

**EVIDENCE TAKEN BEFORE THE SENATE SPECIAL COMMITTEE  
INVESTIGATING THE PROPOSED REMOVAL FROM OFFICE BY  
IMPEACHMENT OF THE DEPUTY GOVERNOR OF MACHAKOS  
COUNTY HELD ON MONDAY, 11<sup>TH</sup> AUGUST, 2014, AT THE COUNTY  
HALL CHAMBER AT 10.00 A.M.**

[The Chairperson – Sen. Mutahi Kagwe]

**SENATORS PRESENT**

Sen. (Dr.) Agnes Zani	-	Vice Chairperson
Sen. Njoroge Ben		Sen. (Prof.) Peter Anyang'-Nyong'o
Sen. Martha Wangari		Sen. Sammy Leshore
Sen. Lenny Kivuti		Sen. Daisy Kanainza
Sen. Kennedy Mong'are Okong'o		Sen. Abu Chiaba
Sen. Hassan Omar Hassan		

**SECRETARIAT**

Ms. Eunice Gichangi	-	Director, Legal Services, Senate
Ms. Mary Chesire	-	Deputy Director, Committee Services, Senate

**IN ATTENDANCE**

**THE DEPUTY GOVERNOR'S TEAM**

Mr. Bernard Kiala	-	The Deputy Governor
Mr. Harun Ndubi	-	Advocate
Mr. Anthony Oluoch	-	Advocate
Ms. Celestine Anyango Opiyo	-	Advocate
Hon. Alexander Kathizi	-	Member of County Assembly
Hon. Peter Kyalo	-	Member of County Assembly
Hon. Pastor Festus Ndeto	-	Member of County Assembly
Hon. Justus Katumo	-	Member of County Assembly

**THE COUNTY ASSEMBLY'S TEAM**

Mr. Kioko Kilukumi	-	Advocate
Mr. Benjamin Musau	-	Advocate
Mr. Wilfred Nyamu	-	Advocate
Mr. Hillary Muthui	-	Principal Legal Counsel

*(The Special Committee convened at 10.10 a.m.)*

**The Chairperson** (Sen. Mutahi Kagwe): Hon. Senators, ladies and gentlemen, I want to call this meeting to order. Before we start, I would like to request the serjeant-at-arms to allow members of the public who would like to come in to do so before we proceed.

*(Members of the public entered the Chamber)*

Thank you very much. If we could all get seated. I would like to do two things; first is to request that if you have a mobile phone, please, put it off or on silent mode.

Secondly, I would like to request Sen. (Dr.) Zani, who is the Vice Chairperson of this Committee, to say the prayer as is our custom in the Senate.

*(Prayers were said by Sen. (Dr.) Zani)*

If you look at the programme that you have, first, I would like to proceed with the introductions before we move on.

*(Members and of the Special Committee and other other participants introduced themselves)*

Hon. Senators, ladies and gentlemen, the Special Committee on the proposed removal from office of the Deputy Governor of Machakos County was established on Tuesday, 5<sup>th</sup> August, 2014 by a resolution of the Senate. The Special Committee is provided for under Section 33(4) of the County Governments Act, 2012, and Standing Order No.68(2) of the Senate Standing Orders. The Special Committee is required to do the following:-

- (1) Investigate the matter; and,
- (2) Report to the Senate within ten days whether it finds the particulars of the allegations against the Deputy Governor to have been substantiated.

Hon. Senators, ladies and gentlemen, as the hon. Speaker of the Senate observed in his Communication to the Senate on Thursday, 31<sup>st</sup> July, 2014, the hearing of charges for the proposed removal from office of a Deputy Governor is one of the most important and solemn functions of the Senate under the Constitution. The hon. Speaker, therefore, urged that the Senate exercises the highest level of responsibility and circumspection on this matter in plenary and also in this Special Committee.

The Special Committee, therefore, wishes to emphasize that it is cognizant of the gravity of the matter with which it is seized and that it shall accord all parties in the proceedings a full and fair hearing.

Hon. Senators, ladies and gentlemen, it is important to observe the strict ten day timeline attached to the discharge of this mandate of the Special Committee. The Special

Committee is expected to table its report in the Senate on Friday, 15<sup>th</sup> August, 2014. The Special Committee, therefore, urges all parties to effectively use the time allocated to them so as to ensure that the committee concludes its work and reports back to the Senate within the required time.

Having done that, I wish to invite the Vice Chairperson of this Committee, Sen. (Dr.) Zani to go through the rules of procedure.

**The Vice Chairperson** (Sen. (Dr.) Zani): Mr. Chairperson, Sir, I would like to take this opportunity to go through the rules of procedure for the investigation into the proposed removal from office of a Governor and/or Deputy Governor as the case might apply.

1. Upon the convening of the meeting of the Senate to hear the charges against the Governor, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, No.17 of 2012 and Standing Order No.68, the Speaker shall report the resolution of the County Assembly to the Senate.
2. The Senate, may, pursuant to Section 33(3)(b) of the County Governments Act and Standing Order No.68(1)(b) by resolution appoint a Special Committee to-
  - (a) Investigate the matter; and,
  - (b) Report to the Senate within ten days on whether it finds the particulars of the allegations against the Governor to have been substantiated.
3. Where the Senate does not establish a Special Committee, the Senate shall proceed to investigate and consider the matter in plenary. Rule 4 shall, with necessary modification, apply to the investigation by the Senate.
4. Where a Special Committee is appointed, it shall within 24 hours of its appointment elect the Chairperson and the Vice Chairperson from amongst its Members and appoint a date for commencement of the hearing of the evidence for the purpose of the investigations. In our case today, this Committee was appointed on 5<sup>th</sup> August, 2014. Sen. Kagwe was elected the Chairperson and myself the Vice Chairperson.
5. Upon appointment of a date for commencement of the hearing of the evidence for the purposes of the investigations, the Committee shall:-
  - (a) Invite the Governor or Deputy Governor to appear and be represented before the Special Committee during its investigations; and,
  - (b) Notify the County Assembly of the date for the commencement of the investigation and invite the Assembly to designate the Members of the Assembly being not more than three Members, if any, who shall appear before the Committee to represent the Assembly during investigations.
6. An invitation under Rule 5 may be effected by personal service or by notice in at least one newspaper in national circulation.

7. Where the Governor chooses to appear before the Committee, the Governor shall be required within three days of invitation under Rule 5, on a date specified by the Committee to file an answer to the charges with the office of the Clerk of the Senate in which the Governor shall set out:-
  - (a) the Governor's response to the particulars of the allegations;
  - (b) how the Governor proposes to appear before the Special Committee; whether in person, by advocate, or in person and by advocate;
  - (c) the names and addresses of the persons to be called as witnesses, if any, and a statement by each such witness; and,
  - (d) Any other evidence to be relied on.
  
8. Where the county Assembly chooses to appear before the Committee, the Assembly shall be required within three days of the invitation, under Rule 5, on a day to be specified by the Committee, to file with the office of the Clerk of the Senate documentation:-
  - (a) Designating the Members if any, who shall attend and represent the Assembly in the proceedings before the Special Committee.
  - (b) Indicating the mode of appearance by the Members before the Special Committee, whether in person, but advocate or in persona and by advocate.
  - (c) Indicating the names and addresses of the persons to be called as witnesses, if any, and a statement by each such witness.
  - (d) Specifying any other evidence to be relied on.
  
9. The Clerk of the Senate shall furnish each party with the documentation filed by the other party under Rules 7 and 8.
  
10. The Committee may at the request of the county assembly or the Governor invite or summon persons to appear and give evidence before the Committee.
  
11. Where the county assembly or the Governor chooses not to appear before the Committee, that fact shall be recorded by the Committee and the Committee shall proceed with its investigations without further reference to the Assembly or the Governor, but the Committee may for exceptional reasons to be recorded, permit a later appearance before the Committee by the Assembly or the Governor.
  
12. The hearing of the evidence once it commences, shall proceed and continue until the Committee concludes the hearing of the matter.
  
13. The Committee shall before the commencement of the hearing of the evidence, allocate time for the hearing of the case by the Governor and the case by the county assembly.
  
14. Any preliminary question or issue raised by the county assembly or by the Governor shall be argued for not more than 30 minutes, unless the Committee otherwise directs.

15. The Clerk shall administer the oath of affirmation in the manner and form prescribed in the Schedule to every person who appears to give evidence before the Committee before such person gives such evidence.
16. At the commencement of the hearing before the Committee, the Clerk shall read out the particulars of the allegations.
17. After the particulars of the allegations have been read out, the Committee shall allow an opening statement to be made on behalf of the county assembly and on behalf of the Governor.
18. An opening statement made under Rule 17 shall be for not more than 40 minutes, unless the Committee otherwise resolves.
19. After the opening statements have been made, the witnesses on the part of the county assembly, if any, shall present the evidence of the Assembly.
20. In presenting its evidence, the Assembly shall not introduce any new evidence that was not a part of the allegations against the Governor by the county assembly as forwarded by the Speaker of the county assembly to the Speaker of the Senate.
21. After all the witnesses on the part of the county assembly have presented their evidence, the witnesses on the part of the Governor shall present their evidence.
22. Each of the witnesses shall be led in evidence, cross-examined, and where necessary and only for the purposes of clarification.
23. A Member of the Committee may put a question to any of the witnesses before the Committee.
24. No person other than:
  - (a) the Governor
  - (b) a person who has been called as a witness by the County Assembly or by the Governor; and,
  - (c) a person who is invited or summoned by the Committee to appear and give evidence shall give evidence before the Committee.
25. After all the witnesses have given their evidence, the Committee shall allow a closing statement to be made on behalf of the County Assembly and, thereafter, on behalf of the Governor.
26. A closing statement made under rule 21 shall be for not more than thirty minutes, unless the Committee otherwise resolves.

