

RECORD OF EVIDENCE TAKEN BEFORE THE SENATE
SPECIAL COMMITTEE INVESTIGATING THE PROPOSED
REMOVAL FROM OFFICE BY IMPEACHMENT OF THE
GOVERNOR OF WAJIR COUNTY
HELD ON WEDNESDAY, 12TH MAY, 2021 IN THE SENATE
CHAMBER, MAIN PARLIAMENT BUILDINGS

SENATORS PRESENT

[The Chairperson (Sen. Okong'o Omogeni, MP) – Presiding]

Sen. Susan Kihika, MP – Vice-Chairperson

Sen. Paul Mwangi Githiomi, MP	Sen. Johnson Arthur Sakaja, MP
Sen. Mithika Linturi, MP	Sen. (Eng.) Godana Hargura, MP
Sen. Fredrick Outa, MP	Sen. Kavindu Muthama, MP
Sen. Petronila Lokoria Were, MP	Sen. Issa Juma Boy, MP
Sen. Christine Zawadi Gona, MP	

INATTENDANCE

THE GOVERNOR'S TEAM

Hon. (Amb.) Mohamed Abdi Mohamud - County	Governor, Wajir
Mr. Paul Nyamodi	- Advocate
Mr. Ndegwa Njiru	- Advocate

Mr. Charles Mwangi Ndegwa - Advocate
Mr. Patrick Barasa - Advocate

THE COUNTY ASSEMBLY'S TEAM

Mr. Ahmednasir Abdullahi SC - advocate
Mrs. Hanan El-kathiri - Advocate
Ms. Elizabeth Wangui - Advocate

MEMBERS OF WAJIR COUNTY ASSEMBLY

Hon. Mohamud Gabane Noor - Majority Leader & MCA
Sarman Ward
Hon. Abdullahi Isaack Mohamed - MCA, Tula Tula/Elnur Ward
Hon. Issa Ahmed - Chairperson, Public
Accounts & Investments
Committee
Hon. Shueb Bare Ahmed - MCA, Diff Ward

SECRETARIAT

Dr. Johnson Okello - Director, Legal Services
Ms. Mary Chesire - Deputy Director, Committee
Services
Ms. Josephine Kusinyi - Principal Legal Counsel
Dr. Brenda Ogembo - Senior Clerk Assistant

Ms. Sylvia Nasambu	-	Second Clerk Assistant
Ms. Lucy Radoli	-	Legal Counsel II
Ms. Lorna Okatch	-	Research Officer
Mr. Wilson Bosmet	-	Principal-Serjeant-At-Arms
Mr. Patrick Murindo	-	Serjeant-At-Arms
Ms. Julia Gachoki	-	Serjeant-At-Arms
Mr. Mohamed Ibrahim	-	Serjeant-At-Arms

(The Special Committee commenced at 10.15 a.m.)

The Chairperson (Sen. Omogeni): Hon. Senators, I now call the meeting to order. As is our tradition, we never commence any business before we pray. I ask the Senator of Meru, Sen. Linturi to lead us in a word of prayer.

Prayer

I extend a warm welcome to all the parties, Members of County Assembly (MCAs) of Wajir, Members from the Executive office of the Governor of Wajir County, the team of lawyers, members of the public and the media.

Welcome to this Special Committee session that is inquiring into the proposed removal from office by impeachment of hon. Mohamed Abdi Mohamud, Governor of Wajir County.

As you know, we are living in very extraordinary times. We have the COVID19 pandemic. If you put at the sitting arrangement, we have put

stickers on where you should sit and create space.

We expect you to observe that social distance during the entire session of these sittings. We also want you to abide by the Ministry of Health (MoH) guidelines. Keep your mask on at all times during these proceedings. At no time should your mask be off during the proceedings.

In front of you, we have extended courtesy by putting a bottle of sanitizer on the table. When you handle documents, please sanitize.

This is a Senate Sitting. We are guided by our Standing Orders and we expect everybody appearing before us to handle themselves with decorum and extend mutual respect to each other. We hope that we will have a very gentle man and gentlelady kind of proceedings, where we expect mutual respect to each other.

My name is Sen. Okong'o Omogeni, the Chairman of these proceedings. I have a team of 10 Members. I ask them to introduce themselves.

(The Members of the Special Committee introduced themselves)

We have two Senators who will be joining us later on. I also introduce our Secretariat team, which is led by Dr. Okello whom I ask to introduce members of the Secretariat.

(The Director, Legal Services (Dr. Okello), introduced himself and other Members of the Secretariat)

I also remind our guests that it is the policy of any Senate proceedings that you switch off your phones or keep them on silent mode so that they do not ring in the course of the proceedings.

I request the MCAs or persons representing the County Assembly to introduce themselves and their team.

(The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC) introduced himself and his team)

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Do I have to introduce the witnesses?

The Chairperson (Sen. Omogeni): If you are the lead Counsel, you can introduce them or ask their team leader to introduce them.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): The team leader is just behind me. He can introduce the Members.

Sen. (Eng.) Hargura: On a point of Order, Mr. Chairman, Sir. For purposes of the HANSARD, it would be proper if all of them speak to the microphone.

The Chairperson (Sen. Omogeni): You can say your name and then ask the others to introduce themselves and speak to the microphone.

(Members of Wajir County Assembly introduced themselves)

The Chairperson (Sen. Omogeni): Are you only two?

Hon. Abdullahi Isaack Mohamed: Mr. Chairman, Sir, our colleague, Mr. Hussein is coming. He is on his way. He will be joining us soon.

The Chairperson (Sen. Omogeni): We will now go to the side of the Governor. Either the Governor or his counsel may introduce the team.

(The Governor of Wajir County (Hon. (Amb.)

Mohamud introduced himself)

(The Advocates for the governor introduced themselves)

The Chairperson (Sen. Omogeni): Governor, any witnesses from your end?

The County Secretary (Mr. Maalim): Thank you, Mr. Chairman, Sir. I am Mr. Abdullahi Issa Maalim, the County Secretary and a witness.

The Chairperson (Sen. Omogeni): I was struggling to locate you. Any other? That is one. We presume you are the only witness.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Mr. Chairman, Sir, some of them are seated at the Gallery.

The Chairperson (Sen. Omogeni): Okay. Then that is okay. We are trying to manage the numbers we can accommodate here. I think that is it then with

the introduction. I would like to make some Communication before we commence the proceedings.

THE CHAIRPERSON'S COMMUNICATION ON THE
COMMITTEE'S PROGRAMME

The Chairperson (Sen. Omogeni): Honorable Senators, ladies and gentlemen, the Special Committee on the Proposed Removal from Office of the Governor of Wajir County was established on Tuesday 11th May, 2021 by resolution of the Senate.

The Special Committee is provided for under Section 33 (4) of the County Government Act 2012 as read together with Standing Order No. 75 (2) of the Senate Standing Orders.

The Special Committee is required to-

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

Honorable Senators, by way of a status update, the Speaker of the County Assembly of Wajir and the Governor of Wajir County were on 7th May, 2021 served by the Senate with invitations to appear before the Special Committee today Wednesday, 12th May, 2021. The parties were required to file their documentation with the Office of the Clerk of the Senate by 5.00 p.m. Tuesday, 11th May, 2021 setting out among others-

- (a) The mode of appearance before the Special Committee whether in person, by advocate or in person and by advocate.
- (b) For the County Assembly, the designation of not more than three Members of the County Assembly who would attend and represent the Assembly in the proceedings before the Special Committee.
- (c) The names and addresses of the persons to be called as witnesses if any and witness statements containing a summary of evidence to be presented by such witnesses before the Committee.
- (d) Any other evidence to be relied on.

Honorable Senators, on Tuesday, 11th May, 2021 at 4.56 p.m. the Office of the Clerk of the Senate received a response to the invitation to appear for Ahmednasir Abdullahi Abdullahi Advocates stating that they had been instructed to represent the County Assembly of Wajir. The said advocates forwarded a bundle of documents, which would be adduced by the County Assembly as evidence during the hearing.

The advocates also submitted a list of three Members of the County Assembly of Wajir designated to represent the Assembly whom they intended to call as witnesses and a further list of four persons, which the said firm of advocates requested the Special Committee to summon pursuant to Rule 9 of Part II of the Fifth Schedule to the Senate Standing Orders.

The Committee shall at an appropriate time pronounce itself on the request made by the said advocates on behalf of the County Assembly.

On the same day at 4.30 p.m., the Office of the Clerk of the Senate received a response to the invitation to appear from the Governor of Wajir County stating that he would appear before the Special Committee in person and by

advocates namely V.A Nyamodi and Company Advocates and the firm of Ndegwa and Ndegwa Associates. The advocates also forwarded a bundle of documents which would be adduced by the Governor as evidence during the hearing.

Pursuant to Rule 8 of Part II of the Fifth Schedule to the Senate Standing Orders, each party was furnished with the documents filed by the other party on 11th May, 2021 soon after the documents were received by the Office of the Clerk.

The Committee shall therefore, proceed to conduct the hearing and attended proceedings in line with its mandate as set out under Section 33 (4) of the County Governments Act 2012 as read with Standing Order No. 75 (2) of the Senate Standing Orders.

The Special Committee wishes to emphasize that it is cognizant of the gravity of the matter with which it is seized and that it shall accord all parties to the proceedings the right to be heard and shall accord all the parties a fair hearing.

I urge all honorable Senators and the parties to this matter to desist from discussing the matter while it is still actively before the Committee and the Senate and to allow the constitutional and legal process to take its course.

The Special Committee hereby reiterates its commitment to ensuring a fair and just process that is founded on the law. The Special Committee in making its decision shall be guided only by the evidence adduced by the parties and the law.

Honorable Senators, ladies and gentlemen, it is important to observe the strict ten-day timelines attached to the discharge of the mandate of the Special Committee.

The Special Committee shall in conduct of its hearing be guided by the rules of procedure set out in the Fifth Schedule of the Senate Standing Orders. These rules were served on the parties to the proceedings together with the invitation to appear before the Committee this morning.

Thank you.

Having made that Communication, ladies and gentlemen, I briefly want to take you through the program. I will take you through the program. These proceedings are equivalent to the hearing for Presidential Election in the Supreme Court.

Therefore, we will conduct them within very strict timelines because the Constitution requires that we file our report before the Senate on Monday 17th May, 2021.

We will ask that you bear with us and that we strictly follow the proposed timelines. Shortly we will be reading the charges to the Governor, which should commence in the next five minutes at 10.35 a.m.

We will allow parties if you have any preliminary objections or issues to do so and we will restrict that to a maximum of 30 minutes. We will allow both parties to make some opening statements on behalf of the County Assembly and the Governor. We will restrict this to not more than 40 minutes. If you take lesser the better for us.

Then we will allow the County Assembly to adduce its evidence and call witnesses and subject the witness to cross-examination and reexamination for a period of three hours and 30 minutes.

We will also try to allow any interventions by Members here to ask any questions. We project that that should not take anything more than an hour.

We will allow parties to make their concluding remarks for the day before we adjourn not more than 6.30 p.m. because the Senate cannot sit beyond 6.30 p.m.

Without wasting time, I call upon our Clerk to read the charges to the Governor unless you have something you want to say.

The Advocate for Wajir County Government (Mr. Ndegwa Njiru): Yes, Mr. Chairman, Sir. Just before we leave the programme, we might not have time to revisit that issue. However, we seek your guidance on whether these proceedings will be affected by the anticipated *Eid-ul-Fitr*. If they will be affected, how do we accommodate the timeline noting that we are representing a client who is in that period? I am much obliged.

The Chairperson (Sen. Omogeni): According to us, the public holiday is gazetted to be on Friday. We are not doing any proceedings on Friday. That is the official gazetted *Eid-ul-Fitr*. We are not going to undertake any proceedings on that Friday, so you are taken care of.

