
MACHAKOS COUNTY ASSEMBLY**OFFICIAL REPORT****Wednesday, 23rd July, 2014**

The House met at 3.00 p.m.

*[The Speaker (Mr. Mung'ata) in the Chair]***PRAYERS****Hon. Speaker:** Good afternoon honourable members. Proceed Clerk.**MOTION****IMPEACHMENT OF DEPUTY GOVERNOR, MACHAKOS COUNTY****Hon. Speaker:** Proceed with your report, chairperson of ad-hoc committee.

Hon. Kasimu: Thank you Mr. Speaker. Mr. Speaker, Sir, aware that this Hon. Hon. House received a notice of motion which was given on Wednesday the 10th July, 2014, on the impeachment of the Deputy Governor by Hon. Joseph Kalunde, MCA for Mutituni Ward, pursuant to Section 33 (4)(5)(6) of the County Governments Act. This honorable House constituted an *Ad-hoc* Committee consisting of eleven members and four members of staff, whose names appear below to investigate the same:

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| 1. Hon. Wilson Kasimu | - Chairman |
| 2. Hon. Oliver Nzeki | - Vice Chairman |
| 3. Hon. Gedion Kavuu | - Member |
| 4. Hon. Leonard Katela | ” |
| 5. Hon. Alphonse Wambua | ” |
| 6. Hon. Joseph Muli | ” |
| 7. Hon. Raphael Mutuku | ” |
| 8. Hon. Joseph Kalunde | ” |
| 9. Hon. Cecilia Sereka | ” |
| 10. Hon. Veronica Mbithe | ” |
| 11. Hon. Michael Mutua | ” |

In Attendance

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| 1. Ms. Evelyn Kimote | -Snr. Clerk Assistant |
| 2. Mr. Hilary Muthui | -Principal Legal Counsel |
| 3. Mr. Dalmas Masila | -Snr. Research Officer |
| 4. Ms. Cynthia Watuka | -Public Communication Officer |

1. Mr. Speaker Sir, the mandate of the committee was to inquire into the matter and report its findings and recommendations to this house within seven days.
2. The Committee, through the Clerk accorded the Deputy Governor an opportunity to appear before it and respond to the allegations on 14th July 2014. Attached and marked “**Exhibit No. 1**” is the said letter.
3. In order to execute its mandate herein the Committee held several meetings and retreats. With the support of the secretariat staff the Committee also conducted research on the matter at hand.
4. Further Mr. Speaker, the committee received affidavits from 10 County Executive Committee members and 3 Chief Officers the committee also received from the mover of the motion a list of grounds for the removal from office of Bernard Kiala, Deputy Governor, Machakos County which are as follows: -

LIST OF GROUNDS AND PARTICULARS FOR THE REMOVAL FROM OFFICE OF BERNARD KIALA - DEPUTY GOVERNOR - MACHAKOS COUNTY

That; Bernard Kiala, being the Deputy Governor of Machakos County be removed from office by way of impeachment on the grounds whose particulars are stated here below:

Ground 1: Gross violation of the provisions of the Constitution:

Particulars

THAT on various dates between 5th March 2013 and 7th July 2014 he committed the following acts which are in gross violation of the specified provisions of the Constitution of Kenya:

- (i) The Deputy Governor conducted himself in a manner that undermines his position as a member of the Machakos County Executive by variously antagonizing the Governor, other members of the County Executive Committee and other members of the County Government thereby acting contrary to the principles and spirit underpinning collective responsibility for the county executive as contemplated under Article 179 (4) (5) and (6) of the Constitution.

- (ii) He failed to disclose that he had a criminal case pending against him in a court of law contrary to Chapter 6 and Article 10 of the Constitution of Kenya
- (iii) He committed acts which exhibited bias in the appointment of officers within his docket and attempted to influence appointments of members of his extended family contrary to Article 73 (2) (b) of the Constitution.
- (iv) He solicited for money from members of the public to award contracts and for jobs in the County Government contrary to Article 73 of the Constitution.
- (v) He failed to adhere to the values and principles of public service contrary to Article 232 of the Constitution.

**Ground 2: Gross violation of the provisions of various Acts of Parliament
Particulars**

(a) County Governments Act :

THAT on various dates he committed the following acts which are in gross violation of the specified provisions of the County Government Act No. 17 of 2012 among other provisions:

- (i) He failed to supervise the progress of County Projects contrary to Sections 30 and 32 of the County Government Act.

(b) Public Officers Ethics Act:

THAT on various dates you committed the following acts which are in gross violation of the specified provisions of the Public Officers Ethics Act No. 4 of 2003 among other provisions:

- (i) Influencing or attempting to influence the employment of relatives in dockets under him or in other County institutions contrary to Section 17 of the Public Officers Ethics Act.
- (ii) On the 7th July 2014 intentionally and willfully mislead members of the public that his official car had been withdrawn information he knew was not true contrary to Section 19 of the Public Officers Ethics Act.
- (iii) On various instances he conducted himself in a manner that does not maintain public confidence in the integrity of the office of the Deputy Governor contrary to Section 9 of the Public Officers Ethics Act.

(c) National Cohesion and Integration Act No. 12 of 2008:

THAT on various dates he committed the following acts which are in gross violation of to the specified provisions of the National Cohesion and Integration Act No. 12 of 2008 among other provisions:

- (i) He used derogatory language against people from outside Machakos County.
- (ii) Causing to be printed inflammatory leaflets
- (iii) Making inflammatory remarks on social media
- (iv) Uttering ethnically and regionally divisive and defamatory words during public rallies.

(d) Leadership and Integrity Act No. 19 of 2012:

THAT on various dates he committed the following acts which are in gross violation of to the specified provisions of the Leadership and Integrity Act No. 19 of 2012 among other provisions:-

- (i) He used his office to push for Government contracts in various County Departments including trade, health and agriculture to his relatives and friends contrary to Section 10 of the Leadership and Integrity Act.
- (ii) He intimidated his colleagues through SMSes and telephone calls seeking various favours contrary to Section 34 of the Leadership and Integrity Act.

Ground 3:Gross misconduct:

Particulars:

- (i) THAT on various dates he failed to attend County Executive Committee Meetings without good cause.
- (ii) THAT on 7th July 2014 he conducted himself in a manner unbecoming of a public officer by misleading the public that he had been ordered out of a County Executive Committee Meeting, information that he knew was false.
- (iii) THAT on various dates he mislead members of the public that his security has been withdrawn, information he knew was false.
- (iv) THAT on various dates he neglected his duties delegated to him by the Governor.

(v) THAT he has made utterances in public which disclosed information that is confidential to the County Executive Committee.

(vi) THAT he criticized government decisions which he is party to.

Ground 4: Abuse of office:

Particulars

(i) THAT on various dates he attempted to use his office as the Deputy Governor of Machakos to influence the award of a tender to supply drugs by incessantly making telephone calls the County Executive Committee member in charge of Health and Emergency Services.

(ii) He threatened Executive Committee members to be loyal to him purporting that he would protect them once the Governor is impeached.

(iii) He used his office to cause anxiety and tension to investors, private sector professionals and members of the public who are non-Kambas and non-Machakos Kambas.

5. Mr. Speaker Sir, after receiving these documents, the committee met on 11th July 2014 in the conference room and agreed on a course of action to undertake its mandate. The committee held several meetings at various places to discuss the matter where they examined the affidavits and the list of grounds presented by the mover of the motion.

6. Mr. Speaker, the committee resolved to invite a number of County Executive Committee members and Chief Officers to appear before the Committee to give their evidence pursuant to Standing Order no.171 of Machakos County Assembly which states that: *“Committees shall enjoy and exercise all the powers and privileges bestowed on Assembly by the Constitution and statutes, including the power to summon witnesses, receive evidence and to request for and receive papers and documents from the Government and public”*. Attached and marked **“Exhibit No. 2”** is the said letter of invitation.

