

**EVIDENCE TAKEN BEFORE THE SENATE SPECIAL COMMITTEE
INVESTIGATING THE PROPOSED REMOVAL FROM OFFICE BY
IMPEACHMENT OF THE GOVERNOR OF EMBU COUNTY HELD ON
FRIDAY, 9TH MAY, 2014 AT THE AMPITHEATRE, KENYATTA
INTERNATIONAL CONVENTION CENTRE AT 10.35 A.M.**

[The Chairperson - Sen. (Dr.) Khalwale]

SENATORS PRESENT

Sen. Kipchumba Murkomen	-	Vice Chairperson
Sen. Kimani Wamatangi		Sen. Zipporah Kittony
Sen. (Prof.) Wilfred Lesan		Sen. Naisula Lesuuda
Sen. (Eng.) Hargura Godana		Sen. James Orengo
Sen. Judith Sijeny		

SECRETARIAT

Ms. Eunice Gichangi	-	Director, Legal Services, Senate
Mr. Anthony Njoroge	-	Director, Litigation & Compliance
Mr. Njenga Ruge	-	Deputy Director, Legislative and Procedural Services, Senate
Mr. Mary Chesire	-	Deputy Director, Committee Services, Senate
Maj. (Rtd.) Samson Sorobit	-	Chief Serjeant-At-Arms, Senate

IN ATTENDANCE

GOVERNOR'S TEAM

Mr. Wilfred Nyamu	-	Advocate
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COUNTY ASSEMBLY TEAM

Hon. Kariuki Mate	-	The Speaker, Embu County Assembly
Mr. George Ng'ang'a Mbugua	-	Advocate
Mr. Charles Njenga	-	Advocate

(The Committee convened at 10.35 a.m.)

Prayers

*(The Chairperson (Sen. (Dr.) Khalwale) introduced himself
and other Members of the Committee)*

The Chairperson (Sen. (Dr.) Khalwale): Ladies and gentlemen, at this time, we must remind ourselves that this Special Committee on the proposed removal from Office of the Governor of Embu County was established on Tuesday, 6th May, 2014 by a resolution of the Senate. This Special Committee is provided for under Section 33(4) of the County Governments Act, 2012, and Standing Order No.68(2) of the Senate Standing Orders. I wish to remind you that this Special Committee is required to investigate the matter and report to the Senate within ten days whether it finds the particulars of those allegations against the Governor to have been substantiated.

Hon. Senators, ladies and gentlemen, as the hon. Speaker of the Senate observed in his Communication to the Senate on Tuesday, 6th May, 2014, the hearing of the charges for the proposed removal from office of a Governor is one of the most important and also most solemn functions of the Senate under the Constitution of Kenya.

The hon. Speaker, therefore, urged that the Senate exercises the highest level of responsibility and circumspection on this matter in plenary and in this Special Committee Sitting. The Special Committee, therefore, wishes to emphasize that it is cognizant of the gravity of the matter with which it is seized and that it shall accord all the parties to these proceedings a full and fair hearing.

Hon. Members, ladies and gentlemen, it is important to observe the strict statutory timeline attached to the discharge of the mandate of the Special Committee. The Special Committee, therefore, urges all parties to effectively use the time allocated to them so as to ensure that the Committee concludes its work within the required time.

Hon. Senators, it is, therefore, my special privilege to invite all of you so that we proceed to hear the charges against Martin Nyaga Wambora, the Governor for the County of Embu. I will now request Sen. Onesmus Kipchumba Murkomen, the Senator for Elgeyo-Marakwet, who is the Vice Chairperson of this Special Committee to now take us through the rules of procedure.

The Vice Chairperson (Sen. Murkomen): Thank you, Mr. Chairman, Sir. The following are the rules of procedure for investigations into the proposed removal from Office of the Governor.

(1) Upon convening of a meeting of the Senate to hear the charges against the Governor, pursuant to Article 181 of the Constitution, Section 33 of the County Governments Act, No.17 of 2012, and Standing Order No.68, the County Assembly Speaker shall report the resolution of the County Assembly to the Senate.

(2) The Senate may, pursuant to Section 33(3)(b) of the County Governments Act and Standing Order 68(1)(b), by resolution, appoint a Special Committee to-

- (a) investigate the matter; and
- (b) report to the Senate within ten days on whether it finds the particulars of the allegations against the Governor to have been substantiated.