Tomorrow, we will allow parties to attend their payers and will commence the hearings slightly late at 10.00 a.m. We also have Senators who are Muslims, so we have done wide consultations.

Clerk, can you read the charges? I will ask the Governor to step to the witness box as we read the charges. The charges will be read to you. If they are true, you can confirm that they are true, we finish the proceedings this morning. If they are not true, then you can tell us that they are not true then we proceed with the enquiry. You can stand on the witness dock, please.

(Hon. (Amb) Mohamud stood up in his place)

READING OF THE CHARGES AGAINST THE
GOVERNOR OF WAJIR COUNTY

The Director, Legal Services (Dr. Okello): I am going to read the charges verbatim as received from the County Assembly.

The first ground is gross violation of the Constitution of Kenya (2010) the County Governments Act (2021), the Public Procurement and Disposal Act (2015), and the Public Finance Management (PFM) Act (2012), by the following actions and/or omissions.

Mr. Chairman, Sir, again, I am reading it verbatim.

- (a) Failure to account for the financial resources allocated to the County and appropriated by the County Assembly by failing to provide quarterly expenditure reports to the County Assembly in blatant disregard of Articles 201(a), 183(3) of the Constitution and Sections 149 and 166 of the PFM Act (2012).

- (b) Lack of accountability in the management of the county resources by incurring unsustainable debts and other pending obligations up to the tune of Kshs2 billion. These pending obligations were never disclosed both in the County Fiscal Strategy Paper (2019) and (2020), thus violating Article 201 (e) of the Constitution (2010), and Section 107 (2) of the PFM Act (2012).
- (c) Failure to draft the Medium-term Strategy for the Financial Year 2020/2021 in contravention of Section 123 of the PFM Act (2012). This places Wajir County in a highly precarious position as it will have no budget to run its affairs and it may lead to protracted and costly court battles with creditors and eventual auctioning of the county assets.
- (d) Violation of Articles 176 (1) and 185 of the Constitution of Kenya (2010) by disregarding the County Assembly as an arm of the County Government, and further undermining its three cardinal roles of legislation, oversight and representation through systematic non-remittance of the requisitioned funds for the County Assembly's operations amounting to Kshs70,216,902.

This is truly an affront to the separation of power, understanding that the County Assembly is an independent entity. This systematic crippling of the Assembly operations compromises the independence of this honourable House.

This unwritten edict of the County Governor violates the Constitution at Article 6 on Devolution and Access to Services and Article 10 on National Values and Principles of Governance.

- (e) Failure to establish the County Budget and Economic Forum for County Budget Consultation Process as stipulated in Section 137 of the PFM Act (2012), and as a result, the Governor has gone on to violate Sections 87, 91 and 115 of the County Government Act (2012) as well as Articles 10 and 201(a) of the Constitution, and deliberately created an atmosphere to facilitate plunder and loss of public resources.
- (f) Violation of Section 30 (2)(k) of the County Government Act (2012) by failing to deliver the annual State of the County Address that otherwise enumerates the policy direction of the County Government.

This was despite the several requests coming from the Assembly. For instance, the hon. Speaker, in a letter dated 24th June 2020, urged the Governor to give the address, but failed.

- (g) Violation of Section 30 (2)(j) of the County Government Act (2012) by failing to submit to the County Assembly an Annual Report of the Implementation Status on the County Policies and Plans.
- (h) Violation of Section 167(1) of Public Finance Management (County Government) Regulations by failing to establish an Audit Committee for the County that will adhere to the forms prescribed by the Accounting Standards Board, and that would further encapsulate the governance process, accountability process, control systems and offer objective advice on issue concerning risk, control, regulatory requirements and governance for the County.

- (i) The Governor has never bothered to seek approval of payments out of the Emergency Fund for the last three consecutive financial years and instead frustrated the Assembly's effort to enforce compliance.
- (j) Section 19 of the Wajir County Disaster Management Act allows the Governor, through the County Executive Committee Member (CECM) for Finance to establish the County Emergency Fund, make payments out of the Fund where necessary, and seek approval of the County Assembly within two months of making such payments.
- (k) Violation of Section 82 (1)(b) of the Public Finance Management (County Government) Regulations (2015) by operating 19 bank accounts in local commercial banks. Under the cash and banking arrangements for county governments at Section 82 (1) of the Public Finance Management (County Government) Regulations (2015), county governments are to open their accounts with the Central Bank of Kenya (CBK).
- (l) Violation of Regulation 25 (1) (b) of the Public Finance Management (County Government) Regulations 2015 by exceeding expenditure limit of 35 per cent of the County Government's total revenue. For instance, as at 30th June 2019, the County Government of Wajir wage bill was equivalent to 39.6 per cent of the aggregate operational revenue.
- (m) Violation of Section 119 (5) of PFM Act (2012) which requires the County Government to keep complete current records of all bank accounts required under the Constitution or other legislation. The Governor failed to maintain cash books for Financial Year 2017/2018. This has caused misuse of Kshs409,175,031, as this money was

withdrawn between 6th October 2017 and 29th June 2018, and its use cannot be ascertained.

(n) Violation of Articles 201 (a)(d)(e) of the Constitution of Kenya, 2010 on principles of Public Finance Management and Article 226 (5) as well as Article 227(1) on procurement of goods and services and Presidential Directive No. 2 of 2018.:

(o) Violation of Article 227 of the Constitution on Procurement of Public Goods and Services and Section 45, 46, 47, 48, 53, 54, 57, 71 and 74 of the Public Procurement and Asset Disposal Act, 2015. The Governor has failed to prudently manage the County resources by engaging in procurement of goods and services without a system that is fair, equitable, transparent, competitive and cost-effective as required by Article 227(1) of the Constitution.

Violation of Article 201 (a) (d) (e) of the Constitution of Kenya, 2010 on Principles of Public Finance Management and Article 226(5) as well as Article 227(1) on Procurement of Goods and Services and the Presidential Directive No.2 of 2018.

The Auditor-General in his report on financial statements of Wajir County Executive for the year ended 30th June, 2018 observed the following glaring irregularities committed under the watch of the Governor as the Chief Executive of the County as provided under Article 179(4) of the Constitution:

a) Irregular procurement of goods and services amounting to Kshs172,751,776 without raising quotations as required by Section

- 105 and 106 of the Public Procurement and Asset Disposal Act, 2015 but rather used standard forms to procure goods, works and services but did not give guidance on specific requirements of the tender, where to place them and the deadline for submission of the tender.
- b) Irregular award of contract for construction of 60,000 M3 mega pan at Shimbirey to Ms FATCO Construction and Transporters Ltd at a contract sum of Kshs34,747,105. This company had a lesser experience in water construction than other bidders in the tender.
 - c) Misappropriation of Kshs199,237,448. The Controller of Budget (CoB) authorized a request for credit from Wajir County Government vide letter dated 5th December, 2019 and a sum of Kshs199,237,448 was credited to the Wajir County Development Operation account.

A sum of Kshs104,046,400 for 24 companies for Water Resources Department and Kshs95,241,305 for 15 companies for Roads, Transport and Public Works Department. However, the money was diverted for different use contrary to the purpose for which the money was requested.

- d) Out of the 24 companies that were listed as the beneficiaries of the sum of Kshs104,046,400 meant for water resources, none of the companies were paid, except Dulla Limited which was paid Kshs26,672,608. The rest of the 23 companies did not receive any payment and the money was diverted and paid to other companies not included in the list attached to the request for funds. This is a clear case of misappropriation and outright theft of public funds.
- e) Out of the sum of Kshs95,241,305 for Roads, Transport and Public Works which was meant to pay 15 companies, none of the 15 listed

companies were paid except Halane Construction Ltd., which was paid Kshs43,805,207 but which the money was paid on 20th November, 2019 six days before the County had even made the request for the funds, thus making the payment suspect and fraudulent.

The other 14 companies listed alongside Halane Construction Ltd in the letter requesting for funds, were not paid instead, the sum of Kshs51,436,101.28 was divided to other companies other than intended payees. The paid companies are Shell used by certain individuals associated with the Governor and his family to defraud the County. Tender No.WCJ/OT/SP/02/2019/2020 and assorted items for humanitarian needs.

The tender was awarded to Leyli General Constructors Company Ltd which is associated with the Governor and his family. Contrary to the law, the company was allowed to supply items at an inflated rate. For instance, the Company supplied 42,857 bales of maize meal at a cost of Kshs3500 per bale totaling to Kshs149,999,500 contrary to the local market price of Kshs1,600 per bale. Further, some items have not been 100 per cent delivered for instance, sleeping mat and Tarpaulin.

- f) Contrary to the provisions of the Public Procurement and Asset Disposal Act, 2015 and the Public Finance Management Act, 2012, the Wajir County Executive, under the leadership of the Governor, gave contracts to various companies to undertake construction of mega water pans that have not been factored in the approved budget for financial year 2020/2021. The tender numbers were as follows:

1. WGC/OT/WTR/01/2020/2021
2. WGC/OT/WTR/02/2020/2021
3. WGC/OT/WTR/03/2020/2021
4. WGC/OT/WTR/04/2020/2021

The tenders were awarded to the following companies:

1. Tender No. 1: Leyli General Constructors Ltd.
2. Tender No. 2: Warbow Building Construction Ltd.
3. Tender No. 3: Kamorow Construction Ltd.
4. Tender No. 4: Bloomergic Construction Ltd.

Violation of Article 227 of the Constitution on Procurement of Public Goods and Services and section 45, 46, 47, 48, 53, 54, 57, 71 and 74 of the Public Procurement and Asset Disposal Act, 2015.

The Governor has failed to prudently manage County resources by engaging in procurement of goods and services without a system that is fair, equitable, transparent, competitive and cost-effective as required by Article 227(1) of the Constitution.

Whereas the Public Procurement and Asset Disposal Act, 2015 clearly stipulates the procedure to procure goods and services by any public entity, the Governor violated the Act on the following counts:

- a) Allowed unqualified professionals to handle the function of procurement in the Department of Roads and Public Transport, contrary to Section 47 of the Public Procurement and Asset Disposal

Act, 2015. This has led to the mismanagement of resources allocated to the Department.

- b) Allowed the County officers of the key sectoral departments to procure goods and services without any annual procurement plan approved by the relevant County Executive Committee Member (CECM) that is based on the indicating or approved budget.

As a result, the County officers have engaged in fraudulent procurement activities and engaged in over-spending sprees in wanton abandon leaving the unsuspecting members of the public worse for wear with manually generated Local Purchase Orders (LPOs) and Local Service Orders (LSOs) without availability of funds to service contrary to the provisions of the laws and the Constitution.

The departments of Roads and Public Transport, Water and Health are the biggest casualties and since, remain a threat to the County economy and service delivery.

- c) The Governor has routinely, since assuming office, facilitated and condoned corruption by allowing accounting officers of various departments in procuring goods and services to split and structure the entire development budget of the County into numerous quotations of below Kshs4 million to avoid and circumvent the procurement procedures contrary to Section 54 of the Act. In some cases, the tender documents such as the quotations, LSOs and minutes were all raised on the same day.

Violation of the right to health of the people of Wajir County.

- (1) The County Executive under the leadership of the Governor has caused the health sector of the County to run into disarray and into a deplorable state that has comprised and undermined the realization of the right to the highest attainable health standard of the people of Wajir as enshrined in Article 43(1) of the constitution of Kenya, 2010.
- (2) Whereas the County Assembly has allocated over Kshs2.4 billion to the department of medical services, public health and sanitation in the financial years 2018/2019, 2019/2020 and 2020/2021 which is equivalent to 22 per cent way above the national health policy requirement of 20 per cent under Universal Health Coverage.