7. The Committee heard the oral testimony of the following County Executive Committee members and Chief Officers:

- a) Hon. George Kioko Luka -CEC Transport, Roads and Public Works
- b) Hon. Dr. Sunil Kumar Dhall -CEC Trade, Economic Planning and
Industrialization

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| c) Ms Sheilla Mueni Mukunya | -Chief Officer Department of Trade,
Economic planning and Industrialization |
| d) Hon. Ruth Nduku Mutua | -CEC Education, Youth and social Welfare |
| e) Hon. Joshua Nthenge Musili | -CEC Lands, Energy and Natural Resources |
| f) Mr. Collins Sila Kaia | -Chief Officer Department of Education,
Youth and Social Welfare |
| g) Hon. Faith Syokau Wathome | -CEC Tourism and Culture |
| h) Mr. Jackson Musyoka Kala | -Chief Officer Department of Public
Service, Labour and ICT |
| i) Hon. Naomi Mutie | -CEC Health and Emergency Services |
| j) Hon. Elizabeth Nzyoka | -CEC Finance and Revenue Collection |
| k) Hon. Hellen Kiilu | -CEC Decentralized units, Urban areas and
Municipalities |
| l) Hon. Francis Maliti | -CEC Water, Irrigation and Sanitation |
| m) Hon. Lawrence Wambua | -CEC Agriculture, Livestock and Co-operative
Development |

8. Members of the public were also allowed to present their memorandum pertaining to the above case.
9. Mr. Speaker Sir, of the fourteen (14) invited officers, ten (10) appeared before the Committee.
10. The Deputy Governor's Attorney was represented in the hearing by Ms. Celestine Opiyo of Orendo & Co. Advocates pursuant to Standing Order no. 63. However, Ms. Opiyo left shortly after the exercise had begun. It should be noted further that all the witnesses gave their evidence under oath.

Findings

11. Mr. Speaker, Sir, after hearing all the witnesses and after reviewing all the evidence including documentary and electronic evidence the committee set out to establish if the following facts had been substantiated:
- (1) Since his election into office, has the Deputy Governor committed acts which are in gross violation of the provisions of the Constitution of Kenya by conducting himself in a manner that undermines his position as a member of the Machakos County Executive by variously antagonizing the Governor, other members of the County Executive

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Committee and other members of the County Government thereby undermining the principle of collective responsibility that guides the county executive as contemplated under Article 179 (4) (5) and (6) of the Constitution?

- (2) Did the Deputy Governor fail to disclose that he had a criminal case pending against him in a court of law contrary to Chapter 6 and Article 10 of the Constitution of Kenya?
- (3) Has the Deputy Governor committed acts which exhibited bias in the appointment of officers within his docket and attempted to influence appointments of members of his extended family contrary to Article 73 (2) (b) of the Constitution?
- (4) Has the Deputy Governor solicited for money from members of the public to award contracts and for jobs in the County Government contrary to Article 73 of the Constitution?
- (5) Has the Deputy Governor failed to adhere to the values and principles of public service contrary to Article 232 of the Constitution?
- (6) Has the Deputy Governor failed to supervise the progress of County Projects contrary to Sections 30 and 32 of the County Government Act?
- (7) Has the Deputy Governor influenced or attempted to influence the employment of relatives in dockets under him or in other County institutions contrary to Section 17 of the Public Officers Ethics Act?
- (8) On the 7th July 2014 did the Deputy Governor intentionally and willfully mislead members of the public that his official car had been withdrawn information he knew was not true contrary to Section 19 of the Public Officers Ethics Act?
- (9) On various instances the Deputy Governor conduct himself in a manner that does not maintain public confidence in the integrity of the office of the Deputy Governor contrary to Section 9 of the Public Officers Ethics Act?
- (10) On various occasions did the Deputy Governor use derogatory language against people from outside Machakos County? Is there reason to believe that he caused to be printed inflammatory leaflets? Did he at any one time make inflammatory remarks on social media? Has he uttered ethnically, and regionally divisive and defamatory words during public rallies?

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- (11) Did the Deputy Governor use his office to push for Government contracts in various County Departments including trade, health and agriculture to his relatives and friends contrary to Section 10 of the Leadership and Integrity Act?
- (12) Did the Deputy Governor intimidate his colleagues through SMSes and telephone calls seeking various favours contrary to Section 34 of the Leadership and Integrity Act?
- (13) Has the Deputy Governor failed to attend County Executive Committee Meetings without good cause?
- (14) On 7th July 2014 did the Deputy Governor conduct himself in a manner unbecoming of a public officer by misleading the public that he had been ordered out of a County Executive Committee Meeting, information that he knew was false?
- (15) Has the Deputy Governor mislead members of the public that his security has been withdrawn, information he knew was false?
- (16) Has the Deputy Governor neglected his duties delegated to him by the Governor?
- (17) Has the Deputy Governor made utterances in public which disclosed information that is confidential to the County Executive Committee?
- (18) Has the Deputy Governor criticized county government decisions which he is party to?
- (19) Has the Deputy Governor attempted to use his office to influence the award of a tender to supply drugs by incessantly making telephone calls the County Executive Committee member in charge of Health and Emergency Services?
- (20) Did the Deputy Governor threaten Executive Committee members to be loyal to him purporting that he would protect them once the Governor is impeached?
- (21) Has the Deputy Governor used his office to cause anxiety and tension to investors, private sector professionals and members of the public who are non-Kambas and non-Machakos Kambas.

12. After the interrogations the following were the Committee's findings on the specific charges.

GROSS VIOLATION OF THE PROVISIONS OF THE CONSTITUTION

- (1) The Committee received 13 affidavits sworn by Members of the Machakos County Executive Committee (CEC) and Chief Officers. Attached and Marked “**Exhibit No. 3 a - m**” are the said affidavits. All the deponents expressed misgivings about the conduct of the Deputy Governor. The affidavits lend credence to the assertion that the Deputy Governor does not enjoy the confidence and trust of his fellow members of the County Executive Committee. Hon. Faith Syokau Wathome the CEC member for Tourism and Culture depones that owing to the adverse public statements made by the Deputy Governor, she has serious reservations sharing cabinet secrets with him during Cabinet meetings as she is wary that he might share them irresponsibly with other parties. Another case in point is the testimony of Dr. Sunil Kumar Dhull the County Executive Committee Member for Trade, Economic Planning and Industrialization. Dr. Dhull testified that the Deputy Governor walked into his office and requested for cash loan. Dr. Dhull informed the Deputy Governor that he (Dr. Dhull) did not have that the money but only had Kshs. 200,000. Dr. Dhull informed the Deputy Governor that he would lend him the money but in exchange for a postdated cheque. Dr. Dhull testified that although the Deputy Governor later repaid the money it caused him ‘mental anguish’ for his boss to ask for money for personal use from him and that he found it to be unethical.

The Committee was alive to the fact that almost all the CEC members had lost confidence in the Deputy Governor. It is blatantly clear that the Deputy Governor has lost face and value in the eyes of his fellow CEC members.

The upshot of this is that this Committee finds that since his election into office, the Deputy Governor has committed acts which are in gross violation of the provisions of the Constitution of Kenya by conducting himself in a manner that undermines his position as a member of the Machakos County Executive by variously antagonizing the Governor, other members of the County Executive Committee and other members of the County Government thereby undermining collective responsibility for the county executive as contemplated under Article 179 (4) (5) and (6) of the Constitution.

