yes, I am aware.

The Advocat for the Governor (Mr. Nyamodi): Have you had an opportunity to read that Motion?

Mr. Joe Muriuki: Yes, I have.

The Advocate for the Governor (Mr. Nyamodi): Confirm whether you have a written a Statement in response to that Motion.

Mr. Joe Muriuki: Yes, I have.

The Advocate for the Governor (Mr. Nyamodi): Would you like to produce that Statement, Bwana Muriuki, as your testimony or part of your testimony in Chief before this Committee?

Mr. Joe Muriuki: Yes, I do.

The Advocate for the Governor (Mr. Nyamodi): Madam Vice Chairperson, for the record that is the Statement that runs from pages 79 to 84 of the Governor's response.

The Vice Chairperson (Sen. Halake): Noted.

The Advocate for the Governor (Mr. Nyamodi): The area I want you to shed light on at the beginning is the health sector in Kirinyaga.

The Vice Chairperson (Sen. Halake): Mr. Muriuki, you may remove your mask. I am told that your voice is not very clear.

The Advocate for the Governor (Mr. Nyamodi): I want you to shed light on the health sector in Kirinyaga.

Mr. Joe Muriuki: Is there any specific area?

The Advocate for the Governor (Mr. Nyamodi): Yes, I want to ask you whether you recall whether there was a strike at any time by health workers in Kirinyaga.

Mr. Joe Muriuki: Yes, there was and that was as a result of the notice they gave on the 20th of May, 2019.

The Advocate for the Governor (Mr. Nyamodi): The notice was given on the 20th of May?

Mr. Joe Muriuki: Yes.

The Advocate for the Governor (Mr. Nyamodi): When did the strike commence?

Mr. Joe Muriuki: My understanding is before the end of that month.

The Advocate for the Governor (Mr. Nyamodi): Do you know why the strike took place?

Mr. Joe Muriuki: Yes, there were a number of things they raise ranging from promotions and training, among others.

The Advocate for the Governor (Mr. Nyamodi): Promotion and training. Were those the only issues that were the subject of the strike?

Mr. Joe Muriuki: I recall those as the primary ones that they had cited.

The Advocate for the Governor (Mr. Nyamodi): How was the strike resolved?

Mr. Joe Muriuki: I would like to mention that prior to the strike, they sent us a letter that they wanted to have an engagement with County Executive. However, before the period they had given us elapsed, they issued that notice. Consequently, the Executive had no option than to go to court to seek legal redress. The Executive went to court.

Advocate for the Governor (Mr. Nyamodi): Mr. Muriuki, is it your testimony that the strike was resolved through litigation?

Mr. Joe Muriuki: Yes.

Advocate for the Governor (Mr. Nyamodi): Mr. Muriuki, do you recall the resolution that was given by the court in respect of that dispute?

Mr. Joe Muriuki: The court used two adjectives to term the strike. The court said that the strike was unprotected and illegal.

The Advocate for the Governor (Mr. Nyamodi): How did the County Government of Kirinyaga respond there after?

Mr. Joe Muriuki: The county tried to persuade the striking workers to resume work even as their grievances were being addressed. Despite the efforts by the County Government of Kirinyaga in telling the workers the dangers of engaging in an unprotected and illegal strike, they still ignored and went on strike. A moratorium was extended to them after the court ruling but some workers did not take the county seriously.

The Advocate for the Governor (Mr. Nyamodi): What was the County Government of Kirinyaga response to the continued strike by the health workers in Kirinyaga?

Mr. Joe Muriuki: Faced with the responsibility of the county government to protect the interest of the residents of Kirinyaga County, we had to undertake some measures to prevent the collapse of health services in the county. Consequently, through the Public Service Board of Kirinyaga County, we advertised the positions of the workers that did not resume work within the stipulated period.

The Advocate for the Governor (Mr. Nyamodi): There is a gap in your testimony. Did you advertise for positions, while your employees were still employed by the county government?

Let me rephrase the question. What was the county Government's response to the employees continued to remain on strike?

Mr. Joe Muriuki: The employees who continued to remain on strike were fired by the County Public Service Board.

The Advocate for the Governor (Mr. Nyamodi): How many employees were fired?

Mr. Joe Muriuki: About 549 employees were fired.

The Advocate for the Governor (Mr. Nyamodi): Did the county government hire new employees thereafter?

Mr. Joe Muriuki: The County Government of Kirinyaga hired 359 employees through the County Public Service Board because 185 employees took advantage of the moratorium.

Advocate for the Governor (Mr. Nyamodi): For us to get the correct perspective, before the strike, how many employees did Kirinyaga County employ in its health sector.

Mr. Joe Muriuki: Before the strike, the County Government of Kirinyaga had employed 1,265 health workers.

The Advocate for the Governor (Mr. Nyamodi): As a result of the strike, how many were terminated?

Mr. Joe Muriuki: About 549 employees were fired.

The Advocate for the Governor (Mr. Nyamodi): How many employees did not go on strike?

Mr. Joe Muriuki: About 716 employees did not go on strike.

The Advocate for the Governor (Mr. Nyamodi): How many employees took advantage of the moratorium?

Mr. Joe Muriuki: About 185 employees took advantage of the moratorium.

The Advocate for the Governor (Mr. Nyamodi): After the strike how many employees were there in total. I mean those who returned to work and those who took advantage of the moratorium?

Mr. Joe Muriuki: The County Government of Kirinyaga was left with about 1,260 employees.

The Advocate for the Governor (Mr. Nyamodi): That is not a big difference from what you had initially.

Mr. Joe Muriuki: No, it is not a big difference.

Advocate for the Governor (Mr. Nyamodi): yesterday, the Chairperson of the County Public Service Board of Kirinyaga County read a statement on the hiring of 77 health workers who he said were hired by the County Public Service Board who he said were not in the payroll. Do you recall that testimony?

Mr. Joe Muriuki: Yes, I do recall that testimony.

The Advocate for the Governor (Mr. Nyamodi): What can you say about that testimony?

Mr. Joe Muriuki: It appears to me that when the County Public Service Board undertook to replace the workers that went on strike, reconciliation was not done properly. Consequently, by the time they decided to hear unilateral appeals which involved even the County Executive, I think that they did not recognize or take cognizance of the fact that they had already gotten a total staff complement which was

more or less equal to the number before the strike. Consequently, the 77 employees were going to push the numbers post-strike level to about 1,332.

The challenge to this move is that; one, the County Public Service Board decided to hear appeals on workers that it had dismissed when it was clear that the mandate rested with the Public Service Commission as per Section 77 of the County Governments Act, 2012. Secondly, the numbers that they wanted to reinstate to the payroll, was going to push the annual payroll by about Kshs81 million; money that was not factored in the budget.

The Advocate for the Governor (Mr. Nyamodi): Mr. Muriuki, I would like to know who has the mandate to higher staff in Kirinyaga County?

Mr. Joe Muriuki: Mr. Chairman, Sir, Section 59 and 63 of the County Governments Act gives that mandate to the County Public Service Board.

The Advocate for the Governor (Mr. Nyamodi): Mr. Muriuki, I take it that he who hires is able to fire.

Mr. Joe Muriuki: Mr. Chairman, Sir, yes, by the same provisions in Section 59.

The Advocate for the Governor (Mr. Nyamodi): Who terminated the employment of employees who went on strike?

Mr. Joe Muriuki: Employment of the employees who went on strike was terminated by the County Public Service Board.

The Advocate for the Governor (Mr. Nyamodi): Who hired their replacements?

Mr. Joe Muriuki: The County Public Service Board hired their replacement.

The Advocate for the Governor (Mr. Nyamodi): Did the County Government of Kirinyaga have budgetary provisions for 77 additional health workers?

Mr. Joe Muriuki: Mr. Chairman, Sir, I can confirm that the County Public Service Board did not have a budgetary provision.

The Advocate for the Governor (Mr. Nyamodi): A statement was read yesterday which seemed to suggest or paint a poor picture of the state of health facilities in Kirinyaga County as deplorable. You are the County Secretary, the person administratively in charge of the County, what is your response to that testimony?

Mr. Joe Muriuki: Mr. Chairman, Sir, any person can make a comment or any statement when addressing yourself to gallery. I have in Kirinyaga County for long including in the previous administration. I can tell you for a fact that the health services in Kirinyaga County even before the strike by health workers were not deplorable as was painted.

The Advocate for the Governor (Mr. Nyamodi): Subsequent to the strike, has the County Government of Kirinyaga made any improvement? Has it made any investments in its health facilities?

Mr. Joe Muriuki: Madam Vice Chairperson, a number of initiatives were done including a functional well-equipped eye unit. We have also renovated the outpatient

unit. With the partnership with the national Government, we have also completed the CT Scan Unit and equipment has been installed. They are just awaiting commissioning.

We have also finished the new laundry upgraded facility and it is functional. We have built new kitchen facilities, which are almost complete. We have also procured an incinerator with the capacity to process the medical or hospital waste for all the hospitals. Besides that, there are laundry facilities in the other hospitals. The ones which needed repair have also been repaired.

Madam Vice Chairperson, there is an ongoing construction of a new hospital complex, which will enable the elevation of Kerugoya County Referral Hospital from Level Four to Level Five. One may wonder what the big deal is, but there is a lot. By so upgrading and once this facility are complete, and the progress is quite good. This is because Her Excellency the Governor has been emphasizing on the teams to make sure that they are also carrying out various inspections on them. We will have a High Dependency Unit (HDU), Intensive Care Unit (ICU), specialized rooms and specialized services, and even the state of the art facilities.

In terms of the human resources side, since then, we realized that there were human resources that were underutilized. We redeployed some staff from various departments, who were underutilized and also tried to increase the productivity of even the support staff. We have also employed, where necessary, additional casuals to supplement the efforts in terms of services provision.

Madam Vice-Chairperson, the county has also undertaken or is expecting additional health workers through partnership or medical internships seconded from the national Government. All those will go a long way in supplementing the services that are being rendered there. Those are some of the things.

The Vice Chairperson (Sen. Halake): Thank you very much, Mr. Muriuki. Counsel, you have run over your time. I am not as lenient as my Chairperson. Unless you ask, I am not going to volunteer time.

The Advocate for the Governor (Mr. Nyamodi): Madam Vice Chairperson, I want to just take another few minutes. There are just two important areas that I want him to cover.

The Vice Chairperson (Sen. Halake): How much time do you need?

The Advocate for the Governor (Mr. Nyamodi): Madam Vice Chairperson, they will be brief. It is just about five minutes, and I will not use all of them.

The Vice Chairperson (Sen. Halake): That is granted.

The Advocate for the Governor (Mr. Nyamodi): Alright, Madam Vice Chairperson. Mr. Muriuki, there was a suggestion by one of the witnesses who testified yesterday that

the County Government of Kirinyaga had closed dispensaries. What do you have to say about that?

Mr. Joe Muriuki: Madam Vice Chairperson, I am not aware of the hospitals being closed down. I must confirm that this morning I also called the hospital in charge to find out whether that is true. They stated categorically that they do not know what the person was talking about.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Madam Vice-Chairperson, we object that answer. It is based on hearsay.

The Vice-Chairperson (Sen. Halake): Mr. Muriuki, do you have support? What are you basing that on other than the phone call? Is there something that you can show this Committee that actually that was not true?