(3) Where the Senate does not establish a special committee, the Senate shall proceed to investigate and consider the matter in plenary and rules 4 to 33 shall, with necessary modification, apply to the investigation of the Senate.

(4) Where a special committee, like in the current instance, is appointed, the Committee shall, within twenty-four hours of its appointment-

(a) elect a Chairperson and a Vice Chairperson from amongst its Members, which is already done;

(b) appoint a date for the commencement of the hearing of evidence for the purposes of investigation.

(5) Upon the appointment of a date for the commencement of the hearing of the evidence for the purpose of investigation, the Committee shall-

(a) invite the Governor to appear and to be represented before the Special Committee during the investigations; and,

(b) notify the county assembly of the date of commencement of the investigation and invite the Assembly to designate the Members of the Assembly, being not more than three members, if any, who shall appear before the Committee to represent the Assembly during the investigations.

(6) An invitation under Rule 5 shall be effected by personal service.

(7) Where the Governor chooses to appear before the Committee, the Governor shall within three days of invitation under Rule 5, on a date specified by the Committee, file an answer to the charges to the Office of the Clerk to the Senate in which the Governor shall set out-

(a) the Governor's response to particulars of the allegation;

(b) how the Governor proposes to appear before the Special Committee; whether in person or by advocate; or in person and advocate;

(c) the names and address of the person to be called as witnesses if any, and a statement by such witness;

(d) and any other evidence to be relied upon..

(8) Where the County Assembly chooses to appear before the Committee, the Assembly shall, within three days of the invitation under Rule 5, file with the Office of the Clerk of Senate documentation-

(a) designating the members, if any, who shall attend and represent the Assembly in the proceedings before the Special Committee;

(b) indicating the mode of appearance by members before the Special Committee; whether in person, by advocate, or in person and by advocate;

- (c) indicating the names and addresses of the persons to be called as witnesses, if any, and a statement by each such witness;
- (d) specifying any other evidence to be relied upon.

(9) The Clerk of the Senate shall furnish each party with the documents filed by the other parties under Rule 7 or 8.

(10) The Committee may, at the request of the County Assembly or the Governor, invite or summon any person to appear and give evidence before the Committee.

(11) Where the County Assembly or the Governor chooses not to appear before the Committee, that fact shall be recorded by the Committee and the Committee shall proceed with its investigation without further reference to the Assembly or the Governor, but the Committee may, for exceptional reasons to be recorded, permit a later appearance before the Committee by the Assembly or the Governor.

(12) The hearing of the evidence, once it commences, shall proceed and continue on consecutive days until the Committee concludes the hearing of the matter.

(13) The Committee shall, before the commencement of the hearing of the evidence, allocate time for hearing of the case by the Governor and the case by the County Assembly.

(14) Any preliminary question or issue raised by the County Assembly or the Governor shall be argued for not for more than 30 minutes, unless the Committee otherwise directs.

(15) The Clerk shall administer the oath of affirmation in the manner and form prescribed in the schedule to every person who appears to give evidence before the Committee before such a person gives such evidence.

(16) At the commencement of the hearing before the Committee, the Clerk shall read out the particulars of the allegations.

(17) After the particulars of the allegations have been read out, the Committee shall allow an opening statement to be made on behalf of the County Assembly and on behalf of the Governor.

(18) An opening statement under Rule 17 shall be for not more than forty minutes, unless the Committee otherwise resolves.

(19) After the opening statement has been made, the witnesses on the part of the County Assembly, if any, shall present the evidence of the Assembly.

(20) In presenting its evidence, the Assembly shall not introduce any new evidence that was not part of the allegations against the Governor by the County Assembly as forwarded by the Speaker of the County Assembly to the Speaker of the Senate.

(21) After all the witnesses on the part of the County Assembly have presented their evidence; the witnesses on the part of the Governor shall present their evidence.

(22) Each of the witnesses shall be led in evidence, cross-examined and, where necessary and only for purposes of clarification of issues that may have arisen in cross-examination, a witness may be re-examined.

(23) A Member of the Committee may put a question to any of the witnesses before the Committee.

(24) No person other than-

- (a) the Governor;
- (b) a person who has been called as witness by the County Assembly or by the Governor; and,
- (c) a person who is invited or summoned by the Committee to appear and give evidence, shall give evidence before the Committee.