- (2) In the course of the investigations the Committee established that there is pending before a Nairobi Court Case No. 820 of 2005 Republic versus Edwin Benjamin, Benjamin Omula, Johannes Okello and Bernard Muia Tom. The Committee established that the fourth accused Bernard Muia Tom refers to the Machakos Deputy Governor. The Committee deduced that had the Deputy Governor had some explaining to do on the details of this case including the nature of the charges therein, the progress, if the matter

has been concluded, the outcome and a certified copy of the judgment if any. This brings to question his integrity. The Committee had given a chance to the Deputy Governor to clear his name but he failed to do so. In the absence of a certified copy of the judgment in the above case the Committee can only find the Deputy Governor as being in gross violation of chapter 6 and Article 10 of the Constitution and therefore the charge is substantiated.

- (3) The Committee heard the oral evidence and read the affidavit of the Chief Officer in charge of Public Service, Labour & ICT Mr. Jackson Musyoka Kala who works under the direct supervision of the Deputy Governor. He testified that his department had undertaken a staff audit which revealed the Deputy Governor had influenced employment of 14 of his close relatives and friends. Attached and marked “**Exhibit No. - 4**” is the list of relatives and friends of the Deputy Governor who have been appointed into different positions in the County Government. The Committee observed that it would be a big coincidence that all these persons would apply for jobs in the County Government, be shortlisted, interviewed, pass the interviews and be appointed to the respective positions. In conclusion these actions by the Deputy Governor were found to be biased and therefore in gross violation of article 73 (2) (b) of the Constitution.

The Committee also heard from Mr. Kala who testified and stated that the Deputy Governor demanded for unjustifiable payments of allowances to himself and officers under him for working over the weekends. This constitutes behavior that compromises the public and official interests in favour of a personal interest which is grossly contrary to the spirit of Chapter 6 of the Constitution and specifically Article 73 (2) (d) and Article 75. (Affidavit for Mr. Kala is annexed and marked “**Exhibit No. 3 – b**”)

- (4) On the assertion that the Deputy Governor solicited for money from members of the public to award contracts and for jobs in the County Government contrary to Article 73 of the Constitution the Committee found that this claim was not substantiated.
- (5) Article 232 of the Constitution outlines the values and principles of public service. They include high standards of professional ethics, responsive, prompt, effective, impartial and equitable provision of services and accountability for administrative acts. The sum total of the Deputy Governors behavior demonstrates gross violation of this provision. A few examples will suffice. According to Mr. Collins Sila Kaia the Chief Officer responsible for Education, Youth and Social Welfare the Deputy Governor interfered with operations of his Department by purporting to give directives to the Social Welfare Board which

falls under his (Mr. Sila's) docket. Mr. Sila swears that without his knowledge the Deputy Governor instructed the Social Welfare Board to form local assistance teams to assist in disbursing funds. The intermeddling by the Deputy Governor caused confusion in the said Board and resulted in the delay in disbursing the social welfare funds. Since the Financial Year has ended the said allocation which amounted to Kshs. 40,000,000 lapsed and the government was unable to meet its target to that end in the 2013/2014 financial year. Annexed and Marked "**Exhibit No. 3 – d**" is the affidavit of Mr. Sila. This position is buttressed by the testimony of Ruth Nduku the County Executive Committee member for Education, Youth and Social Welfare (Annexed and Marked "**Exhibit No. 3 – a**" is the affidavit of Hon. Ruth Nduku).

The Deputy Governor has also purported to commit the County Government to activities of Machakos County University Students Association (MACUSA) (for which he is a patron) and which is under the Department of Education, Youth and Social Welfare which activities are not in the County Budget. This kind of actions not only interfere with the smooth running of the Department but also antagonize and confuse members of the public as to the operations of the County Government (see the affidavit of Hon. Ruth Nduku).

This Committee therefore finds that the Deputy Governor grossly violated the provisions of Article 232 of the Constitution.

GROSS VIOLATION OF THE PROVISIONS OF THE LAW

- (6) The Deputy Governor is in charge of the Department of Public Service, Labour and Information, Communication and Technology. The Chief Officer for this Department Mr. Jackson Musyoka Kala affirmed through written and oral evidence that the Deputy Governor has been unavailable to perform his functions, duties and responsibilities under his portfolio.

This has strained the said Chief Officer who has been forced to stand in for the Deputy Governor in policy formulation, oversight and direction of the department.

The Committee observed that the Deputy Governor is an important member of the County Executive Committee who deputizes the Governor in the Committee and acts in that capacity in the absence of the Governor. In the case of Machakos County, the Deputy Governor has full portfolio as the substantive CEC member for Public Service, Labour & ICT.

After considering the averments of the Chief Officer among other pieces of evidence the Committee concluded that and Deputy Governor failed to supervise the progress of County Projects in gross violation of Sections 30 and 32 of the County Government Act.

- (7) It was the evidence of Naomi Mutie, the County Executive Committee member for Health and Emergency Services that the Deputy Governor made attempts at influencing the appointment of his sister in law as matron in charge of Machakos level Five Hospital. Hon. Naomi Mutie resisted these attempts successfully. Attached and marked “**Exhibit No. 5**” is a bundle of documents about the said Deputy Governor’s sister in law’s purported transfer. The actions of the Deputy Governor are in gross violation of Section 17 of the Public Officers Ethics Act.
- (8) The events of 7th July 2014 are well documented in the affidavits of the CEC members. During the 20th CEC meeting at the Governor’s office the Deputy Governor raised a preliminary matter on his personal security. He said that his security had been withdrawn and that the Chief of Staff had threatened to kill him. The CEC meeting resolved to discuss the conduct of the Deputy Governor as an agenda item. Since his conduct could not be discussed in his presence, the Deputy Governor was requested to step out and was escorted to a separate room by the County Secretary. It is then sworn that even before the CEC meeting ended the CEC members received information that the Deputy Governor was doing social media updates that he had been ejected from the cabinet meeting.

Clearly this information is misleading and is calculated at creating mistrust for the Machakos County government and specifically the Governor of Machakos. (attached and marked “**Exhibit No. 6**” is a newspaper cutting on the Deputy Governors actions after he walked out of a CEC meeting. The Deputy Governor also lied to the media and therefore to the members of the public that his security and official transport had been withdrawn an allegation he knew to be false. The Committee was presented with evidence to show that when he was alleging that his official transport had been withdrawn the Deputy Governor had official County Government transport. Attached and marked “**Exhibit No. 7**” is a bundle of CCTV pictures clearly showing the activities of the Deputy Governor on the said date).The Committee is convinced that the Deputy Governor intentionally and willfully mislead members of the public that his official car had been withdrawn information he knew was not true in gross violation of Section 19 of the Public Officers Ethics Act.