The Advocate for the Governor (Mr. Nyamodi): Perhaps, Madam Vice Chairperson, before the witness answers that question, the record of the Committee will bear me witness. Other than the wild allegations from the witness in the hot seat hear, there is no evidence in support of the motion to suggest that dispensaries are closed. What kind of evidence do I have in mind? It is perhaps a name, location or even better, a statement from a resident of an area where a dispensary has been closed. So, the same standard must apply. The only allegation---

The Vice Chairperson (Sen. Halake): Counsel, you did not raise this yesterday at the time that the wild allegations were being made. However, he is raising it, and so, I am going to ask it. Both the teams are going to be asked to substantiate.

The Advocate for the Governor (Mr. Nyamodi): Madam Vice-Chairperson, the position is that there was none that was identified. We asked for identification and there was none. So, it is difficult to respond where there is none identified.

He is the administrative head of the county. He asked and says who he asked. That is not hearsay. He has said the answer that was given to him. It would be hearsay if he said that he heard somebody tell somebody else. That is hearsay. That is an answer given to a question that he asked.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Madam Vice Chairperson, unless Counsel wants to amend the Evidence Act by submissions, it is very clear. If he is relying on information that has been given to him by another party, unless that other party comes and corroborates what he is saying, it stands as hearsay, unless there is an amendment to the Act.

The Advocate for the Governor (Mr. Nyamodi): Madam Vice Chairperson, corroboration is different from hearsay. There is no corroboration required in this instance. The witness is stating what he was told.

The Vice Chairperson (Sen. Halake): Counsel, I will allow him to finish and the Committee will make a determination from both sides in terms of substantiation. That is those that said it was closed and those that are saying it is not.

The Advocate for the Governor (Mr. Nyamodi): Madam Vice Chairperson, thank you very much.

The Vice-Chairperson (Sen. Halake): Please, continue, Mr. Muriuki.

Mr. Joe Muriuki: Madam Vice Chairperson, it is unfortunate that as I am asked this question. There is nothing that has been tabled before me, so that I can be responding to the specific facilities that are purported to have been closed. Let me also mention this. I am a resident of Kirinyaga County. In terms of my capacity, I have the ability to know some of those critical decisions being undertaken. I am not aware of any decision by the executive or any organ of the county having made that kind of decision.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much, Mr. Muriuki. Madam Vice Chairperson, that is all for this witness.

The Vice Chairperson (Sen. Halake): Mr. Ndegwa Njiru, would you like to cross-examine?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Madam Vice Chairperson, with your permission.

The Vice Chairperson (Sen. Halake): Go ahead.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Madam Vice Chairperson, I will begin with a few issues that were raised yesterday. One of them is in respect to the employment of one person, Ms. Pauline. Mr. Muriuki, do you know her?

Mr. Joe Muriuki: Madam Vice Chairperson, yes, I do.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you know her previous engagement?

Mr. Joe Muriuki: Madam Vice Chairperson, yes, I do.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What was she?

Mr. Muriuki: Madam Vice Chairperson, she was a Personal Assistant (PA).

The Advocate for the County Assembly (Mr. Ndegwa Njiru): PA to who?

Mr. Joe Muriuki: Madam Vice Chairperson, to the Governor.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Good. Do you know what her current engagement is?

Mr. Muriuki: Madam Vice Chairperson, she is the Director of Administration.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you know her qualifications?

Mr. Joe Muriuki: Madam Vice Chairperson, I would have to check.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you know the qualifications of a director?

Mr. Joe Muriuki: Madam Vice Chairperson, I am not aware.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you know the qualification that a director must get?

The Vice Chairperson (Sen. Halake): Counsel, I would like you to let him finish his sentences, please.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Madam Vice Chairperson, I am much guided.

Mr. Joe Muriuki: Madam Vice Chairperson, may I request for protection that you do not try to intimidate me. What you want is to get answers from me, but shouting and intimidating will not give you the correct answers.

The Vice Chairperson (Sen. Halake): Mr. Muriuki, I have directed him to let you finish.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you know the qualification one must have for them to be a director, as head of civil service?

Mr. Joe Muriuki: Madam Vice Chairperson, let me mention this. I would like to refer you to the County Government. It has specified various roles for certain organs. It is the duty of the County Public Service Board (CPSB) because it is the one that is recruiting. It is also the one that cross-checks.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): So, you are simply saying that as the head of civil service, you do not know.

The Vice Chairperson (Sen. Halake): Counsel, let him finish the sentences.

Mr. Joe Muriuki: Madam Vice Chairperson, thank you. What I can tell you, unless you have a specific answer you are looking for, is that I know about the advertisement that was placed for the Director of Administration. It said “either a degree or a diploma.”

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Have you acquainted yourself with the provisions of the Transitional Authority (TA) employment manual?

Mr. Joe Muriuki: Madam Vice Chairperson, first of all---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Have you or have you not?

Mr. Joe Muriuki: This is the first time I am hearing about the Transition Authority (TA) manual because I have not seen it even being referenced in any of the pertinent Acts.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you know the chair of the board was seated where you are seated yesterday?

Mr. Joe Muriuki: Yes, I do.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you know that he referred to a letter dated 4th January 2018 in respect to coercion to have Pauline employed?

Mr. Joe Muriuki: That is his statement. I have not seen any substantiation.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I will show you. Have a look at that letter. To whom is it addressed to and what is the content and the date of the letter?

The Advocate for the Governor (Mr. Muchigi): Madam Chairperson, before my learned friend continues, I have a question.

The Vice-Chairperson (Sen. Halake): Before you get the question, allow him to look at the list for a few seconds before you ask the questions.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am sure you are through scanning it.

Mr. Joe Muriuki: I am through.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you know the date of the letter?

Mr. Joe Muriuki: 4th January 2018.

The Vice Chairperson (Sen. Halake): Mr. Muchigi, what is your point of order?

The Advocate for the Governor (Mr. Muchigi): Madam Chairperson, the question I wanted to ask is, cross-examination is supposed to focus on what a person has stated either in the evidence-in-chief or the statement that he produced. He has not adduced evidence about the things he is being asked about. He was focusing on the issue of health.

The Vice Chairperson (Sen. Halake): Mr. Ndegwa Njiru, what would you say about that? Are you introducing new evidence?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I will simply submit and I will have a legal submission. Counsel has not cited any section. I will remind him what the Evidence Act provides. It provides that in cross-examination, a counsel can ask any question. I am not limited to the content that he has dealt with. Remember this is the only witness, administrative witness the governor has called.

The governor has refused to take the stand. Who else can I ask this question other than the administrator himself? In cross-examination, I can even ask him the name of his mother as long as I show the relevance. Mr. Muriuki, have a look at the letter.

Mr. Joe Muriuki: I am not sure about what I am required to do with this letter because I am seeing it for the first time. I cannot authenticate anything of it.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do not worry. I will lead you. Have a look at it. What is the date of the letter?

Mr. Joe Muriuki: 4th January 2018.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What is the content of the letter?

Mr. Joe Muriuki: The subject matter says coercion by the governor to recruit unqualified director of administration.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Read out the contents fully.

Mr. Joe Muriuki: The above subject matter refers:

“Once again, I wish to reiterate that the Constitution of Kenya gives the County Assembly oversight role as cited in Article 185(3) and also cognizant of the provisions of Article 73(2)(a),(b)and (c), I wish to state that it has become extremely impossible to act as per the laws since the governor has become adamant that the above said Pauline Wairimu Kamau must be selected for this position; who is a Diploma holder evidenced only by a result of slip.

This further contravenes the directives issued by the Transition Authority that a person can only be recruited to a position of a director if he or she owns at least a first degree from a recognized university.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am okay with that. How many years have you worked for the county government?

Mr. Joe Muriuki: Almost six (6) years.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Six years and you have never come across the Transition Authority Manual?

Mr. Joe Muriuki: Yes, I have not.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Marvelous. Another letter. Have a look at it.

Mr. Joe Muriuki: It is a letter through Chair to the County Assembly.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): When is it dated?

Mr. Joe Muriuki: 4th December 2017.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What is the author seeking?

Mr. Joe Muriuki: Request for intervention.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Read it out.

Mr. Joe Muriuki: It reads:

“I would wish to write to you seeking your intervention to rein in on the Governor to respect the law. We as the County Public Service Board are meeting challenges, especially of recruitment.

At times, we are recruiting some individuals who do not meet the minimum thresholds due to forces beyond our control.

Please intervene and help restore the board’s independence”.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): When is the letter dated?

Mr. Joe Muriuki: 4th December 2017.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I will show you another letter.

Have a look at it.

What is the date of the letter?

Mr. Joe Muriuki: 15th November 2017.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Whom is it addressed to?

Mr. Joe Muriuki: Wayne Gichara Gakuya.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What is his designation?

Mr. Joe Muriuki: ICT advisor.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Is that a provision provided under the manual?

Mr. Joe Muriuki: I have not seen that manual.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Under whom does that person act to? That office is under the office of who? *Nani*?

Mr. Joe Muriuki: Her Excellency the Governor.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Does that person report to you?

Mr. Joe Muriuki: No.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who does he report to?

Mr. Joe Muriuki: Through the Chief Officer, but also---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am asking; in the office of the Governor, who is in charge of the Governor or staff?

Mr. Joe Muriuki: I think my understanding is a bit different from the direction you want to direct me.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Yes, I want you to tell me who is in charge of the personnel employed under the office of the Governor.

Mr. Joe Muriuki: The Chief of Staff.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who is currently the Chief of Staff?

Mr. Joe Muriuki: Madam Stella Bogonko.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you know her previous engagement or employment?

Mr. Joe Muriuki: No

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Will it surprise you if I put it to you that she was previously employed in the Youth Board that was disbanded?

Mr. Joe Muriuki: I am not sure its relevance to this.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Does it surprise you?

The Advocate for the Governor (Mr. Nyamodi): Madam Vice-Chairperson—

The Vice-Chairperson (Sen. Halake): What is it Counsel?

The Advocate for the Governor (Mr. Nyamodi): Madam Vice-Chairperson, what is the relevance of that line of cross-examination?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): The relevance is to show and indicate the criminal enterprise operationalized in the office of the Governor by her staff.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Madam Vice-Chairperson, this is sensationalizing and it is not acceptable.

The Vice-Chairperson (Sen. Halake): Mr. Ndegwa Njiru, you are out of order. If the Youth Board was disbanded, does that mean that it is criminal? Was it proven criminal in a court of law?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): If I am given time, I would have led the witness to substantiate that point. Under the Evidence Act, facts

otherwise not relevant become relevant. We call it the doctrine of *res gestae*. You can draw an irrelevant fact and it becomes relevant in a trial.

The Vice-Chairperson (Sen. Halake): Mr. Ndegwa Njiru, we do not have the time to start with irrelevant facts and come to the relevant. Please let us keep to the relevant.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): How are decisions taken in the Cabinet?

Mr. Joe Muriuki: Repeat your question.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): How does the Cabinet take decisions in Kirinyaga County?

The Advocate for the Governor (Mr. Nyamodi): Madam Vice-Chairperson, what is the relevance of that? There is no issue about Cabinet decision making in the Cabinet that arises here.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): This is cross-examination. Witness, how does the county executive operate in terms of its decisions?

The Advocate for the Governor (Mr. Nyamodi): Madam Vice-Chairperson, perhaps a direction on that before he proceeds?

The Vice-Chairperson (Sen. Halake): Mr. Ndegwa Njiru, where are you heading with that?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am heading to establish the question of abuse of office by the Governor.