(25) After all the witnesses have given their evidence, the Committee shall allow a closing statement to be made on behalf of the County Assembly and, thereafter, on behalf of the Governor.

(26) A closing statement made under Rule 25 shall be for not more than thirty minutes unless the Committee otherwise resolves.

(27) After the closing statements have been made, the hearing shall conclude and the Committee shall proceed to prepare and conclude its report.

(28) Pursuant to Section 33(4)(b) of the County Governments Act and Standing Order 66(2)(b), the Committee shall, within ten days table its report in the Senate in which it will indicate whether it finds the particulars of the indications against the Governor to have been substantiated.

(29) The proceedings of the Committee for the hearing of evidence shall be held in public, but the deliberations of the Committee shall be held in camera.

(30) The quorum of the proceedings of the Committee shall be seven of its Members at any given time.

(31) Except as otherwise provided in these Rules, the Standing Orders shall apply.

(32) Where on a particular question or matter, including, but not limited to questions of evidence, materiality, relevancy, competency or admissibility of evidence and any questions consequential or incidental thereto, no provision has been made in the Standing

Orders or in these Rules, the Chairperson of the Committee shall rule on the question or matter and the ruling of the Chairperson shall be final.

(33) These rules shall, with necessary modifications, apply to the process of removal of any other state or public officer in respect of whom the Senate has jurisdiction.

There is also a Schedule which is the oath of affirmation attached therein.

Thank you Mr. Chairman, Sir.

The Chairperson (Sen. (Dr.) Khalwale): You are welcome. Embu County Assembly, do you have any issues on those rules?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, we request that we be furnished with an abstract of the rules for reference and also, since I have heard the Vice Chairman make reference to the Standing Orders, probably, if we could be furnished with the same as a working document.

The Chairperson (Sen. (Dr.) Khalwale): It is so directed. We now wish to proceed to the substance of the matter and we would like to be led by the office of the Clerk. We will invite Madam Gichangi to read out the charges against the Governor of Embu.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, before that is done, I wish to make an application since this would be the right time. I suppose.

The Chairperson (Sen. (Dr.) Khalwale): I do not know why you are jumping ahead of yourself; making an application against what? Let the charges be read out first. Even the hon. Members do not know these charges. It is only the County Assembly of Embu that knows the charges. So we would like the office of the Clerk to now read the charges to the Members, to you and the members of the public. Then when you make your application, it is very clear to all that it is those particular charges that you are making the application against.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, the reason I have risen at this particular juncture is because as it is, once the charges are read, it is like the proceedings have commenced. I would expect that they commence with the reading of the charges and, probably, this would be the right time for me to make the kind of application that I wish to make before the charges are read.

The Chairperson (Sen. (Dr.) Khalwale): We would like to know the application you are making; is it in respect of these particular charges?

Mr. Wilfred Nyamu: It is in respect to these proceedings.

The Chairperson (Sen. (Dr.) Khalwale): If it is in respect of these proceedings and because these proceedings are as a result of those charges, then you will wait for the

charges to be clear to us, then you make your application. Even if you want whatever amount of time for the application, it will be granted.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, in my opinion, proceedings will commence from the reading of the charges and where I wish to make an application prior to the commencement of our proceedings, with due respect, the right time would be for me to make that application before the charges are read.

The Chairperson (Sen. (Dr.) Khalwale): Mr. Nyamu, because of the respect I have for you and you have for the Constitution of Kenya, you are reminded that these proceedings commenced on the 6th of May in the plenary of the whole Senate when the Committee was constituted. That was the first step. The second step was; we went on and held a meeting that led to the election of the Chairperson and the Vice Chairperson. We have now come to the third stage of those proceedings. So, we are actually in the middle of the proceedings. It does not matter whether you raise what you are raising after one hour from now or two hours; it will not kill you. What we can assure you of is that we will consider whatever application you make with the fairness it deserves.

Mr. Wilfred Nyamu: Guided, Mr. Chairman, Sir.

The Chairperson (Sen. (Dr.) Khalwale): Thank you, Mr. Nyamu. We may now proceed.