27. After closing statements have been made, the hearing shall conclude and the Committee shall then proceed to prepare and conclude its report.
28. Pursuant to Section 33(4)(b) of the County Governments Act and Standing Order No.65(2)(b), the Committee shall, within ten days, table its report in the Senate (On 15<sup>th</sup> August, 2014) in which it shall indicate whether it finds the particulars of the allegations against the Governor to have been substantiated.
29. The proceedings of the Committee for the hearing of the evidence shall be held in public, but the deliberations of the Committee shall be held in camera.
30. The quorum of the proceedings of the Committee shall be seven of its Members.
31. Except as otherwise provided in these rules, the Standing Orders of the Senate shall apply.
32. Where on a particular question or matter, including but not limited to questions of evidence, materiality, relevance, competence or admissibility of evidence and any questions consequential or incidental thereto, no provision has been made in the Standing Orders or in these rules, the Chairperson of the Committee shall rule on the question or matter and the ruling of the Chairperson shall be final.
33. These rules shall, with necessary modifications, apply to the process for the removal of any other State or public officer in respect of whom the Senate has jurisdiction.

At the end, we have the Schedule for the oath and affirmation which we shall use during these proceedings.

Thank you.

**The Chairperson** (Sen. Mutahi Kagwe): Thank you very much, Sen. (Dr.) Zani.

The Rules of Procedure are quite clear, particularly with regard to the time that we have allocated. The opening statements as Sen. (Dr.) Zani said are actually 40 minutes according to the Rules of Procedure, unless the Committee has decided otherwise. I can confirm that we have not decided otherwise. So, the opening statements shall be 40minutes. It is important to remember that because we intend to keep it to 40 minutes. Remember that if we give one side more time, then we have to also give it to the other side to be fair. Therefore, I would urge that you stick to the 40 minutes and then after that, we will have the hearing of the evidence and the hearing of the evidence is going to be there and half hours on any side. Again because of the deadline that we have for Friday, we also intend to keep that to three and a half hours. I would urge that the parties stick to the three and a half hours.

I would now like to invite, therefore, the Director of Legal Services to read the charges and also to invite the Deputy Governor, Machakos County, to take the seat next to me so that he is very clear about the charges thereof.

**The Director of Legal Services, Senate** (Ms. Eunice Gichangi): Hon. Bernard Kiala, the Deputy Governor, Machakos County, the following are the particulars of your proposed removal from office of the Deputy-Governor of Machakos County as forwarded by Hon. Speaker of the County Assembly of Machakos to the Speaker of the Senate by a letter dated 25<sup>th</sup> July, 2014.

**Ground 1: Gross Violation of the Provisions of the Constitution**

That on various dates between 5<sup>th</sup> March, 2013 and 7<sup>th</sup> July, 2014, you committed the following acts in gross violation of the specified provisions of the Constitution of Kenya-

- (1) That you conducted yourself in a manner that undermined your position as a member of the Machakos County Executive by variously antagonizing the Governor, other Members of the Machakos County Executive Committee and other members of the County Government, thereby undermining the collective responsibility of the County Executive as contemplated under Article 179(4), (5) and (6) of the Constitution;
- (2) You failed to disclose that you had a pending criminal case in a court of law, contrary to Article 10 and Chapter 6 of the Constitution of Kenya;
- (3) That you committed acts which exhibited bias in the appointment of officers within your docket and attempted to influence appointments of members of your extended family, contrary to Article 73(2)(b) of the Constitution;
- (4) You solicited for money from members of the public to award contracts and for jobs in the County Government contrary to Article 73 of the Constitution; and
- (5) You failed to adhere to the values and principles of public service contrary to Article 232 of the Constitution.

**1. Ground 2: Gross Violation of the Provisions of Various Acts of Parliament**

**(1) The County Governments Act, No. 17 of 2012**

The Particulars are that on various dates the Deputy Governor committed acts that were in gross violation of the County Governments Act. In particular, that the Deputy Governor failed to supervise the progress of County projects contrary to sections 30 and 32 of the County Governments Act.

**(2) The Public Officer Ethics Act, Cap. 183**

That on various dates you committed the following acts which were in gross violation of the Public Officer Ethics Act, among other provisions-

- (1) You influenced or attempted to influence the employment of relatives in dockets under you or in other County institutions contrary to section 17 of the Public Officer Ethics Act;

- (2) That on 7<sup>th</sup> July, 2014, you intentionally and willfully mislead members of the public that your official car had been withdrawn, information which you knew was not true, contrary to Section 19 of the Public Officer Ethics Act; and,
- (3) On various instances, you conducted yourself in a manner that did not maintain public confidence in the integrity of the Office of the Deputy Governor contrary to Section 9 of the Public Officer Ethics Act.

**(3) The National Cohesion and Integration Act, No. 12 of 2008**

That on various dates you committed the following acts which were in gross violation of the specified provisions of the Leadership and Integrity Act, No. 19 of 2012, among other provisions-

- (i) That you called Dr. Sunil Kumal Dhall, the County Executive Committee Member for Trade, Economic Planning and Industrialization, a “*mhindi*”;
- (ii) That you used derogatory language against people from outside of Machakos County;
- (iii) You caused to be printed inflammatory leaflets;
- (iv) That you made inflammatory remarks on social media; and,
- (v) You uttered ethnically and regionally divisive and defamatory words during public rallies.

**(4) The Leadership and Integrity Act**

On various dates, you committed the following acts which were in gross violation of the Leadership and Integrity Act:-

- (1) You used your office to push for Government contracts in various County Departments, including Trade, Health and Agriculture to relatives and friends contrary to Section 10 of the Leadership and Integrity Act;
- (2) You intimidated his colleagues through text messages and telephone calls seeking various favours contrary to Section 34 of the Leadership and Integrity Act.
- (3) You solicited for Kshs500,000 from Dr. Sunil Kumar Dhall, the County Executive Committee Member for Trade, Economic Planning and Industrialization, contrary to Section 12 of the Leadership and Integrity Act.

**Ground 3: Gross Misconduct**

- (1) On various dates, you failed to attend County Executive Committee meetings without good cause.
- (2) On 7<sup>th</sup> July, 2014, you conducted yourself in a manner unbecoming of a public officer by misleading the public that you had been ordered out of a County Executive Committee meeting, information that you knew to be false;
- (3) On various dates, you misled members of the public that your security had been withdrawn, information which the Deputy Governor knew to be false.
- (4) On various dates, you neglected duties delegated to you by the Governor.
- (5) You made utterances in public which disclosed information that was confidential to the County Executive Committee.
- (6) You criticized Government decisions which you were a party to.

**Ground 4: Abuse of Office**

- (1) On various dates, you attempted to use your office as the Deputy Governor of Machakos County to influence the award of a tender to supply drugs by incessantly making telephone calls to the County Executive Committee Member in charge of Health and Emergency Services.
- (2) You threatened Executive Committee members to be loyal to you, purporting that you would protect them once the Governor was impeached.
- (3) You used your office to cause anxiety and tension to investors, private sector professionals and members of the public who were non-Kambas and non-Machakos Kambas.

The facts are supported by various documents and other materials, as indicated by the county assembly.

**The Chairperson** (Sen. Mutahi Kagwe): Thank you very much. I would now like to ask the Deputy Governor to indicate how he pleads to the charges.

**The Deputy Governor of Machakos County** (Mr. Bernard Kiala): All of them are not true, Mr. Chairperson, Sir.

**The Chairperson** (Sen. Mutahi Kagwe): Thank you very much, indeed. You may now take your seat.

*(Mr. Kiala resumed his seat)*

At this juncture, I now want to ask that the county assembly makes its opening statement. *Bw. Wakili*, you are free to use the Dispatch Box if you wish, because of your documents and everything.

*(Mr. Kilukumi moved to the Dispatch Box)*

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, first, they have the benefit of our recorded opening statement by the Deputy Governor. I wonder if they have theirs. If it is written, could we get a copy to look at, as they read it?

Thank you, Mr. Chairperson, Sir.