The only County referral hospital laboratory which also serves the region cannot conduct a test of the corona virus pandemic due to faulty test kits and lack of reagents despite an additional allocation of Kshs194,000,000 in the 3rd Wajir County Supplementary budget for financial year 2019/2020 in a bid to contain the spread of the disease.

- (3) Mismanagement of the budget appropriated for basic health services such as ambulances, fuel and maintenance as evidenced by the public outcry after the widely circulated incident in Eldas Constituency where a desperate caller who wanted to save a life in rural Eldas was tasked to buy tyres and fuel for the County Ambulance.

The department admitted unequivocally that this allegation in response to a statement by the MCA for Eldas Ward tabled on the floor of the House through the sectoral committee for Public Health and Medical Services. This notwithstanding the death of the Senior

County Public Health Officer for lack of oxygen in the main County Referral Hospital.

Honourable Governor, true or not true?

The Governor of Wajir County (Hon. (Amb.) Mohamud): Mr. Chairman, Sir, I am not guilty.

The Director, Legal Services (Dr. Okello): **Charge No. 2: Abuse of office/gross misconduct.**

Abuse of power and authority of the Governor contrary to Article 236 as read together with Article 235 of the Constitution of Kenya, 2010, the County Governments Act, 2012 and the Public Service Act by reshuffling the Chief Officers in the Finance department six (6) times, within two years despite being a critical docket within the County Government of Wajir, with the intent of distorting institutional memory and facilitate corruption and plunder of public resources.

The unpredictability of the tenure of the office which is now largely dependent on the constantly changing mood and liking of the Governor's wife, has eroded public confidence in the critical department of the County treasury.

Violation of Article 73(2)(B) of the Constitution

Violation of Article 73(2) (b) of the Constitution on objectivity and impartiality in decision making and in ensuring the decisions are not influenced by nepotism, favouritism and other improper activities or corruption practices.

The Governor has allowed his wife to literally run the affairs of the county as the *de facto* authority. He ceremoniously officiates and signs off where necessary for decisions she unilaterally makes based on her own wishes and judgment without due regard to any law.

It is an open secret in Wajir County and far beyond its borders, that Mrs. Kheira Omar is the ‘supreme’ leader of the County and it is always her way or the highway. This has caused ridicule and disrepute to the high office of the County Governor.

Therefore, his decision to relinquish the executive powers vested on him constitutionally and derived from the people, amounts to abuse of office and relegation of duties.

Violation of Section 59(1)(B) of the County Governments Act, 2012

By usurping the powers of the County Public Service Board to appoint persons to hold or act in offices of the county public service. The Governor had allowed Mr. Jeff Mworira, his Economic Advisor, who was on contract basis to act as the Head of the County Treasury from March 2018 to December 2018.

Mr Jeff Mworira with the help of others irregularly withdrew Kshs26.1 Million from Wajir County Imprest account held at Kenya Commercial Bank (KCB), Wajir branch. The officer who was later arrested by Ethics and Anti-Corruption Commission (EACC) was charged with abuse of office contrary

to section 46 as read with section 48 of the Anti-Corruption and Economic Crimes Act, 2003.

In Court Case No.ACC47 of 2018, he was convicted and sentenced to pay Ksh800,000 or in default to serve four years in prison. The court further ruled that the Wajir County Governor, His Excellency, Ambassador Mohamed Abdi Mohamud be investigated for abuse of office in relation to the above case.

Honourable Governor, true or not true?

The Governor of Wajir County (Hon. Mohamud): The allegations are not true.

The Director, Legal Services (Dr. Okello): Thank you.

The Chairperson (Sen. Omogeni): Okay. In that case, Honourable Governor, you may resume your seat.

The Governor having denied all the allegations, we have to proceed to the next level which is to conduct a hearing and an investigation to confirm whether there is any substantiation on the allegations.

Counsel for County Assembly, do you have any preliminary issues that you want the Committee to deal with?

Counsel for the Governor, do you have any preliminary issues that you want the Committee to deal with before we commence the investigation?

PRELIMINARY ISSUES RAISED

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Mr. Chairman, Sir, we have several preliminary issues that touch on the process of the Motion before you.

The Chairperson (Sen. Omogeni): Okay. Hold on, Senior Counsel Ahmednasir Abdullahi

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Mr. Chairman, Sir, I just have two issues for clarification.

The Chairperson (Sen. Omogeni): You may go ahead. How many minutes do you want me to give you?

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Mr. Chairman, Sir, one is a matter of housekeeping. There is a witness statement by our second witness, Hon. Shued Bare Ahmed. There is an annexure we forgot to annex in that document.

I will seek leave of this Committee since the governor's team will answer tomorrow. If you could give us leave to put a small affidavit that we have here so that we can annex that document and then we serve my learned friends for the governor.

Secondly, I would like your guidance on the role of or just a clarification because I do not want to be raising objections in the midst of their case. I just want your guidance on what is the juridic legal status of the Governor's participation in this proceedings because we note that he is not one of the witnesses.

They have adduced six witnesses and he is not one of them. He is entitled to appear; I take cognisance of that. He is entitled to appear without becoming a witness but I just want to have clarification that he will not have any interventionary role in these proceedings. That he will be a spectator.

Since he is appearing through counsel, I want to have your guidance and undertaking that he cannot address this Senate in any capacity having elected not to be a witness and having elected to appear through counsel.

Mr. Chairman, Sir, those are the two issues.

The Chairperson (Sen. Omogeni): Senior Counsel, on number one, do you have any specific rule under the Fifth Schedule that you want us to invoke? We served you with the rules that guide this Committee's proceedings.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Mr. Chairman, Sir, there is one that I marked when I was going through. However, I think you have discretion as an adjudicatory body to allow me to put those annexures. My learned friend will suffer no prejudice. They will have enough time.

The Chairperson (Sen. Omogeni): If you do not have it, I will give you time to have a look. Counsel for Governor, any objection?

The Advocate for Wajir County Governor (Mr. Nyamodi): In respect of the request that the learned Senior has made in terms of the--- I am not sure whether it is an additional deposition or an annexure or evidence that was omitted from the witness statement of Mr. Shueb Bare Ahmed that was served on us last night. We object in the strongest possible terms to that request.

Mr. Chairman, Sir, without jumping the gun, we have a substantive objection to that affidavit. I ask that this Committee considers the request by learned Senior for the County Assembly together with our substantive objection and then makes a composite decision in respect of our objection and learned Senior's objection to put in additional documents in respect of that deposition.

The Chairperson (Sen. Omogeni): I have not gotten you clearly. You said you have an objection to which affidavit?

The Advocate for Wajir County Governor (Mr. Nyamodi): We have an objection to the affidavit that learned Senior wishes to augment.

The Chairperson (Sen. Omogeni): To the proposed affidavit?

The Advocate for Wajir County Governor (Mr. Nyamodi): No. The learned Senior said that there is an affidavit on record of Mr. Shueb Bare Ahmed. He said that in respect of that affidavit, there was certain information that was left out. He seeks to add or improve or augment an existing affidavit.

Mr. Chairman, Sir, the point is that we have a substantive objection about the existing affidavit. The request by learned Senior should be considered together with our substantive objection.

The Chairperson (Sen. Omogeni): I hear you.

The Advocate for Wajir County Governor (Mr. Nyamodi): Alright. In respect of the second request, it is not, with tremendous respect to learned Senior, for anybody other than this Committee to determine how a governor,

who is the subject of impeachment proceedings, participates before these proceedings.

The Governor has chosen not to be a witness and that is his choice. That is his constitutional right. That should then not limit the manner in which he interacts with this Committee. He may choose to make an opening or closing statement. Those are opportunities that this Committee and its rules have legitimately extended to the Governor.

Merely because he has chosen not to be a witness, should not limit his interaction with this Committee.

The Chairperson (Sen. Omogeni): What we are putting on record is that the Governor will not be a witness. Counsel Nyamodi, is that what you are saying?

The Advocate for Wajir County Governor (Mr. Nyamodi): I am confirming that the Governor will not be a witness.

The Chairperson (Sen. Omogeni): Senior Counsel Ahmednasir Abdullahi, does that settle your objection?

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): That clarification is important for the trajectory these proceedings will take. However, if he makes that election, I do not think he has any other capacity for interacting with this Committee.

The Chairperson (Sen. Omogeni): I think the only guidance we can give at this stage is that he will not be a witness. We will deal with any other interaction as and when it arises. For your second objection, it is clear that he will not be a witness.

The one that remains unresolved is on your affidavit. Therefore, I will now give the legal team for the Governor to raise any preliminary issues you have and then we will deal with them and other pending issue raised by the Senior Counsel Ahmednasir Abdullahi.

The Advocate for Wajir County Governor (Mr. Nyamodi): Thank you, Mr. Chairman, Sir, for the opportunity to address you again. We have a few preliminary issues arising or in respect of today's proceedings. I will deal with some and my learned colleague, Mr. Ndegwa, will deal with others.

The Chairperson (Sen. Omogeni): How many issues are these?

The Advocate for Wajir County Governor (Mr. Nyamodi): They are five.

The Chairperson (Sen. Omogeni): You will do a summary in how many minutes?

The Advocate for Wajir County Governor (Mr. Nyamodi): I will do a summary in not more than five to 10 minutes. They will not be long.

The Chairperson (Sen. Omogeni): Thank you. Proceed.

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, the first issue that we wish to pick, and it is an issue that has arisen as this Committee commenced its proceedings with its preliminaries this morning, is that we have heard for the first time that the legal team for the County Assembly have given notice to this Committee that they wish to summon four witnesses.

Mr. Chairman, Sir, we also note that the Committee has stated that it will reserve its decision---

The Chairperson (Sen. Omogeni): We gave a chance to the County Assembly to raise any preliminary issue and I have not heard any request on the issue of witnesses. I am assuming that you have waived that right. This is the opportunity you have to deal with any preliminary issues.

Snr. Counsel Ahmednasir Abdullahi, kindly, proceed.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Mr. Chairman, Sir, the procedure that we were informed is that it is for you to summon. We made a request in writing. It is with your Secretariat. There is a letter we wrote yesterday, on 11th May, 2021. We requested that this Committee summons four witnesses pursuant to Rule No.9 of your Rules of Procedures. We also gave the witnesses we were calling.

Mr. Chairman, Sir, Rule No.9 is very clear. It reads-

“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.”

Therefore, we are entitled to.

The Chairperson (Sen. Omogeni): The best way to handle this, so that we do it once and for all, is that now that you have brought it our attention, I will allow you, Snr. Counsel Ahmednasir Abdullahi, to make the requests formally to the Committee and then I will allow the Governor to respond, and then we shall give directions.

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, perhaps before my learned colleague makes his application, may I request that we have sight of that letter. We have not seen that letter. I

request that through the Office of the Clerk of the Senate we have sight of the letter and a few minutes to consider it. We have not seen it.

The Chairperson (Sen. Omogeni): I direct that you effect service. Give Counsel Nyamodi a copy of that letter.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Mr. Chairman, Sir, with your kind permission, even before--- I am not overruling your position. So that---

Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Can I intervene a little bit on that?

The Chairperson (Sen. Omogeni): Just a minute Senior Counsel.

Mr. Ndegwa, kindly, proceed.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): There was a ruling and the rules guiding these proceedings are very clear that parties were to be served with specific documents at a specific time. We appeared for this service before the Office of the Clerk and all the documents that the Senior Counsel intended to rely on in these proceedings were served upon us. Even before you may direct whether to be served, there is a question whether there is a document filed before you for that purpose as long as that document relates to the trial before us.

Mr. Chairman, Sir, I am seeking your directions because of the question of the equality of arms. Is there a document that even the Committee can rule that there be a service upon in the first instance?