The Vice-Chairperson (Sen. Halake): Within what frame?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): It is in the Motion.

The Vice-Chairperson (Sen. Halake): Where do you want him to start from? This is because he could start from when people are employed. You have to be direct.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You said that there was a directive to reinstate some medical officers.

Mr. Joe Muriuki: I did not mention about a directive.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What did you say?

Mr. Joe Muriuki: Those are your words. I do not recall saying anything like that.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): How were they reinstated?

Mr. Joe Muriuki: Probably that question should be addressed to the County Public Service Board.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): The County Public Service Board chairperson said that the Governor directed that they be reinstated. Are you aware of those directives?

Mr. Joe Muriuki: I am not aware. However, what I know is about a moratorium.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who issued the moratorium?

Mr. Joe Muriuki: The Governor.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Was that an administrative moratorium?

Mr. Joe Muriuki: What exactly do you mean?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Was it administrative?

Mr. Joe Muriuki: Are you asking whether it was binding or what?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): What I am asking is; was that moratorium an executive decision?

The Vice Chairperson (Sen. Halake): Mr. Ndegwa Njiru, help him by defining that so that he understands it well.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Was that an executive decision or was that a decision by an Executive Office of the County Government?

Mr. Joe Muriuki: I can say that that was an executive decision.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): It was an executive decision. Do you have the minutes for that decision?

Mr. Joe Muriuki: I did not carry because they were not part of my submissions.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): They were not part of your submissions. Okay. There was a CEC for Health who sat there where you are seated today and said that there was a directive to close the dispensaries in Kirinyaga County. Are you aware of those directives?

Are you aware of these directives?

Mr. Joe Muriuki: I am not aware of such decisions. I would have known.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Let me first deal with the issue of the moratorium. I want to take you to Section 41 of the County Governments Act, which I ask you to read.

The Vice Chairperson (Sen. Halake): Counsel, your time is up. I will give you a few more minutes, but not exceeding five minutes. How much more time do you need?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Just ten, to wind up with this witness.

The Vice Chairperson (Sen. Halake): I am giving you five minutes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I will try with the circumstances, if the witness is also going to expedite the process.

Read.

Mr. Joe Muriuki: Which section?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Section 41, highlighted in green.

Mr. Joe Muriuki: Meetings of the county executive committee

- (1) The deliberations of all meetings of the county executive committee shall be recorded in writing.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Was that put in writing?

Mr. Joe Muriuki: Yes, it was.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have it?

Mr. Joe Muriuki: I did not come with it.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I will now take you to your statement on where you were appointed to the task force that was looking into the issues of the health status. Are you aware of that?

Mr. Joe Muriuki: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): It was appointed on 12th May, yes?

Mr. Joe Muriuki: Yes, through the Chair.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): By her Excellency the Governor, yes?

Mr. Joe Muriuki: Yes, through the Chair.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have the minutes for that appointment and the decision by the executive?

Mr. Joe Muriuki: I think---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have it or not?

Mr. Joe Muriuki: Through the Chairperson, when you ask a question---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have it or not?

Mr. Joe Muriuki: When you ask a question, allow me to answer. I am not aware that that needed to be given. It is Her Excellency who gave me the appointment letter, so I do not know what minutes you are asking for.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am asking for the minutes that appointed this task force.

Mr. Joe Muriuki: The task force was appointed by Her Excellency, the Governor, and there was even a press statement to that effect.

Madam Chairperson, can I make this point?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am asking whether you have the minutes of the executive.

Mr. Joe Muriuki: Please allow me to make this point.

The Vice Chairperson (Sen. Halake): First let me respond, and then I will allow you. Just say yes or no, then you can continue. Counsel, allow him to finish please.

Mr. Joe Muriuki: There were no minutes that appointed members to the task force.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Was there a cabinet decision?

Mr. Joe Muriuki: I am not aware that there was supposed to be a cabinet decision on this matter. What I know is that the county executive had already directed the kind of actions to be taken in case of the strike.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): So, that was roadside declaration? Is that what you are telling us?

Mr. Joe Muriuki: No, in a previous cabinet meeting, it had already taken a possession on the way forward in terms of the strike.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You then said that there was a decision about the implementation of the task force. Was the task force report implemented?

Mr. Joe Muriuki: Through the Chairperson, yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who commissioned the implementation of the report?

Mr. Joe Muriuki: That one was addressed to Her Excellency, the Governor, because she was the appointing executive.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Who executed the implementation?

Mr. Joe Muriuki: I oversaw the implementation.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Was the County Executive Committee member (CEC) involved?

Mr. Joe Muriuki: I know that as a department, they were involved.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): And you say that you are the one who oversaw the implementation of the task force report?

Mr. Joe Muriuki: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I will lead you to Section 44 (3) (b) of the County Governments Act. Have a look at it and read it loudly.

Mr. Joe Muriuki: The County Secretary shall-

(b) be responsible for arranging the business and keeping the minutes of the county executive committees subject to the directions of the executive committee

(c) Convey the decisions of the county executive committee to the appropriate persons and authorities.

(d) Perform any other functions as directed by the county executive committee.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): So, was there a directive directed to you to implement the task force report?

Mr. Joe Muriuki: Are you implying that---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): No, I am asking the question, not implying.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Let me mention this. You have conveniently omitted Section 44 (3) (a), which says that the County secretary is also the head of the county public service. I have other mandates that I can implement under that umbrella.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Yes, I know. For this particular task for report, were you commissioned by the relevant executive officer of the county to implement it?

Mr. Joe Muriuki: The relative executive officer, yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have the minutes of that meeting that took the decision to allow you to implement the task force report?

Mr. Joe Muriuki: I mentioned before that that was a directive by Her Excellency, the Governor.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): There were no minutes?

Mr. Joe Muriuki: It was not necessary to be done through minutes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I take that. You have testified in length about the status of the health sector in Kirinyaga County, yes?

Mr. Joe Muriuki: Through the Chair, yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I also gather that you have some medical background in terms of your qualification, correct?

Mr. Joe Muriuki: Absolutely not.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You have also said that there were incinerators that were procured, correct?

Mr. Joe Muriuki: Yes, Madam Vice-Chairperson.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have the tender number that provided for the procurement?

Mr. Joe Muriuki: I am sure that that question is better addressed by---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): No, I am asking you. You are the one---

Mr. Joe Muriuki: There are documents that I do not have.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Listen, you are the owner of that piece of evidence, yes?

Mr. Joe Muriuki: No. What evidence are you talking about?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am asking, do you have proof of purchase of the incinerator?

Mr. Joe Muriuki: If you allow, I am sure that I can get the documents, but---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): But you do not have now?

Mr. Joe Muriuki: Please understand that there are departments. I do not know how much the Counsel knows about the structure of a county government, especially the role of the county secretary. I am the head of the county public service of about 3000 employees. I do not get involved in virtually every decision. However, in the overall direction, yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I hear you, but my question is simple. Do you have evidence of purchase of the incinerator?

Mr. Joe Muriuki: I do not have it, but there is evidence.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): You do not have.

Mr. Joe Muriuki: Madam Chairperson, for the record---

The Vice Chairperson (Sen. Halake): Counsel, your time is up.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Only one more question.

You testified to the effect that the reinstated individuals were way over and above the people who were supposed to be working, yes?

Mr. Joe Muriuki: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): And that their reinstatement created a crisis, yes?

Mr. Joe Muriuki: I did not say a crisis, you are the one who is saying that.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Are you aware that there are allegations that there are 77 health workers who were not paid?

Mr. Joe Muriuki: Yes, as a consequence of the County Public Service Board not playing the correct role.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): So, it means that there is no synergy between the office of the county public service board and the Office of the Governor, because of the directives that the Governor gave for the moratorium, yes?

Mr. Joe Muriuki: Absolutely not true. Let me mention---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): No, I am okay with the answer. Are you trying to tell us that there is redundancy of employees---?

The Vice Chairperson (Sen. Halake): Counsel, that one question has become three.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): That is the last one.

Mr. Joe Muriuki: I am sorry; can you repeat?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Is there redundancy?

Mr. Joe Muriuki: What do you mean by redundancy?

The Advocate for the County Assembly (Mr. Ndegwa Njiru): There is redundancy there and people who are not working. They are just there having jobs in the health sector.

Mr. Joe Muriuki: I think it depends on whom you are asking about, because ---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): The 77.

Mr. Joe Muriuki: The position is this. I think it was on 4th January 2020 that I actually forwarded the executives decision for them to recall the letters that they had irregularly issued but they---

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Do you have that statement?

Mr. Joe Muriuki: Let me check whether it is part of the documents

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Finally, confirm that these 77 people are being paid.

The Vice Chairperson (Sen. Halake): Counsel, I am going to order you to take your seat.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Much obliged.

The Vice Chairperson (Sen. Halake): The Counsel for the Governor, do you wish to re-examine the witness? Please go for it.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Very shortly.

Issues have been raised to you regarding the question of employment of public servants. Who advertises for positions for employment in the county?

Mr. Joe Muriuki: It depends on the kind of position.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Let us say for public officers at the director level, who advertises?

Mr. Joe Muriuki: It is the County Public Service Board.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Who determines the qualifications before advertising?

Mr. Joe Muriuki: What happens is the requesting officer can stipulate through an itinerary. However, it is the mandate of the County Public Service Board to ensure that the advertisement meets the qualifications required.

The Advocate for the Governor (Mr. Kamotho Waiganjo): You alluded to this in your initial statement. Before the interview for the positions of the Director of Administration, there was an advertisement for that position?

Mr. Joe Muriuki: Yes.

The Advocate for the Governor (Mr. Kamotho Waiganjo): That advertisement indicated the qualifications as what?

Mr. Joe Muriuki: My correction is that it stated a degree or diploma holder.

The Advocate for the Governor (Mr. Kamotho Waiganjo): When the interview happened, had that advertisement been done by the Board indicating diploma holders?

Mr. Joe Muriuki: Yes, Madam Vice Chairperson. They are the ones who recruited, interviewed and appointed.

The Advocate for the Governor (Mr. Kamotho Waiganjo): They are the ones who issued the appointment letter.

On the question of the numbers, what was the total number of health workers before the strike started?

Mr. Joe Muriuki: Madam Vice Chairperson, they were 1,265.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Without the 77, what was the total number or the ultimate number after reengagement of the new health staff?

Mr. Joe Muriuki: Madam Vice Chairperson, it was about 1,260.

The Advocate for the Governor (Mr. Kamotho Waiganjo): If you added the 77, would you have had a crisis in terms of your budget?

Mr. Joe Muriuki: Yes, Madam Vice Chairperson.

The Advocate for the Governor (Mr. Kamotho Waiganjo): What would have been the difference of that budget?

Mr. Joe Muriuki: Madam Vice Chairperson, it would have been about 81 million per year.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Did the County have an allocation for the Kshs81 million?

Mr. Joe Muriuki: No, Madam Vice Chairperson.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Do you have it now?

Mr. Joe Muriuki: No, Madam Vice Chairperson.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Thank you.

The Advocate for the Governor (Mr. Nyamodi): Madam Vice Chairperson, we have no other reexam for this witness. That was our last witness. We do appreciate the manner in which the Committee has enabled us to lead evidence. I would also want to put on record the fact that the Governor's response is the document paginated together as the response together with the three witness statements that come after it and all the documents that have been provided in the various volumes that we have supplied to the Committee.