- (9) On the allegation that on various instances the Deputy Governor conduct himself in a manner that does not maintain public confidence in the integrity of the office of the Deputy Governor in gross violation of Section 9 of the Public Officers Ethics Act the Committee was of the view that the amalgamation of the evidence before it pointed to this fact that the Deputy Governor's conduct does not maintain public confidence in the integrity of the office of the Deputy Governor.
- (10) The Committee established that the Deputy Governor used derogatory language on the social media platform by referring to employees of the County from outside Machakos County as "*nguu*" (Annexed and marked "**Exhibit No. 8**" is a facebook update by the Deputy Governor). As a result of his ethnically and regionally divisive utterances placards were printed and displayed during a CORD rally which placards stated "*nguu toka*" or "*get out you tortoise*". The Committee noted that the derogatory use of the allegory of the tortoise can squarely be associated with the Deputy Governor as he has used it in numerous occasions as demonstrated by the different pieces of evidence availed to the Committee (Annexed and marked "**Exhibit No. 9**" is a copy of the placard). Also annexed and marked "**Exhibit No. 10**" is a bundle of transcripts of recordings of the Deputy Governor addressing members of the public in different fora. These actions are in gross violation of sections 6 and 13 Of the National Cohesion and Integration Act No. 12 of 2008.
- (11) The Committee was satisfied that the Deputy Governor did not carry out duties of his office efficiently and honestly. This point has been made elsewhere in the report and the Committee considered that there is no need to belabor it. This is in gross violation of Section 10 of the Leadership and Integrity Act.
- (12) Section 34 (1) of the Leadership and Integrity Act states that 'A state officer shall not bully any person'. Section 34 (2) states that 'For purposes of subsection (1), "bullying" includes repeated offensive behavior which is vindictive, cruel, malicious or humiliating and is intended to undermine a person'. The Chief Officer responsible for Education, Youth and Social Welfare Mr. Collins Sila Kaia did give evidence to the Committee that the Deputy Governor constantly and relentlessly pestered him to award a tender for the construction of new office structures to his friend by the name "Rose". The Committee also considered the evidence of Dr. Sunil Kumar Dhull the County Executive Committee Member for Trade, Economic Planning and Industrialization and that of Sheila Mueni Mukunya the Chief Officer in the same Department who gave testimony that the Deputy Governor sent her (Ms. Sheila Mukunya) smses requiring her

to consider giving certain companies of his choice the tender for the construction of market sheds. Attached and marked “**Exhibit No. 11**” are copies of the smses sent to Ms. Sheila Mukunya by the Deputy Governor. The Committee concluded that the net effect of the actions of the Deputy Governor of sending pestering smses, making incessant calls and constantly summoning chief officers and other officers of the county executive to his office amounted to bullying within the meaning of Section 34 of the Leadership and Integrity Act and therefore the Deputy Governor is in gross violation of the same.

GROSS MISCONDUCT

- (13) The County Secretary Mr. Francis Mwaka testified that the Deputy Governor had absented himself from County Executive Committee Meetings on several occasions without good cause. Attached and marked “**Exhibit No. 12**” is a bundle of the minutes of the County Executive Committee showing the absence of the Deputy Governor. When at one time he was asked why he misses the County Executive Committee meetings the Deputy Governor is quoted to have said that ‘he didn’t feel like attending’. The County Secretary stated that he had verbally warned the Deputy Governor about missing County Executive Committee meetings. Attached and marked “**Exhibit No. 13**” is the letter written by the County Secretary to the Deputy Governor requesting him to respond to the allegations. The Committee felt that this is a serious matter which indicted the Deputy Governor on his general attitude towards his government. County Executive Committee meetings constitute the essence of the executive where policy decisions are made and for the Deputy Governor to have such a casual approach to them was sacrilegious. The Committee therefore found that the act of the Deputy Governor of missing County Executive Committee Meetings constitute gross misconduct.
- (14) In considering whether the Deputy Governor portrayed misconduct, the Committee revisited the happenings of 7th July 2014. The Committee was of the view that the chronology of actions by the Deputy Governor starting with him leaving the room he had been asked to wait for the CEC to discuss him, to him lying that he had been thrown out of the CEC meeting, to him issuing false information to the media that his security and official transport had been withdrawn, to him lying that he had taken a ‘*matatu*’ to Nairobi all show that the Deputy Governor conducted himself in a manner unbecoming of a public officer which amounts to gross misconduct.
- (15) The Committee found that the issue of the allegation by the Deputy Governor that his security had been withdrawn had already been substantiated.

- (16) About the allegation that the Deputy Governor had neglected his duties delegated to him by the Governor again the Committee found that this issue had been sufficiently considered earlier in the report. Save to add that the earlier testimony by the Chief Officer Mr. Jackson Kala was buttressed by the sworn testimony of the County Secretary Mr. Francis Mwaka.
- (17) The County Secretary Mr. Francis Mwaka indicated that at least two members of the CEC had complained to him that confidential information which had been discussed in a CEC meeting had found its way outside the meeting. From the information gathered by the Committee it is only the Deputy Governor who was constantly discussing confidential information discussed in CEC meetings. In her affidavit Hon. Elizabeth Nzyoka expressed her reluctance to sit in the CEC with the Deputy Governor because she is wary of the information he might disclose. This in the Committee's view amounts to gross misconduct on the part of the Deputy Governor.
- (18) In video clips viewed by the Committee the Deputy Governor constantly criticizes the decisions of the County Executive Committee. The Committee found this to be unusual as through the doctrine of collective responsibility the Deputy Governor is expected to own the decisions of the CEC. The Committee noted with concern that the Deputy Governor had made it his preoccupation, even his full time job to criticize and antagonize the government.

ABUSE OF OFFICE

- (19) Hon. Naomi Mutie the CEC member in charge of Health and Emergency Services swore an affidavit and testified under oath that sometime in January 2014 the Deputy Governor telephoned her and told her that his brother (Boniface Kiala) had funded the campaigns for the government and that she should use her position to ensure that he (Boniface Kiala) is awarded tenders to supply hospital drugs. This clearly demonstrates that the Deputy Governor was abusing his office to arm-twist county Government officers to give him favours contrary to public policy.
- (20) On the allegation that the Deputy Governor threatened Executive Committee members to be loyal to him purporting that he would protect them once the Governor is impeached the Committee failed to find any credence in it. This is for the reason that no witness testified about it. The Committee therefore concluded that the allegation had not been substantiated.

(21) The Committee deduced that any investor or person from outside Machakos County hearing the utterances of the Deputy Governor will be taken aback, will be tense, anxious and apprehensive owing to the good reputation that the County enjoys. Since the utterances of the Deputy Governor are careless and even to some extent malicious the Committee was of the view that these utterances amounted to gross misconduct on the part of the Deputy Governor.

13. Mr. Speaker Sir, in accordance to Standing Order no. 63 of Machakos County Assembly, the Committee invited the Deputy Governor or his legal team to respond to the charges leveled against him. However, his advocate left the meeting prematurely thereby failing to respond to the charges.

CONCLUSION

Pursuant to Section 33 of the County Governments Act, 2012 and Standing Order 61 as read together with Standing Order No. 60 of the Interim Standing Orders, the Committee finds that the following charges have been substantiated:

(a) Ground 1:

Gross violation of the provisions of the Constitution and specifically Articles 10, 73, 74, 75, 179 (4), (5) and (6) and 232.

(b) Ground 2:

Gross violation of the provisions of various Acts of parliament including Sections 30 and 32 of the County Government Act No 17 of 2012, Sections 9, 17 and 19 of the Public Officers Ethics Act, Sections 6 and 13 of the National Cohesion and Integration Act No. 12 of 2008 and Sections 10, 12, 34 of the Leadership and Integrity Act No. 19 of 2012.

(c) Ground 3:

Gross misconduct

(d) Ground 4:

Abuse of office

RECOMMENDATIONS

Mr. Speaker, Sir, the Committee recommends that this honorable House approves and adopts the report of the *Ad-Hoc* Committee on Impeachment of the Deputy Governor. Thank you Mr. Speaker Sir.

Mr. Speaker, Sir, Further to the Report of the *Ad Hoc* Committee on the Impeachment of the Deputy Governor of Machakos, I wish to clarify to this House on the timeframes envisaged by Standing Orders number 60 and 61.

Mr. Speaker, Sir, The matter herein was committed to my Committee on 10th July, 2014 and it was to report back to the House on 16th July 2014. However on 14th July, 2014 the Committee received information that a court order had been issued staying the proceedings of the Assembly on the matter at hand.

Mr. Speaker, Sir, In compliance with the said court order the committee resolved to hold its activities in abeyance until further orders by the court. On 21st July, 2014 the committee was informed that the stay orders issued by the court earlier had been lifted and the Committee was free to proceed with its work. The Committee proceeded to complete its investigations and the writing of the report herein.