**The Chairperson** (Sen. Mutahi Kagwe): Do we have that?

**Mr. Kioko Kilukumi:** Mr. Chairperson, Sir, our opening statement is not in writing. We intend to speak off-the-cuff.

**The Chairperson** (Sen. Mutahi Kagwe): Very well.

**Mr. Kioko Kilukumi:** Thank you, Mr. Chairperson, Sir. On 3<sup>rd</sup> July, 2014, the County Assembly of Machakos, by a resolution supported by 40 Members of the Assembly, against 19 Members, adopted a report of the county assembly which had been specifically constituted to inquire into the conduct of hon. Benard Kiala, the Deputy Governor of Machakos County.

Mr. Chairperson, Sir, in accordance with the governing law, the information was transmitted to the Speaker of the Senate on 25<sup>th</sup> July, 2014. The Senate by a resolution passed on 5<sup>th</sup> August, 2014, established this Special Committee to inquire into the proposed removal of the said Deputy Governor. Pursuant to the notice of invitation to appear, served on the advocate of the county assembly on 6<sup>th</sup> August, 2014, we have today appeared before you to assist you in your investigative role, under Section 33(3) (b) of the County Governments Act. It is pursuant to these provisions that we are appearing before you today.

Mr. Chairperson, Sir and Members of the Senate, you will appreciate that under the Constitution, the Deputy Governor is a nominee of the Governor and they are elected on a joint ticket. The Governor of Machakos, His Excellency Alfred Mutua, did nominate his Deputy, Benard Kiala, in the general elections held in 2013. At the time of nomination, the Deputy Governor enjoyed full trust and confidence of the Governor for him to have nominated him to the crucial role of deputizing him. One year down the line, the Deputy Governor has been unable to perform his functions. He has abused his office and contravened the Constitution.

Mr. Chairperson, Sir, the people who know the Deputy Governor pretty well, come from the lowest electoral units, being the wards, and interact with him on a daily basis,

overwhelmingly passed a resolution that he be removed from office. This resolution was not the resolution of the Governor or the Government of Machakos. Under the law, it is only the county assembly that can pass a resolution, as a first stage, in the impeachment process.

Mr. Chairperson, Sir, an issue has been raised. We wish to address it at this opening, as to whether the Deputy Governor is or is not impeachable. Under Article 181 of the Constitution, quite admittedly, there is no express provision dealing or addressing the question of removal of a deputy governor. But these provisions have the subject of interpretation by the High Court of Kenya. You will appreciate that the High Court of Kenya is the only organ mandated under Article 165(3)(d) of the Constitution to interpret the Constitution. The role of interpreting the Constitution is not one for the Senate, but the courts. Once the High Court has interpreted the Constitution, that remains the law until that decision is overturned by a court higher than the High Court itself.

For the record, I wish to give the case that dealt with this. It is the case of hon. Dorothy M. Muchungu versus the Speaker of the County Government of Embu. This was constitutional petition No.5 of 2014. In that decision which is available, and we will make it available to the hon. Members, it was held that, firstly, a deputy governor is impeachable. Secondly, the procedure that is adopted for the impeaching of a governor will apply with the necessary modifications to the procedure of impeaching a deputy governor. For the record, that decision of the High Court has never been overturned to this day. As I speak, it remains the law.

Hon. Members, following on that decision, the hon. Benard Kiala brought up that argument in the High Court of Kenya in Machakos, in the case of Benard Muia Tom Kiala versus the Speaker of the County Assembly of Machakos and four others; this being Miscellaneous Civil Application No.113 of 2014. The matter was heard before Lady Justice Jaden, who following in the footsteps of her fellow Judges, held that a deputy governor is impeachable. The procedure to be followed is the same as that which is followed for the impeachment of a governor. That particular decision is subject of an appeal. As I speak before you, tomorrow the same parties will be appearing in the Court of Appeal litigating over this same issue. It is important to point out that the decision for Machakos, where the Deputy Governor was a party, drew the attention that under the County Governments Act, Section 33(10), the section is quite clear in that it includes the deputy governor in the removal provisions of Section 33.

Mr. Chairperson, Sir, and hon. Senators, in this question of impeachment, will recall that this issue was also raised in the Plenary of the Senate and the Speaker of the Senate ruled this admissible. Indeed, a deputy governor is impeachable and the procedure used to remove a governor will be applied to his deputy.

Finally, Mr. Chairperson, Sir, on the question of impeachment, it will be the anti-thesis of constitutionalism if anyone was to say that a deputy governor is irremovable. He will be the only person or office in the country that is not subject to removal even when there is

deliberate violation of the Constitution and the law. I do not think that, that proposition can be urged in a country that believes in the rule of law.

Mr. Chairperson, Sir, I will now move on to address you on the role of the Senate in impeachment proceedings. The architects of our Constitution chose to vest the power to impeach on the Senate and the county assembly. That was a deliberate and good choice laid. This decision of whether or not a person holding a political office should continue to do so, is a quasi-political and quasi-judicial decision. That decision is best taken by pragmatic people. Commentators and legal scholars have had the view that elected Senators are better placed than journalists to take into account different conflicting political considerations and factors and the overall interests of a county as compared to Judges sitting in courtrooms.

Mr. Chairperson, Sir, we urge you that this role is so important and cannot be done elsewhere. A deputy governor cannot be removed through the courts. He can only be removed through this sitting.

Mr. Chairperson, Sir, in the case of Nancy Barasa, which again we are going to cite and make available to the Senate, the High Court made it clear that when it comes to questions of removal, the organs that have been set by the Constitution to deal with those removal proceedings are best placed to handle those issues and should be left uninterrupted to deal with the issues.

Mr. Chairperson, Sir, as you approach this question of whether or not to remove the deputy governor, it calls for bi-partisan approach. It is important to always recall that hon. Kiala was nominated on the Wiper Party ticket. His governor was also nominated on the Wiper Party ticket and they went ahead to win the elections. The County Assembly of Machakos is predominantly members of the Wiper Party, an affiliate of the CORD Coalition. It is this coalition that with a two-thirds majority voted to commence the impeachment proceedings against its deputy governor.

This, therefore, even at the Senate level that there be bipartisan approach as to whether the deputy governor is suitable to hold office in view of the conduct that we are complaining of before you.

Mr. Chairperson, Sir and Members of the Senate, it is important that I give a short preview of the evidence that we would be presenting before you. It is important to establish at the very outset that the purpose of an opening statement is for us to give a roadmap of the case of the county assembly and what is consistent in that case; that is, a sneak preview of the evidence before you. We have had the good advantage of reading the opening speech prepared by the deputy governor. That does not come anywhere near an opening speech. It is in independent impeachment proceedings in the guise of an opening speech. It is important because that issue is critical that we refer to the dictionary on the meaning of an opening speech.

**Sen. Hassan Omar Hasasn:** On a point of order, Mr. Chairperson, Sir. In that very light, is the counsel in order to start to pre-empt the deputy governors opening which we have the benefit of or should we let it at that point when he rebuts it?

**The Chairperson** (Sen. Mutahi Kagwe): I think the counsel explained that they do not have a written statement, but the opportunity will be rightly given to the other side to rebut on the matter.

**Mr. Harun Ndubi:** On a point of order, Mr. Chairperson, Sir. In spite of the benefit that the counsel has had to see our opening statement it is not in his opening to impeach our statement. He should wait at the appropriate time in the course of the proceedings either during tendering evidence or cross-examination of witness that is the time he will then be free and legally available to address the question of what is in the statement. We might as well have withheld our statement just like they did theirs from us. So, it is not right that he should now seek to impeach our statement at this point.

**The Chairperson** (Sen. Mutahi Kagwe): I would advise the counsel to deal with his opening statement at this juncture.

**Mr. Kioko Kilukumi:** Mr. Chairperson, Sir, I will deal with a short preview of the evidence that would be presented before you. The evidence that we will present before you is that the deputy governor on several occasions in churches and rallies, he has called upon people who do not come from Machakos County with the derogatory term of “*nguu*”. “*Nguu*” is a Kamba word for the tortoise. The deputy governor in using this derogatory term to refer, firstly, to Kambas coming from Makueni County, Kambas coming from Kitui County and other Kenyans coming from other counties in the Republic, is in gross violation of Article 10 of the Constitution dealing with national values and governance principles. The important principles that we will demonstrate have been violated by this kind of conduct. Firstly, national unity which is one of the values listed under Article 10.

Mr. Chairperson, Sir, and hon. Senators, you will appreciate that we, as a country, have 47 devolved units. However, we nonetheless remain a unitary State. As a unitary State, every Kenyan in every county is at liberty to seek employment, invest in our counties, own properties in other counties and no State officer should use derogatory terms so as to exclude members from other counties. These violations of national values and governance principles----, we will only list five: Firstly the national value of national unity, inclusiveness, equality, integrity and good governance. It is the county assembly’s case that the deputy governor, as a senior State officer is in breach of these values.

Mr. Chairperson, Sir, as a consequence of his remarks, which have been broadcast in vernacular radios in Ukambani, and we will lead evidence to that, people started entertaining fear as to whether they can continue to do business or to work in the county. This cannot be the Kenya we want to build. Any State officer cannot be allowed to exclude other members of the country from his county. Counties belong to all of us and all of us should be free to work in any place that we wish to. He has gone on record, and

we have audio tapes, which are predominantly in the Kamba language, but they have been translated and the translation placed before the Senate. In these translations, he has expressly stated that jobs in Machakos County are for the Kambas who hail from Machakos county and no one else. He has gone ahead to attack anybody who is propagating inclusivity and national unity. That is gross misconduct which calls for the removal of the deputy governor from his office.