The Vice-Chairperson (Sen. Halake): Thank you, Counsel. I would like to give the opportunity to the Senators for them to seek for clarification. Members, we are seeking for clarification and not cross-examining. We will keep it concise for us to have time for the closing remarks and time for us to retreat and determine a few things before we come back.

Sen. Pareno: Thank you, Madam Vice Chairperson and Mr. Muriuki for your statement. I will seek for three clarifications.

We were informed by Dr. Agnes Gachoki, a former CEC, that after the moratorium, the 77 health workers came back and you issued them with letters and from July, 2019 to date, they have not been played and that there is a case in court. I would like to hear more about that.

The second issue is about the picture that was painted by Dr. Gor Goody and Dr. Agnes Gachoki. Dr. Gachoki said that she resigned because she was asked to close all the dispensaries. She said that over 30 dispensaries are closed to date. Dr. Gor Goody indicated that many dispensaries are so dilapidated that one can actually find rodents such as snakes in there. She said that the environment in those dispensaries are not fit. She painted a bad picture of your health system. I would want to know the reason as to why she made such allegations. What would this Committee find if it visited your dispensaries?

Mr. Joe Muriuki: Thank you, Madam Vice Chairperson. I will first respond to the question about the 77 health workers. It is true that they have not been paid for the reasons that I stated earlier. There is no budgetary provision for that.

Dr. Gachoki said that she resigned because she was asked to close the dispensaries. Given the position that I occupy, I would have known of such a decision because I was one of the people who were trying to coordinate the crisis. Her Excellency the Governor did not make such a decision. That is not true.

I am not surprised that Dr. Gor Goody talked about the dilapidated condition of the dispensaries because she is an activist of some kind. They were upset because they lost the cases in the court when the strikes were declared illegal. The court actually denied them audience. Consequently, I do understand her. She is a human being and she is bitter because of that but that does not mean that what she said is true. You are welcome to visit the County to confirm for yourself.

Sen. Mpaayei: Thank you, Madam Vice Chairperson. Thank you, Mr. Muriuki. In your statement, you said that Kerugoya Level IV and V hospitals are equipped with broad and various new units. Yesterday, we had a witness who stated that most of the palliative and curative treatment are currently being handled by the neighbouring county hospitals such as Nyeri and Embu. Do you have evidence to back up your statement on the current service operations and employment of more staff and the functional state of the said existing facilities?

Mr. Joe Muriuki: Madam Vice Chairperson, the allegation that a lot of our patients are going to our neighbouring hospitals for treatment is contrary to the situation that we have been experiencing on the ground. Patients from the other counties are the ones who have been patronizing our facilities.

Kerugoya County Referral Hospital is fully functional and any person can confirm this. In fact, we are even offering eye clinic services.

The Chairperson (Sen. Malalah): Thank you, Madam Vice Chairperson. I am alive of the fact that we are supposed to restrict our questions within the borders of Mr. Muriuki's statement. However, given his position as the County Secretary, I would wish that you allow me to seek clarification on a matter that is not encapsulated on his statement. I seek your permission before I ask the question.

The Vice Chairperson (Sen. Halake): Is it relevant to the general charges against the Governor?

The Chairperson (Sen. Malalah): Yes, Madam Vice Chairperson.

The Vice Chairperson (Sen. Halake): I will allow it if it is.

The Chairperson (Sen. Malalah): Thank you, Madam Vice Chairperson. Mr. Joe Muriuki, there was an allegation brought forth by one of the witnesses yesterday that Kirinyaga County Government has no coffee shop in the United States of America. Can you attest to this Committee? Do we have a coffee shop owned by the Kirinyaga County Government in the United States of America? Do you know of such a shop?

Mr. Joe Muriuki: Madam Vice Chairperson, he did get me off guard. I wonder whether I am competent enough to respond to this, but I am not aware.

The Chairperson (Sen. Malalah): Madam Vice Chairperson, he has shown this Committee that he is well versed with information about the development agenda of the Governor. He has talked of the hospitals and roads that have been constructed and the facilities that have been equipped by the Governor. Does he want to tell this Committee that he does not know this?

So, you want to tell this Committee that you do not have any iota of information that there is a coffee shop in the US owned by the Kirinyaga County Government. Yes or no?

The Mr. Joe Muriuki: I am not aware of any.

The Chairperson (Sen. Malalah): Thank you.

Sen. M. Kajwang’: Thank you, Madam Vice Chair. County Secretary, the functions of your office, as you have told us, are stated in Section 44 of the County Governments and those of the Public Service Board in Section 59. Health is devolved and it is extremely important. It is something I wish we had more time to get evidence from the county on how robust its health systems are.

County Secretary, you have put in your documents supporting your statement a letter dated 4th July, 2019, which is a media statement signed by the Governor. My understanding of your functions and those of the CPSB is that you are the head of the CPS. Is that correct?

The Mr. Joe Muriuki: Yes.

Sen. M. Kajwang’: Together with the CPSB, you have some dual responsibility to manage and administer the CPS. I would not expect the Governor to give directives or instructions to members of the CPS on issues that are contractual in nature.

The Mr. Joe Muriuki: Yes.

Sen. M. Kajwang’: I believe you are aware of the letter dated 4th July, 2019, which the media statement in your pack. It is headed: County Directive on Back to Work Terms for Health Workers in Kirinyaga County.

The Vice Chairperson (Sen. Halake): Sen. M. Kajwang’, is that in the responses or in one of the files?

Sen. M. Kajwang’: It is in the supporting documents that have been referred to by the witness in his statement.

The Vice Chairperson (Sen. Halake): What file number was that?

Sen. M. Kajwang’: It is the file marked “Health”.

The Vice Chairperson (Sen. Halake): Can somebody give it to the witness so that he is apprised?

Sen. M. Kajwang’: He has referred to all these appendices in his statement.

The Vice Chairperson (Sen. Halake): Let us remind him.

Sen. M. Kajwang’: It is a media statement dated 4th July. Through the Chair, Joe, are we on the same page?

The Mr. Joe Muriuki: Yes, thank you.

The Vice Chairperson (Sen. Halake): You may proceed.

Sen. M. Kajwang’: The only thing I want to find out about this letter is; in what capacity was the Governor issuing back to work instructions to health workers?

The Mr. Joe Muriuki: Through the Chair, let me respond as follows. According to Article 179 of the Constitution, the Governor is the CEO of the county. My understanding and simple interpretation is that as officers, we report to her in that capacity. In fact, the County Government goes ahead to specify other functions that she may perform. Therefore, to me, this is in line with her duties as a governor. In fact, the law also gives her the ability to do anything that helps to execute the functions of her office.

Sen. M. Kajwang’: Thank you Joe, because that is Article 179(4) that designates the Governor as the CEO and the Deputy Governor as Deputy CEO of the county respectively, which I agree with. So, it means that with leadership comes responsibility.

The Mr. Joe Muriuki: Yes.

Sen. M. Kajwang’: Meaning that that sweeping power, role and duty of a governor as a CEO would mean that if there were sectoral failings, then she would be expected to correct them as the CEO? This was a sectoral failure falling within your domain as the County Secretary, CPSB and Health. She stepped in as the CEO in accordance to the Constitution. Is that right?

The Mr. Joe Muriuki: Yes.

Sen. M. Kajwang’: That is fine. One thing I have seen a sign of leadership in this letter in the second last paragraph where the Governor says that going forward, she has requested the Senator of Kirinyaga County, hon. Charles Kibiru, to convene sessions to address concerns in the health sector while bearing in mind the constraints faced by the County Government, which I believe is a statement made by virtue of her position as the CEO. Would you let us know as a Committee the outcome of that initiative? It is because you have adduced it as evidence to support your statement.

The Mr. Joe Muriuki: Through the Chair, let me mention something that may help to understand the background of this letter. My understanding and interpretation of the prevailing situation at the time of the strike was that there was a lot of political aspect. The strike was taking a political direction. My only assumption is that that is the

contextual framework within which this comment was made. Maybe Her Excellency the Governor would be in a better position to state further.

Sen. M. Kajwang’: Since you are on the witness stand, maybe this is my final question. Are there other competent bodies, besides the court of law, that have adjudicated this matter? Have these health matters come before the Senate or the County Assembly and has there been any resolution by any of those bodies?

The Mr. Joe Muriuki: Only in terms of the court that gave its final position.

Sen. M. Kajwang’: What about the County Assembly? Has there been any inquiry into health issues in Kirinyaga?

The Mr. Joe Muriuki: Yes, I know we have written but not resolved.

Sen. M. Kajwang’: What about the Senate?

The Mr. Joe Muriuki: To the best of my recollection, this is the time I am seeing correspondence from the Senate, but I stand guided.

Sen. M. Kajwang’: Thank you, Madam Vice Chairperson.

The Vice Chairperson (Sen. Halake): Is there any other question hon. Members?

Sen. (Dr.) Mbito: Mr. Muriuki, I think we met briefly when I visited you with the Senate Committee on Health to Kirinyaga County and we discussed most of these issues there. Let me not go that direction.

There is something inside the file you gave us about Kirinyaga Investment Development Authority (KIDA). Just very briefly, could you tell us exactly what this authority is; what is its legal status and what does it do? I do not know why you put it here. I have found it in the file label “Health”. You tell also where it is domiciled. Does it have registered offices? That is the first document in that file.

The Mr. Joe Muriuki: For record purposes, I do recall you came to the county during that time. You have asked where KIDA is domiciled. I know that---

Sen. (Dr.) Mbito: First of all, what is the legal status?

The Mr. Joe Muriuki: There is a KIDA Act.

Sen. (Dr.) Mbito: Is it a task force, authority or parastatal?

The Mr. Joe Muriuki: It is an authority which was established through an Act of the County Assembly of Kirinyaga.

Sen. (Dr.) Mbiti: Where is it based?

The Mr. Joe Muriuki: It is based in Kirinyaga.

Sen. (Dr.) Mbiti: Is that where the registered offices are? Does the County have an office in Nairobi? I can see all its meetings were being held at Delta House. Is that legal?

Mr. Joe Muriuki: Mr. Chairman, Sir, the county used to have an office at Delta House and that could explain the reason some meetings were held there.

Sen. (Dr.) Mbiti: It does not have an office in Kirinyaga?

Mr. Joe Muriuki: It also has.

Sen. (Dr.) Mbiti: Okay. Thank you, Mr. Chairman, Sir.

The Vice Chairperson (Sen. Halake): Thank you very much. Sen. Mugo has a question. Senator, can you hear us? Would you like to ask your question or should we ask it on your behalf? Maybe you can transmit it to the Chairperson to ask on your behalf. One of the Senators - Sen. Mugo, you are muted. Sen. Madzaayo would you like to ask a different question or you are asking on behalf of Sen. Mugo? She is trying, but we cannot hear her.

The Chairperson (Sen. Malalah): I do not know if I can see. Is it okay or we give her an opportunity?

Sen. Pareno: Mr. Chairman, Sir, read it on her behalf.

The Chairperson (Sen. Malalah): It reads-

I would like to ask the following question: There have been claims that the Governor used intimidation and coercion to influence the hiring of staff in the County Government and that she should be held responsible for the firing of health workers around the time of the strike. Please clarify who in the County Government is directly and ultimately responsible for appointments and dismissal of staff? At what point, if at all, does the Governor becomes involved in this process?

The Vice Chairperson (Sen. Halake): Thank you, Mr. Chairman, Sir. Witness, you may answer.