Therefore, Mr. Speaker, the Committee proceeded on the premise that the effect of the court order issued on 14th July, 2014 was to freeze the seven days envisaged under Standing Order No. 60. The seven days started to run again on 21st July, 2014 when the stay lapsed. Thank you, Mr. Speaker.

[Applause]

Mr. Speaker, I call upon Hon. Nzeki, MCA Mua to second.

Hon. Nzeki: Thank you Mr. Speaker Sir. I got an invitation to be one of the committee members of the ad-hoc committee investigating the conduct and impeachment of the Deputy Governor and pursuant to Standing Order 171, it states that committees shall be formed and can enjoy the privileges and powers to summon witnesses and receive evidence. The committee did so and I therefore second the report of the ad-hoc committee brought before this honorable house for approval and adoption. Thank you Mr. Speaker, Sir.

Hon. Speaker: Hon. Members, the report is now before the house for debate. You can take grounds in support and grounds in opposition. Let us begin with those in support. Sorry?

Hon. Ndeto: Thank you, Mr. Speaker. I would like the Chair, that is the Speaker, to give us direction over this motion if it will be in order for this house to discuss this motion based on the report that has been tabled, which is a mere theory. No single evidence is attached to the report that has been given and that makes this a single theory. Thank you.

Hon. Speaker: Let us hear points in support. You'll raise that ground in opposition. Proceed.

Hon. Muli: Thank you, Mr. Speaker, Sir. I have read the report very well and I have understood it. Mr. Speaker, from my own feeling, after a report which I have read, I believe the county is so much bigger than an individual. As Hon. Members from this House, whereby our roles are oversight role, we have legislation and also we represent our electorate from the ground. If, Mr. Speaker, the sentiments or the allegations which are within this report as they have been documented in the report about the Deputy Governor, Mr. Speaker, I am standing here in total support of the impeachment of the Deputy Governor.

Mr. Speaker being the second year whereby we are in the youthful stage of devolution, and if these allegations which are here have been made within that short time Mr. Speaker, I as an Hon. Member of Machakos County, I can believe and confess most of the confusion and also the things which we are hearing from the media and also in operation of this House of Machakos County as the main theme and motherhood is the victim being the Deputy Governor. Mr. Speaker, out of the ten executives who are in the executive committee, those are the ministers, Mr. Speaker I fail to understand how it can appear that the ten ministers and about three chief officers are against one of their member.

Most of the affidavits which have been read from the reports have a lot of truth even practical issues. Mr. Speaker, I believe from this house that from the report which has been presented, there is gross violation of the provisions of the Constitution. There is also gross violation of various parliamentary Acts, Mr. Speaker. There is also misconduct and abuse of office. Mr. Speaker, I personally witnessed the clip whereby the Deputy Governor has said he had his vehicle deployed, but from the clip, I personally saw the Deputy Governor being carried and he was allocated a car.

So Mr. Speaker, what has been said here and has been presented in the ad-hoc committee has a lot of truth and I stand here to support the impeachment of the Deputy Governor. Thank you, Mr. Speaker.

Hon. Speaker: thank you. Another member in support? Yes

Hon. M. Mutuku: Mr. Speaker Sir, I stand here to support the impeachment of the Deputy Governor of Machakos County, reasons being that a report has been tabled by the chairman of the ad-hoc committee where I was a member. Mr. Speaker Sir, for those who were following the report keenly, it has reflected that so much violation has been done to the Constitution of Kenya which is the Supreme Law of the land. We have seen violation of various Acts of parliament; we have seen violation of National Cohesion and Integration Act, no. 12 of 2008. We have also found that there is violation of the Leadership and Integrity Act of 2012. Over and above that, we have seen that there is violation of office, which is abuse of office.

In conclusion Mr. Speaker Sir, those violations do meet the minimum requirement, do meet the threshold for the impeachment. Mr. Speaker, a government should work as a football

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team and if one of the players when it's supposed to be played forward tries to shortchange the other players and plays shortcut by passing the ball to the opponents, Mr. Speaker Sir, I think that's against the spirit of the government. We have seen there was violation of collective responsibility of the cabinet through him leaking secrets of the government.

Mr. Speaker Sir, for those who were listening we have heard that he has gone round campaigning, putting Machakos town in a campaign mood. We are aware as a cabinet secretary you are not supposed to campaign actively once you have been appointed to that position of a cabinet secretary. Failure to recognize 30 per cent as stipulated in the Constitution for employees of the County, because we say 30 per cent employees of the County should not be county residents.

That Mr. Speaker is very bad because we are seeing doctors who are non-county members planning to leave the county because of such fear. Mr. Speaker Sir, with those few remarks, I stand to support the impeachment of the Deputy Governor of Machakos County. Thank you.

Hon. Speaker: We have heard two honorable members in support; we can hear two honorable members in opposition of the report.

Hon. Matheka: Mr. Speaker, Sir, according to my own opinion this cannot be called a report; this is a propaganda. A report has annexures and has evidence. Nothing is attached here, no annexures, no evidence, nothing. Mr. Speaker Sir, this is just a theory and propaganda and I want to tell you something Mr. Speaker sir. This leaves a lot to be desired from whomever and whichever committee that compiled this report and it will leave a lot to be desired from this Honorable house. We are diminishing our house, to a theory house and Mr. Speaker, Sir we should not bend that low. Mr. Speaker, Sir, I want to tell you this.

Hon. Speaker: Kindly tell the house.

Hon. Matheka: Mr. Speaker, Sir, I am sorry. Propaganda is not meant for serious thinkers but for cowards who can buy anything coming in the market and I can see that coming to this Honorable house. Mr. Speaker Sir, what has been brought to this house is cheap propaganda which can only be supported by Kindergarten kids, Hon. Members.

[Loud consultations]

Hon. Speaker: Order, order, order. Hon. Member, kindly check your language.

Hon. Matheka: Thank you Mr. Speaker, Sir. Mr. Speaker for this reason I ask this house to treat this report with ultimate suspicion as it was brought to this house. Thank you, Mr. Speaker.

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Hon. Speaker: Yes, another member in opposition. Yes, Hon. Kyalo Kyuli.

Hon. Kyuli: Thank you Mr. Speaker

Hon. Speaker: Before he speaks I want to get it clear from Hon. Matheka. You are saying you don't have the exhibits, the annexures from the report,

[Hon. Matheka nodded

Hon. Speaker: Yes proceed

Hon. Kyuli: Thank you Mr. Speaker, Sir. First, I want to stand here and oppose seriously this motion that was brought here maliciously with malicious intent. Mr. Speaker, we have a report that has been brought to us with so many writings on it. Members of this house and the ad-hoc committee sat down to investigate and Mr. Speaker, they invited people to give evidence. Mr. Speaker Sir, you cannot invite people you want to come and tell you what you want to hear.

Obviously Mr. Speaker they will tell you exactly what you want to hear. Therefore Mr. Speaker, as a House, because motions will come in this House, we will discuss them but this one Mr. Speaker, I want to beg my fellow members that we throw it through the window because this is just malice. I cannot understand why somebody will ask you to give him money and you give them in your own office or elsewhere and when you return the money, you find that it is also something that will bring somebody here to be impeached for. Mr. Speaker Sir, nepotism is there.

A committee of Labour that I sat in, I am not a member of that committee but I sat in that committee one day Mr. Speaker, requesting the list of all the employees of this County but that list has never been brought to this House, Mr. Speaker. Then there is somebody who is saying here the Deputy Governor is asking a minister or the P.S. to employ his brother or sister and his friend Mr. Speaker, as if the executive members do the employing. Mr. Speaker, employment is done by the County Public Service Board.