The Chairperson (Sen. Omogeni): We will ascertain. You can make all those observations in your response, so that our ruling will also take that into account. For now, I am directing that the letter dated Tuesday 11th May, 2021, received by the Office of the Clerk of the Senate on the same date be served to the Counsel for the Governor. Confirm if that has been done, Clerk.

The Advocate for Wajir County Governor (Nyamodi): Mr. Chairman, Sir, I confirm that I have received a letter from the assistants to the Committee. It is a letter dated Tuesday, 11th March, 2021, from the law firm of Ahmednasir Abdullahi Advocates, LLP, and it is received by the Office of the Clerk of the Senate on the 11th of May, 2021. I note also from the face of the letter that it is only addressed to the Clerk of the Senate and not copied to the Governor or his legal representatives.

The Chairperson (Sen. Omogeni): I hear you. Our apologies. Are you able to take a response after Snr. Counsel Ahmednasir Abdullahi makes the request?

The Advocate for Wajir County Governor (Mr. Nyamodi): I am seeing the letter for the first time. I would seek five or 10 minutes to take instructions on that letter from the Governor.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Mr. Chairman, Sir, I would like your guidance on an important house-keeping matter. Both the County Assembly and the Governor have their legal teams. We are a number of lawyers, there are about four, and we are three on our side. There is certain decorum when lawyers are many on who leads the matter and who can speak on a specific matter.

Can we have some guidance that they should not speak in chorus on the same matter? Let us have one lead counsel who argues one matter. I do not think it is fair if all of them speak on the same subject matter. Let them make an election on who the lead counsel to argue on certain matters is, so that we can respond. But if they all argue on the same point, it is like there is three or four representation that comes from their side and it does not look tidy.

The Chairperson (Sen. Omogeni): I presume, Mr. Nyamodi, that you are the Lead Counsel. You can elect who speaks on what issue, but I will allow you to take the lead. Where you think Mr. Ndegwa is the one to deal with the matter, through you, you guide the Committee and say, ‘on that matter Mr. Ndegwa will respond and on this particular one I will deal with’, so that we take you as the lead counsel. I assume you are the lead counsel?

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, yes, I am.

The Chairperson (Sen. Omogeni): Take the lead and when you want to delegate to the other legal team, we do it through you. You guide us that on the particular matter, so and so will deal with it.

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, I am guided by that direction from you. In respect of the Governor, we are both on record for the Governor; both my firm and Mr. Ndegwa’s firm.

The Chairperson (Sen. Omogeni): I want to know who the Lead Counsel is.

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, I am the Lead Counsel.

The Chairperson (Sen. Omogeni): You take the lead and delegate appropriately. Where you want somebody in your team to respond, you direct him to do so, but be the Lead Counsel.

Hon. Members, there is a request from the Governor's legal team that they require five minutes to take instructions on that letter. We will allow you to take five minutes adjournment. We will give you the five minutes. Consult quickly and when we come back, we take the request by Senior Counsel Ahmednassir, your response and then give directions on the way forward? Can we adjourn up to 11.21 a.m.?

The Advocate for Wajir County Governor (Mr. Nyamodi): Thank you, Mr. Chairman, Sir.

((The Special Committee adjourned temporarily at 11.17 a.m.))

The Chairperson (Sen. Omogeni): Counsel Nyamodi, I believe you have now sought instructions.

The Advocate for Wajir County Governor (Mr. Nyamodi): I have instructions and I am in a position to listen.

The Chairperson (Sen. Omogeni): Senior counsel, I think we can give you the opportunity to make the request and lay the basis why you want us to summon these witnesses. How long do you require?

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Mr. Chairman, Sir, as I make that submission, can I also add one of the annexures so that you have one ruling to make? Is that in order?

The Chairperson (Sen. Omogeni): I guess that should be in order then we will have a response from the Governor. They will object to your application in response.

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, if I heard you correctly, had you not given direction that the first issue be dealt with together with the objection that we want to take on that affidavit?

The Chairperson (Sen. Omogeni): Because of time, I want him to make the two requests and then you raise your issue and also respond to his request.

The Advocate for Wajir County Governor (Mr. Nyamodi): Can I reserve my response to the request of the augmentation of Mr. Bare's deposition to when I make my objection?

The Chairperson (Sen. Omogeni): The way you may elect but I think the decent way would be to allow him to make the request then you object to it in response, so that we are able to make a ruling on it.

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

The Chairperson (Sen. Omogeni): Okay. Senior counsel, how many minutes?

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): I will take less than five minutes.

The Chairperson (Sen. Omogeni): Thank you, proceed.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Mr. Chairman, Sir, we wrote to this Committee on Tuesday, 11th May, 2021, as part of the housekeeping rules. Basically we informed you about two issues. Our witnesses will be three. We gave them names so that there is full disclosure on the same.

We also indicated to the Clerk and this Committee that we want this Committee to summon four witnesses that are critical to the fair trial and disposal of this matter. Without them, this trial will not be a proper trial. You have the powers and rules.

As you can see, Mr. Chairman, Sir, the first witness is the first lady who is the Governor's wife, the second one is the Governor's son, and the third one is the Governor's daughter---

The Chairperson (Sen. Omogeni): Maybe as you give the names, you can also tell us why you need them to come and clarify if you are able to.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Mr. Chairman, Sir, the County Assembly's case revolves around the family of the Governor. We will adduce another evidence to show that the Governor, his wife and children have played a pivotal role in the degradation of governance in the county governance and misappropriation of public funds and breaking down structures of governance. They have ruled the County Government of Wajir in an *ad hoc* manner outside the constitutional architecture of governance. For that matter, their presence is indispensable.

Mr. Chairman, Sir, a trial that does not call the first lady cannot ventilate properly the issues we are raising here because she is the epicenter and eye of the storm. She is the foundation of the issues raised both in the petition and in the witnesses' statements here and so are the daughter and son who are pivotal in this matter.

You have the powers, Mr. Chairman, Sir. It will not take a lot of time to summon them. Summon them and let us have---

The Chairperson (Sen. Omogeni): It is good you have said daughter and son. You should be telling us whether "B" is the daughter and "C" is the son for record purposes.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): "A" is the first lady, "B" is the son, "C" is the daughter and "D" is a man whose fingerprints appear in every transaction that the County Government of Wajir has done. He owns so many companies. He has won so many contracts. He has been given so much money. Mr. Osman Abdi

Jimale must, in my humble submission, be summoned here. He is a treasure-trove of evidence. There is not one company that was awarded a contract where his name does not appear.

The Chairperson (Sen. Omogeni): Are those companies part of the documentation?

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): We have put the CR-12 as part of our annexures.

The Chairperson (Sen. Omogeni): We have a bundle of documents. You can direct us there. Just make reference to the bundle where we will get the CR-12.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): They are attached to the witness statement of Mr. Siad who is our second witness. He represents Diff Ward and his affidavit has all the annexures.

The Chairperson (Sen. Omogeni): You will bear with us. You brought boxes of documents, and so, we are trying to trace.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): It is labelled CS-7.

The Chairperson (Sen. Omogeni): I have the document. So, you can refer us to where there are CR-12. If we move together, I can see from page 34---

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Mr. Chairman, Sir, can my learned friend Hanan show you the pages?

The Chairperson (Sen. Omogeni): Counsel, you can just point the pages.

The Advocate for Wajir County Assembly (Mrs. El-Kathiri): My apologies, Mr. Chairman, Sir, I am reaching the page. It appears on Page 38.

The Chairperson (Sen. Omogeni): That is Leyli General Contractors Company Limited.

The Advocate for Wajir County Assembly (Mrs. El-Kathiri): It also appears at Page 39.

The Chairperson (Sen. Omogeni): That is Dahayo Construction and General Supplies?

The Advocate for Wajir County Assembly (Mrs. El-Kathiri): Correct. It also appears at Page 40.

The Chairperson (Sen. Omogeni): That is Lesley and General Merchants.

The Advocate for Wajir County Assembly (Mrs. El-Kathiri): Correct, Mr. Chairman, Sir.

The Chairperson (Sen. Omogeni): Any other?

The Advocate for Wajir County Assembly (Mrs. El-Kathiri): Mr. Chairman, Sir, we have also made reference under the affidavit and the witness statement of Hon. Abdullahi Isaack, the Mover of the Motion.

The Chairperson (Sen. Omogeni): I know the documents are many but can you pinpoint where they were awarded contracts? Is it also here?

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, if you allow me with your kind permission to interject, this is one of the positions that we wish to take a preliminary issue on. It is prejudicial to the Governor at this juncture for substantive materials such as an allegation of award of contracts or any microscopic examination of a CR-12 to go on record.

The Chairperson (Sen. Omogeni): We are not taking details. We just want to see the basis upon which this request is being made. We are not at all making any determination at this stage. Counsel, is there any page you want us to look at?

The Advocate for Wajir County Assembly (Mrs. El-Kathiri): That is it, Mr. Chairman, Sir.

The Chairperson (Sen. Omogeni): Is there any?

The Advocate for Wajir County Assembly (Mrs. El-Kathiri): No.

The Chairperson (Sen. Omogeni): Senior Counsel, you are done?

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Mr. Chairman, Sir, yes. On that point of summoning the witnesses, we are done. I am guided by you on whether I should add, reply or join my learned friend when he is taking the more substantive objections here.

The Chairperson (Sen. Omogeni): Can you conclude on the request for further affidavit and annexure?

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Mr. Chairman, Sir, on the further affidavit, my humble submission is that we are not raising any new evidence. What we are doing is that we inadvertently misplaced some annexures to that affidavit. We are not bringing new evidence; it is just an issue of annexing this new document. I have looked at your rules---

The Chairperson (Sen. Omogeni): So that the record is clear, which affidavit are you talking about? Is it the same C7?

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Yes. That one of Shueb. We forgot some documents on that; Shueb Bare Ahmed.

The Chairperson (Sen. Omogeni): You are referring to the affidavit of Bare Ahmed? CA7?

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Yes. If you look at that statement, you will see from page 1 to page 21. There are certain bank statements and transactions that are there. Within those statements there are certain documents or bits we forgot. If you look at

paragraph 26 of the witness statement, we say: “Annex here to unmark the SPA1 are the following documents.” They run from A to L.

Unfortunately, we forgot a very critical annexure, that is Annex A, a copy of Mrs. Haira Omar’s statement account for the year. This one is very crucial. It shows you a lot of evidence on how kickbacks were paid, how money was received, the nexus between that company we were talking about, the companies by that witness and the transactions.

What we will do for ease of reference is that we did a chat like this which gives you the movement of money from one account to another, from one company to another and how it all ended up in the bank account of Mrs. Haira Omar Maalim.

The Chairperson (Sen. Omogeni): So, the application, if I hear you right, is that you inadvertently forgot to include Annexure A?

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Yes, Annexure A.

The Chairperson (Sen. Omogeni): Okay. That is clear. That is all?

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Yes, that is all and we have it here. Since the case is tomorrow, my learned friends will have ample time the whole of today, to reply to that, to interrogate it in depth. So, there will be no prejudice, absolutely none that they will suffer.

The Chairperson (Sen. Omogeni): Very well. Senators, I think you can follow CA7, paragraph 26. The request by counsel for the county assembly

is that they inadvertently forgot to attach Annexure A. So, when we retreat you can bear that in mind.

Okay, counsel for Governor, I will allow you to make your response and also make any preliminary issues that you have.

Senior counsel Ahmednasir Abdullahi, one Member wants a clarification. Proceed, Sen. Linturi.

Sen. Linturi: Mr. Chairman, Sir, with tremendous respect to senior counsel, I would wish that he would further clarify whether the document he intends to introduce is a statement of account or it is a bank statement.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Mr. Chairman, Sir, yes, it is a statement of the bank relating to certain accounts of the witness which we forgot to add.