Mr. Joe Muriuki: Mr. Chairman, Sir, I am not aware of the coercion that is mentioned thereof. I have not seen any complaint from any officer in my position channeling such a complaint. I have also not been supplied with any document substantiating that. Therefore, I am not aware of the coercion. That is not the character of Her Excellency the Governor whom I know through interaction.

In terms of appointments and dismissals, the County Governments Act makes it very clear, in terms of which officers can be fired and by who. The public officers, especially as defined under Section 2 of the County Governments Act gives the mandate to the County Public Service Board (CPSB) through Section 59. In fact, to some extent from Section 63.

In terms of the other officers like the County Executive Committee Member (CECMs), those ones the Governor has some power also through the County Assembly. It depends on what specific position, but for the normal county public officers that is the work of the CPSB.

The Vice Chairperson (Sen. Halake): Thank you, witness. Sen. Madzaayo, did you want to say something?

Sen. Madzayo: The clarification I am seeking from you would be based on the employees. Medical staff have found their services being terminated and some being employed. There is a huge turnout of employment and termination. From a staff of 1,260 you fired 500, then you employ again and then there is reinstatement. I am not concerned about the number of the medical staff you employ; I am only concerned with the huge turnout or dismissal of health workers. Does it affect the performance or the morale of the medical staff according to you?

The second question is; I am concerned about the payment of dues to those employees who did not go back to work. Have they been paid their dues? It looks like there are a bit of challenges between how you sort out the people who have been employed and what happens to those one who have not been reinstated and they are still out there. Have they been paid?

Finally, is on the health situation of facilities in Kirinyaga. The picture painted by the two eminent doctors from Kirinyaga, who are very senior and occupying very senior positions, clearly stated that the situation in Kirinyaga is deplorable. I do not know whether you are a doctor and if you are not, whether you would find yourself qualified to state that the state of affairs in Kirinyaga, particularly on health, is fair.

I can see there is an encouragement from your statement that you are putting up quite a number of buildings like the Intensive Care Units (ICUs) and High Dependency Units (HDUs). You are doing a commendable job. However, currently, as it is before this take off, what is the current situation according to your own opinion? Even though you are not a doctor, please clarify whether the situation is as pathetic as it was stated by the doctors who said the state of health facilities is deplorable?

The Vice-Chairperson (Sen. Halake): You may respond.

Mr. Joe Muriuki: Madam Vice-Chairperson, thank you. There are three questions. One, you mentioned in terms of the dynamics instead of the dismissal and the hiring of new staff. I can understand basically what your concern could be.

It is important to understand that the situation the county government was faced in was left with no option. There were two possibilities; either you give up and let the situation totally get out of control with the residents not getting health services or the county government takes action. As I mentioned before, various efforts were made to get the health workers to understand the consequences of going on strike and continuously refusing to abide to a competent court of law ruling.

Notices were issued. We went out of our way issuing notices and public announcements to the employees. They ignored all those. Hon. Senator, by the time the decision was made, we did not have a situation at all because they had refused to resume office, the public needed services so something had to be done. The court had already ruled. It is not that I could have wanted to go that route, but circumstances were such that a decision had to be made at one point or another.

In terms of the morale, I must mention this. Since then we have tried to increase the level of engagement with the health workers. I forgot to mention, although it is there in my write up, that we have employed health managers on full time basis who we are interacting with. We are having regular meetings with them and trying to address their concerns. In terms of the morale I am confident that it is good.

Mr. Joe Muriuki: I am actually confident that it is good. In terms of the dues for the employees who did not resume work, my recollection is that at the point where they decided to go on unprotected and illegal strike, they had already been paid. However, after the termination, the way I understand the law is that, they ceased being employees of the County Government.

The County Executive is quite limited in terms of what it can do, especially when the workers have been dismissed. This is because that obligation and that mandate moves from the CPSB, and as per the Section 77 of the County Governments Act, transfers it to another body, which is Public Service Commission (PSC).

I am aware that the PSC wrote the CPSB, asking them to make recommendations to the PSC and for the PSC to make determination. I am not aware whether they complied or they did not.

In terms of the budget, there is a challenge, as I did mention, that workers have already been hired up to more or less, the pre-strike staff compliment. Consequently, any additional staff would pose budgetary challenges. That is an issue that is beyond, just say, let the people go back to the office besides other legal aspects.

Madam Vice-Chairperson, on the issue of the deplorable state, the good thing is that, besides being an employee or somebody working in Kirinyaga County, I am also a resident. I am interested in having a good work environment. I know you mentioned that I am not a medical doctor and it is true I am not.

However, may I also mention that I am one person who believes that there are universal skills of management. Basically, management experts would define the technical Human Resource (HR) and even conceptual skills. Those help any person to work in various settings.

Before I came back to Kenya, I have held very senior positions, both locally and overseas with international and reputable companies. At one time, I also worked in the health sector. I am aware about what a clean health environment is. This is because I was a long-term healthcare nurse at one time or another. I am familiar with that one. Therefore, I can tell.

Secondly, I can assure you that even if you came and visited the hospital, you understand that with the limited resources that we have, there is great improvement in the county.

Sen. Madzayo: I will come. I thank you, Madam Vice-Chairperson.

The Vice Chairperson (Sen. Halake): Thank you very much. Counsel for Kirinyaga County Assembly, you had your hand up. You had something before I overruled you.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Madam Vice Chairperson, I was seeking your directions because I have an application to make; that pursuant to the conclusion of the proceedings and noting the lengthy and the documents referred to, I note that I was supposed to make my closing statement immediately we conclude these proceedings.

I find it humanly impossible to collate the evidence as I sit here. I was seeking for a break of only 30 minutes to allow me sit and collate.

The Vice Chairperson (Sen. Halake): We already had made provision for that.

The Advocate for the County Assembly (Mr. Ndedgwa): Much obliged.

The Vice Chairperson (Sen. Halake): We were to have a break of 20 minutes. However, based on your application, we may make it to 30 minutes, so that we give you the fair chance to collate your information as you requested.

Hon. Members, parties, thank you very much. Witness, you have done your civic duty and whatever it is that you needed to do to aid this Committee. We thank you very much. We will release you.

We will take half an hour break, for each of the parties to prepare their closing statements. This Committee will take leave or break for those 30 minutes. We will reconvene here exactly or promptly at 5.25 p.m. to allow the two parties to prepare their closing statements. After which, we will continue with the proceedings.

I thank you.

(The Committee adjourned temporarily at 4.55 p.m.)

(The Committee resumed)

The Chairman (Sen. Malalah): Thank you, hon. Members, ladies and gentlemen. Welcome back to the second part of our afternoon session, which I think is the final session before the Committee retreats to do a Report. We only remain with two presentations, that is, the closing statement by the County Assembly team and the closing statement from the Governor's team.

So, I would like to take this opportunity without much ado and welcome the Counsel representing the County Assembly of Kirinyaga to make their closing statement. Remember that you have only 30 minutes, and I will not extend that time.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Thank you, Mr. Chairman, Sir. Only to recap a ruling that was done in the first stage of these proceedings in the morning that we be supplied with clear copies, not concealed and not opaque. We want to confirm that even as we close the proceedings, the same has not been done.

It will also be beneficial for the Senators. The same was raised by Sen. Githiomi at that particular time. The copies appearing on our files and the ones that were served as soft copies are the ones appearing. We would rather probably exhibit them to the Committee to see what we have and the difficulties we have. We do not understand the concealment. However, I wish to proceed to make my closing remarks.

The Advocate for the Governor (Mr. Kamotho Waiganjo): We do not want that issue left hanging. It is an important issue and we would like to respond on it, unless the Committee has already made a decision.

The Chairman (Sen. Malalah): You may respond.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Mr. Chairman, Sir, and the Senators, this is a very simple issue. The Governor may be a public servant, but she is also a private person. It is not the business of any person to track where she travels other than those trips which are paid for by public money. We have removed those parts of those passports that relate to other travels that she makes.

Now, if the Committee believes that those pages are a fabrication, we are willing to go with the original copies of the passport. The Committee can then confirm that those stamps for entry and exit, because that is what the Committee is interested in, are valid then we can have her passports back.

Already, these copies that we have provided are all over social media about, where the Governor travels, we will not have that. That involves her children and her family. We will not circulate it other than in relation to the travel that was paid for by public money.

Thank you.

The Chairperson (Sen. Malalah): Thank you. I will make the following directives:

- (1) That we need to remain alert to the fact that both cases have been closed.
- (2) That, Mr. Ndegwa, at this point in time, you do not need those documents because your case is closed, and I think the documents are needed by the Committee.

I direct as follows: That the Secretariat of the Committee will find time with the Governor's legal team to go and ascertain whether the copies that we have are true copies of the originals. Once the Secretariat has ascertained that fact, we shall use the photocopy that we have to make a determination.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Much obliged.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Much obliged.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, yesterday afternoon, when we were making our opening remarks, we did promise this Committee and the County Assembly of Kirinyaga, and more importantly the Republic of Kenya who pays all the revenue, that this Committee has the responsibility of oversight.

We promised them that today, at the fullness of time, at the close of these proceedings, we will be able to demonstrate with a lot of clarity and concise approach to things, that the Governor does not deserve to continue serving as the Governor of Kirinyaga County.

Questions have been asked to witnesses; have you seen the Governor's hand in all these proceedings? Yes, we submit that the Governor's hands are so present in all the tenders that have been impugned, that the Governor's officers and staff are present. Their hands are present and these officers are directly answerable to the Governor.

May I help the Committee to draw this web? It is a web that begins all the way when the Governor was the Director of Integrated Financial Management Information System (IFMIS) at the Treasury. It all begins again by having Carilus Otieno, who appeared today as a witness, being an officer under the Directorate of IFMIS Treasury, who later becomes the Chief Procuring Officer in the County of Kirinyaga.

The Advocate for the Governor (Mr. Nyamodi): With respect to learned Counsel, this is not the time to tell tales.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): This is my tale.

The Advocate for the Governor (Mr. Nyamodi): Carilus Otieno stated that he worked at the Treasury. He did not state where he worked.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): This is my tale; allow me to tell it as I want.

The Chairperson (Sen. Malalah): I will rule as follows: I think these are closing statements, so they are general statements. We will pick whatever we can pick and leave whatever we can leave. So, they are general statements where you say anything without substantiating.

We will be free with you, Mr. Ndegwa, but try and limit yourself within the scope of the case.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Thank you, Mr. Chairman, Sir. I said that Carilus Otieno, who previously worked at the Directorate of the IFMIS at the Treasury, where the Governor previously worked before her appointment with the Ministry of Devolution, is now the Chief Procurement Officer in charge of Kirinyaga County.

Suffice to know that this officer has been working in this county under the auspices of the Governor, without even having the proper certificates from his professional body. The question will linger as to why somebody should continue to serve. Where is the eye of the Governor in all this?

Is the Governor in touch of the leadership in Kirinyaga County? We answer no, in the affirmative. How would an unqualified person not holding a certificate of

professionalism, at that particular time, proceed to execute such kind of important obligations and tasks? Is that the only web where the Governor's hands are? No! You will need to move from the Directorate of the Treasury, and go all the way to the Ministry of Devolution.

When she was the Minister for Devolution, you have to mention all what preceded and this House is alive to the fact that this is not the first time a trial of this nature is being raised against her. When you go to the Ministry of Devolution, you will find Pauline Wairimu Kamau.