Mr. Chairperson, Sir, the second issue on the evidence, the deputy governor has gone on record on national television stage-managing that he has been evicted from county executive committee meetings. Permitted by this Special Committee of the Senate, we will present before you, the driver and conductor of the *matatu* who will give evidence that other than for stage-managing for the newspapers and televisions, the deputy governor alighted from this vehicle and went back without going to Nairobi as news was put across the country. This was misleading information and in contravention of the law. We have and we will table before this Special Committee CCTV image cameras capturing the moments the deputy governor was in the Governor's office for the cabinet meeting and he left there with an official vehicle. Evidence would be tabled on the two official Prado vehicles that have been issued to the deputy governor contrary to information he has availed to the public which is false and misleading that he has been deprived of transport as a State office.

We will also table evidence to show nepotism; a list of 14 close relatives of the deputy governor in recruitment of civil servants in Machakos County. In his own response to that issue, in this written document, he has only dealt with only two of the 14 who bear the same surname as himself. The other 12, he has been completely silent about them. That schedule of 14 people, the relationship between the deputy governor and the named individuals is disclosed. Some are cousins to his wife, some are his own cousins and some are his friends and so on. However, he says nothing up to this point before the Special Committee. Nepotism is not part of the national values, it is against the public service values that are entrenched in our Constitution. Nepotism is not permissible under the written laws of the country.

We will present evidence before this Committee that the deputy governor as in abuse of office, pushed, harassed and pressurized chief county officers to award or influence the award of contracts to amongst others, his brother. He says, and that evidence will be tabled, that his brother funded the campaigns and this is the time to recoup his investment. He should, therefore, in violation of the law be awarded contracts to supply drugs and other pharmaceutical products. That, we say, is in violation of Public Officers' Ethics Act and violation of the Leadership and Integrity Act.

Hon. Members, it is important at this stage I simply touch shortly on the threshold that is expected of us to substantiate the allegation that are facing the deputy governor. In the proceedings for the Governor of Kericho, Hon. (Prof.) Chepkwony, the Senate, in a report that is before you, set out the threshold that must be met. This is to be found in Paragraphs 208, 215, 219, 223 and 225. In a summary, that threshold is the issues that are we raising; must be weighty, must be substantial, must be serious. We must show a nexus

between the allegations that are made and the deputy governor. We must show that there is credible evidence that you can act on.

Mr. Chairperson, Sir, hon. Senators at this stage, we submit that that evidence will come to the threshold that you have laid in this Senate. The other two issues that need to be mentioned at this stage is the question of lack of public participation in the removal proceedings at the county assembly in Machakos. Public participation, the Senate has held in Chepkwony impeachment proceedings, is not a requirement when impeachment proceedings are undertaken. The Senate has gone on to distinguish between recall procedure where a Member of Parliament can be recalled and when impeachment proceedings are instituted. On Paragraph 65 of the Report in the Chepkwony impeachment proceedings, the Senate expressed itself clearly that public participation is not one of the requirement when impeachment proceedings are put in Motion.

Mr. Chairperson, Sir, there has been allegations put that there were improper motives in initiating the impeachment proceedings against the deputy governor. The question of improper motives has been addressed by the Senate in Chepkwony impeachment proceedings at paragraph 62. This is what the holding of the Senate has been. These proceedings of impeachment nature enjoy parliamentary privilege. Because of that, it is not possible and it is not permissible for one to say there is improper motive.

Mr. Chairperson, Sir and hon. Senators, that is a short synopsis of the evidence that we intend to lay before you to impeach the deputy governor. Thank you very much.

**The Chairperson** (Sen. Mutahi Kagwe): Thank you. You may take your seat. I now wish to invite a statement on behalf of the deputy governor.

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, the statement was derived by the Governor himself. Perhaps, if you may permit us to raise one little matter that we intended to raise after the statement; my learned colleague has made reference to their desire to call evidence at some point to prove certain facts that he has stated.

**The Chairperson** (Sen. Mutahi Kagwe): Please, remember that this is part of the 40 minutes.

**Mr. Harun Ndubi:** Yes, Mr. Chairperson, Sir. I will be very brief about this.

Mr. Chairperson, Sir, we have availed a copy of the memorandum of the documents that the County Assembly of Machakos filed in response to these proceedings. We do find that in that document, there are a series of affidavits that have been sworn by various people that were not part of the record presented to the deputy governor and presented before the County Assembly of Machakos at the time the proceedings were commenced at Machakos. Therefore, we are asking that you make a decision that we expunge all the affidavits that have been introduced by the County Assembly of Machakos at the Senate proceedings and which were not produced in Machakos.

Two, Mr. Chairperson, Sir, we are asking the Senate to expunge any additional new evidence which is listed in the document that we were served with that was not produced at Machakos. This includes the alleged Digital Video Discs (DVDs)--- Allow me to consult.

*(Mr. Ndubi consulted his colleagues)*

Mr. Chairperson, Sir, these are the DVDs, *curriculum vitae* and posters. For the printed short messages and printed notes, those are in the proceedings. But we serve as an ordinary proceeding and we request that they be expunged at this point.

Thank you, Mr. Chairperson, Sir.

**The Chairperson** (Sen. Mutahi Kagwe): Thank you very much. Please, note that the rules of procedure allow for each party to call any witness called at County Assembly or not. What is prohibited is the introduction of any new charges. I think it is good to note that.

Please, proceed.

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, our understanding of Rule 20 is different. It is that the assembly shall not introduce any new evidence that was not part of the allegations against the Governor at the county assembly. The issue is one of evidence rather than a witness. Affidavits form part of the evidence that is introduced as real facts.

Thank you, Mr. Chairperson, Sir.

**The Chairperson** (Sen. Mutahi Kagwe): If you look at page 3, Rule 7 of the Procedures, says very clearly that where the Governor chooses to appear before the Committee, the Governor shall be required, within three days of the invitation under Rule 5 on a day specified by the Committee to file an answer to the charges with the office of the Clerk of the Senate, in which the Governor shall set out his response, how the Governor proposes to appear before the Special Committee; the names and addresses of the persons to be called as witnesses, if any; and a statement of each such witness and any other evidence to be relied on.

If you look at Rule 8, under the same, says very clearly that:-

“Where the County Assembly chooses to appear before the Committee, the assembly shall be required, within three days of the invitation under Rule 5, on a date to be specified by the Committee to file, with the office of the Clerk of the Senate, documentation-

- (a) designating the Members, if any, who shall attend and represent the assembly in the proceedings before the Special Committee;
- (b) indicating the mode of appearance by the Members before the Special Committee; whether in person, by advocate, or in person and by advocate;

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

What I would like to ask, at this juncture, is that you at least make the opening statement, even as we contemplate and look at what you had proposed.

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, I only wanted to say that these rules ought to be read together and in consonance with Article 50, especially sub-article 2 of the Constitution, I am grateful to my learned colleague who has submitted these are quasi judicial and quasi political proceedings. The rules that a charge or evidence is provided to an accused person to be able to understand and answer the charge; Article 25 of the Constitution says that amongst the rights that are non-limitable, include the right to a fair trial. It would be an ambush to bring new evidence. It will be equivalent as to go to the Court of Appeal to introduce new evidence which was not previously pleaded or submitted to the trial court. That would contradict the provisions of Articles 25 and 50 as regards a fair trial because in any event, you have pointed out correctly that the rules suggest that the Governor or Deputy Governor, whenever confronted with a charge, ought to make a response to the accusations specifically as they are. So, if new accusations are coming by way of new facts, then you will see that he will be disadvantaged completely. However, I am sure that as you have guided, this matter will be considered in the fullness of time.

**The Chairperson** (Sen. Mutahi Kagwe): Let me state this for the benefit of both sides; you will be guided very strongly by the rules of procedure. If you look at Rule 20, all the rules of procedure will be guided very strongly by that rule, which says:-

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

We will, therefore, as we discuss the matter and as we proceed, be saying that whether a matter was forwarded to the Speaker of the Senate or not, where a matter has been forwarded to the Speaker of the Senate then, clearly, we will be within Article 20. Can we proceed?

**Sen. Hassan Omar Hassan:** Mr. Chairperson, Sir, I want to agree with you that we move and listen to Bernard, the Deputy Governor, and then we request the Counsel to make a formal application to this Committee flagging out that particular evidence which you think is an ambush or which you think is new evidence so that, then, this Committee can make a determination on whether that evidence can be adduced pursuant to Rule 20.

**The Chairperson** (Sen. Mutahi Kagwe): Thank you very much, Sen. Hassan. We are actually already doing that because it is part of the 40 minutes. So, we are already doing exactly what you have requested for.

