



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

THE SENATE

VOTES AND PROCEEDINGS

WEDNESDAY, MARCH 13, 2024, AT 2.30 P.M.

1. The Senate assembled at Thirty Minutes past Two O'clock.
2. **QUORUM OF THE SENATE**

The Speaker, having counted the Hon. Senators present at the commencement of the Sitting and confirming that there was no Quorum, directed that the Bell be rung for ten minutes, pursuant to Standing Order 40;

And there being a Quorum before the expiry of the ten minutes;

The Speaker invited the Clerk to call the Orders of the day.

3. **SUSPENSION OF SITTING**

Pursuant to Standing Order 1, the Speaker suspended the sitting for thirty minutes to allow him to consider and prepare a ruling on preliminary objections raised by the parties in the matter of the proposed removal from office, by impeachment, of Hon. (Dr.) Robert Onsare Monda, Deputy Governor of Kisii County.

4. **SENATE RESUMED** – At ten minutes past three O'clock.
5. **COMMUNICATION FROM THE CHAIR – CONSIDERED RULING ON PRELIMINARY OBJECTIONS RAISED BY THE PARTIES IN THE MATTER OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HON. (DR.) ROBERT ONSARE MONDA, DEPUTY GOVERNOR OF KISII COUNTY.**

The Speaker conveyed the following communication from the Chair:-

“Honourable Senators, Ladies and Gentlemen,

During the morning sitting today, Wednesday, 13th March, 2024, in the course of the opening statements of the parties in the matter of the proposed removal

from office, by impeachment, of Hon. (Dr.) Robert Onsare Monda, Deputy Governor of Kisii County, a number of preliminary issues arose.

For the County Assembly, Counsel raised the following matters-

- (1) A request, pursuant to rule 10 of the Rules of Procedure when considering the proposed removal of a Governor in Plenary as contained in the Third Schedule to the Senate Standing Orders, that one Mr. David Haggai Oyagi, the acting Director, Enforcement and Compliance, County Government of Kisii, be summoned to appear and give evidence before the Senate and in particular to produce his letter of appointment and confirm if the persons who are said to be working in the Deputy Governor's home are officials in the County; and
- (2) A preliminary objection to certain paragraphs contained in the bundle of documents submitted by the Deputy Governor and a request that they be expunged from the record on the grounds that they are irrelevant to the current proceedings as they are in answer to allegations or charges that were not made by the County Assembly.

Honourable Senators, Ladies and Gentlemen,

For the Deputy Governor, a preliminary objection was raised, on the basis of rule 20 to certain paragraphs contained in the bundle of documents of the County Assembly on the basis that these paragraphs, among them paragraphs 14, 22, 23, 24 and 25 were introducing new evidence and were not permissible. Counsel for the Deputy Governor urged that everything not communicated by the County Assembly in its transmittal letter dated 1st March, 2024 be expunged from the record. Counsel for the Deputy Governor also objected to the summoning of Mr. Haggai Oyagi as this would violate the Deputy Governor's right to a fair hearing as enshrined in Article 50 of the Constitution.

The defence of the Deputy Governor also raised a preliminary objection to the effect that the impeachment proceedings at the County Assembly were conducted outside of the timelines provided for in the County Governments Act and in the Standing Orders of the Kisii County Assembly and were, therefore, fatally incompetent.

Honourable Senators, Ladies and Gentlemen,

The final matter which arose and which this ruling will address was the matter of the appearance in the defence team of the Deputy Governor of one Hon. Silvanus Osoro, a Member of Parliament serving in the National Assembly who is also the Majority Whip in the National Assembly.

Honourable Senators, Ladies and Gentlemen,

Rule 30 of the Rules of Procedure when considering the proposed removal of a Governor in Plenary as contained in the Third Schedule to the Senate Standing Orders provides as follows-

Where on a particular question or matter, including but not limited to questions of evidence, materiality, relevancy, competency or admissibility of evidence and any questions consequential or incidental thereto, no provision has been made in the Standing Orders or in these rules, the Speaker of the Senate shall rule on the question or matter and the ruling of the Speaker shall be final.

As rightfully pointed out by Sen. Sifuna, Rule 30 applies in circumstances where no provision has been made in the Standing Orders or in the Rules. Where the Standing Orders and the Rules make provision, naturally, those provisions apply.

Honourable Senators, Ladies and Gentlemen,

As you will all be aware, the timelines provided for the disposal of the impeachment proceedings are quite tight. As you are also aware, the Senate, when conducting the impeachment process is sitting as a tribunal in a quasi-judicial capacity. Article 159(2) of the Constitution requires that in exercising judicial authority, courts and tribunals be guided by certain principles, among them, that justice be administered without undue regard to procedural technicalities. It also requires that the purposes and principles of the Constitution be protected and promoted. Additionally, the Constitution at Article 259, requires an interpretation of the Constitution that promotes its purposes, values and principles, advances the rule of law and contributes to good governance.