Sen. Pareno: On a point of order, Mr. Chairman, Sir. I am worried, with due respect to Counsel, if we are going to allow him to start talking about things that were not articulated during the hearing about devolution or IFMIS. We cannot go that way.

I ask that you direct him to make submissions on things that have been discussed before this House.

The Chairperson (Sen. Malalah): I directed Mr. Ndegwa---

The Advocate for the Governor (Mr. Kamotho Waiganjo): This is a *quasi*-Judicial Tribunal. This is an important Institution. Let us not make a joke of it.

If an issue was not raised here, so that it could be controverted, how can it just be thrown out there? It is unacceptable. How do you say Pauline worked in the Ministry of Devolution? It is not an issue that was raised here. Even if there is scope, talk generally.

Sen. Madzayo: If I may put---

The Chairman (Sen. Malalah) Order! Hon. Madzayo you have been a judge before. When the Chair says 'order,' it means that.

Sen. Madzayo: I am obliged.

The Chairman (Sen. Malalah): I would ask the Counsel representing Governor Waiguru to first of all respect the Chair and speak through the Chair.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Apologies, Chair.

The Chairperson (Sen. Malalah): Second, I still insist that Mr. Ndegwa, you need to restrict yourself within the scope of the case. We shall not allow new allegations because we do not now have time to substantiate the allegations you are telling us.

In your case, you never told us about the National Youth Service (NYS) and the IFMIS. Why are you bringing new things in your closing remarks? You need to restrict yourself to the scope of the case.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): I am well guided, Chair.

The Chairperson (Sen. Malalah): I think that because this borders on defamation. We will not give you the liberty to say anything about Governor Waiguru in the full glare of the cameras. So, if you continue with that trend, I warn you that I will rule you out of order and deny you an opportunity to make your closing remarks. Stand guided.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I am well guided and also hope that I am protected by the Chair; that I am not under threat that I will be charged with libel or slander because I am executing my civic duty.

Okay, I will adopt the line of my submissions, which suits the Counsel's interest.

However, I will submit that all what we are supposed to do is to demonstrate the nexus between the tendering that was done and Governor Waiguru *vis-à-vis* the charges that have been levelled against her.

Is there nexus? We submit, yes, and that was held in the case of Mwangi Wa-Iria, that you must create nexus and indicate how the Governor is involved in all these.

On that issue, I refer to Section 30(3) (b) which provides that-

“In performing the functions under subsection two, the Governor shall provide leadership to the County Executive Committee and administration on the county policies and plans”

Of most importance is that the leadership is coming from the Governor. She is leading her CECs and the entire administration of the county. So, her hands must be seen even in the procuring processes. That is the question of administration.

Unless and until this law is repealed, this law creates a nexus between all that which takes place in the county. Hence the provisions of Article 179 which designates the Governor as the Chief Executive Officer of the county.

So the question that lingers is: What is the coincidence that in all the tenders that have been passed before this Committee, we are seeing the hands of one Pauline Wairimu Kamau. Evidence has been read before this Committee that one Pauline Wairimu Kamau does not even meet the minimal requirements to hold the position of director.

Evidence has been read by the Chair of the CPSB and confirmed by the County Secretary that prior to her appointment as the Director of Administration she was in acting capacity as Governor Waiguru's Personal Assistant.

So the question is: What is the coincidence? What is the nexus? Do these things just fall in place? Were they by default or by design? Yes, we answer in the affirmative, that this was by design. It was meant to have serious control of all the tenders that Governor Waiguru has interest in.

Why have we not impugned any other tender? We have only concentrated on these tenders. I submit that had it not been for the influence of Governor Waiguru to have Pauline appointed as Director of administration then she would not have had the capacity.

It was so essential and strategic to have Pauline as a director so that she can have the ability and capacity to sit and have the *locus standi* to perform the acts that she has performed.

We move on to Wayne Gichira. He is an advisor to the Governor. If you look at the advice of the Transition Authority---. Allow me to refer to it.

The advisory opinion of the Transition Authority dated the 2nd September, 2013, paragraph 11 says-

“The Transition Authority together with the Public Service Commission in consultation with the Council of Governors and the Salaries and Remuneration Commission approved the creation of a cadre of five staffs to be known as advisors to the governor. Also three support staffs were approved for each governor. The staff exist as advisors and not as executive or administrators in the hierarchy of the county governments.”

It is *ultra vires* for these staff to issue directives of binding nature unless they are communicating the governor’s message or providing information to facilitate decision making.

Even in the midst of this advisory, an advisor finds himself dealing with tenders worth millions of shillings. What do we see in evidence? What was confirmed by the Governor’s witness, one Calirus Otieno? It was confirmed that the tenders involving Velociti were also fictitious. The orders did not follow the law. The orders were not in compliance with the Public Procurement and Disposal Act. There were serious transgressions. Who does this person report to? Who does Wayne Gichira report to? He directly reports to the Governor.

Did the Governor know that his staff were sitting in the Tender Committee? If she knew, what did she do? If she never knew and came to know of the transgression did she call for rectification? She never called for any. That then means the indolence does not aid. She cannot be aided by indolence.

I submit that there is clear nexus between these officers, the tenders impugned and the Governor. Evidence was led that this one officer Pauline does not even qualify to be appointed as a director. From a Personal Assistant to a Director. A re-advertisement is made in the national dailies to suit the circumstances to find herself strategically positioned to siphon public money.

Evidence was further led that tenders that were specifically reserved for specific groups such as women, youth and Persons with Disabilities (PwDs) ended up benefiting one company. What is the nature of this company Ever Trading Limited?

The company is owned by a brother to the Chief Executive Officer, Finance. This was confirmed in evidence. Is it by coincidence that one company Ever Trading Limited can have three tenders and all these are impugned and the chair sitting in those tender is Pauline? Was it by default that this company belongs to the chief campaigner of the Governor, one Edwin Gichobi Ndathi? Was it by default? Can you see the hands of the Governor? Yes.

I implore upon the Committee to look at it from that perspective. I further move---

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, again the issue of chief campaigner did not arise in evidence because the learned counsel knows that he is abusing the privilege of this House. I am compelled to ask that you restrict that privilege

so that appropriate action can be taken against counsel so that he can then be compelled to behave himself.

The Chairman (Sen. Malalah): During cross-examination of one of the witnesses, the issue of chief campaigner was raised and, therefore, the counsel is in order to refer to that issue and to insinuate though not extensively that Edwin Gichobi Ndathi was the chief campaigner. He is in order.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Thank you, Chair for the protection. I move. We are saying that this was not by coincidence. It was a well-orchestrated and choreographed move to steal from the public.

We said yesterday that white collar crime is concealed crime. One must have a toothpick for you to be able to pick the person who is culpable. Remember it was mentioned in evidence that Governor Waiguru is not fond of signing any document.

Members of the Committee, when you retire to give your ruling and your findings do not look at the hands of Governor Waiguru through a document that has been executed. You have to look beyond the executions of documents because that is her habit not to sign any document that is committal in any manner.

Evidence was further led that motor vehicles were purchased without following the due process. Guarantees were issued without following the due process. Hon. Members, what does Section 102 of the Public Finance and Management Act provide?

When you retire, look at Section 103(2) of the same Act. Further, look 107(2) (iv). Look at those evidences against the provisions of this law. The law is quite clear that despite a refusal to admit that, that was a bank guarantee, there was no other definition that was provided by the witness.

Did that bank guarantee follow the provisions of the law? No. Was there approval of the County Assembly? No. Does that undermine the County Assembly? Yes. This amounts to a serious transgression of the law.

All those tenders that have been impugned hon. Members, you must read the requirement of Article 201. It provides that public resources must be utilized in a prudent manner. Public resources even include Kshs1 and a penny as long as that one penny has come from a Kenyan.

Mr. Chairman, Sir, public resources include every penny that comes from Kenyans and it must be utilized in a prudent manner. Do not look at the amount of money that was lost. Look at the process in which this money was lost. For example, there were two imprests that were provided to us this morning with a receipt date 17th April, 2020.

What was the purpose of that receipt? The purpose of the receipts was to reimburse money to the county. The said money was domiciled in the Governor's account. Was that confirmed during the hearing? Yes, it was. The Chief Officer confirmed that he received the money from the Governor. Did the Governor therefore draw personal benefit from that money? Yes, she did for four months.

Why did the Governor hold onto money that belongs to Kenyans? Is the Governor authorized to bank on behalf of Kenyans? Is the Governor the Central Bank of Kenya? That is a serious transgression of the law.

Mr. Chairman, Sir, I would like to draw your attention to Section 93 of the Public Finance Management Act that requires that, there must be a surrender of imprest if a journey or travel was not undertaken. The law says that surrender of imprest must be done within seven days. The Governor made a reimbursement after four months only after a Motion was filed to impeach her on the question of abuse of office. Does that demonstrate the question of abuse of office? We answer in affirmative. It demonstrates the abuse of office. Did the Governor have a personal gain or personal benefit from that money? Yes, she did. What was the Governor doing with the money for four months?

Mr. Chairman, Sir, as I sum up my submission, I urge you to look at the transgressions that have been done to the residents of Kirinyaga County. The law has been transgressed.

Under Article 3 of the Constitution, we have the duty to protect it and any other law that emanates from the Constitution. Any transgression on any law is a transgression on the people of Kenya and the Republic of Kenya. A total of 23 out of the 33 MCAs of the Kirinyaga County Assembly returned a verdict. There was no vote in favour of the Governor during the impeachment. The people of Kirinyaga County exercised their sovereignty through their elected representatives under Article 1.

Article 10 of the Constitution requires that there must be accountability and transparency. Transparency should be in the sense that when you fail to travel, you must reimburse public funds. It is on record that even the Speaker of the National Assembly commanded the Members of the National Assembly to refund public funds when they failed to travel to the United States of America (USA) to attend the United Nations Commission on the Status of Women as a result of COVID-19. Is Governor Waiguru exceptional? Governor Waiguru is not exceptional.

The law says that we are all equal before the law. Governor Waiguru should, therefore, not receive any favour. She should not receive any treatment that may mean that the law favours her. Governor Waiguru is under the ambit of the law and has no protection of the law. The law only protects itself. The law protects the fidelity of the law. Any person who initiates any action that amounts to the infidelity of the law is an enemy of the law. An enemy of the law is an enemy of the people of Kenya.

Mr. Chairman, Sir, you will ask whether the County Assembly of Kirinyaga has made out its case. We answer, yes. Even where we had chief officers, for example, in the Department of Water and Health, we have seen the hand of the Chief Officer Finance executing all the necessary documents on behalf of the officers.

On questioning, we were told that those offices were not accessible at the time. Was the interference by the by the Chief Officer Finance, by design? We say, yes. It was not by default. It was by design. The Chief Finance Officer went against Section 46(2) of the Public Procurement and Assets Disposal Act.

It was confirmed before this Committee that even on matters as sensitive as health, the Governor just issues what we call roadside declarations. Roadside declaration was a

pandemic that prevailed during the late President Moi's regime. The new Constitution removed us from the roadside declaration regime.

Section 41 of the County Governments Act states that any meeting that the county executive sits to deliberate an issue, the resolutions must be put in writing. The County Secretary just feigned ignorance to that law. Can the Governor benefit from that ignorance? No. The Governor cannot benefit from that ignorance. The County Secretary was aware that he would be confronted with such kind of questions, yet he feigns ignorance even on what is on record in his testimony about the taskforce report.

The County Secretary could not provide minutes or a cabinet position on the matter and when he is put to task to explain, he says that the Governor gave the directives.