**The Deputy Governor of Machakos County** (Mr. Bernard Kiala): Thank you, Mr. Chairperson, Sir, and Members of the Special Committee of the Senate. I have given before you my opening statement, which is written, and because of time, I will try to go through it. I do believe that even if I do not finish every article, you will have enough time to go through it and see the issues that I am raising. The issues I have highlighted in my statement are very pertinent. They are the issues that mitigate the reason I find myself in this scenario; that is, the issue why we are here to talk about these proceedings.

The Governor of Machakos County, Dr. Alfred Ng'ang'a Mutua, requested me, Bernard Kiala, to be his deputy and I agreed to come with him in accordance to the provisions of Article 180(5) of the Constitution of Kenya. On 4<sup>th</sup> March, 2013, we were elected as Governor and Deputy Governor of Machakos in the general elections. We assumed office immediately we were declared winners and we were sworn in on 27<sup>th</sup> March, 2013. In the period intervening, the elections, I discharged my duties faithfully as Deputy Governor. In the process, I raised a number of issues relating to governance and corruption within the county. I believe these issues are at the very bottom of my problems with the County Assembly into the impeachment proceedings.

Allow me to highlight substantive issues of governance that I have raised with the Governor of Machakos County, Dr. Alfred Mutua, over the period. One, on 11<sup>th</sup> April, 2013, the Governor appointed and sworn in the County Executive Committee (CEC) Members in contravention of the County Government Act which provides under paragraph 30(2)(b) that:-

“The Governor shall appoint, with approval of the county assembly, the County Executive Committee in accordance with Article 179(2)(b) of the Constitution.”

Here, note that the County Assembly did not approve the appointments as at then, but later after several months in office.

Two, he appointed county chief officers in contravention of Paragraph 45(a) of the County Governments Act, which says that:-

“The governor shall—

(a) nominate qualified and experienced county chief officers from among persons competitively sourced and recommended by the County Public Service Board; and

(b) with the approval of the county assembly, appoint county chief officers.”

Mr. Chairperson, Sir, the Governor appointed 156 senior county government officers in contravention of Paragraph 59(1)(b) of the County Governments Act which state that:-

“The functions of the County Public Service Board shall be, on behalf of the county government, to—

(b) appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments;”

Mr. Chairperson, Sir, note the following here. There were no advertisements so as to reach as a wide population of potential applicants; there was no County Public Service

Board (CPSB) in place when these appointments were made in April, 2013, as is required by law. All those employees are yet to be confirmed by the CPSB and given letters of appointment stating the terms of their employment. They continue drawing salaries from the county government, salaries which are not commensurate with their qualifications. Their salaries are actually outside the guidelines formulated by the Salaries and Remuneration Commission (SRC).

Mr. Chairperson, Sir, the list of the chief officers was approved by the County Assembly last month, July 2014, after having been in office for more than one year in charge of public funds. These issues were captured by the Kenya National Audit Office Report on Machakos County Government covering the period from January to June, 2013. The Governor, Machakos County, Dr. Alfred Mutua, purchased 15 Subaru, 2,500 cc cars and allocated 10 of them to the CEC members and the balance to his own appointed officers. He also purchased one Toyota Land Cruiser, 4,700 cc for himself. All these are second hand vehicles, in contravention of the Public Finance and Management Act, 2012, and the Public Procurement and Disposal Act, 2005.

Mr. Chairperson, Sir, kindly note the following, no pre-purchase valuation was done by the Ministry of Public Works or a Government registered valuer to establish the length of usage since these vehicles were used or second hand. The supplier was identified and the price negotiated by the Governor himself contrary to the procurement laws and regulations. The documents of this transaction were done after their supply.

Mr. Chairperson, Sir, the allocation of the vehicles to the users was done in public and before the media on 16<sup>th</sup> April, 2013. This explains why the Machakos County Government was the first county to appear to have started operations immediately upon assuming office, but that was on a wrong footing. This transaction was among those queried by the Auditor-General's Report and now under investigation by the Ethics and Anti Corruption Commission (EACC) and hence unable to produce the documents, but they are available.

Mr. Chairperson, Sir, on embezzlement of funds, during the first County Executive Committee (CEC) meeting held on 16<sup>th</sup> April, 2013 the Governor appointed me to head a CEC subcommittee to look into revenue collection and make recommendations on how revenue collection can be enhanced in Mavoko Sub County. The subcommittee was made up of five Executive Members. The subcommittee unearthed a lot of irregularities in revenue collection. A major irregularity which was noted was that revenue was being collected and not banked. There were no daily collections or bank records. However, there was overwhelming evidence of officers collecting and issuing parallel receipts. There was a very sad case of one officer who collected revenue and banked it into his personal account. I shared the contents of the report with the Governor for guidance before tabling to the CEC. We had made various recommendations, including having one officer, one Moses Muthusi, to be investigated by the EACC for corruption. However, before the committee could present its report, the Governor disbanded it. Up to today, this report remains in my CEC file which I now have got no access to. The reasons; the

Governor said he wanted to hire a forensic expert to go through revenue collection in the entire county.

Hon. Chairperson, Sir, allow me to refer you to Machakos County Circular No.3 marked as Exhibit 1 and is on page one of the document I provided to you. It is dated 6<sup>th</sup> May, 2014. It is authored by the County Secretary, Francis Mwaka with a name highlighted in yellow, Mr. Moses Muthusi. This is on page 49 of the document that you have. This officer has now been appointed as the Sub County Administrator at Mavoko vide that circular.

Paragraph 3 of the circular reads in part:-

“The Governor, His Excellency Dr. Alfred Mutua, E.B.S. has undertaken the deployment after successful, competitive recruitment by Machakos County Public Service Board.”

I wish to refer you again to a Government of Machakos County Public Service Board (CPSB), circular dated 29<sup>th</sup> May, 2014 marked as Exhibit 2 on page 51. It is authored by Dorothy Mwanzia, for Chairman, Machakos, CPSB. She is the Vice Chairperson of the Board. In this particular case, the CPSB is refuting the names appearing in the first circular by the County Secretary, Francis Mwaka acting on behalf of the Governor as per the third paragraph of that circular.

I refer you again to page 52 of the circular under the first table. It reads:-

“The County Public Service Board was not involved in the appointment of the following and as such has not sanctioned them:-

Manthi Patrick Wambua

**Moses Muthusi**

Peter Mwololo

Onesmas Ituo”

The name Moses Muthusi is indicated in bold. One major concern here is this officer, Mr. Moses Muthusi. He was not interviewed and sanctioned by the CPSB as is required by law. But the Governor, Dr. Alfred Mutua appointed him as the sub county administrator of Mavoko Sub County. This is the same officer whom in my revenue collection subcommittee report, I had identified as corrupt and needed to be investigated by the EACC.

It is, therefore, not a surprise that on 6<sup>th</sup> June, 2014, as per the bank statement, Exhibit 3 highlighted on page 53 of the document that you have, Cooperative Bank, Mavoko Sub County, Account No.01141549052000, Revenue Collection Account, Moses Muthusi transfers by RTGs Kshs2,265,235 to this Machakos County Government Account.

When I pointed out this irregularity to the Governor and also the fact that I had adversely mentioned this officer in my executive sub county committee report, the fact that he was eventually appointed - but the Governor could not hear any of it hence my conclusion that the Governor of Machakos County is either corrupt---. For this reason, the Deputy

Governor for Machakos County must go for exposing him. These are serious governance issues which I raised with my Governor. Instead of solving them, it comes that the Deputy Governor has to go.

Mr. Chairperson, Sir, as the Deputy Governor of Machakos County, occupying a constitutional office and bound by the oath of office, I cautioned the Governor on these excesses at the beginning of our term, but the Governor has on many occasions reminded me that he enjoys executive powers, just like the President of the Republic of Kenya and as such I should shut up or resign from my office.

On nepotism, early March this year, we had our first full Government retreat at Travelers' Beach Hotel in Mombasa to discuss our achievements and challenges in our first year in office. This was a full Government retreat made up of the County Executive, Chief Officers, Directors and members of various boards. In my remarks before inviting the Governor, Dr. Alfred Mutua to speak, I pointed out to him that there was rampant nepotism in our county public service and I gave out the following examples:-

We have Mbithe Kala who is a Wiper Party Nominated MCA. She is the mother to Musyoka Kala who is the Chief Officer, Public Service, Labour and ICT. He is son to Mbithe Kala and husband to Salome N. Kioko. Salome Ngina Kioko is a Procurement Officer, Water, Irrigation and Sanitation. She is the wife to Musyoka Kala.

Ivei Kala, an Emergency Caller in Matuu Call Centre is the first cousin to Musyoka Kala. Joseph Musyoka, Water Bowser Driver is a first cousin to Musyoka Kala.

Over 20 drivers and 10 county government employees are related to Musyoka Kala.

Nimbrod Mbai, Chief Officer Devolved Units, Urban Areas and Municipalities was a former bodyguard to the Governor, Dr. Alfred Mutua when he was serving in the office of the Government Spokesman and is husband to Grace Mbithuka. It is not clear if he has resigned from his former office or he is seconded to the county government.