Honourable Senators, Ladies and Gentlemen,

Applying the Constitution, the County Governments Act, the Senate Standing Orders and the applicable Rules, I rule as follows on the matters raised: -

Firstly, on the request for the summoning of Mr. David Haggai Oyagi, the acting Director, Enforcement and Compliance, County Government of Kisii, pursuant to rule 10, the same is permissible under the Rules and is hereby allowed, with the caveat under rule 20 that his evidence can only relate to the charges that were the basis of the impeachment as read to the Deputy Governor. This is in recognition of the right to a fair trial that the Governor enjoys under Article 50 of the Constitution. Directions are hereby given to the Office of the Clerk to immediately issue the Summons and facilitate the appearance of the Mr. Oyagi, in the Senate tomorrow, Thursday, 14th March, 2024 at 2pm. The necessary adjustments to the proceedings shall be made to facilitate this.

Secondly, on the preliminary objection to certain paragraphs contained in the bundle of documents submitted by the Deputy Governor and the request that they be expunged from the record on the grounds that they are irrelevant to the current proceedings as they are in answer to allegations or charges that were not made by the County Assembly, the same is disallowed as no prejudice to the County Assembly has been shown. The Senate is competent and will make a determination on the relevance of any evidence adduced before it.

Thirdly, and for similar reasons, the preliminary objection raised on behalf of the Deputy Governor that certain paragraphs in the bundle of documents of the County Assembly be expunged on the grounds that they introduce new evidence is disallowed on the basis that the objection of necessity requires evidence to be adduced in its support or rebutted and this can best be achieved in the course of the hearing. I therefore rule that this objection be subsumed and taken up by the defence in the course of the presentation of the case of the Deputy Governor.

On the objection of Counsel of the Deputy Governor that the proceedings at the County Assembly were conducted outside of the timelines provided for in the County Governments Act and in the Standing Orders of the Kisii County Assembly and were therefore fatally incompetent, I also rule that this is a matter of fact requiring adducing of evidence and will best be determined by hearing both parties and entertaining any evidence that they have in respect thereof. This preliminary objection is accordingly also disallowed at this stage.

Finally, Honourable Senators, Ladies and Gentlemen,

Is the matter of the appearance for the Deputy Governor by the Hon. Silvanus Osoro, a Member of Parliament serving in the National Assembly who is also the Majority Whip in the National Assembly. It recognized and is provided for in standing order 80(3) of the Senate Standing Orders that the Governor has a right to appear and be represented before the Senate or a special committee. This is a right recognized in Article 50 of the Constitution. It is not in dispute that Hon. Osoro is a Member of Parliament and a State officer in terms of Article 260 of the Constitution. Pursuant to Article 75(1) of the Constitution, a State officer is required to behave, whether in public or official life, in private life, or in association with other persons, in a manner that avoids any conflict between personal interest and public or official duties, compromising any public or official interest in favour of a personal interest or demeaning the office that the officer holds. In this respect, it is also useful to cite the well-known principle that justice must not only be done but should also be seen to be done.

The attention of the Senate was drawn to and the Senate can properly take judicial notice of the fact that the Hon. Osoro is a Member of Parliament representing a constituency in Kisii County and a leader both in the county and the national level, holding a senior leadership position in the Parliament of Kenya. Under Article 93 of the Constitution, Parliament consists of the National Assembly and the Senate and although the National Assembly and the Senate are required to perform their respective functions in accordance with the Constitution, it is the role of Parliament to protect the Constitution and promote democratic governance of the Republic.

The roles of legislation, representation and oversight belong to Parliament and it will not be correct to say, as we were urged to find, that the mandates of the Senate and the National Assembly are so distinct that the affairs of county governments and county officials would fall entirely outside the jurisdiction and

oversight of the National Assembly so as to remove a Member of the National Assembly from any possible connection with the oversight of county officials.

For these reasons, I find and rule that it does not promote the purposes, values and principles of the Constitution nor contribute to good governance for the Legislature to put itself in the place where one part of the Legislature serves as a judge in matters relating to integrity in public affairs and members of the other part of the same Legislature act as advocates for State officials party to the matter.

In the present matter, I also note that the Deputy Governor is represented by other counsel, among them learned counsel Katwa Kigen, and will not be deprived of his right to legal representation. I therefore direct that the Hon. Silvanus Osoro, MP cease forthwith to serve as part of the legal team for the Deputy Governor.