Ms. Eunice Gichangi: Thank you, Mr. Chairman, Sir. Hon. Senators, ladies and gentlemen, on 30th April 2014, the Speaker of the Senate received from the Speaker of the County Assembly of Embu a letter communicating the resolution of the County Assembly of Embu that the Governor of Embu County be removed from office for gross violation of the Public Procurement and Disposal Act, 2005, the Public Finance Management Act, 2012 and the Constitution of Kenya, 2010. The particulars of allegations against the Governor of Embu County are as follows:-

1. Gross Violation of the Public Procurement and Disposal Act, 2005

(a) Procurement of maize seeds for distribution to farmers.

On 25th October, 2013, the office of the Governor authorized the procurement of maize seeds of variety and quantity other than those requisitioned by the Director of Agriculture, the expert of the concerned department. Whereas the expert requisitioned for two varieties, mainly KDV1 and KDV6, the maize variety procured by the office of the Governor was DK8031 in violation of the provisions of Sections 26 and 34 of the Public Procurement and Disposal Act, 2005. The procured maize seeds of variety DK8031 either did not germinate or recorded a germination rate of below 20 per cent resulting in untold losses to maize farmers of Embu County and to date, the Governor has not taken any steps to mitigate losses to Governors for the total maize crop failure occasioned by his actions.

Whereas authority of the purported tender committee to procure maize seeds was granted on 27th November 2013, the distribution exercise carried out by the Governor of Embu County personally commenced on 1st October 2013, nearly two months before the alleged procurement was done in blatant violation of the procurement procedures laid down under Section 26 of the Public Procurement and Disposal Act, 2005. Indeed, the form and nature of the purported minutes of the purported tender committee point to an attempt to regularize an otherwise irregular process.

The procured maize was delivered by the supplier directly to farmers and was not entered into any store records to ascertain its quality and quantity through inspection, in blatant violation of Section 26 of the Public Procurement and Disposal Act, 2005.

(b) Procurement of works for the face lifting of Embu Stadium

The Governor through his office initiated the works to facelift the stadium without involving the user department and other technical departments in total violation of Section 26(1) and Section 26 (3)(c) of the Public Procurement and Disposal Act, 2005. The head of the user department is on record stating that she was not involved at any part in the procurement process.

The Governor, through his office, received Bills of Quantities for the face lifting of the stadium on 30th December, 2013 while the tender of the works was floated on 22nd October, 2013, a clear violation of Section 26 of the Public Procurement and Disposal Act, 2005. Indeed, the Bills of Quantities appeared to be an effort to regularize an otherwise irregular procurement process. The Governor, through his office, initiated the procurement of works before ascertaining availability of sufficient funds in violation of Sections 26(3)(a) and 26 of the Public Procurement and Disposal Act, 2005, an attempt to regularize this violation through a supplementary budget was defeated by the absence of a justification of circumstances under which a project whose approved budget was Kshs8 million was increased to Kshs50 million. The Bills of Quantities forwarded to the County Assembly on 31st December 2013, was an effort at that justification.

(c) Procurement of Motor Vehicles

The Governor of Embu County directly procured the purchase of various motor vehicles from specific dealers for specified amounts of money without any reference to the County Tender Committee in blatant violation of Sections 26 (1)(2)(3) and (4) of the Public Procurement and Disposal Act.

(d) Violations of the Public Procurement and Disposal Act, 2005 by the County Executive of Embu under the Governor through his office set out in the report of the Auditor-General for the period 3rd March, 2013 to 30th June, 2013.

(i) Irregular award of contracts for repair works at the town hall and probation offices in violation of Section 27 of the Public Procurement and Disposal Act, 2005

(ii) Unwarranted disqualification of interested bidders in violation of Section 66 (3)(b) of the Public Procurement and Disposal Act, 2005.

(iii) Favoritism in consideration for responsiveness of tenders during evaluation which is against the objectives enshrined under Section 2 of the Public Procurement and Disposal Act.

(iv) Failure to conduct financial and technical evaluation of contracts in violation of Section 16 of the Public Procurement Act Regulations.

(v) Irregular reallocation of funds for works not included in Bills of Quantities contrary to 26(1)(2) of the Public Procurement and Disposal Act.

(vi) Lack of formal contracts for such as in contracts Ref: EBU/COUNT/07/013, Ref: EBU/COUNT/08/2012-13 and Ref: EBU/COUNT/09/2012-13 as a violation of Section 68 of the Public Procurement and Disposal Act.

(vii) Use of unregistered sub-contractors such as during undertaking of works related to electrical installation, CCTV and plumbing works all valued at Kshs2,402,500 in violation of Section 31 of the Public Procurement Act.