Grace Mbithuka is the Procurement Officer, Education, Youth and Sports. She is the wife to Nimrod Mbai. There are over 30 drivers who are related to Mr. Mbai.

We have Mwengi Mutuse. He is the Chief of Staff and Personal Assistant to the Governor. Formerly, he was in the Office of the Government Spokesman and husband to Esther Mwengi who is the Procurement Officer, Devolved Units, Urban Areas and Municipalities. She is wife to Mwengi Mutuse.

Stephen Muoka, Procurement Officer, Water Irrigation and Sanitation, is brother to Mwengi Mutuse. Ngeto Mutuse, Revenue Clerk is brother to Mwengi Mutuse.

Moses Muthusi, the officer I talked about, the one who transferred money from his personal account to the account of the government, is the sub county administrator Mavoko. He is cousin to Mwengi Mutuse and the officer who was irregularly appointed.

We have Livingstone Mutuse, Technician, brother to Mwengi Mutuse. We have Mumo Makundi, County Officer, Devolved Units, Urban Areas and Municipalities. He is cousin to Mwengi Mutuse.

We then have Alfred Mutua, Revenue Officer, Mavoko sub county. He is cousin to Mwengi Mutuse. We have many officers, about 50 of them who are linked to Mwengi Mutuse.

We also have Peter Mutie who is the Chairman, Machakos Entertainment Centre, Film, and Arts Board. He is husband to Ruth Nduku Mutua who is the Executive Committee Member for Education, Youth and Sports.

We also have Ken Wathome, Chairman Machakos Investment Board. He is brother to Faith Syokau Wathome. Faith Syokau Wathome is the County Executive Member in charge of Culture, Sports and Tourism. She is sister to Ken Wathome.

We also have Robert Maitha, Director, Trade and Economic Planning. He is husband to Winifred Kithome. Winifred Kithome is Assistant Director, Labour and ICT and wife to Robert Maitha.

Nicholas Kimanzi, Director Labour and ICT is husband to Erica Kasimbi. Erica Kasimbi is County Officer, Public Service, Mavoko sub county.

Jacinta Masika is the Chief Officer Finance and sister to Maria Masika.

Rosemary Mulee is the Secretary County Public Service Board, Sister to Francis Mulee. Francis Mulee, is a driver, Transport Department and brother to Rosemary Mulee.

Mwikali Muthoka is the Chief Officer, Department of Land and Energy. She is sister to Emmanuel Muthoka. Emmanuel Muthoka is Protocol Officer, Office of the Governor.

This list is not exhaustive. I pointed it out in the principle of equity and fairness. It was inappropriate for chief officers to work with their spouses. These spouses are heading senior positions in procurement, which in my opinion would create a conflict of interest because chief officers are accounting officers of various departments.

It, therefore, turns out that the impeachment proceedings are a case of the hunter turning out to be the hunted.

On general corruption incidences, at the same retreat at Traveller's Beach, I also raised the issue of corruption in procurement and cited the issues captured by the office of the Auditor-General in a Special Report of the County Government of Machakos and the five local authorities during the transition period from January to 3<sup>rd</sup> June, 2013. The report is marked as Exhibit 5, pages 55 to 124.

I said that whereas this report is not addressed to the executive, it adversely mentioned some senior county officers in the executive and must be acted upon as per Article 229(7) and (8) which says:-

“Audit reports shall be submitted to Parliament or the relevant county assembly.”

Within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action.”

In this report, there were a lot of irregularities in procurement which points out to corruption and outright theft of public funds. Kindly consider the following cases:-

On page 64 of the Report, Machakos County Investors Conference, Maanzoni, the Auditor-General faults this transaction and recommends adherence to the Public Procurement and Disposal Act 2005 and Regulations 2006, while procuring services, but not single sourcing. He further recommends that the concerned officer should be surcharged for the apparent loss to the county government.

On page 64 on Maruba Dam expenditure; the Auditor-General picks out irregularities in this transaction and recommends that all services should be competitively procured, but not single sourced and the culpable officers should be surcharged for apparent loss to the county government. This recommendation has not been acted upon.

We then have funeral expenses for the late Sen. Mutula Kilonzo where a sum of Kshs2.8 million was spent. The Auditor-General requested for necessary explanations and documentary evidence on how this transaction was entered into. He said that the expenditure of Kshs2.8 million is an irregular one and culpable officers should be surcharged for the apparent loss of Kshs2.8 million in an expenditure of public funds. No action has taken place to date.

On purchase of motor vehicles, I have mentioned this transaction elsewhere. As I speak to you, this matter is being investigated by the EACC.

On purchase of motor vehicles, county assembly, this is on pages 78 and 9. The Machakos County Assembly procured and paid one Osaka Motors Limited for supply of one Toyota Harrier Station Wagon, 2,300 cc at a price of Kshs2.6 million and also procured and paid Muhammed Aden for the supply of one Toyota Prado 2690 cc at Kshs7 million, all used/second hand vehicles as per the sale agreement dated 27<sup>th</sup> June, 2013. There is a sale agreement to that effect.

Mr. Chairperson, Sir, the Auditor-General points out the issue of single sourcing with regard to Kshs7 million loan given to MCAs to buy brand new vehicles. However, Kshs7 million is the money the Machakos County Government uses to purchase second hand vehicles and goes ahead to say that we are saving money for the public.

Mr. Chairperson, Sir, it is important to note here that these two vehicles were for the use of the Speaker of the County Assembly of Machakos, Hon. Barack Mungata and the Leader of Majority, Hon. Joshua Mwonga. This one single transaction would explain

why this Auditor's report has not been tabled in the Assembly as is required by law for debate.

### **Confidential Expenditure**

The Governor Spent Kshs7.5 million in a span of three months. You would ask yourself how much more he has spent in the last financial year. If he can spend Kshs7.5 million in a span of three months and does not account for it, how much has he spent in the last financial year?

We have another case which I highlighted in the same retreat about Globyte Communications Limited. This is a company that will show how much Machakos County does procurement. There is a notice of award. You realize that the notice of award is dated 7<sup>th</sup> February, 2014, but the delivery of materials that were procured were all delivered in January. These are the issues that I raised in that retreat.

I ended my speech during the retreat and I called the Governor to speak. He was very upset with me, a fact which he confirmed to me during the health break. He avoided the subject I raised in my speech. According to him, it was business as usual. After the retreat, the chief officers became very hostile to me and the entire county executive committee started isolating me. The Governor became indifferent and uncomfortable with me. The Chairman of the CPSB, one Mr. Alphonse Kioko resigned quietly, thereafter citing frustrations and lack of independence of the Board. His position is yet to be filled up to this day. As a responsible Deputy Governor, I raised these issues of governance in that forum. However, after raising them, everybody became hostile to me. For that reason, the Deputy Governor has to go because choices have consequences.

### **Repercussions of raising these issues**

On April 30<sup>th</sup> 2014, after a county forum at Masinga sub-county during the launch of the county comprehensive water and food security programme, the Governor reprimanded and painfully humiliated me before the public and alleged that I was teaming up with MCAs who were hostile to him with a view of instituting an impeachment Motion against him, meeting the Senator of the Machakos County and picking calls from people who do not support the Government of Machakos County. I found this extremely embarrassing. After a meeting with the Governor in his office, it did not yield any reconciliation. I also feel that the Governor undertook to punish me for my choice of association which I think is an infringement on my rights.

The same thing happened again at Matuu Market in Yatta County on June 14<sup>th</sup>, 2014 during a launch of the same programme. This time it was from the Majority Assembly Leader, Joshua Munga and the Chairman of the Budget Committee, Isaac Muinde. During a brief meeting with the Governor at his office in Machakos after the function, I asked him to comment on why MCAs were attacking me in public and he asked me whether I have ever had the Deputy President of the Republic of Kenya questioning the

President on anything. I knew for sure that he was out to make sure that he poisons the public as he prepares for my exit.

On June 15<sup>th</sup>, 2014, I chose to break the silence at a Sunday church service in Ndalani, Yatta Sub-county. I spoke in parables and said that the Machakos County Governor has been held hostage by people who were hell bent to ensure that he does not succeed and that his Government does not succeed. I said that these are the individuals who are the face of nepotism, corruption and impunity in our Government. For us to be able to work harmoniously, ethnicity ought to leave our Government.

The Governor called me and told me that our partnership was over. As far as he was concerned, I stood sacked. The following day at about 8.00 a.m, the two APs who used to guard my residence were withdrawn and to date, they remain withdrawn. Thereafter, I received threats from individuals who have been well covered in my statement. To date, the two guards at my residence have not been brought back. Thereafter, I received a letter asking me to appear before the County Executive Committee. There were very many allegations leveled against me. It was like everybody was out to ensure that the Deputy Governor had to go.

I have seen so many affidavits sworn by members of the County Executive Committee (CEC) and all of them are saying that they are not ready to work with me. It is like they have been made to make up their mind that they cannot work with the Deputy Governor of Machakos County. I even got a letter from Nyamu and Nyamu Company Advocates. It is from page 147 to 148. An amount of Kshs5, 040,000 ought to be charged to the County Government of Machakos. So, I was being asked to shut up.