The Chairperson (Sen. Omogeni): Senator, that is clear?

Sen. Linturi: Yes, it is clear, Mr. Chairman, Sir.

The Chairperson (Sen. Omogeni): Thank you. Counsel Nyamodi, you can respond to the issues raised by senior counsel Mr. Ahmednasir Abdullahi and then you can also raise your appeal and Ahmednasir Abdullahi will respond so that when we consider them we do one direction on all of them. You have ten minutes.

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, just to start by responding to the request for a further affidavit, it would have been easier to respond to senior learned counsel if

we had had an opportunity to see what he has taken such great pains to describe in such graphic detail.

Mr. Chairman, Sir, and Members of the Committee I urge you to note that even as the request is being made, we have not had sight of this monumental important document that was omitted when this affidavit was being put together.

In respect of what it is or what it is not, or whether it completes what is already in the deposition, having had no sight of it, we are unable to make any comment on it.

What is more important is that according to the programme that you read out at the beginning of this morning's proceedings, it is the County Assembly's turn to present its witnesses once we conclude with the preliminaries, you make your determinations and give direction about objections.

What learned senior is saying is that they want to introduce new evidence now and they then want the witness to testify now because today is their day; they have no other day in which to lead evidence. They then wish the Governor to respond to that evidence at whatever time the Governor chooses to respond. Needless to say, that is a prejudicial position to the Governor.

There is no clearer example of an ambush. Evidence cannot be produced during the hearing because the hearing commences today, because the Governor has no opportunity not just to consider but to respond as he is entitled to.

The affidavit in respect of which that evidence is thought to be adduced, the evidence contained in that affidavit is important.

I wish to refer the Chairman and Members of the Committee to pages 34 to 40 of the annexures to that affidavit. I just wish the Committee to note the dates of those CR12s. CR12s are records from the company registry in respect of directorships and shareholders of companies. You will note that the CR12s are dated on various dates between the 9th and the 10th of May this year.

This evidence could therefore, not have been before the Assembly when the Assembly sat to consider the Motion of Impeachment at the end of last month.

What this evidence is and I will argue that point substantively when I argue my objection is an attempt by the County Assembly to expand the scope of the Motion of Impeachment facing the Governor.

Other than the fact that it is an ambush it is an attempt, unlawful and unconstitutional to expand the scope of the Motion. For those reasons, I urge that this Committee denies the request by learned senior to augment the evidence and by extension, expand the scope of the Motion for impeachment.

I now wish to respond to the first issue and that is the letter dated the 11th of this month requesting for witnesses to be summoned.

Mr. Chairman, Sir, I oppose that request. I commence by pointing out the important words in Rule 9 that “the Committee may.” If the Committee may, then it also may not. It is not mandatory but discretionally.

I submit the following reasons why the Committee should not summon the witnesses-

(1) The relationship between the first three witnesses A, B and C and the Governor. It is the Governor's wife, son and daughter.

As a matter of law whereas those witnesses may be competent to testify against the Governor, with tremendous respect, they are not compellable. The summon seeks to get this Committee to compel them to testify against the Governor, a husband and father in both instances.

I will leave it to Mr. Ndegwa to highlight the relevant provisions of the Evidence Act.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I proceed from where my senior has left. We oppose vehemently the application to summon those said witnesses. As indicated there is no basis that has been laid by the applicant as to why those witnesses might be called upon to appear before you.

I invite you to look at the Oath and Statutory Act. We also invite you to look at the rules of the court under Section 6. You also go to Rule No.9 which deals with the question of exhibits. It provides that-

“All exhibits to affidavit shall be securely sealed together under the seal of the commissioner and shall be marked with serial letters of identification.”

What has been presented before you is just a mere allegation that they fall in between the affidavits. You have been told that those documents fall between Annexure A and something. Are they capable of being effectively distinguished as prescribed by Rule 9?

Even as we appear before you this morning, do they comply with that rule? An affidavit is a statutory oath that is guided by this Act. Any procedure that offends this Act offends the entire process.

May I submit on the compellability of this witness? I refer you to the case of hon. Governor Wambora Civil Appeal No.21 of 2014. In that case, the Court of Appeal at Nyeri was able to distinguish these processes. When it was settling down on the question of the standard of proof, the court said that it is not on the balance of probability. It is not above reasonable doubt; it is there in the middle.

Why was it there in the middle? It was because of the quasi-criminal nature that these proceedings invite. When you look at the quasi-criminal proceedings, you might then want to look at Section 127 (3) of the Evidence Act on the question of compelling a witness and more so a spouse. That provision says that a witness can only be admitted at the election of the person charged not at the election of the person who is charging in this case the County Assembly.

Mr. Chairman, Sir, we submit that the provision bars or prohibits a spouse from testifying against the spouse.

You might want to ask the foundation of that provision and you find it in the Constitution which provides that the family is the fundamental unit of every society. If then we are to summon the family members to testify against their father, the question which might be both legal and social is the future cohesiveness of the society.

As I sum up, you have been told that these documents will become relevant during the proceedings. That is mere speculating. The applicant is on a

fishing expedition because there is no witness who has testified before you to lay basis whether these individuals participated in that procedure.

How and why should the applicant; the County Assembly, be aided by this Committee to summon witnesses? Have they demonstrated that they have done it and the witnesses have probably abandoned or refused to honour the summons? There must be equality of arms which is the provision of Article 27 which is equal protection before the law. The Governor is equally protected before the law as much as the applicant.

Mr. Chairman, Sir, you might want to invite yourselves when you are looking at this application under Article 50 on the question of fair hearing---

The Chairperson (Sen. Omogeni): I am told your time is up.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): I am just winding up. Article 50 is an underogable right under Article 25. When we say that the applicant ought to be granted time and/or opportunity to summon witnesses, the question shall be: where shall the fair hearing aspect be left, noting that the witnesses will come and testify towards that document and we will not have an opportunity of cross-examining them on the content of that document?

I oblige.

The Chairperson (Sen. Omogeni): Senior counsel, before you respond, Mr. Nyamodi as lead counsel, I had also given you leeway. If you have any preliminary issues, you can raise them now so that when senior counsel responds, he does so to all of them because we are trying to manage time.

The Advocate for Wajir County Governor (Mr. Nyamodi): We have other preliminary issues. May I claim 25 minutes of time in respect of our preliminary issues?

The Chairperson (Sen. Omogeni): We cannot give you 20 minutes because our timetable accorded you only 15. You can take 15 minutes. You must conclude all the issues within those minutes. Your time begins running from now.

The Advocate for Wajir County Governor (Mr. Nyamodi): Thank you very much. I will commence my preliminary issues by winding up one loose end that was left hanging in respect of the letter we have just submitted on.

In respect of Witness No. D, in that letter if I heard learned senior correct, he said that the intention is to establish that he is the owner of various companies. I believe that is done by the CR12. There is no need to call an owner, director or shareholder of a company to prove that he owns the company.

I submit that the request to call the owner and a shareholder in the face of such a clear CR12 is an attempt that can only achieve to embarrass that witness. That is the reason this Committee should not summon him.

In respect of the preliminary issues that we have in respect of this matter, I had indicated that we had three. We have addressed one and now four remain.

First, we wish to object to the inclusion on the record of these Committee's proceeding today of the affidavit of Mr. Barre Ahmed. It is the affidavit that

has been discussed at length in the submission that commenced with the learned senior's request for improvement or augmentation of the deposition.

Mr. Chairman, Sir, I wish to state, first, that the testimony contained in paragraph one to the last of that affidavit was not before the County Assembly. The evidence that was before the County Assembly was supplied by the Senate to the Governor on the 30th of last month and the Governor supplied the Assembly, which has responded to the allegations and to the evidence that was shared with him by the Senate, exhaustively.

Mr. Chairman, Sir, I will repeat for the purposes of emphasis the submission I made a few minutes ago, that this affidavit was received maybe about 8.00 p.m. last night and this witness is meant to testify today. There may be responses to the allegations that are made in that affidavit, but there is no opportunity to respond in the timeframe in which this Committee is proceeding.

I submit that a party seeking to impeach a governor is, therefore, under the obligation to ensure that before the Assembly, they present all the evidence that they wish to adduce in support of their Motion for Impeachment. That then enables the Governor to have his full Article 50 rights of responding to those allegations.

Mr. Chairman, Sir, it should not be lost to this Committee's mind that what is at stake here is the Governor's governorship. The Committee should then give him all the opportunity to defend himself. Allowing substantive evidence such as this to be brought before the Committee at the eleventh hour and served to the governor without an opportunity to respond is prejudicial to the governor.

Again, I submit for emphasis that this is another attempt by the County Assembly to improve or to expand the scope of the grounds for impeachment. Yes, the allegations may have been made in the Motion for Impeachment that was before the Assembly, but the evidence was not presented before the Assembly and it only arose last night.

Mr. Chairman, Sir, and Members of the Committee, our request and preliminary issue is that the affidavit of Mr. Shued Bare Ahmed be expunged from the records.

The Chairperson (Sen. Omogeni): Very well. Next.

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, secondly there is evidence that falls into the same category and that evidence is contained in the County Assembly's bundles marked on the top left hand corner as CA4 and CA8.

On the front of CA4 is indicated Education Department 2015-2017 and in respect of CA8, ICT, Fisheries, Trade Department, Public Works, Environment and Agriculture.

Again, this is evidence that was shared with the Governor's legal representative and us only late last night. This evidence does not arise from the length and breathe of the Motion for Impeachment.

As I have previously said, there may be very well answers. The Governor may very well have answers to the documents that are produced in these two bundles. However, having not been given an adequate opportunity to respond, noting that the witnesses are due to take the stand once these

preliminaries are concluded, to allow these documents to remain on record, is prejudicial to the Governor and it limits his Article 50 rights.

Mr. Chairman, Sir, I leave the rest of the time for my learned friend Mr. Ndegwa Njiru to urge the other remaining preliminary issues that we wish to take up.

The Chairperson (Sen. Omogeni): Thank you Counsel. Mr. Ndegwa proceed.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I just have to pick up from where my senior has left and refer you to an affidavit by one Mr. Hussein Abdurrahman Dahir.

The Chairperson (Sen. Omogeni): Are you on the same issue?

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Yes, Mr. Chairman, Sir, just proceeding. It appears as CA1 to which we are making an application that running all the way from paragraph 28 and there are two affidavits, that is CA1 and CA2, to the last paragraph of the affidavit be expunged from records.

The Chairperson (Sen. Omogeni): Who is the author of CA1?

The Advocate for the Governor (Mr. Ndegwa Njiru): Mr. Chairman, Sir, the deponent is Mr. Hussein Abdurrahman Dahir.

The Chairperson (Sen. Omogeni): That is CA1.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Mr. Chairman, Sir, CA1 and CA2.

The Chairperson (Sen. Omogeni): Proceed.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Mr. Chairman, Sir, the basis of this application is premised on the House Standing Order guiding this provision Rule No.19. It provides that in presenting its evidence, the County Assembly shall not introduce any new evidence that was not part of the allegations against the Governor by the County as forwarded by the Speaker of the County Assembly to the Speaker of the Senate.

What this presupposes is that within the two days contemplated under Section 33 of the County Government Act, the period prescribed for the Speaker of the County Assembly to forward the resolution, it is a presumption under this rule of the Senate that the same must be accompanied by the evidence that the County Assembly is seeking to rely on.

Mr. Chairman, Sir, if you just read that provision, it says ‘new evidence that was not part of the allegations against the Governor by the County Assembly as forwarded.’ The operative word here is “as forwarded” not “as filed as at yesterday”. If you look at Section 33(2), it is the one that refers to the question of forwarding the evidence.