Mr. Speaker, how? Mr. Speaker, we formed a government early last year and there must be employees employed but one thing that I'm wondering is, when the Deputy Governor is asking about nepotism the same arrow is being turned on him. My fellow members, this is funny, this is funny. Mr. Speaker Sir, SMSes were sent according to this report, calls were made according to this report. I really don't understand, Mr. Speaker. When we came in, I hardly knew him, Hon. Muthuka. I hardly knew her, Hon. Ndawa, I hardly knew many of these members Mr. Speaker, but we came in as one government.

Mr. Speaker, we made friends, along the way some dropped. I was friends to so many, I may be now a friend to few, Mr. Speaker but along the way, Mr. Speaker, you cannot say that an honorable Deputy Governor went to an executive member and threatened them. Someone is

saying 10 out of 13 or 8 out of 10 executive members of committee went against the Deputy Governor. This originated from them and that's why it is being brought into this house to impeach the Deputy Governor.

So therefore Mr. Speaker, I strongly stand and oppose this motion so that members of this county, why is it that instead of thinking of impeaching anybody, leave alone the Deputy Governor, why think about impeaching anybody while we are supposed to bring together our county? Mr. Speaker, I tried, I brought a motion in this House and it was thrown out of the window and this one is here. Mr. Speaker, this trend of impeaching and removing will go on if it goes on like this until we will have nobody in the office remaining.

So Mr. Speaker, I strongly think that we should be thinking about bringing together our county leaders instead of impeaching. So therefore Mr. Speaker, I strongly oppose. Thank you.

Hon. Speaker: thank you very much. The report that I have has annexures. Can I give the Hon. Members time to go through the annexures maybe about an hour or two to go through the reports? What is the position of the house that we proceed? Let me put the question. Where is the mover of the motion?

Hon. Kasimu: Mr. Speaker, Sir, I want to make it clear to this house Mr. Speaker Sir that the reasons why we form ad-hoc committees is that we cannot go as 59 members to investigate issues at hand. We send committees to investigate on behalf of the house and bring the reports. We cannot bring the SMSes here, we cannot bring the clips, and we cannot bring the affidavits because the committee was sent to do that work on behalf of this House.

Mr. Speaker Sir, the letters of invitation to the county executive members were done and we cannot bring the letters here because we were doing it on behalf of this honorable house. We cannot bring the video clips here, we cannot bring the audio clips here because we were doing it on behalf of the members of this house. If anyone had interests the house was open to the members of this County Assembly to come and join my committee and work together, investigate together.

We threw no one out and if there is any member who came here and was thrown out they should come here and tell it to Mr. Speaker. Mr. Speaker Sir, we did the CCTV camera clips. We brought them in this committee. We did the testimonials of the County Executive. We cannot bring all the exhibits here. We have brought a report in this House to be adopted because we have done the work on behalf of this honourable house. Mr. Speaker, Sir, you have the exhibits, the clerk has the exhibits.

If any member needs to go through the exhibits he can get them from your office and not keep this house at hostage until they all go through them. I will not support the idea that we go back discuss and go through the testimony. This is not fair. I don't see the work of the committee

if the whole House wants to go back to interrogations and interviews. Mr. Speaker, I am not in support of that.

Hon. Speaker: Thank you, indeed this is my proposal but I can see the mood of the house is that we proceed. Those in agreement we proceed with the matter as it is.

[Question put and agreed to]

Hon. Speaker: then we shall proceed with the debate. Can we hear two in support and two in opposition?

Minority Leader (Hon. Kasoa): Thank you Mr. Speaker. I stand to support this motion as the leader of Minority and I stand to say that it was clear in the TV when the Deputy Governor was addressing the press in his office, he lied to the people of the Machakos and the even nation that he walked to his office a distance of 5 km from the Governor's office to his office. Where is 5 km from the Governor's office to the Deputy Governor's office, Mr. Speaker? Unaware that the CCTV cameras were following him, he took the Subaru Outback and when he arrived in his office, he called a *matatu* only to take a picture. That is why he used a *matatu*. This is a total lie. This is abuse of power and abuse of office, Mr. Speaker. I support the impeachment of the Deputy Governor. Thank you, Mr. Speaker.

Hon. Speaker: thank you. Let us hear that Hon. Member.

Hon. R. Mutuku: Mr. Speaker Sir, before I contribute, may I thank the whips of the House for ensuring that the committee had persons with disability represented. I'm among the members who interrogated the witnesses. I stand here to support the impeachment of the Deputy Governor. Mr. Speaker Sir is it in order for a senior person like the Deputy Governor, Mr. Speaker Sir, to undermine juniors who are working with him by SMSing them, by calling them. Mr. Speaker Sir, this is not right. If all senior officers will proceed in this direction Mr. Speaker, juniors will not have any place in this County Mr. Speaker Sir. I totally support the impeachment of the deputy Governor.

Hon. Speaker: Thank you. Yes Kitheka.

Hon. Kitheka: Thank you Mr. Speaker Sir and the House at large. Thanks very much for the committee coming up with a very strong and detailed literature of fiction. This is total fiction which we have to address in this House. First and foremost Mr. Speaker, as you check on the preamble of this document, you find that the members who were appointed into the ad-hoc committee seem to be singing the same song of 'We support the Deputy Governor to go.'

Secondly Mr. Speaker, when you go to page 13, I would like you to refer to the English law. The maxims of equity say, if you come for equity, come with clean hands. If you come for

equity, come with clean hands. I wish everything which has been tabled in this House, the members who have tabled it and the people who have given affidavits on the same have come with clean hands to an extent that they cannot be pointed out when issues crop. First and foremost, I wish to give you a small chronicle of when I was the Chairman for Labour and Social Welfare.

We in the committee dealt with the issue of nepotism. We in the labour committee dealt with the issue of favouritism in positions. We talked to the one, CO Jackson Musyoka Kalla who was an issue in the same issue of nepotism, notwithstanding the employment of his wife, notwithstanding the employment of his brother---

Hon. Speaker: Order, Hon. Member.... Hon. Member, order

Hon. Kitheka: Mr. Speaker---

Hon. Speaker: Order, you are getting out of order. You cannot impute improper motive on a person who is not in this House

Hon. Kitheka: I am talking, Mr. Speaker---

Hon. Speaker: To thank extent, you are out of order

Hon. Kitheka: I withdraw, Mr. Speaker. Mr. Speaker, I wish to withdraw that. But Mr. Speaker, to that extent, I wish to inform this House that the employment of this county is based and is done by the County Public Service Board and if there have been any issue concerning employment, it seems that we engaged a Service Board which is not culpable of doing its work. Mr. Speaker, not going far from page 13, we go to page 14. We address the issue of Social Welfare which still lands squarely in the docket which I was the Chair.

Mr. Speaker, here it is being addressed about the argument of Kshs. 40 million. Mr. Speaker, we sat in the Honourable House, in these precincts of the Assembly and we passed a budget in which we passed Kshs. 160 million of the budget to be disbursed to the elderly, to the youth, to the disabled and the women. Mr. Speaker, I tend not to understand what this member is referring to because this to us is a nullity of all standards because we didn't pass such a budget on the same and we cannot address something which we did not pass in the House.

So Mr. Speaker, I wish to clarify clearly that this is work of fixation, this is fiction and it is meant to mudsling somebody and to defame the character of a person like the Deputy Governor. Mr. Speaker, I wish to inform this House that we are going to take this trend of bringing motions of impeachment into this House. We may claim to have numbers to impeach somebody but one day you will have a sensitive issue which will make you even to impeach the most powerful and the mighty in this County. Let me just tell you that this trend is just a chronic which might end to run off you in the near future.

Hon. Speaker: Order!