These issues I have highlighted here form the basis of why I find myself before you. Devolution is under threat in this country not from powers without, but from within. I wish to submit to this Committee that I am a victim of witch-hunt and a sacrificial lamb at the altar of merchants of impunity and a CEC led by the Governor himself keen to hound me out of office for whistle blowing against corruption and bad governance. Should I choose to say yes to corruption and nepotism, I will continue earning my salary, live in a decent house and everything that goes with it, but I could not reconcile my conscience to that. Therefore, I chose to say no to corruption, impunity and nepotism at the risk of losing even my job.

My Lawyers will be responding on my behalf through written submissions on each and every allegation against me. Thank you.

**The Chairperson** (Sen. Mutahi Kagwe): I think you used the 40minutes to the end. Thank you very much. At this juncture, I think the Senators and the counsel will need a short break. I am, therefore, going to call for a 15 minutes break. We will resume here at exactly 12.05 p.m. to start hearing of evidence by the county assembly.

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, we will be having two preliminary matters which I will only take five minutes to address you on. I do not know whether we do it now or we wait and do it after the break.

**The Chairperson** (Sen. Mutahi Kagwe): I think we take a break and then we resume after 15 minutes.

*(The Special Committee adjourned temporarily at 12.20 p.m.)*

*(The Special Committee resumed at 12.25 p.m.)*

**The Chairperson** (Sen. Mutahi Kagwe): Welcome back Senators, ladies and gentlemen. Before we took the tea break there was a request that the counsel from the Deputy Governor's side needed five minutes. I will give you ten minutes to deal with whatever preliminary remarks you want to make. After which, in the event that the counsel for the assembly wants to rebut on that, I will also give him ten minutes. We will continue to hear evidence for at least an hour before taking the lunch break. Before you proceed, I would ask the two Senators who have just joined us to introduce themselves.

*(Sen. Hassan Omar Hassan and Sen. Abu Chiaba introduced themselves)*

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, there are two quick preliminary matters that we are requesting the Committee to look at. The first one might sound like a repetition of what we argued earlier, but we would like it to go on record as a preliminary objection that we are raising, touching on the admissibility of the affidavits that are introduced in the document filed by the County Assembly of Machakos headed as Memorandum of response to the invitation to appear.

Mr. Chairperson, Sir, affidavits are evidence. They are statements of evidence. This is a *quasi* judicial and *quasi* political process that we are undertaking. The quasi political nature of it, in my humble submission is with regard to the nature and the structure of the power that is being enjoyed by this Committee and, of course, the process of election of the persons affected by these proceedings. That is the only thing that is political about it. The process itself of taking the evidence, the burden to prove the evidence and its admissibility of is a judicial process.

Therefore the Senate must pay attention to Article 50(2) of the Constitution which provides that every accused person has the right to a fair trial. The document that we are referring to has been introduced, and we are thankful to the County Assembly for noting it in writing, but they are proposing witnesses who did not testify at the hearings before the County Assembly who will be forced to testify before this Committee. This we humbly submit will be offensive not only to the rules of natural justice, because that evidence which was presented in the county assembly ought to be the only evidence that can be relied on because under the rules of natural justice, evidence must be given to the person being accused so that he may be able to rebut such accusations or even acknowledge the accusations if they are true.

Having not been produced before the County Assembly of Machakos, witness statements, namely the affidavits of the persons named there and, perhaps, for the record you may allow me to read them: The affidavit of Dr. Eric Omondi Abade, Benedict Mutuku, Joshua Nzuki Muli, Penina Mbithe Wanyoro, Patrick Kilonzo Ngala, Patrick Njuguna Mbugua, Dominic Mwenda Mutua, Hannah Wambui Waweru, Nathan Ngatua Mutui, John Mutinda Pascal, Joseph Kisio Musembi, all those persons named did not testify admittedly before the County Assembly of Machakos or even before the *ad hoc* Committee. Their evidence must in that regard be expunged from the record.

The second part is the DVDs, newspaper cuttings, posters, printed SMSs and Facebook posts.

Our instructions are that these matters were never presented before the County Assembly of Machakos. The DVDs were not played before the County Assembly or these DVDs, CDs and these newspaper cuttings given to the Deputy Governor in order for him to confront them. Therefore, we apply that they be expunged from the record and not referred to. This is because the object of these proceedings is to inquire and investigate into whether any of the matters the Deputy Governor is being accused of were properly proved. That inquiry at this point cannot extend to introducing new material which was not introduced, because that would be not only prejudicial to the Deputy Governor, but illegal in terms of being contrary to the Constitution. In fact, a party cannot, at this time, be allowed to have passed a resolution to impeach and then seek to improve the grounds of impeachment. Like we said earlier, it is akin to seeking to strengthen a case when you are already in the appellate level.

The second preliminary issue which is not so much an objection, is for you to consider the issue of the mandate, extent and scope of the jurisdiction of this Committee of the Senate in inquiring into the proceedings of the county assembly. It is important that this Committee looks at the proceedings before the county assembly in their entirety, in order to satisfy yourselves whether they were just, fair and complied with the rules of natural justice and Constitution, especially Article 50(2) and Article 25. It is important because these quasi-judicial proceedings must engender fairness, truth and natural justice. We are aware that the Senate, in proceedings before the Assembly regarding the Deputy Governor of Embu, held on sub-paragraph 88, which goes on to the next page--- I will now read the sentences that we will be asking you to rely. It says:-

“It is not in our respectful view within the jurisdiction of the Senate to question or interrogate the proceedings of a county assembly, which within our constitutional arrangement is a separate legislature, having charge over its own internal proceedings.”

Mr. Chairperson, Sir, this Senate, just like the Supreme Court, has the jurisdiction, mandate and power to review its rulings and change positions previously taken. Our humble submission is that since the paramount duty in the investigation of this nature is to see whether the allegations were proved, such burden of proof of the allegations can only be found within the proceedings of the county assembly. Without inquiring into the

propriety of those proceedings, this Senate will not be able to make a finding in respect of whether or not those allegations were proved. Therefore, we invite you very respectfully to relook at that position taken by the Senate, in order that we interrogate the proceedings of Machakos County Assembly.

I thank you.

**The Chairperson** (Sen. Mutahi Kagwe): Counsel for the Assembly.

**Mr. Kioko Kilukumi:** Thank you, Mr. Chairperson, Sir, and hon. Members of the Senate.

I will respond first to the question of admission of affidavits. Firstly is to point out the provisions of Section 33 of the County Governments Act and in particular, sub-section 3(b). The Senate by resolution may appoint a special committee, comprising 11 of its members to investigate the matter. The jurisdiction vested in this Special Committee is to investigate the matter. This being the parent Act of Parliament, giving you power to look into this matter, there is no qualification whatsoever as to what evidence this Committee can hear. Based on this section, rules of procedure have been formulated for special committees dealing with impeachments.

As it was pointed out at the very start by the Chairperson of this Committee, Rule 8 is relevant to the issue now raised. I did not read Rule 8 in full, because the Chairperson did so, but two important things arise from this Rule. Under Rule 8 (c), we were required to indicate the names and addresses of persons to be called as witnesses, if any, and a statement of such witness. That rule has no restriction as to who can submit a statement when they appear before the Special Committee of the Senate.

Rule 8 (d) says:-

“Specify any other evidence to be relied on.”

We specified that other evidence. It is our submission that Rule 8 of the rules of procedure must be read together with Rule 20 of the rules of procedure. A careful reading of Rule 20 is clear; that the only thing that you are not permitted to do at this stage is to bring new allegations. However, if it is the same allegations, you can buttress them with any further evidence that you deem fit. For the record, I will read Rule 20. It reads:-

“In presenting its evidence the assembly shall not introduce any new evidence that was not part of the allegations against the Governor by the county assembly.”

In my humble submission the operative words here are “not part of the allegations.” All the evidence of all the additional witnesses that we seek to be heard before this Special Committee do not bring in new grounds or allegations. It is simply additional evidence which supports the very same allegations which were before the county assembly.

Turning to the facts, it is not true to say that the CDs and DVDs were not played. They were, indeed, played in the *ad hoc* committee of the County Assembly of Machakos.

Among the documents that were transmitted to the Speaker of the Senate by the Speaker of the County Assembly in Machakos, included translations from the Kikamba language as well as the Kikamba transcription of what is contained in those DVDs and CDs. For the record, I just want to refer to the file that is before the Members who are here. On page 238 of the file which has been supplied to all the Senators, you will see a Kamba translation; a transcript of the tapes which were played in the *ad hoc* committee. On page 242, there is the English translation.

On page 230, the document that is before this Committee, you will see a Kamba transcription and an English translation of the documents, DVDs and CDs which were before the *ad hoc* committee and, subsequently, tabled in the county assembly. On page 233, you will see the Facebook post, which was again, clearly before that assembly. We can go on and on. On page 235, you will see posters that we intend to rely on and which were placed before the *ad hoc* committee and the county assembly. So, apart from the construction of the law, there is no merit whatsoever to this so-called objection. It is completely baseless.