Anything that was not received as at the time the County Assembly was forwarding these documents can only be regarded as new evidence and hence the question of admissibility comes into play.

Mr. Chairman, Sir, all those paragraphs that we have cited and as annexed in that affidavit were not before the County Assembly at the time of moving of the Motion. Where is the evidence; the County Assembly’s HANSARD?

One cannot have his cake and eat it. Equally well, one cannot be in a fishing expedition and expect the assistance of this Committee.

I refer you to the case of Hon. Philomena Mwilu *vs* the Directorate of Public Prosecution (DPP) Occasion No. 295 of 2018. In that case---

The Chairperson (Sen. Omogeni): All those cases are they in your bundle somewhere?

The Advocate for Wajir County the Governor (Mr. Ndegwa Njiru): Mr. Chairman, Sir, these are preliminary issues that I have just raised.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): These are the issues we have. My learned friend is citing issues he has not given us citation of. We do not know the spin he is putting on. He is breaking so many laws.

The Chairperson (Sen. Omogeni): You are a very experienced advocate and you know courtesy dictates that if you are making reference to an authority and I presume you knew you will make reference to it, you should have shared the same with your learned friend, Senior Counsel.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Mr. Chairman, Sir, I am well guided. I will not refer to the case. It is cardinal rule of any criminal procedure even of this one which is *quasi*-criminal in nature that prosecution is not to be made good. It must appear to be good at the time of its inception.

Appearing good is making sure again there is equality of arms. That the procedure complies with the doctrine of fair trial. This is so that this doctrine of fair trial may not compromise the Governor's presumption of innocence.

What then that means is that these paragraphs as indicated will only lead to embarrassing the Governor. The Governor will not have the opportunity of substantively responding to them.

I move on to the other point; which is the question of the competence of the Motion before you as originating from the County Assembly.

The Chairperson (Sen. Omogeni): So, that is another issue now?

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Mr. Chairman, Sir, that is another issue.

The Chairperson (Sen. Omogeni): Okay.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Mr. Chairman, Sir, while this Committee is competently capable of dealing with the issues, the question of the competence of that Motion comes into play. The competence is the legal competence.

Why are we impugning the competence of this Motion? It is because at the time of the debate at the County Assembly, there existed a valid court order arising from Petition E009 of 2018 which was filed before the Meru High Court. The Meru High Court enjoined the processes of the debate because we were impugning on the legal ability of some officers to participate in that process. In the wisdom of the Judge, the Judge found it fit to enjoin the process. The fundamental question is whether an issue that arises from a process that has been enjoined by the court can form a competent basis of an impeachment.

Mr. Chairman, Sir, we argue this knowing very well that there exists a doctrine of checks and balances. The doctrine of checks and balances does

not necessarily mean that these organs will operate in utopia. There must be a balance of each other. That is why Article 165 (3) (d) of the Constitution provides that the High Court has jurisdiction to interrogate whether anything said to be done has been accordance to the Constitution.

An impeachment is a constitutional process. It being a constitutional process, it is under the interrogation of the High Court. That is why in that wisdom, the High Court wanted to evaluate and interrogate whether the entire process sits well within the Constitution.

Mr. Chairman, Sir, I move on to the other question about the issues appearing in the Notice of Motion. It suffices to note that some of the issues forming the basis of this impeachment are competently before the County Assembly and are pending resolution. Look at Standing Order 89 of the County Assembly of Wajir. Read it together with Section 14 (a) of the County Governments Act, which empowers the County Assembly to legislate the Standing Orders. You will realize that, that Standing Order bars the Assembly from debating any matter that is before a Committee.

Was that issue raised before the Assembly? Yes. We will refer you to the Standing Orders of the Assembly, which we assume you have been served with. An issue was raised by hon. Rashid Mahamud as to the competence of that Motion. The Speaker said:

“Order, hon. Member! If that matter is before the Committee, stop discussing it. So, go straight to what is in the Motion.”

The question is: could the Assembly then find the Governor culpable for issues that were before the Committee? At that particular time, did the

Speaker guide the Assembly as to what issues contained in the Motion that may be voted for or against or did he abscond his duty?

The Chairperson (Sen. Omogeni): I am told by our timekeeper that your time is up.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Let me summarize. We urge you to find that the Motion before you is not competent, that the Governor's presumption of innocence and the question of equal protection before the law will be violated if this process moves on. We are not impugning the jurisdiction of this Committee. This Committee has power to check on the abuses of their sister or brother county assemblies through doctrine of oversight.

Much obliged.

The Chairperson (Sen. Omogeni): That is okay. Senior Counsel Ahmednasir, you need to respond to those appeals.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abudullahi): I will respond, but as a preliminary---

The Chairperson (Sen. Omogeni): How many minutes do you require?

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abudullahi): I will be done in maybe 15 minutes.

The Chairperson (Sen. Omogeni): Senior Counsel, can you do it within 10 minutes? Time is not on our side.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abudullahi): That is okay.

Mr. Chairman, Sir, I think that we need to discuss the high-sounding legal clichés my learned friend submitted that are completely irrelevant to these matters. “Separation of powers,” “rule of law,” “presumption of innocence;” they are neither here nor there. That is not what is before this Committee.

Before I go into this substantively, you asked me whether there is any rule that completely addresses this issue. Rule 31 gives the Chairman absolute powers to rule on all these matters and address them in the most appropriate manner.

Mr. Chairman, Sir, there is a very serious matter that my learned friend raised for the first time, and it is a grave danger to the rule of law. They are telling you that a governor can commit all kinds of crimes through his children and wife, and you cannot summon them because, as my learned friend put it, the unit of the family will be compromised.

In other words, everybody will commit offences through their wives and children and when the law wants to take its course, you will be told:

“No! This is the wife, this is the husband. Let us not destroy this family.”

What will happen to constitutional accountability? Will we hide under the cover of spouses, daughters and sons, as my learned friend submitted? I am surprised that Counsel can make that kind of argument; that let us not call the wife, daughter or son of the Governor because it may create some disharmony in that family. What of the Kenyan public whose money was misappropriated in this process? What happens to the law? That is not an argument worth making in the first place.

Mr. Chairman, Sir, my learned friend also said that we are adding new evidence, and they cited Rule 19. Rule 19 is very important, but contrary to the submissions by my learned friend, Mr. Ndegwa, the material words are:

“In presenting the evidence, the Assembly shall not introduce any new evidence that was not part of the allegations.”

Therefore, as long as we have made allegations in the county assembly, we can adduce evidence.

All these allegations that the Governor’s wife is the *de facto* ruler, and that his daughters and sons were given--- All those issues are part of the Petition that was taken to this House. There is nothing we are adducing in terms of new allegations.

My learned friend also had issues with the CR-12. The CR-12 was made on 9th and 10th but that is not manufacturing new evidence. That is just retrieving documents that are on a certain webpage. Since we were taking instructions, you will see that the person who requested it, is my learned friend, Mrs. Hanan. She just wanted to confirm the assertions by the client that Jimare appears in all of these. She just retrieved that document. The fact is that he was a member of that company. The mere fact that you retrieve evidence that exists in a certain database is not manufacturing of evidence.

Mr. Chairman, Sir, my learned friend, Mr. Ndegwa, refers you to the evidence, but this is not a criminal trial. This is a constitutional inquiry on whether the Governor should be removed or not. When my learned friend takes you through all those rules, he knows that they are not relevant and are of no use, but he still recites for whatever purpose.

I, therefore, urge you to discount all those issues that my learned friend submitted before. That is why I said that he used a lot of clichés. He talked about the balance of probability and the criminal nature of these proceedings. We will talk about that. We have not reached there yet; it is just a premature.

Mr. Chairman, Sir, you will have proper time to determine all these issues that my learned friend said you should expunge from the record. When our witnesses are called and you look at the original Petition, then you will make a determination on it. I can give you my word that we are not introducing new allegations or any evidence that was not there before. My learned friend's vehement opposition on this should be dismissed *in limine*.

The Chairperson (Sen. Omogeni): They have raised an appeal on a pending matter before court. Any comment?

The Advocate for Wajir County Assembly (Mr. Ahmednassir Abudullahi): Yes. My learned friend also knows that even the courts themselves, and if you look at the ruling by the Speaker of the County Assembly of Wajir, which my learned friend--- My learned friend praised the ruling by the Speaker of Wajir County Assembly as highly sound and appropriate when it was read. It is in the HANSARD. My learned friend said:

“Thank you, Mr. Speaker, Sir, and the distinguished Assembly. My name is Ndegwa Njiru, an advocate of the High Court of Kenya. With me is my learned friend, Mr. Mwangi. We have heard your ruling and we highly respect it because it is constitutionally sound.”

That is his statement. I am not making it. He said it is ‘constitutionally sound.’ Why is it constitutional sound? It is because the Speaker rightly

made the ruling that, whereas the High Court has supervisory jurisdiction over Parliament when it made a decision – I am not disputing that – the High Court has made ruling that you cannot micromanage Parliament. You cannot intervene in proceedings that are ongoing. You cannot stop Parliament to debate what it want to debate. That is a red line on the sand. That is the tradition of the Commonwealth, whether in England, Canada or Australia.

The courts have said the jurisdiction is triggered by a decision of Parliament. They have no jurisdiction to stop or micromanage Parliament. That is why my learned friend said jurisprudentially the Speaker's decision was sound. I am not surprised he is changing his stand depending on the forum, but that is not what counsel should do. If you say it was sound in Wajir County, it must be sound in Nairobi City County.

Mr. Chairman, Sir, all the objections to the affidavits are inappropriate. This is not the right time. Let evidence be adduced. Allow us to put the evidence which is critical for this. Let us proceed.

The Chairperson (Sen. Omogeni): Thank you. You have raised several issues that the Committee will require to retreat to consider them.

Counsel Nyamodi, I see you have put your microphone on.

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, in the submissions, we made a response to the two preliminary issues that our learned senior had taken up. We also had three or four preliminary issues of our own which the learned senior has responded to.

I was hoping, if possible, to claim two minutes as the right of reply having moved preliminary issues that have been responded to by the other side.

The Chairperson (Sen. Omogeni): I hope you are not misleading the Chair. I thought you responded to his preliminary observations and then raised your own.

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, I raised mine and then I have a right to a response to whatever he said.

The Chairperson (Sen. Omogeni): You have right of response. You have two minutes limited to those issues only.

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, it is just a single issue to contextualise Rule 19 of the Rules of this Committee. If you look at the invitation from the Clerk of this Senate to the Governor, it forwards to the Governor the Motion and evidence in support of that Motion. That forwarding in good time, gives the Governor an opportunity to respond to the allegations and the evidence.

Therefore, Rule 19 should be given the interpretation that then makes it possible for the Governor to respond. The word “allegation” in Rule 19 should be read together with evidence. This because allegation, evidence and opportunity to respond. Rule 19 seeks to prohibit an ambush. It should not be interpreted so that it is facilitative of the kind of ambush that the County Assembly seeks this Committee to be an accessory to.

The Chairperson (Sen. Omogeni): Thank you. As I was saying, you have raised a number of preliminary issues that will require this Committee to retreat to consider and then give its ruling on the way forward. Did you intend to make any opening remarks, Senior Counsel, Ahmednasir Abdullahi.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Yes, Mr. Chairman, Sir. We want to make extensive opening remarks.

The Chairperson (Sen. Omogeni): What about Counsel Nyamodi?

The Advocate for Wajir County Governor (Mr. Nyamodi): Yes, Mr. Chairman, Sir. We intend to make opening remarks.

The Chairperson (Sen. Omogeni): I will give this direction so that we manage time. We will sacrifice our lunch hour to do a ruling that will give direction on how we will proceed on all these preliminary issues; the witnesses and whether to accept the request or reject the implication of that court order and all the others.