Hon. Kitheka: Mr. Speaker, I wish to sit down. Thank you.

Hon. Speaker: Let's hear Hon. Kathinzi.

Hon. Kathinzi: Thank you Mr. Speaker. I've stood before you today this afternoon in the presence of these Hon. Members to say there is no need to impeach any member, any employee and any elected member as at now. Mr. Speaker, according to the last document which was read by the Chairman of that particular ad-hoc committee, you can go to page 2 of 2. The last paragraph says that "therefore Mr. Speaker, the committee proceeded on the premise that the effect of the court order issued on 14th July was to freeze the 7 days envisaged under Standing Order 60. The 7 days started to run again on 21st July, 2014. According to how I understand and the little knowledge I have, it is that this committee should have restarted this process again and called the said Deputy Governor to defend himself in that particular committee.

Hon. Speaker: Order! Hon. Members.

Hon. Kathinzi: The other issue Mr. Speaker is that during the proceedings in the court, there was a document with the said lawyer, Mr. Orenge that was saying that Mr. Dhull Shah indicated that he was conned Kshs. 500,000 by the said Deputy Governor. Now it is a different version that it is borrowing of Kshs. 200,000 and I can tell you for sure that even myself, I have a debt with somebody whom I have to pay. There is no worry; it's not a crime for somebody to owe you or to be owed by somebody.

The other one Mr. Speaker, I think this is a theory which has just been brought to this House to demean the character of Hon. Deputy Governor. Therefore, I beg to say that I totally disagree with this particular motion, Mr. Speaker. Therefore, there is no need of talking too much, we can vote so that we can determine the way forward for this particular motion, Mr. Speaker. Thank you.

Hon. Speaker: Let us hear the two points in support

Hon. Muinde: Mr. Speaker, I just want to remind this House that early in the life of this Assembly, at one time the Deputy Governor appeared before the committee of Labour which was then led by Hon. Cornelius Kitheka to defend the employment of 146 employees. Now we are shifting goalposts when the former chairman tries to move that responsibility from the Deputy Governor to the Public Service Board. So what was the Deputy Governor coming to defend here then? We know he is also a CEC member in charge of Labour.

Mr. Speaker, I also want to say that in the year 2007/2008 that in this country Kenya, the country was burning. This was caused by politicians going round the country calling some sections of the communities around Kenya 'madoadoa,' removing them from where they live, confining them to a certain Province. Mr. Speaker, that necessitated the National Cohesion and Integration Act No. 12 of 2008 so that Kenyans can live anywhere and work anywhere.

It is therefore worrying for a respected member of this government goes to church harambees, actually next to the pulpit in a church and calls people 'Nguu' which is translated as tortoise and asked members of the Kamba community who are not coming from this County asking them to leave and yet he should know that at least 30 per cent of positions must be given not just to the community from other counties, but also members of this country from other counties. So Mr. Speaker, that alone is tantamount to asking people to begin fighting, moving people from this County to other counties.

Mr. Speaker we have many people of our community, in fact members of Machakos County, working in other counties in senior positions. If you allow me Mr. Speaker, I would like to say go to Kiambu County, the CEC, Finance is a member of the Kamba community. Go to Kiambu County again at the Assembly. The clerk to that Assembly was a former clerk here and he is a member of the Kamba community. Go to Nakuru Assembly. The Clerk to that Assembly is a Kamba from this community. So if all Kambas were to be confined to Machakos and that we from Machakos have to kick out anybody who is not from this County, then we'll cease to be a country and Machakos will cease to be a part of this country.

Mr. Speaker, that alone does not require more evidence because it was in all over the print and electronic media, it was broadcast by the local stations and not only once, but repeatedly, he has made that clarion call asking people who are not from this county to leave. Mr. Speaker, that alone indicts the Deputy Governor and can cause his impeachment and I therefore stand to support this impeachment. Thank you.

Majority Leader (Hon. Mwonga): Mr. Speaker, I'm an MCA representing Masinga Central ward, where the Deputy Governor comes from, Mr. Speaker and I want to quote the late Senator, Hon. Mutula Kilonzo. Without any fear of contradiction Mr. Speaker, I want to state my position on this issue of the impeachment of the first Deputy Governor of Machakos County. Mr. Speaker, from the gallery I can see that it is full of faces from my ward and I cannot change my position on this issue, Mr. Speaker.

The issue of 2017 will take care of itself. The issue of 2017 is known by God through the people of Masinga. Mr. Speaker, I want to start by thanking the committee for work well done. Mr. Speaker, I don't want to repeat what has been said by majority of the members who have stood in support of the impeachment of the Deputy Governor. Mr. Speaker, the House has no

other option other than to impeach the Hon. Deputy Governor of Machakos County for the growth and posterity of this County.

Thank you Mr. Speaker and I remain to be quoted Mr. Speaker. He has to go for the posterity and growth of this County. Thank you, Mr. Speaker.

Hon. Speaker: But he can only go with the authority of this House. Let us hear you

Hon. Muthuka: Thank you Mr. Speaker. Mr. Speaker time is of the essence and time is money. The whole of today we were discussing a malicious document while we are not addressing the problems of the county. We know we have a problem with the tenders, we have a problem...

Hon. Speaker: Muthuka you are out of order. You cannot a document malicious, a document that is before the House.

Hon. Muthuka: I withdraw, Mr. Speaker. My point was, it is important that we discuss the flawed tendering process in our county; we discuss the salary arrears for our employees who are our sons and daughters---

Hon. Speaker: That matter, Hon. Member is not before this House yet.

Hon. Muthuka: Mr. Speaker this is my contribution.

Hon. Speaker: You need to bring it separately within a motion and you know the procedure.

Hon. Muthuka: Thank you Mr. Speaker. What I want to say concerning this motion is simple. Hon. Isaac Muinde has quoted about 'Nguu' and I want to remind the House we have a Kamba proverb which I can quote: "*ndia yi ngu u ndyisaa ukelmya kiwu*" (when a tortoise is in a pool of water, the water never settles). That is a proverb that Hon. Deputy Speaker used. Sorry, Deputy Governor used. Sorry we are used to the Deputy Speaker because that is our jurisdiction. Mr. Speaker, I wonder because we have learnt members of this County Assembly that are not able to understand even proverbs.

They just take in particular words which they are capitalizing on and I must be quoted: in those forums I have been indicating the reason why we are fighting in Machakos and I have quoted the two persons that are trying to make us fight. I have quoted the Chief of Staff, Machakos County and I have quoted the Decentralized Units Chief Officer. I don't understand why we are not addressing the issues which are hurting our people. So Mr. Speaker, with all due respect, let us save time and those like-minded people like me who wish to say that if the die is cast, may it be because this is just the first step of the process. If at all we can vote and then save

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time and then we can address the County Government issues apart from malicious impeachment. Thank you.

Hon. Speaker: Let's hear the Deputy Speaker. You need to tell us whether your name is coming in this report by error or what

Hon. Nganga: Mr. Speaker, there is a close proximity between the name of the Deputy Speaker and the name of the Deputy Governor. Bearing in mind that we largely interact with members here, maybe that could also be the confusion. It has happened in other forums, this is not the first one and we hope that going forward, members of the House and the public will be able to differentiate between the two state officers. Mr. Speaker, I would want to use this opportunity to contribute on the matter before this House and say Mr. Speaker that having gone through the report, I have been able to get one or two items.

Mr. Speaker, out of all the matters that have been raised there, you realize that there is incompatibility in the functionality of this County Executive of the County of Machakos. Mr. Speaker, going through the report, you realize that the elders of the senior echelons or positions in the County Government are not in a position to continue functioning as they would wish to with the Deputy Governor of the County of Machakos. Mr. Speaker, the mistrust itself has slowed down development and has affected the implementation of development programs within the county. Mr. Speaker, for the last one or two weeks we have spent a lot of time, energy and money trying to find a solution to this matter.