With these directions, we shall now proceed with the impeachment proceedings.

I thank you.”

6. HEARING AND DETERMINATION ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HON. (DR.) ROBERT MONDA, DEPUTY GOVERNOR OF KISII COUNTY

The Senate resumed consideration of the matter of the proposed removal from Office, by impeachment, of Hon. (Dr.) Robert Monda, Deputy Governor of Kisii County-

Presentation of the case by the County Assembly of Kisii

Counsel for the Assembly commenced the presentation of the case of the Assembly, by leading the following witnesses in presenting testimonies before the Senate: -

a) Mr. Dennis Mokaya Misati – Resident of Jogoo, Kisii Town

The witness took oath and informed the Senate that-

- i) in early April 2023, his father learnt, through the Deputy Governor, of job vacancies at the Gusii Water and Sanitation Company Limited (GWASCO) that would be advertised on GWASCO website. The Deputy Governor implored his father to ensure that he explored the said website for the advertisement;
- ii) on Friday, 21st April, 2023, while he was working with Together as One Micro Finance company as a marketer, his father brought to his attention the

advertisement for job vacancies with GWASCO on its website. He downloaded the advert and applied for the post of Commercial Manager;

- iii) GWASCO acknowledged his application and shortlisted him for the post and, subsequently, invited him for an interview, which he attended at the company Boardroom situated at Bobaracho Market along the Kisii-Keroka Highway. He was advised to wait for the outcome within three weeks and that, following the interview, his father communicated to the Deputy Governor that he had attended the interview;
- iv) the Deputy Governor had called them to his home in Kisii within days of being informed about the post but before the interview was carried out, the Deputy Governor instructed them to pay some money to the Board members, through the Managing Director, to assist in guaranteeing his appointment. He asked them to raise the sum of Kenya shillings eight hundred thousand (Kshs. 800,000);
- v) together with his father, they voluntarily gave the Deputy Governor Kenya shillings seven hundred and ninety-nine thousand only (Kshs. 799,000), an amount meant to secure the job, believing that the Deputy Governor had influence over GWASCO;
- vi) the sum of Kenya shillings seven hundred and ninety-nine thousand only (Kshs. 799,000) was paid to the Deputy Governor as follows:
 - a) Kshs. 150,000 paid on 28th May, 2023 through his Safaricom line (0725487300) to the Deputy Governor, Robert Monda's Safaricom line (0711860700) at 20:33 PM;
 - b) Kshs. 49,000 paid on 28th May, 2023 through his Safaricom line (0725487300) to the Deputy Governor, Robert Monda's Safaricom line (0711860700) at 20:37 PM;
- vii) he reported this matter to the Ethics and Anti-Corruption Commission (EACC) for investigations; and
- viii) the Deputy Governor, upon being informed by Dennis' father that he had been reported to the EACC, threatened him (Dennis) and he had to flee from his home, together with his wife, for their safety.

The witness was cross-examined by Counsel for the Deputy Governor and re-examined by Counsel for the County Assembly.

Thereupon, Senators sought clarifications on the testimony, following which the witness was discharged.

b) Hon. Wycliff Gesongori Siocha – Elected Member of the Kisii County Assembly

The witness took oath and informed the Senate that-

- i) he was the Mover, in the Kisii County Assembly, of the Motion on the proposed removal from office, by impeachment, of Hon. (Dr.) Robert Monda, Deputy Governor of Kisii County;
- ii) Mr. Dennis Mokaya had informed him that the Deputy Governor had solicited and received a bribe from his family to facilitate his recruitment by GWASCO;
- iii) upon investigating the matter, he found out that the Deputy Governor had grossly violated Articles 10, 73, 75 and 232 of the Constitution;
- iv) the Deputy Governor attempted to bribe the Managing Director, Ms. Lucy Wahito Wachira, with a sum of Kshs 100,000/= in the month of May, 2023; and
- v) the Deputy Governor had also abused his office by soliciting for bribes, intimidating his family and misusing the staff of the county.

The witness was cross-examined by Counsel for the Deputy Governor and re-examined by Counsel for the County Assembly.

Thereupon, Senators sought clarifications on the testimony, following which the witness was discharged.

c) Lucy Wahito – Managing Director, Gusii Water and Sanitation Company (GWASCO).