Mr. Chairman, Sir, we must protect our democracy and the gains that came with the new Constitution. The democracy that is contemplated in the new Constitution is one envisaged under Articles 73, 74 and 75. The said Article of the Constitution speaks to a leader becoming a servant. The Constitution says that we no longer have rulers. We have public servants. Has Governor Waiguru demonstrated that servanthood? The answer is, no. Governor Waiguru has not demonstrated servant leadership.

Is the Governor supposed to be given the benefit of doubt when she has serious transgressions of the law? She should not be given any benefit of doubt. Put to task on the question of whether or not there exists minutes, the County Secretary said, no. That was confirmed by our witnesses.

Two CECs appeared before you and gave a picture of how the County Government of Kirinyaga is run. Who else can we believe other than the insiders? Who else can we believe to be the owner of the story other than the person who was there?

I beseech you to look at this case as one way of protecting democracy and devolution. May you not forget that sometimes some jobs can become difficult. One can be looking for a lighter engagement which ends up becoming as difficult as it is now. We are now in that situation where we were. The duties have become harder than expected. These are not lighter duties for Governor Waiguru. This distinguished assembly is well positioned--

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The Advocate for the Governor (Mr. Nyamodi): The insinuation by the Counsel is abuse of privilege of this House.

The Chairperson (Sen. Malalah): What specifically are you referring to?

The Advocate for the Governor (Mr. Nyamodi): The insinuation that the Counsel made about 'lighter duties', 'this not being lighter duties' and 'us being where we were'.

The Chairperson (Sen. Malalah): I do not get the connection of lighter duties. Can you elaborate to this House?

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, we will let that one slide because I believe we all understand what Counsel meant.

The Chairperson (Sen. Malalah): The Chairperson does not understand what is meant by lighter duties. So, I will leave it at that.

Mr. Ndegwa, you have five minutes to finish up.

The Advocate for the County Government (Mr. Ndegwa Njiru): Mr. Chairman, Sir, the people of Kirinyaga County and the rest of Kenya have confidence in this Committee. People are confident that this Committee will deliver justice. People are confident that this Committee will look at the evidence that has been presented before it and not the individuals that have presented the evidence.

At the fullness of time, this House will be on trial to show course whether they actually protected democracy, the rule of law and the whole aspect of devolution. Protecting devolution is not protecting individuals who have questionable character within devolution.

When you retire, kindly look at your roles under Article 96 of the Constitution. Finally, how many times can one commit transgressions and get away with it? I rest my case.

The Chairperson (Sen. Malalah): I now call upon the Counsel representing Governor Anne Waiguru to make closing remarks.

The Advocate for the Governor (Mr. Muchigi): Mr. Chairman, Sir, we will break our closing remarks into three parts. I will start by making a few remarks. My learned friend has clearly stated that what we seek before this Honourable House is fidelity to the law and the Constitution.

The High Court in its description of this honorable House has in very many decisions held that this honorable House is the defender of devolution, county governments and counties. That has been explained based on very many provisions of the Constitution.

Mr. Chairman, Sir, one obligation that is placed on this House is that in the case of Mwangi wa Iria and two others *versus* the Speaker of Murang'a County Assembly, the High Court went as far as saying that this honorable Senate plays the role of the impeachment court. That is a very special position given to it. It indicated that in that role, the Senate is expected not only to investigate the nexus of the allegations to the Governor.

It is also supposed to interrogate the entire process as it is carried through the County Assembly to determine that not only was the Constitution complied with but also the requisite requirements of natural justice were also followed through.

Our submission in summary is that the House is faced with a Motion that did not meet the constitutional threshold for the following reasons: First, the Constitution is very clear in Article 196 (1) that the County Assembly has an obligation to ensure that its processes undergo public participation. That is a constitutional obligation. The County Assembly has confirmed that there was no public participation.

Mr. Chairman, Sir, the courts have made it very clear that with regard to the issue of public participation, and in that, we have indicated in our submissions that we have placed before the Senate, they are the written submissions which we rely on. Public participation is not usurped by virtue of representation. The public must be involved.

That is why the provisions of the County Government Act are clear on citizen presentation, participation and how it is supposed to be undertaken. That has been confirmed before this Committee that it was not done.

Secondly, the Constitution is very clear that when allegations are made against a person that are going to have adverse consequences on them, pursuant to Articles 47 and 50, a person is supposed to have fair administrative action and hearing. The requirements for a fair hearing have been set out in the Constitution.

Mr. Chairman, Sir, we have indicated for the fact that the people who moved the Motion slept in the House so that they could go through with their agenda, it was very clear that they did not comply with Article 50 on impartiality. The Governor was not given a chance to defend herself and answer to the charges. The question of fair hearing was also violated.

On the issue of threshold, Article 180 is very clear. This Senate has rendered a number of decisions which we have quoted in our submissions on what that threshold entails. One thing that has come out very clearly in the decisions of this Senate is that the tool of impeachment was not intended to be used for malicious purposes. However, it was intended to facilitate good governance in compliance with the Constitution. The question that is there is; have our friends complied with that?

Mr. Chairman, Sir, the Court of Appeal in the case of Martin Wambora *versus* the Speaker of the Senate, which we have indicated in our submissions, clearly states that not only must it be shown that the proper procedure was followed. It must also be shown that the threshold was met.

The question that this Senate has to contend with based on the Motion that was placed before the House and which the Governor has responded to is; was any evidence adduced in that Motion to substantiate the allegations made? We are holding that no evidence was led to substantiate the same. To that extent, they became mere allegations. The question that we are asking this House to ponder in is; can somebody be held culpable on the basis of mere allegations?

Mr. Chairman, Sir, on that issue, I urge the Committee to consider a decision that we have quoted from the Supreme Court in the case of Ferdinand Waititu *versus* Evans Kidero which I will read.

It says from the beginning:

“It is clear that the applicant is endeavoring to build a case on the foundation of a bare allegation. It is an allegation of corrupt conduct on the part of one judge, a judge forming part of the solid Supreme Court Bench of seven judges.”

It goes on to conclude that:

“I have to state clearly that the applicant is bringing before the Supreme Court a case that lacks any legal foundation and the matter is, therefore, not properly before the court. I hereby find and hold that it is inadmissible as a case in the Supreme Court’s work program.”

It proceeds to hold that mere allegation does not shift the burden of proof.

As I close on this issue, I just want to remind the Committee on the Supreme Court’s decisions in the case of Moses Wetangula *versus* Independent Electoral and Boundaries Commission (IEBC) and Fredrick Otieno Outa *versus* Jared Odoyo Okello and four others which we have quoted there. It has clearly stated when it comes to matters of criminal nature, corruption being one of them; the standard of proof must be beyond reasonable doubt. The evidence must be credible, cogent, focused and clear-cut. We submit to you that no such evidence has been placed before you.

Mr. Chairman, Sir, as we close, I want to mention one issue that the Court of Appeal in the case of Martin Nyaga Wambora and four others *versus* the Speaker of the Senate and six others held. That is the fact that when it comes to matters of impeachment, it cannot be based on the political principle of collective responsibility. Evidence must clearly point and affix itself on the Governor.

Thank you.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Mr. Chairperson, Sir, with your permission, I would like to make my presentation as I stand. Can I do that?

The Chairperson (Sen. Malalah): That is well accepted. At least you have gone through the Chair now.

The Advocate for the Governor (Mr. Kamotho Waiganjo): Mr. Chairman, Sir, alright. I have learnt my lesson. I am a quick learner.

I will go very quickly on the issue of the grounds. I start by saying that a case was presented before the County Assembly of Kirinyaga and an impeachment was concluded. That Motion was then brought to this House with the grounds and the evidence. The responsibility of the Mover of the Motion and the County Assembly of Kirinyaga is to prove that Motion before the Senate now.

Let me give you the grounds that were alleged and responses to them. Ground one was violation of the Constitution. There is no constitutional provision for the Governor to provide, at all, a State of the County Address. There is a provision in the County Government Act, but it does not say the presentation is to the County Assembly. That County Assembly provision is in the Standing Orders of the House. If there is any violation, it is that the Governor violated the Standing Orders. That is why you are being asked to impeach her.

Mr. Chairman, Sir, secondly, on Ms. Pauline Kamau and Ms. Winnie Gichera, what is there is salacious information. It is interesting and exciting. However, look at it this way. Ms. Pauline Kamau was appointed pursuant to an advert by the County Public Service Board (CPSB) that defined her qualifications. This is an independent body. It then went on to interview and recruit her. It then decided that at this point when it is politically convenient to say, wait a minute, this was not our act, we were being pushed. Who would believe that sort of stuff?

Secondly, on the evaluation committees, they are *ad-hoc*. Information was given here that Ms. Pauline Kamau and Ms. Winnie Gichera sat in a minority of evaluation committees. What my colleagues have done is that they have picked the contracts in which these two sat and then said impugn these ones and then send the story that these are the only contracts that were impute.

Mr. Chairman, Sir, look at the contracts and issues that were raised on those contracts. There is nothing significant in the allegations. It is that the majority of them are whether or not they complied with Access to Government Procurement Opportunities (AGPO) regulation. You are representatives of counties and you know the sought of traders who trade in counties. They are small traders. They are not people with three years' qualifications or five years. Most of them are youth and women companies.

So, AGPO requirement is the very essence of the success of the business environment in the counties. What you are saying is making it as if it is evil to have an AGPO certificate. The truth of the matter that even for the open contracts, preference is given to AGPO companies.

For all these companies, the AGPO certificate was presented. For Eva Trading Agencies Limited, the one that became interesting about three contracts on water because all of them are provision of water; the AGPO certificate was never an issue in this complains. Otherwise, we would have presented the certificate.

In fact, the certificate is available and will be presented to the Committee and to my colleague. They can confirm this is a Government certificate. We are not the ones who produced it.

On the issue of the two, Gichira and Pauline, they sat in committees of either three or five people as one vote. Therefore, at any point there were minorities. Why is it that they were so powerful that all the other committee members were not able to raise issues? These people never sat together in a committee of two where they were the majority.

That is why I said these issues are salacious and interesting. They actually have no foundation. Even though my learned friend would like to keep saying that there is a hand in the cookie jar; honestly, that is unfortunate because if you will make an allegation of the nature of corruption, surely at the very minimum, show that there is loss; show that there is movement of money from somebody so that after that contract was given, money was moved to somebody.

You could even then show that, that person is associated with the Governor. There is no such allegation. All we are saying is person "X" got a contract worth Kshs.13 million. So that is corruption by the Governor and this Senate is supposed to believe that story and impeach the Governor and send her home. It is unfortunate and demeaning of the Senate.

The issues on the tenders largely revolve around qualification of tenders. In none of these tenders was an issue raised by the losing bidder. Has this Committee now been converted to be the Procurement Regulatory Authority to investigate tenders? Is this Committee going to be pushing the agenda of contractors who lost tenders? It is not acceptable, unless there is almost criminal activity to be shown in the process of evaluation of those tenders.

Let me mention one contract that went over and over; that of Velocity. Again, it is unfortunate, there is no question that those documents relate to one company. I prepared the response of the Governor and I wrote Velocity in all those documents. I actually did not notice that there is a difference in the spelling because it is not the sort of word generally unless you really look and you will read Velocity. That is a normal thing.

These are typical sort of errors that happen. You can see that the critical documents in this process, the tender award, the contract and even the payments to the same company. This insinuation is just interesting, salacious and rumor-based, that has no foundation in law.