I will give you an opportunity to make your opening remarks for the remaining period. During lunch hour, we will prepare our ruling on the

issues we have raised, which we will deliver in the afternoon before we start the trial.

In that case, I will allow Counsel for the County Assembly to make his opening remarks. How many minutes do you need?

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Mr. Chairman, Sir, we need not less than 20 minutes.

Sen. Sakaja: On a point of order, Mr. Chairman, Sir. I appreciate the situation we are in with COVID-19, but counsel from both sides are a bit muffled behind their masks. Maybe you can direct that as they present, they can use the Dispatch Box so that we can hear them clearer, especially for the Counsel for the Governor because he is surrounded. Counsel for the assembly is not surrounded. You can remove your mask so that we can hear you a bit clearer.

The Chairperson (Sen. Omogeni): Sen. Sakaja, earlier on, I had directed that nobody should speak without their mask on.

Sen. Sakaja: Mr. Chairman, Sir, they are muffled. We cannot hear them. There is no reason to have a proceeding where we cannot hear.

The Chairperson (Sen. Omogeni): If we can rearrange the sitting, maybe the person next to the Dispatch Box can move to the right. We allow Senior Counsel to go to the Dispatch Box and he make his remarks. Is that okay for you?

(The sitting arrangement was changed)

Yes, you can do it from there.

OPENING STATEMENT BY WAJIR
COUNTY ASSEMBLY

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): Thank you, Mr. Chairman Sir, and Hon. Members of this Committee. We are most honoured and grateful for this opportunity to present the case of Wajir County Assembly in this process that entails the removal of the Governor of Wajir County, Hon. (Amb.) Mohammed Abdi. You all know it

was triggered by the impeachment process that was started by Wajir County Assembly.

This process is important both to the people of Wajir County and the general Kenyan public for a number of reasons. First, this is another glorious opportunity for this House to showcase to the Kenyan public the important of constitutional accountability and fidelity to the law. The Senate, by virtue of Article 81 of the Constitution and Section 33 of the County Government Act, Act No.17 of 2022 has a solemn constitutional duty to undertake the process of removing or not removing a governor. In our view, that process is a delicate balance that you must maintain between its being seen as a whitewash or witchhunt.

Mr. Chairman, Sir, it is my humble submission before this august institution that you have an excellent opportunity to showcase to the skeptical and disillusioned Kenyans that are unhappy with our institutions of governance.

During an era when the institutions – whether the Judiciary, Executive or the Legislature – are floundering and grossly underperforming; and, when the citizenry of this country have shown great dissatisfaction and unhappiness with the three arms of Government, this Committee has a special duty and obligation. It is for the common man and woman in rural Kenya who believe that the rich and powerful are simply unaccountable and operate in an atmosphere where the rule of law has taken an indefinite leave of absence.

Mr. Chairman, Sir, you and your Committee have a duty to re-establish the faith in our institutions and that, in my humble submission, is priceless. We are not saying that you swallow our case and evidence hook, line and sinker. However, we are pleading and respectfully petitioning this august institution that you apply the law as it should and hold the Governor of Wajir to a constitutional audit and accountability so that his reign comes to an end.

Mr. Chairman, Sir, the trial and Motion that triggered it could not be more authentic and genuine. It is as a result of the masses and ordinary folks in Wajir who have revolted and risen against the rule of the Governor. It is the local Members of County Assembly (MCAs) in the rural stations in Wajir in a bold and brave act of selfish sacrifice that initiated this process.

I want this Committee to appreciate that this process has no bigwig. It has no big man. It has no sponsor. It is the MCAs from Wajir who have triggered it. It is not driven by the national politics of this country. It is not even influenced by the clan dynamics of Wajir. This petition is both clan and political neutral.

It is because of the accountability of the Governor, the impunity of the Governor that could not be tolerated anymore by the petitioners and the grassroots members that they are representing that triggered the seismic political change in the ecosystem of Wajir and even the larger Northern Kenya.

Mr. Chairman, Sir, and hon. Committee Members, we are confident that when we take you through the evidence and show you the graphic, but scary maleficence, incompetence and corruption of the Governor of Wajir County, we are confident that you will reach the inescapable conclusion that His Excellency Governor Mohamed must be taken out of the political equation in Wajir.

In fact, we boldly submit that if the Senate cannot remove this, it will probably not remove another Governor. The evidence is overwhelming, the evidence is indicting.

Mr. Chairman, Sir, I know you as my former Chairman. You and some of your Members have excellent training in law. However, I will tell you that when you go through this evidence, the issue that should come to your mind is the legal doctrine in the law of tort that is habitually pleaded in personal injury cases comes to my mind and that is *res ipsa loquitur*, the facts speak

for themselves. You really do not need to prove it. It is so obvious. It is there *ex facie*.

Mr. Chairman, Sir, just like your Committee, we are very conscious of the fact that this is not a criminal trial. Rather, it is a constitutional process that is *quasi*-judicial in nature. So, even though we are confident that our evidence can sustain a criminal trial and satisfy the standard of proof of beyond reasonable doubt, that is not our brief this morning. We are not doing a criminal trial. This is a constitutional process of judication and the standard of proof hovers in the neighbourhood of the balance of probability.

Mr. Chairman, Sir, again, I would like to impress your Committee that it is not a question of quantitative; it is a question of qualitative. If we show that one shilling, one dime, was stolen or misappropriated, that is enough for his removal. We do not have to show you that billions were stolen or hundreds of millions. It is the breach of the law and act of impunity that led to the loss of that one shilling that should be enough for you to remove him.

Mr. Chairman, Sir, before we give you a snapshot of the evidence that we will lay before the Committee and the factual matrix that define the case of the County Assembly of Wajir, let me comment about, very briefly, the Governor as a witness and his decision not to appear as a witness in the most important trial of his political career so far.

We are conscious that he has appeared before you pursuant to Rule 6, but we emphasise that his refusal to take the witness stand is pivotal in the determination of this and it is very critical in the deliberations you make. Although we refrain from submitting that a negative inference can be drawn by his refusal to take the witness stand, I submit that, Mr. Chairman, Sir, you

must take notice that as usual when the Governor is told to account for his omissions or acts, he always skips his trial. He never participates in his trial.

Mr. Chairman, Sir, there is just one issue I would like to emphasise and this is the fact that if you look at the history of the defendant and his participation in judicial processes, this is a witness who persuaded a court that his lack of education is not very important; a court of the imminence and the standing of the Supreme Court. When I argued that matter before the Supreme Court, I impressed upon the Court the famous case called Dred Scott vs. John Sandford which is an 1857 case of the United States of America (USA) Supreme Court which declared that a black man is a chattel and is not entitled to freedom and will never be a citizen of the USA.

I impressed upon the Supreme Court that they have a similar situation and if they rule that the Governor does not need to have a university education, the same way Dred and Scott damaged the standing of the Supreme Court, that case will damage the Supreme Court of Kenya.

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, if I may perhaps interject at this point, I have listened very keenly to my learned senior making his opening remarks.

With tremendous respect to my learned senior and this Committee, he seems to be settling a personal score with the Governor. The issues of the Supreme Court, what was submitted and what the Supreme Court was persuaded and not persuaded sure cannot form the subject matter of opening remarks in respect of an impeachment trial. Those are personal views and my learned senior is not a voter or a citizen of Wajir County.

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): I think it is beneath my learned friend to make that---

There is nothing personal about this. I am referring to one of the most important cases ever decided by the Supreme Court of Kenya. That he is uncomfortable with that does not mean anything to me. It is for him to sort it out.

Mr. Chairman, Sir, can I conclude? I am about to finish.

The Chairperson (Sen. Omogeni): Senior Counsel, we will allow you to proceed, but try as much as possible to limit your opening remarks to the issues before us. We may not have a lot to say---

The Advocate for Wajir County Assembly (Mr. Ahmednasir Abdullahi SC): I understand.

Mr. Chairman, Sir, the point I am making is that interpretive decisions institutions make have historical implications. That is why I am saying that when I gave the case of Dred Scott and the case of the Governor in the Supreme Court, there are certain decisions that institutions make that they regret for the rest of their lives. That is the danger that I am alluding to in this matter.

Mr. Chairman, Sir, as a deliberative institution, you are seized of interpretive powers under Article 10 of the Constitution. When you are determining this matter, you are interpreting the Constitution, statutes and certain values that are captured in Article 10 of the Constitution have very important ramifications for your path.

Mr. Chairman, Sir, we are calling three witnesses in this matter and we have deposited the witnesses and statements. The first witness is Mr. Abdullahi Issack who is the MCA for Elnur/Tula Tula Ward. He is the author of the Notice of Motion dated 19th April 2021 that triggered the impeachment process. We will take you through his evidence first to show you the process from a constitutional law perspective was of high integrity and followed the letter of the law in all aspects.

He will take you through the facts that inform the case; the breach of Public Finance Management Act that is completely ignored in all dealings in the County Government of the Governor. This Act, in my humble submission, is the bedrock of accountability. When you break this Act like the Governor has breached in all aspects, you cannot have or do not have any regard for public finance.

He will give you a detailed breakdown of each and every breach that occurred. He will show you that the process was not even byzantine, it was worse than that. He will show you that billions of shillings were lost, some unaccountable, some nobody knows where they have gone. He will show you that even something so simple like giving the annual address so that you can share the vision and the hope of your county, the Governor has refused notwithstanding the statutory provisions that underpin such an important exercise.

He will take you through the budget and the accounting process. He will show you that when the County Assembly passed the budget for one year, the Governor changed the whole budget, so that it can suit certain issues of dynamics for him. He will show you that Gov. (Amb.) Mohamud thrives in

an opaque secretive system that has no checks and balances and accountability. He is defined by impunity and immunity from prosecution or the reach of the law.

Mr. Chairman, Sir, the second witness is hon. Siad Barre Abdi. He represents Diff Ward. He has an affidavit. He seconded the Motion for the Assembly. His evidence zeros on the first lady Her Excellency, Mrs. Kheira Omar Maalim. We are very respectful your honour. We do not want to go very personal with the first lady. This is because she is a mother, a wife and we have been very careful to circumscribe the evidence we are giving to ensure that it is only relevant when it interacts with public finance and public accountability.

According to the evidence by Mr. Shueb, Mrs. Kheira is not only a first lady. She is not the power behind the throne. She sits on the throne. Mr. Shueb will take you through his evidence and give you a snapshot of her reach and, how her tentacles are deep and strong in the affairs of the county.

In 2018 - we will share with you the chart- we will show you evidence of about Kshs28,825,000 that she received as kickbacks in contracts that were awarded by the Government. It is astonishing. It is breathtaking, but we will share that evidence with you.

Lastly, Mr. Chairman, Sir, we will share with you the last witness, Hon. Hussein Abraman. He is the representative of the ward. He has two affidavits; one on pending bills of Kshs2 million of work done and not paid for. He will share with us where that money has gone. The other affidavit is health. A staggering Kshs2 billion was spent in the last three years on the health sector. There is nothing to show that.

Mr. Chairman, Sir, when we share this evidence with you, we will persuade you and your Committee that the only option you have in light of the evidence we show you is to recommend to the Plenary of the Senate that His Excellency (Amb.) Mohamud's tenure as Governor of Wajir should come to an ignominious end.

I am most obliged.

The Chairperson (Sen. Omogeni): Very well. Thank you, Snr. Counsel Ahmednasir. Thank you, for keeping to time. Counsel, Mr. Nyamodi, do you have some opening remarks to make?

The Advocate for Wajir County Governor (Mr. Nyamodi): Mr. Chairman, Sir, with your permission, I can address you without my mask from here. We will be sharing the time---

The Chairperson (Sen. Omogeni): We will sanitize the dispatch. You can speak from the dispatch.