(viii) Irregular procurement method in the contract for the refurbishment of Embu County Council Hall to house the County Assembly.

(ix) Irregular purchase and registration of a motor vehicle Registration No.KBU 683T, in that the purchase price exceeded the budgeted amount in clear violation of Section 26(2)(a) of the Public Procurement and Disposal Act.

(x) Procurement of fuel was found to be irregular with no store records maintained to show receipt and usage of fuel in violation of Regulation 17 of the Public Procurement and Disposal Act.

(e) Non-existence of a tender committee for the county executive.

At the time of procuring works for the face lifting of the Embu Stadium, the office of the Governor was not able to demonstrate that there existed a tender committee appointed pursuant to the provisions of Section 26(4) of the Public Procurement and Disposal Act, 2005 and Regulation 7 of the Regulations.

A recommendation by the County Assembly that members of the Tender Committee that procured seeds for distribution to farmers be interdicted could not be implemented because the implementing body could not find record of any appointment of the persons purported to be members of the Tender Committee.

2. Gross violation of the Public Finance Management Act, 2012

(a) The irregular procurement of maize seeds for distribution to farmers in which maize seeds other than those requisitioned by technical officers were procured by the office of the Governor. The procurement was not authorized by a tender committee and store records were not maintained. This demonstrated a serious violation of the Public Procurement and Management Act.

(b) The irregular procurement of works for the face lifting of Embu Stadium in which tendering was done without the input of technical departments, without an appointed tender committee and without ascertaining availability of funds, all demonstrated a serious violation of Section 121 of the Public Finance Management Act.

(c) The action of the Governor to direct the purchase of motor vehicles in complete disregard of the procurement law and applicable regulations was a blatant violation of Section 121 of the Public Finance Management Act.

(d) The Governor has willfully, calculatedly presided over a county government that lacked tender committees in an effort to defeat accountability and prudence in application of public funds as evidenced in the report of the County Public Service Board which indicated that there was no officer appointed to any tender committee during the procurement of maize seeds and procurement of works for rehabilitation of the stadium.

(e) The Annual Report of the Auditor-General on the accounts of the County Government for the period March to June 2013 unearthed gross violation of laws regulating prudent management of funds.

(f) Section 162 of the Public Finance Management Act has placed an obligation on any county public officer to ensure prudent management of resources, and where the County Assembly demonstrated a breach of this obligation and made certain remedial recommendations, including interdiction of county officers, to facilitate investigations, no action was taken.

3. Gross violation of the Constitution of Kenya

(a) Article 179 (4) of the Constitution provides that the County Governor is the Chief Executive Officer of the county while 179(6) provides that members of the county executive committee are accountable to the Governor for the performance of their functions and exercise of their powers. In consequence thereof, the Governor is culpable for the gross violation of Article 227 of the Constitution of Kenya 2010 by:-

(i) Failing and or neglecting to ensure that contacts for procuring maize seeds were done in accordance with a system that is fair, equitable, transparent and competitive.

(ii) Neglecting to follow the statutory procedures in procuring services for the face lifting of Embu Stadium.

(iii) Blatantly violating statutory procedures by personally ordering the purchase of motor vehicles in order to defeat transparency and accountability.

(iv) Deliberately operating a county government that applied funds to goods, services and works without an appointed tender committee.

(v) Failing to provide information and act on recommendations made by the Auditor-General when requested to do so.

(b) Article 10(2)(c) of the Constitution of Kenya pronounces good governance, integrity, transparency and accountability as among the national values and principles of governance to which every state officer or public officer is bound. The Governor of Embu has violated this by:

(i) Failing to ensure adherence to laws and regulations that aid transparent and accountable use of resources.

(ii) Defending without any justifiable basis, officers who have been found to have been in violation of the principles of good governance.

(iii) Disregard for the express provisions of Article 232 of the Constitution on the values and principles of public service.

Thank you.

The Chairperson (Sen. (Dr.) Khalwale): Hon. Members, you have now heard the particular charges. I think before we move on to allocate time for various parties, it is important that I give this opportunity to the advocate for the Governor to be able to be heard in his application.

Mr. Wilfred Nyamu: May it please the Chairman, Sir, and Members of the Special Committee of the Senate, on behalf of the Governor of Embu, Hon. Martin Nyaga Wambora, I wish to make an application in this regard.