Hon. Senators, there are several allegations that were thrown on the Motion and no evidence was presented. There is an allegation that a company was paid Kshs.8 million and it did nothing. No single shred of evidence was presented, it was just thrown there.

There are allegations that were given that the Governor did not travel and 13 trips were listed. It was listed that the Governor did not go for the 13 trips. We have shown that in three of those proposed payments, there was actually nothing like that. The County Assembly just created them. You remember when I asked for evidence they said that the Chief Officer will come and present that evidence. Hon. Senators, did you hear evidence of that money? You did not hear it because it does not exist.

On the eight trips that the Governor travelled, we offered to give you the original passport so that you can see it. The reason it is being asked for is to create a narrative which is very unfortunate for this Committee.

There were issues raised about the Kirinyaga Coffee. These issues were not raised in this Motion. If these issues had been raised, we would have presented a whole dossier about how it happened that the Governor decided at the last minute to cancel the trip. That was because it was going to be a loss for the county because they found out at the last minute that their partners in the US expected the county to spend money on that launch.

Initially, the assumption had been that they would run the cost. Therefore, at the last minute, the Governor had to make a decision. Do you continue to expend more or do you cancel even if it inconveniences people?

If that had been raised in the beginning, we would have presented bundles of evidence to show. However, this was the essence of ambush. Present evidence at the last minute so that it cannot be answered and stand to say” “We have proved that there has been theft.” Which theft? Which loss? Which of these contracts has been said not to have been performed, to have been exaggerated for money to have been paid to a third party?

You have sat on impeachment Motions in this Senate. What is the evidence that has been presented to you, by the time you get to the point of making a decision on impeachment? It is not rumors and allegations without evidence.

Hon. Senators, a motor vehicle; how does an allegation like that find itself in an impeachment Motion? This is a vehicle whose budget was approved twice by the same Assembly. The only difference was that money was moved from one account in the county to another one to arrest a crisis caused by the advice of the Controller of Budget (CoB).

There is no allegation that the Governor took any money. It was bought under a framework contract, and yet, it was presented here for salacious reasons to say that money was lost. It is really unfortunate.

For the Kirinyaga Investment Development Authority (KIDA) is the allegation about the payment of salaries. In the documents that we have presented to you, you will see that there is a formal letter from the Salaries and Remuneration Commission (SRC) on how boards and staff are to be paid. It is there in the documents. That sort of allegation still finds itself in the Motion against the Governor.

That is what I am saying about the frivolity of this Motion. It is intended to achieve a political purpose. Even the statements that are made in support of it are not based on law. They are purely intended to achieve a political purpose and it is meant to defame and harass the Governor.

On health, the truth of the matter is that there are challenges in the health sector. That is the reality and that is not unique to Kirinyaga or one county. Some counties have more challenges than others. In respect of Kirinyaga, a strike happened and there were political issues, as evidence was given. The Governor is not the sole player in the process of provision of health services.

I can give you two examples in the current budget, because I think that it was one of the documents that was presented to you, in that process, the money allocated to health has been reduced and given for ward offices. The County Assembly has refused to approve the appointment of members of the County Public Service Board (CPSB). Therefore, the county government cannot employ doctors. That is the crisis. The CPSB has no quorum.

That is the sort of problem that is created by the Assembly and then it is thrown to the Governor.

Evidence on that issue was pushed by people who were clearly pushing an agenda. Even on a simple issue of whether they know each other and whether they work together, they all changed and said they do not when they realized that there will be a problem because they can be seen to be working in conceit. These are people pushing agendas.

Anybody can visit Kirinyaga County any time. We even invite this Committee for two hours to establish whether the story given on dilapidated services is true. It is not.

Finally, we have no problem with the oversight role of the County Assembly. However, if the oversight role and the impeachment is going to be used as an avenue for harassment, bullying and punishing governors because they do not bend over backwards, that is not acceptable.

Hon. Senators, you must not allow it. If there is evidence to show that there has been a breach, we would say that the Senate can exercise its powers as allowed by the Constitution, but it must not be utilized for collateral purposes.

I will yield the last 10 minutes of my presentation to the Governor to make her final comments.

The Governor of Kirinyaga County (Hon. Waiguru): Hon. Senators, allow me to begin by expressing my gratitude to this hon. Committee of Senators for your time and passionate engagement in the various issues raised over the last two days in relation to the matter before us.

You have kept an open mind as we interrogated the evidence brought before you, both in support of the allegations made or in the rebuttal against these allegations. The responsibility now, therefore, lies upon this Committee to determine whether the impeachment Motion was the way to go in addressing the issues raised by the County Assembly.

Hon. Senators, you can, however, having listened to the presentations made by the Assembly, bear me witness that they mainly involved emotional and contradicting witness statements that were neither supported by any evidence nor fully substantiated by facts. Case in point, you heard about the evidence that there was no Kshs115 million contract paid to the Velocity Company neither did they evidence the invoice of Kshs30 million paid passionately alleged by the MCAs in in the impeachment Motion.

You clearly heard of the Kshs10 million claimed to have been sent to my account, Kshs4.6 million was completely fictitious and a non-existent figure which was never sent to my account.

Further, Hon. Senators, you heard that I am alleged to not have gone on two of those trips. The Leader of Majority was actually present in those two trips; even photographs have shown that today.

You heard of the witness claim that our health facilities are dilapidated to the point that all of them have been infested by snakes. This is in contradiction to the national body, the Kenya Medical Practitioners and Dentists Board, and others, who gave the hospital a clean bill of health after we resolved the issue of the health crisis.

She cited the lack of autoclave machines and incinerators which the Members of the County Assembly (MCAs) so graciously allocated budgets for in May last year and were purchased.

Hon. Senators, the County Assembly has also failed to demonstrate to this Committee how a public participation process on the impeachment process was conducted. My lawyers have dispelled the false allegations that formed the basis of the basic of my impeachment. We have seen that they are an affront to the impeachment process as described in the Constitution. The issues raised could have indeed been clarified through routine enquires.

The Assembly has also failed to prove that any of the tenders mentioned in the impeachment Motion were irregularly awarded, or that the county incurred any financial loss as a result of the said awards, let alone proving how the Governor was conferred any personal benefit.

We have been able to table before this Committee evidence on various correspondences between the County Government and the County Assembly, therefore, dispelling the claims that the Executive does not furnish the Assembly with relevant information on implementation.

I reiterate that these kind of falsehoods do not only demean the legislative arm of the County Government, but are proof that the Motion was only seeking to malign my name with an ulterior motive by the MCAs.

The County Assembly even failed to interrogate the public procurement procedures which could have dully informed them that is within the provisions of the law to purchase the Governor's vehicle from the manufacturer that supplies Government vehicles under a framework contract.

Hon. Senators, so far, we have been treated to innuendos and trivialities that do not meet the threshold of gross violation of the Constitution hence meriting an impeachment.

As I sated in the beginning of this hearing, this impeachment Motion has consumed a lot of valuable time that could have been used to work for the Kirinyaga people. The negative impact of this process cannot be underestimated. I, therefore, call upon this Committee to thoroughly scrutinize the evidence submitted here and disregard any unsubstantiated claims.

The precedent that this Committee will set will be a point of reference in future impeachment processes. It is, therefore, expected that the decisions taken by this Committee will not come back to haunt this House.

All eyes are on this Committee to make decisions that are beyond reproach and will stand the test of time. I urge the Senate to ensure that the outcome of the proceedings will serve

justice to the residents of Kirinyaga County, who deserve every effort to of the elected leaders in accomplishing the development agenda of the county.

Hon. Senators, in conclusion, seeing that there is no evidence to substantiate the allegations brought against me, allow me to tell you why I am truly here. As the elected Governor of my County, some national issues have fallen on my shoulders, particularly those pertaining to the equitable and fair share of national resources to the people of Kirinyaga. This has meant taking political decisions, including to support His Excellency the President, in his Building Bridges Initiative (BBI), which I believe is in the interest if Kirinyaga and all of Kenya.

Hon. Senators, my stand has made me enemies with people of deep influence and pockets, inside and outside my county, which is a matter of public record, resulting in endless attacks on my person because for my support for the BBI and the handshake. However, in the words of the famous Pan-Africanist, Frantz Fanon, I have no regrets. He said that each generation must out of relative obscurity discover its mission, fulfill it, or betray it.

To those that have conspired with those forces to wrongly impeach me, I forgive you. As I close, I say to you in the words of the great American female poet, Maya Angelou, Kirinyaga people will forget what you said. They will even forget what you did, but they will never forget how you made them feel. Neither will I. That notwithstanding, I forgive you. Outside conspiracies visited us with the help of a few local leaders and brought shame and humiliation to us at home. I pray that it should never be allowed to happen again.

Thank you.

The Chairperson (Sen. Malalah): Good enough.

Hon. Senators, ladies and gentlemen, that brings us to a close of this session and to the entire case. I want to take this opportunity to, first of all, thank the parties lead by both legal teams for eloquently arguing out their case.

I also want to take this opportunity to thank the MCAs for undertaking their duties and the consideration of their mandate as enshrined in the Constitution, and further enshrined in the County Government Act.

I also want to take this opportunity to thank all the witnesses who appeared before this Committee for performing their civic duty. We have heard both parties and I must admit with all honesty that we have drilled deep into the matter before us. We have extracted enough content and information that will guide this Committee to come up with a concrete determination that will be referred to by the coming generations.

There has been a wide speculation that this Committee has a predetermined outcome. I want to state clearly that I have a lot of confidence in my Members. In this Committee, we have a galaxy of professions and professionals. We have doctors like Sen (Dr.) Mbiti, whose integrity cannot be questioned. We have a retired Judge, my good friend, Sen. Madzayo. We have lawyers like Sen. Pareno. We have former MCAs like Sen. Kwamboka and myself, proudly a former MCA. We have seasoned politicians like Sen.

Mwangi. We have farmers like Sen. Mpaayei. We have career women like Sen. Mugo and Sen. Halake. We have fishermen, like Sen. M. Kajwang'. We also have footballers like Sen. Loitiptip. We play in the same football team. He is my captain. I have a lot of confidence that these are men of integrity and that we are going to give a just ruling.

I want to assure the public that we are going to retreat and make a fair ruling based on the evidence that has been adduced before us. We are not going to use information fished out of the presentations that we had. We are going to stick to the evidence that has been adduced before us.

As you have all seen, the Speaker of the Senate has already gazetted that on there will be a special sitting on Friday afternoon at 2.30 p.m. at which we will be expected to table the report. Therefore, I would like to invite all Kenyans to anticipate a fair ruling on Friday afternoon. I believe that by then, we should have come up with the ruling.

Lastly, I want to appreciate the media in general who have gone out of their way for the last two days to ensure that these proceedings are covered live. I feel guilty that my Committee did not offer lunch to the media personnel. I want to assure them that the next time I Chair such a committee; I will provide lunch.

You must forgive me. We kept you here for two days and we did not provide you with basic meals. I undertake that correction as the Chairperson. We will be making a recommendation that it is important for us to acknowledge the fact that the media personnel are part and parcel of this proceeding. Hon. Members, I thank you for your commitment and patience.

Finally, I want to ask God to give this Committee overwhelming wisdom as we retreat to write our report. I believe that our good Lord has heard our prayers.

Thank you, and God bless you.

The Committee adjourned at 6.45 p.m.