Mr. Speaker I can bear witness to having tried, together with colleagues of this Assembly in private and in public to find dialogue between the two office holders, Mr. Speaker, just to try and arrest the situation that we are in now, Mr. Speaker. Mr. Speaker, with much reading of the document, it comes very clearly that the county Executive Committee is not ready to work with the deputy Governor and a call has been made to this House to make a determination.

Mr. Speaker, it is a constitutional requirement, it's a requirement by the laws of this land that when such a situation arises, then we make such a determination. Mr. Speaker we cannot escape the time and the moment. The situation is here with us now and we have to make a decision of the Machakos we want. We have to make a decision of whether we want to go forward, we want to remain static or we want to go backwards.

Mr. Speaker, we are implementing devolution for the first time in this nation as a trial and there are many tribulations that we are going through. Each and every County has set off its journey and neither of the Counties is at the cliff of the ocean. All of us are already in the sea but how we manage our ship determines whether we will land in the island of posterity or we shall remain in the anarchy of poverty that has faced our people in the many years that has faced our people for the many years that we have been in this country after independence.

Therefore Mr. Speaker, having read the mood of the House, I would like to call upon you to make the determination that this House with its Hon. Members may go ahead and make a decision on this matter and let the law be followed. Mr. Speaker let's allow the law to take its course and perform our individual responsibilities. You go to the Constitution and you realize, Mr. Speaker, that Members of the County Assembly are mandated by the Constitution to represent their people and to make decisions on their behalf.

The opportunity is again here with us. Mr. Speaker, with those few remarks, I would like to seek your indulgence that you may offer guidance on this matter so that we may be able to proceed and dispense it thereof. Thank you, Mr. Speaker.

Hon. Speaker: I will take it that members would want this question put to the vote and the presumption is that the report is exhaustively debated. In that regard, then I put the question those who would want that we proceed to the vote, can you in oneness say 'ayes'

[Question put and agreed to]

In adherence to our Standing Orders, this is a special motion that attracts a special procedure and equally attracts a special threshold and in our circumstances, I direct that there be a roll call voting in terms of Standing Order No. 69. Immediately after a roll call voting is directed, then the matter goes to the Clerk to ring the bell of division that is rung for 10 minutes then we shall appoint two tellers. One teller for the 'ayes' and one teller for the 'nays.' I'll urge that those names of the two tellers... maybe we'll pick our two Clerks that we have and then the bell will be rung for 10 minutes. Sorry, there are three tellers including one teller for abstentions.

[Several Members stood in their places]

Order! Hon. Members, the session is still on. The teller for 'ayes' will be Evelyn Kimote, the one standing, the teller for the 'nays' will be Mr. Kivelenge and the teller for the 'abstentions' will be our Hansard Officer, Kamau. Thank you, then the bell will be rung for 10 minutes then we shall proceed. We shall be calling roll-call.

DIVISION

[Quorum Bell rung for 10 minutes]

Hon. Speaker: Time is up. May the door be closed. The manner of voting as I had indicated will be guided by Standing order No. 69. At the end of the 10 minutes, the Speaker shall order the door to be locked and the Bar drawn, we don't have a Bar here and no member shall thereafter enter or leave the Assembly until the Roll Call vote has been taken.

When the doors are locked and the Bar drawn and the names of the tellers announced, and that we did, the Speaker shall put the question again and again I direct the Clerk to call out the names of members in the alphabetical order in the presence of the tellers.

When called out, each member shall, thereupon rise in his or her place and declare assent or dissent to the question in the following manner “I vote Yes” or “I vote No” or “I Abstain” or use appropriate Kenyan sign language.

After the Clerk has called out the last name in the Division list, the tellers shall present the result of the roll call vote to the Speaker who shall thereupon announce the result of the vote to the House. No we shall proceed with the procedures as enumerated under Standing Order No. 69.

The question is as it was put earlier. I will repeat: the Question is; that those in support of the report as presented that the Deputy Governor be impeached shall vote in answer to that question. In that you say “I vote Yes” in answer to that question if you want him impeached or “I vote No” if I don’t want impeachment or “I Abstain” if I don’t want to participate in that matter. That is clear. The matter is back to the Clerk.

ROLL CALL VOTING

Yes Vote

1. Hon. Itumo Joseph Kilonzo.
2. Hon. Kaluki Peninah.
3. Hon. Kalunde Joseph Musau.
4. Hon. Kamitu Alex Peter.
5. Hon. Kanui Winston Mbiyu
6. Hon. Kasimu Wilson Mutiso
7. Hon. Kasoa Thomas Mweu.
8. Hon. Katela Leonard Wambua.
9. Hon. Kavuu Gideon Saul.
10. Hon. Kilonzo Timothy Wambua.
11. Hon. Kimata Justus Kyalo.
12. Hon. Manyolo David Kiviu.
13. Hon. Mbither Nina.
14. Hon. Mbithe Catherine.
15. Hon. Mbithe Veronica.
16. Hon. Muinde Isaac Mutuku.
17. Hon. Munyaka Oliver Nzeki
18. Hon. Munyao Geoffrey Mutuku.

19. Hon. Musyoka Joseph Muli
20. Hon. Muthiani Renson Nzioka.
21. Hon. Mutisya Charles Nguvi.
22. Hon. Mutua Mutuku Michael.
23. Hon. Mutuku Raphael.
24. Hon. Mutune Christine Mwendu.
25. Hon. Mwonga Julius Kiilu.
26. Hon. Ndalana Margaret.
27. Hon. Ndambuki Rachael Nduku.
28. Hon. Ndinda Mary.
29. Hon. Ndolo Phillip L. M.
30. Hon. Nduku Bibiana.
31. Hon. Ndumi Ruth.
32. Hon. Nduva Sammy.
33. Hon. Ngu Felix Mutunga.
34. Hon. Ngunzi Edrick M.
35. Hon. Nzioki Peter.
36. Hon. Nziva Jacqueline.
37. Hon. Reuben Nathaniel Nganga.
38. Hon. Sereka Cecilia Mbinya.
39. Hon. Sila John Musyoka.
40. Hon. Wambua Alphonse M

No Vote

1. Hon. Kasyoka Benson.
2. Hon. Kathinzi Alexander Nzambu.
3. Hon. Kitheka Cornelius Musyoka.
4. Hon. Koki Phoebe.
5. Hon. Kyuli Peter Kyalo.
6. Hon. Luka Jacinta.
7. Hon. Maitha Dominic N.
8. Hon. Matheka Francis Musyoki.
9. Hon. Mbinya Brigid.
10. Hon. Munywoki Nzoka Peter.
11. Hon. Musyoka Bernadette Mueni.
12. Hon. Muthuka Stephen.

13. Hon. Mutio Amina.
14. Hon. Mutwela Justus.
15. Hon. Mutwota Collins Mbithi.
16. Hon. Ndawa Magdalene Muthike.
17. Hon. Ndeto Festus M.
18. Hon. Nzioka Alice Mukonyo.
19. Hon. Wairimu Anne Musyoki.

Abstention Vote

NIL

Total Number of Members

59

The threshold of this motion is provided for under Standing Order No. 60 (8) for a two third majority. Two thirds majority of 59 is 39.3 and since we cannot have humans in proportions, the only satiable number is 40. To that extent, the report succeeds.

[The motion was carried by 40 votes against 19]

ADJOURNMENT

Hon. Speaker: Hon. Members, we don't have immediate agenda for tomorrow so the House adjourns until Tuesday next week. Thank you and have a good afternoon.

The House rose at 5.06 p.m.