The Chairperson (Sen. (Dr.) Khalwale): Mr. Nyamu, so that you know how much time you have, preliminaries issues were supposed to be sorted out, according to these rules, in 30 minutes. So try and achieve what you want within 10 minutes so that in case the County Assembly has got issues, again, they enjoy their rightful time and also Committee Members so that within 30 minutes we will be done with your application. You can now proceed.

Mr. Wilfred Nyamu: Hon. Members, the rules provide that service of invitation shall be personally effected on the Governor. The Governor was actually served by advertisement in the newspaper which advertisement was carried in yesterday's *Daily Nation* newspaper for appearance today where he was required by the aforesaid advertisement to file his response and any documents that he may be relying upon. It is within the Governor's rights to seek representation by advocate and to adequately prepare his response.

Hon. Members, it was not possible for the Governor to file his response as required within the time that was indicated in the advertisement. For that matter, he requires more time to respond given the nature of allegations that have been made against him and the issues that have been raised in those charges and also the nature of these proceedings and their implication. We propose and we are asked to re-propose that the Governor be given up to Monday to file his response to the Special Committee.

As it is, I am making my application and, obviously, it will be upon the Committee to deliberate and ascertain whether it will grant that application. As it is, the Committee was given ten days. I have seen the timetable where it is indicated that the Committee endeavours to proceed today and tomorrow as per its schedule. I am actually requesting the Committee to allow us to put our response on behalf of the Governor by Monday morning and then we can be heard on Monday and Tuesday, if that will be warranted. As we are aware, the ten days will actually lapse on the 15th since this Committee was appointed on the 6th.

It is imperative and it is only fair on the Governor that he is given the opportunity to collect all the data, which right is actually prescribed in the Constitution; he ought to be given reasonable opportunity to prepare for these proceedings. Nobody will be prejudiced by that particular order, if granted; it will only be the Governor who will be prejudiced by not being granted this adjournment.

That is all.

The Chairperson (Sen. (Dr.) Khalwale): Thank you very much. Yes, I do not know whether the County Assembly knows what has been happening about service. So, should we not let them know what has happened about the service that Nyamu is talking about and then they can respond in light of what they have heard before we make a decision?

Hon. Members, it is important that you realize that the intention of Nyamu is to make sure that he is given enough time so as to collect documents and to prepare a response; that is not asking for too much. But the reason he is doing that is because he is saying that they were not served personally; that they heard about it through the newspapers. So, I would like to make a communication on the process of serving that has taken place.

(The Chairperson consulted other Members of the Committee)

Okay. I think we want to consult further. But before we consult, we would like to hear the County Assembly of Embu. Mr. Nyamu, I want to thank you for coming and making that particular application.

Proceed, County Assembly of Embu.

Mr. George Ng'ang'a: Thank you, Mr. Chairman, Sir. All we can say is that the County Assembly and the Speaker were served with the summons or with the invitations to appear on the 7th of May in their offices. That particular invitation was presented to us, as

the advocates, yesterday, 8th of May. Being cognizant of the process before us, we were able to file a response or a reply yesterday evening. But on the matter of service upon the Governor, that is entirely out of our hands. We just leave it entirely to the Committee to decide.

The Chairperson (Sen. (Dr.) Khalwale): Yes, Mr. Nyamu, have you heard the County Assembly of Embu?

Mr. Wilfred Nyamu: Yes, I have heard them, Mr. Chairman, Sir. May I respond?

The Chairperson (Sen. (Dr.) Khalwale): Yes, proceed.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, as it is, by the time the County Assembly was actually initiating its proceedings culminating in the resolution that was taken to the Senate, it had already adequately prepared its charges. These charges originate from the County Assembly. As such, it did not require as much time, unlike the Governor who is presented with charges that he has to prepare and appear before the Special Committee of the Senate while prepared. So with that now, looking at both sides, it would not be expected of the Governor to have prepared himself within the time that the County Assembly did, owing to the fact that for the Governor, it is a response. For the County Assembly of Embu, it was a case of only bringing in some submissions.

So, Mr. Chairman, Sir, we urge for consideration on that basis.

The Chairperson (Sen. (Dr.) Khalwale): Hon. Members, I see you are very keen on contributing to this matter, but may I request you that this is technical and there is information which I have that I have not shared with you. So, I will call for a break of 15 minutes for all of us to have a cup of tea, including the media. Then after that time, we will come back and make a decision on that.