The witness took oath and informed the Senate that-

- i) by virtue of her position in GWASCO, she was a member of the Board and was, therefore, involved in the recruitment processes;
- ii) prior to the shortlisting of candidates for the four (4) vacancies that were advertised on 14th April, 2023, she was approached by the Deputy Governor of Kisii County, who informed her that he had a candidate, Mr. Dennis Mokaya Misati, whom he wanted her to assist to secure the position of Commercial Manager;
- iii) on 28th May, 2023 she received Kshs.100,000, sent to her M-Pesa line from the Deputy Governor at 21:24:14 Hrs, although the Deputy Governor's defence was that he had sent the money erroneously, as it was meant for one Ms. Gladys Amina;

- iv) on the morning of 29th May, 2023 Ms. Wahito called the Deputy Governor and told him to reverse the money he had sent her when he failed to tell her what it was for, after which he reminded her of the request to consider his preferred candidate in the recruitment;
- v) the next day, 30th May, 2023 at 16:00hrs she sent the money back after she failed to receive the reversal message; and
- vi) she emphasized that the recruitment exercise had been devoid of any influence, since it was based purely on merit and the qualifications of the candidates.

The witness was cross-examined by Counsel for the Deputy Governor and re-examined by Counsel for the County Assembly.

Thereupon, Senators sought clarifications on the testimony, following which the witness was discharged.

d) Hon. Karen Magara - Nominated Member, County Assembly of Kisii

The witness took oath and informed the Senate that –

- i) she actively participated as seconder in the Motion for the Impeachment of the Deputy Governor of Kisii County, which was moved on 21st February 2024 and passed on 29th February 2024. The motion addressed allegations of gross violation of the Constitution, gross misconduct and abuse of office by the Deputy Governor;
- ii) in verifying the allegations, she had met with Denis Mokaya Misati and his wife, Everlyn Nyaboke Nyang'au and the couple had recounted their ordeal with the Deputy Governor, who had extorted Kshs. 800,000 from them on the pretence of securing employment for Mr. Misati;
- iii) the couple had had to sell their salon business and household goods to meet the Deputy Governor's demands but the job opportunity in question was filled through a fair and competitive process, with Mr. Misati not securing the position;
- iv) the ordeal had personal impact on the Misati family, notably that Ms. Nyaboke who, was expectant after years of unsuccessful attempts, suffered a miscarriage due to stress and depression following the realization that the job offer was fraudulent;
- v) she had participated in a public participation exercise on 26th February 2024, where she met other citizens who had suffered similar fraudulent practices by the Deputy Governor; the testimonies were documented and contributed to the impeachment proceedings; and

- vi) her empathy towards Ms. Nyaboke's situation and her decision to second the impeachment Motion underscored the gravity of the allegations against the Deputy Governor.

The witness was cross-examined by Counsel for the Deputy Governor and re-examined by Counsel for the County Assembly.

Thereupon, Senators sought clarifications on the testimony, following which the witness was discharged.

e) **Reuben Monda - Brother to the Deputy Governor of Kisii County**

The witness took oath and informed the Senate that –

- i) the Deputy Governor of Kisii County was his blood brother, the Deputy Governor being the fourth born in the family and he, the Deputy Governors' younger brother. He described how the relationship between his brother, the Deputy Governor and their family had worsened, particularly after his brother took office. He pointed out examples of extreme disrespect towards their father, who is in his nineties.
- ii) the Deputy Governor had misused county resources by stationing at least five (5) county officers at their family home to perform manual labour, such as well-digging and cow feeding, which he believes falls outside their official job descriptions. Additionally, he added that the officers had been lodging in an old house belonging to their father;
- iii) on 20th December 2023, the Deputy Governor, using his authority, deployed approximately twenty (20) County Officers under the supervision of the Sub-County administrator to arrest him over a dispute involving tree cutting incident on ancestral land and he was detained at Keumbu Police Station for three hours, without being booked on the Occurrence Book (OB);
- iv) following his arrest, he was denied bail or bond despite his medical conditions of High Blood Pressure and diabetes but was transferred to Kisii Central Police Station and during this ordeal was denied medical intervention when taken to Kisii Teaching and Referral Hospital (KTTRH); and
- v) subsequent to deterioration of his health, he was hospitalized at the Coptic Hospital in Nairobi for approximately three weeks, resulting in a new dependency on injected insulin, a condition he did not have previously.

The witness was cross-examined by Counsel for the Deputy Governor and re-examined by Counsel for the County Assembly.

Thereupon, Senators sought clarifications on the testimony, following which the witness was discharged.

And there being no other business on the Order Paper, the Temporary Speaker (Sen. Veronica Maina, MP) adjourned the Senate at thirty-five minutes past Eleven O'clock without Question put, pursuant to the Standing Orders.

7. **SENATE ROSE** – at thirty-five minutes past Eleven O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Thursday, March 14, 2024 at 9:00 a.m.*