The Advocate for Wajir County Governor (Mr. Nyamodi): I will speak from the dispatch, but only for the purposes of responding to the Chair's question. Yes, we have opening remarks. We wish to take about 20 minutes with them. We will share the time equally between the Governor, myself and Mr. Ndegwa Njiru. The Governor will go first.

The Chairperson (Sen. Omogeni): Thank you. Governor, you can take to the dispatch. We have sanitized. If you are not confident enough, you can speak with your masks on. For your own comfort, we actually change the microphones after every speaker. Therefore, you are good.

Counsel Nyamodi, we will give you 20 minutes. See how you manage your client, yourself and Counsel Ndegwa. The floor is yours.

OPENING STATEMENT BY WAJIR

COUNTY GOVERNOR

The Governor of Wajir County (Hon. (Amb.) Mohamud): Thank you very much, Mr. Chairman, Sir. I wish to thank you and the Committee for the opportunity to appear before you and present my defense on this matter of my impeachment.

Further, Mr. Chairman, Sir, I take this opportunity to underscore the cardinal role of the Legislative Arms of the Government, both at the national Government, which is the Senate and the National Assembly and the County Government and the county assembly in exercising their representation, oversight and legislative role as enshrined in the Constitution of Kenya and other relevant laws of the Republic of Kenya.

Secondly, Mr. Chairman, Sir, the appointment of this Committee by the Senate to hear and look into whether or not the allegations leveled against the Governor of Wajir County, which is me, can be substantiated as part of its constitutional mandate is a decision in the right direction. I am optimistic that the Committee will finally bring to an end these charges which are aimed to mar my personal character and integrity.

Mr. Chairman, Sir, I would like to categorically state that I will fully cooperate with the Committee and assist in establishing the truth and nothing but the truth. That, the charges leveled against me as the Governor of Wajir

County are unsustainable, unsubstantiated and cannot stand the scrutiny and threshold required for the impeachment of a governor.

Mr. Chairman, Sir, in the second generation of county government, Wajir County under my leadership has made tremendous progress in basic, social and economic services with improvements in key performance indicators as can be witnessed from the county statistics.

Moreover, my Government has been in the forefront in establishing a working relationship with the County Assembly of Wajir. A good example of that is that we have allocated Kshs25 million to each of the 30 wards in Wajir County since 2017.

In other words, annually, we spend Kshs750 million to all the sub counties for small projects that are for all the 30 wards.

Further, the County Government under my leadership has proactively initiated equity projects by introducing development projects in all these 30 wards. My defense submission will speak to this later during the proceedings.

Mr. Chairman, Sir, I have a rich record as a career public servant for 45 years, long before some of these Members of the County Assembly were born; both within and outside the country. Some of my deployments include serving as a teacher, education officer, Member of Parliament, Assistant Minister, Cabinet Minister, Ambassador and now as the Governor of Wajir County. It is imperative to note that during my industrious service, I have expanded service delivery in basic social services and not been suspected or accused of any charges relating to violation of the Constitution and other relevant laws of the Republic of Kenya.

Mr. Chairman, Sir, as you sit and adjudicate over this matter, it is my humble plea that the Committee will have time to look at the unique circumstances the Somali Community, where I come from, finds itself in its decision making and formation of government at the county level and the structures in all the counties in this region through negotiated democracy. I believe that the allegations contained in the impeachment by Wajir County Assembly are politically motivated, with malice and witch-hunt.

Finally, my lawyers and witnesses will establish evidence; the circumstances that informed and influenced the impeachment. I have full confidence in the Committee and its findings.

Thank you. God bless you.

The Chairperson (Sen. Omogeni): Thank you, Governor. You may resume your seat. Counsel, I hope you get guidance from the timekeeper as to how many minutes you have.

Proceed.

The Advocate for Wajir County Governor (Mr. Nyamodi) Mr. Chairman, Sir, and Members of the Committee, the Governor has spoken extensively about the issues arising from Wajir County and issues he believes are important in respect of these impeachment proceedings that he now faces before this Committee.

I would like to emphasise a few issues about the state of the law that governs the process of impeachment. I believe it is important for me to make these

brief comments about the law because I am sure you require no reminding that impeachment is a political process enabled by the Constitution. It is politics enabled by the Constitution. The provisions for impeachment in respect of governors are straightforward and to be found in Article 181 of the Constitution of this Republic. The grounds for impeachment are found in Article 181 (1) (a) to (d). I am sure when the Committee retires to consider your decision in this matter, you will be guided by those provisions of the Constitution.

However, in respect of the Motion of impeachment before this Committee, the grounds for impeachment are to be found at Article 181(1) (a) and 1(b). They are simple and straightforward. The Governor is accused of gross violation of the Constitution and abuse of office or gross misconduct.

I submit that the word ‘gross’ will be of cardinal importance when you retire to consider your decision in these impeachment proceedings. I say so because it is the responsibility of this Committee to determine whether the evidence that will be led on behalf of the County Assembly of Wajir, if indeed, it does disclose any misconduct or violation of the Constitution or the law; whether that violation, and I do not say there is any, is gross.

The second issue that I wish to request this Committee to bear in mind as you retire to consider your decision in this matter is the context in which the evidence arises. Are these ordinary transactions? Are these ordinary relationships between the County Executive and the County Assembly or do they disclose any misdeeds or gross violations of the Constitution or the law, or any gross misconduct by the Governor of Wajir County? I am sure if you

apply your minds properly to the provisions of the Constitution, especially the ordinary English meaning of the word gross, and thankfully there is guidance from the courts of this Republic as to what amounts to gross in terms of evidence, you will come to the right conclusion.

Thank you. I will donate the rest of the time to my learned colleague, Mr. Ndegwa Njiru, to conclude our opening remarks.

The Chairperson (Sen. Omogeni): Our timekeeper, how many minutes does he have? Mr. Ndegwa, you have seven minutes. Serjeant-at-Arms, can we have the change of microphones?

Counsel, proceed.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Thank you, Mr. Chairman, Sir. I will briefly deal with the issues that the Governor has been accused of. This morning, you are being invited to find the Governor of Wajir County culpable for issues of gross misconduct, violation of the Constitution and in the law. You will be invited to look at the question of the threshold and the issue of the nexus between the issues being complained thereof and the conduct and functions of the Governor.

It is not lost on us that Section 30 of the County Government Act clearly indicates the functions of the Governor before you. We will be inviting you to juxtapose the provisions of Section 30 against the issues being complained hereof. This House has enacted a litany of laws, among them the Public Procurement and Disposal Act, which forms the basis of the complaint against the Governor.

We will be inviting this House in the fullness of time to look at various sections, and most importantly Sections 55 and 45 of the Public Procurement and Disposal Act, and scrutinize the issues complained hereof. It will surprise you that the County Assembly of Wajir is inviting you to find the Governor culpable for mere theatric issues. Theatric issues in the sense that the allegations do not meet the threshold, as established in the case of Governor Wambora Civil Appeal 194 of 2014.

We had the opportunity of arguing that case with my learned Senior Counsel, Mr. Ahmednasir. He is very clear that the threshold was established in that case. The *ratio decidendi* of that case was that not every allegation or breach can culminate to finding of the culpability of the Governor.

Again, Mr. Chairman, Sir, this matter was argued by my senior learned friend Ahmednasir before the Court of Appeal in Nyeri. That was Civil Case No.21 of 2014 of Governor Wambora. There was a question of nexus. How do you connect the allegations facing the Governor with the functions of the Governor? We shall tender evidence at the fullness of time to show you that there is no nexus that can lead to the impeachment of a governor.

Mr. Chairman, Sir, though Article 10 calls for the accountability and transparency as one of the overriding doctrines in matters of governance of this country, the question is, can an individual purport to witch-hunt in the name of calling for accountability? Do we have the standards upon which a person can be said to have been accountable or not? We will be inviting this Committee to set a precedent that lays bare the standards and the threshold upon which an individual, an innocent man of the governor's caliber, can be held to account.

Mr. Chairman, Sir, it is said that it is better to acquit 100 convictees other than having a conviction of one innocent man. The man before you is

innocent. He is a man facing a fishing prosecution. We urge you to protect the integrity of the man before you. We urge you to uphold his dignity as prescribed under Article 29 of the Constitution.

If an ambulance lacks fuel, is it the work of the Governor to fuel that ambulance? Can lack of fuel of an ambulance form the basis of impeachment of a governor who is democratically elected? Were the people of Wajir County involved through the public participation as enshrined under Article 96(2)(d)? Were they involved and did they participate? Do we have evidence of their participation before you? Can a mere person, given the ulterior scandalous vexatious approach, have the Governor convicted?

The Governor is accused of allowing unqualified professionals to handle the functions of procurement. Is the Governor the head of public procurement? Does he participate in the process of employment? Is it true that the County Assembly is not able to distinguish the functions? Are they lost in the mind?

Mr. Chairman, Sir, and Members of this honourable Committee, we will be inviting you at the fullness of time to consider the question of the functions of the Governor and the culpability. This is not one of the impeachments that should have seen the light of day. It is a Motion for impeachment that is scandalous, frivolous and meant to cause annoyance and embarrassment on the part of the Governor.

Why is the County Assembly so much passionate by the failure of the Governor to take the stand? Did they want to have a continuation of the matter before the Supreme Court? We are in a different arena. He is accused of abuse of office and gross misconduct.

You have been told that there was one overall leader. That is the first lady of the County Government of Wajir. Is there any evidence to show that she ever participated in decision making? Is the person alleging this aware that we have now moved from the roadside declarations to a situation whereby Government policies and decisions must be in writing? Have they provided any writing to show that the first lady made any decision on behalf of the County Government? We shall provide evidence embarrassingly so to the contrary.

Mr. Chairman, Sir, we urge you to grant us an opportunity to show you that the Governor has not in any event usurped the powers of the County Public

Service Board (CPSB). To an extent to protect the integrity of the County Government, the Governor stood evidence against these individuals in criminal Case No.147 of 2018 before the Milimani Magistrate Court. The Governor appeared as a witness. Why did the Governor appear as a witness in that case against officers? It is because the Governor believes in the doctrine of good governance, accountability and transparency.

The Chairperson (Sen. Omogeni): Counsel, your time is up.

The Advocate for Wajir County Governor (Mr. Ndegwa Njiru): Thank you, Mr. Chairman, Sir. We invite you to grant us time. We have about six witnesses who shall persuade you to hold to the contrary. Much obliged.

The Chairperson (Sen. Omogeni): Thank you. I think that brings to an end that session of opening remarks.

It is now 1 o'clock. As I said, we will retreat over lunch hour so that we make our ruling on the request by the County Assembly that we summon four witnesses. We will also consider the other preliminary issues that have been raised, including the admissibility of the letter by Senior Counsel Ahmednasir Abdullahi and Company Advocates dated 11th May, 2021.

We will also look at the issue of the competence of the Motion that is before us. We will also look at the issues of affidavits CA-4 and C-8 and the implication of them not having been part of the evidence before the County Assembly. We will also give direction on the inclusion of Affidavit marked as CA-7 and the issue of the Motion that is pending before Wajir County Assembly.

Courtesy of your taxes, lunch will be offered to all of you at the main restaurant. It is in the form of takeaway. So, you can take away to your respective holding rooms. I know others like the Governor and Senior Counsel Ahmednasir are fasting. So, you will spare our tax money by not taking lunch but the rest can have lunch at their holding rooms.

We will convene back at 2 o'clock to proceed with our ruling and then the County Assembly can start adducing their evidence.

We adjourn to 2 o'clock. Thank you.

(The Special Committee adjourned temporarily at 1.05 p.m.)