Sen. Wamatangi, are you on a point of order?

Sen. Wamatangi: Mr. Chairman, Sir, mine is just a question. I wanted to ask a question that would also help us in regard to what the counsel is asking for because he has told us that the Governor required time to prepare himself.

Mr. Chairman, Sir, in yesterday's press, after the service which was still in the press, there was a response by the Governor to these charges via a press statement that he had made. So, I just want the advocate to clarify; the response that was by insinuation, I believe, against these charges in the press statement, was it different from the preparation that you require?

Mr. Wilfred Nyamu: May I respond, Mr. Chairman, Sir?

The Chairperson (Sen. (Dr.) Khalwale): We are caught up in a difficult one. This is why I was calling it a technicality. May I know, Sen. Kimani, was it an advert or was it a report?

Sen. Wamatangi: Mr. Chairman, Sir, in yesterday's press and the day before, there was a full page statement or report responding to these charges---

The Chairperson (Sen. (Dr.) Khalwale): But was it an advertisement or was it newspaper reporting?

Sen. Wamatangi: Mr. Chairman, Sir, well, it was a paid up advertisement by the Governor, which he had signed. He responded sequentially to each of these charges; refuted all those allegations. That was in yesterday's newspapers. So, my question is; if the question right now is that the Governor was unprepared, and the advocate has told us that, indeed, they got service via the media, which charges were those that the Governor had responded to in sequence in all the dailies?

Mr. Wilfred Nyamu: Mr. Chairman, Sir---

The Chairperson (Sen. (Dr.) Khalwale): Order, Mr. Nyamu! Because this Committee and, therefore, the Senate cannot proceed on the strength of media reports, we are retreating for the next 15 minutes during which we will establish whether yours was a paid for advertisement and, therefore, which is admissible; or whether it was merely newspaper reporting. When we come back, we will make that decision. We shall allow you to respond accordingly before we make our ruling.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, it will be prejudicial to the Governor if I do not respond to what he has said now before that ruling is made. I have not even seen the purported advertisement and whether it will be sufficient for these proceedings; and whether this Special Committee can actually, for whatever purposes they deemed to have been responded to in terms of the media altercations or press releases.

The Chairperson (Sen. (Dr.) Khalwale): Very well! I want you to understand me, Mr. Nyamu. What I am saying is that as far as we are concerned technically, the information he is referring to in the newspapers, we do not know. So, until we see it to ascertain that it is not the usual media reporting, we cannot challenge you. But we will challenge you before we make our ruling. We will give you a copy of that advertisement if, indeed, it is there. So, just keep your cool, enjoy your cup of tea and you will have ample time.

Mr. Charles Njenga: Mr. Chairman, Sir, with your kind permission, before the Committee retreats to consult, there is something new that my learned friend has raised as he was responding to the observations by Mr. Njenga. This is just for record purposes. The Governor is not even aware and has not even seen the nature of the charges that he is facing. I just thought, for record purposes, because it is important that this was served on the Governor and that constitutes all the documents that are to be relied on for purposes of this investigation. They were served on the 24th of April, 2014, by the County

Assembly. So, I just want to correct the impression that he has no idea or he does not know. That letter is on record. As a matter of fact, it is on page one of the documents that were forwarded to the Speaker of the Senate, just for record.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, that may call for my response.

The Chairperson (Sen. (Dr.) Khalwale): Order! Order! That is well taken note of. It is important to do so. Mr. Nyamu, you want to comment something on that?

Mr. Wilfred Nyamu: You see, Mr. Chairman, Sir, and hon. Members, the proceedings before the Senate are actually proceedings that are like fresh proceedings, because this is what has been served upon the Senate. When the Senate was actually presented with the resolution, the same was not presented to the Governor. So, it cannot just be assumed that the Governor got the same. I have just got this bundle right now. So, basically, where was I to get those instructions and know that it is the same things? I have not even gone through it and my client has not seen it. All the documents that are relied upon have actually just been served upon us. It cannot be assumed that this constitutes what the Governor knew.

The Vice Chairperson (Sen. Murkomen): Counsel, just so that we do not go wrong, is the Governor aware that the County Assembly passed a Motion impeaching him? Because what the counsel is saying is that the charges were served on him before the proceedings took place in the County Assembly. So, he is saying that it is not a new thing altogether. Even if I go further, he is saying that the charges remain the same ones that were served on him before the County Assembly took its proceedings.

Mr. Wilfred Nyamu: Yes, honourable Vice Chairman. You notice that the advertisement that was carried yesterday did not have the charges; it referred to the charges and said that they were attached. So, that now, as it is, I have to confer with my client as to whether the contents of the charges and the particulars are the same as the charges and particulars as served upon him prior to the commencement of the proceedings before the County Assembly. He is seeing everything for the first time here. He has to ascertain as to whether these are, indeed, the charges and particulars that were served upon him. It cannot just be assumed.

The Chairperson (Sen. (Dr.) Khalwale): Thank you. Hon. Members, I can see that you all want to contribute, but let me assure you that the information I am going to give you when we retreat will answer most of these things. But because of your seniority, proceed, Sen. Orenge.

Sen. Orenge: Mr. Chairman, Sir, I just have one question. Do I understand your application to be confined to the question of getting reasonable time to file a response?

Mr. Wilfred Nyamu: Yes, senior counsel and hon. Senator. We are only requesting for reasonable time from now to file our response with any necessary documents.

The Chairperson (Sen. (Dr.) Khalwale): Thank you. We will now take a 15 minute break.

(The Committee adjourned temporarily for 15 minutes)

(The Committee resumed at 12.30 p.m.)

The Chairperson (Sen. (Dr.) Khalwale): Hon. Members, I believe all parties are in. Governor, are you ready? County Assembly, are you set?

Before we adjourned, I had said that as soon as we reconvene, we will allow Senators to ventilate a little bit before we make a ruling. However, after consultations, whatever ventilations they wanted to make, we have done it during the consultations. Therefore, we are in a position to direct how things should proceed from now.

Hon. Senators, Ladies and Gentlemen, I wish to hereby communicate the decision of the Special Committee on the application by Mr. Nyamu, the advocate for the Governor of Embu. The Special Committee finds that the Governor was properly served with the invitation to appear before this Committee, today 9th May, 2014. The rules of procedure for investigation into the proposed removal from Office of the Governor provide that the Governor may appear before the Special Committee in person, by advocate or in person together with his advocate. It is quite evident, by the presence of Mr. Nyamu this morning that Governor Wambora has chosen to appear by advocate.

On the request for more time, the Special Committee has taken into account the provisions of Article 50 of the Constitution of Kenya, 2010, on the right to a fair hearing which includes the right to have adequate time and facilities to prepare a defence. This Special Committee has also noted the strict timelines stipulated under Section 33 of the County Governments Act and Standing Order No.66 of the Senate Standing Orders.

That, in light of this and in order to allow the Governor adequate time to prepare his defence, this Special Committee has resolved to adjourn the hearing on this matter to Sunday, 11th May, 2014 at 9.00 a.m. at this same venue. The Governor may file any documentation as set out in the notice to appear with the Office of the Clerk of the Senate on or before Saturday, 10th May, 2014 at 5.00 p.m. We want to direct the Secretariat of the Committee of the Senate to remain open throughout for this purpose.

Mr. Wilfred Nyamu: Most obliged, Mr. Chairman, Sir.

Mr. George Ng'ang'a: Mr. Chairman, Sir, as part of your directions, could you also direct that we be served with such responses immediately they are filed so that by the time we convene again, we have notice of the Governor's case to enable us, in the prosecution of the charges, address any such issues that may arise, so that we do not have an event where we come on Sunday and we have no notice whatsoever on the documents as filed or whatever positions we want to rely on.

The Chairperson (Sen. (Dr.) Khalwale): Your request is quite reasonable. For ease of implementation, we want to direct that you serve those documents to the Office of the Clerk, County Hall, First Floor and the office will also be open to you so that they do not start looking for you wherever you are in Embu. You should come personally and collect them from the Office of the Clerk.

Mr. George Ng'ang'a: That is okay. We can collect them.

Mr. Wilfred Nyamu: We shall act as directed, Mr. Chairman, Sir.

The Chairperson (Sen. (Dr.) Khalwale): That is all.

That brings our session to the end of this session. Thank you everybody. Thank you, the media and the public. We are now adjourned.

The Special Committee adjourned at 12.35 p.m.