I will now turn to the second issue. I will formulate it this way; whether it is within the competence of this Special Committee to inquire into the appropriateness and regularity of the proceedings in the county assembly in Machakos. In our humble submissions, that is not open to this Committee. The reason is that every legislative assembly and county assembly enjoys separation of powers. Every House of Parliament, whether at the national level or county level, enjoys separation of powers. Therefore, proceedings that are undertaken in that House cannot be questioned in any other House. These are not my words, but the words of this Senate, in the case of impeachment against the Governor of Kericho. I will just quickly draw your attention to it. It is on paragraph 54 of the Senate's Report, because I will simply summarize that, the Senate held. It say:-

“In any event it is important to note that the county assembly is a fully fledged legislature, albeit at the devolved level. The laws and principles applicable to legislatures apply in full to the County Assembly of Kericho.”

Mr. Chairperson, Sir, after the Senate reviewing very many case laws as well as commentaries in parliamentary privileges, it came to the conclusion that what happens in Machakos County Assembly, they are the final judges of the regularity of the appropriateness of proceedings in those assemblies.

Thank you, Mr. Chairperson, Sir and Senators for listening to my response

**The Chairperson** (Sen. Mutahi Kagwe): Thank you very much indeed. In view of the submissions made on both sides, there will be now 15 minutes break so that the Senate Committee can consider what has been put to us on both sides and then make a ruling before we continue with the hearing of the evidence.

*(The Special Committee temporarily adjourned at 12.41 p.m.)*

*(The Special Committee resumed at 1.20 p.m.)*

The matter that was raised to us was quite serious and we took it with the seriousness it deserves if we are going to dispense justice that is unquestionable. The Committee had deliberated on this matter and in view of that under the mandate of the Special Committee under Section 33(4) of the County Governments Act is to investigate into this matter. The word “investigate” means to carry out a systematic or formal inquiry to discover and examine the facts of an allegation. To aid in the investigation, the rules of procedure at Rules No.7 and No.8 allow both parties to submit any evidence that can be relied on. However, Rule No.20 cautions that in presenting such evidence, the county assembly shall not introduce any “new evidence that was not part of the allegations against the governor by the county assembly as forwarded by the Speaker of the county assembly to the Speaker of the Senate.” The parties are therefore at liberty to present evidence that they wish as long as it does not introduce new allegations.

In accordance with Article 50, such evidence must, as it happened, be brought to the knowledge of either party. Therefore, and in accordance with the precedence set by the Special Committees investigating matters of Governors of Embu and Kericho County, this Special Committee shall allow the affidavits sought to be presented by the County Assembly as the affidavits do not raise new allegations. We also wish to caution very seriously that the Committee shall not allow any new allegations to be brought to the proceedings under the guise of collaborating evidence. This matter rests there and the ruling is final.

Having done that, it is now 1.30 p.m. and we wish to take one hour break for lunch. In fact, it should be less than an hour because we would like to resume here at 2.30 p.m. where we will take the first hearings and continue on until 6.30 p.m. so that we do not take a break that counsel had also questioned earlier in the day.

Enjoy your lunch.

*(The Special Committee adjourned at 1.30 p.m. for lunch)*

*(The Special Committee resumed at 2.35 p.m.)*

**The Chairperson** (Sen. Mutahi Kagwe): Thank you very much, ladies and gentlemen for resuming on time. I now wish to call on the County Assembly of Machakos to give evidence for the next three-and-a-half hours.

You have the liberty to use the Dispatch Box at any time.

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, could we get your guidance where the witness is supposed to sit? I am not sure because I have not appeared in this Senate before.

**The Chairperson** (Sen. Mutahi Kagwe): Any witness called in the proceedings will sit on the chair right opposite.

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, I will call my first witness. The first witness is Hon. George Kioko Luca. His statement appears on page 200 of the bundle that has been supplied to all members of this Special Committee.

**The Chairperson** (Sen. Mutahi Kagwe): Then you are free to examine him on the Dispatch Box.

**Mr. Kioko Kilukumi:** Is it permissible to do it from here?

**The Chairperson** (Sen. Mutahi Kagwe): You can do it from there or here. It is really up to you.

**Mr. Kioko Kilukumi:** Thank you, Mr. Chairman, Sir.

*(Mr. George Kioko Luka took the oath)*

**Mr. Kioko Kilukumi:** For the record, please, confirm your name is hon. George Kioko Luca.

**Mr. George Kioko Luka:** Yes, Sir.

**Mr. Kioko Kilukumi:** Please, speak audibly.

**Mr. George Kioko Luka:** I have a sore throat problem but I will try my best to be audible.

**Mr. Kioko Kilukumi:** Did you swear an affidavit on 9<sup>th</sup> July, 2014 which you have before you?

**Mr. George Kioko Luka:** Yes, I did.

**Mr. Kioko Kilukumi:** Are the contents of that affidavit a truthful account of the events as you know them?

**Mr. George Kioko Luka:** Yes.

**Mr. Kioko Kilukumi:** For the record, could you kindly read through that affidavit, and I will ask you a few questions thereafter?

**Mr. George Kioko Luka:** It says:-

“In the matter of Oaths and Statutory Declaration Act, Cap.15, and in the matter of the Machakos County Executive Committee and in the matter of the Deputy Governor Machakos County Government, Hon. Bernard Kiala, I, Hon. George Kioko Luca, holder of the national identity card No.16000716 of P.O. Box 1996 90100 Machakos, state that I

am the County Executive Committee Member of Transport, Roads, Public Works and Housing, a position I have held since 6<sup>th</sup> April, 2013. I hold a masters degree in development and administration from Birmingham University in the United Kingdom and a Bachelor of Honors in Economics from the University of Nairobi.

I attended the 20<sup>th</sup> cabinet meeting for the Machakos County held on 7<sup>th</sup> July, 2014 in the Governor's office, Machakos, from 10.00 a.m. At the plenary stage of the meeting, the Deputy Governor, Hon. Bernard Kiala, said that he wanted to raise a pertinent matter regarding insecurity. He stated that sometime back, security at his rural residence had been withdrawn and that somebody called and issued death threats against him. He said that after his investigations, he found that the death threats had emanated following a meeting convened and planned by Mr. Mwengi Mutuse who is the chief of staff at the governor's office.

He told the meeting that after his investigations, he can report that the chief of staff, Mr. Mwengi Mutuse, wanted to kill him. In response, the Governor said that these are serious allegations and inquired from the Deputy Governor if he had reported to the police or made a statement to the police and what action the police had taken. The Deputy Governor claimed that he had reported the matter to the police at Embu and that he had also recorded a statement there and police had told him that they were investigating.

Immediately thereafter, the Cabinet discussed briefly and resolved that all members of the cabinet should confirm whether or not they were facing any criminal charges and whether or not any member had a complaint or investigations pending before the police and all the members replied negatively except the chief of staff who said that he had a political case filed by Hon. Harun Mwau arising from the Wiper campaigns in Kibwezi, which was ongoing. The Governor concluded the issue by ruling that it was only fair that the police be given an opportunity to conclude investigations and take action in accordance with their decision.

The Deputy Governor then said that he was feeling uncomfortable to sit in the same forum with people who are threatening his life. That exhibited disrespect to the role of the policy formulation that ought to be exposed by all members of the County Executive Committee and staying away from interfering with the implementation of policies which is the work of chief officers and other officers of the county government. The Deputy Governor mounted pressure on Cabinet colleagues seeking to have his people given tenders while reminding them that he is the Deputy Governor. On 22<sup>nd</sup> June, 2014---“

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, I am following the document that has been supplied by the Senators but I am not sure we are on the same page with the witness. Maybe we need to give him the document that all the Senators have.

**The Chairperson** (Mr. Mutahi Kagwe): I think it is very important that we refer to the documents that have been supplied to the Senate. No other matter outside that.

**Mr. George Kioko Luka:** The Governor concluded the issue by ruling that it was only fair that the police be given an opportunity to conclude their investigations and take action in accordance with their decision. The Deputy Governor then said that he was feeling uncomfortable to sit in the same forum with people who are threatening his life.

Number 10, at this point, hon. (Eng.) Francis Maluti, County Executive Committee (CEC) Member responsible for the department of water, irrigation and sanitation, rose on a point of order and requested an amendment to the agenda to insert as an agenda item discussion of the Deputy Governor's conduct. He justified this by saying that the Deputy Governor had been widely covered in the media on several occasions and in various fora while criticizing the current government while he is also serving in the same government. Hon. Helen Kiilu, the CEC Member responsible for the Department of Decentralized Units and Urban Areas of Municipalities, seconded the proposal for amendment of the agenda to include as an item of agenda for the meeting discussion of the Deputy Governor's conduct. The cabinet meeting then resolved collectively to amend the agenda. The County Secretary (CS) therefore amended it accordingly by including the new agenda item as Agenda Item No.2 titled discuss conduct of Deputy Governor.

The Cabinet, therefore, requested the Deputy Governor to step outside so that his conduct could be discussed and, thereafter, he would be called back to respond on the allegations of misconduct which had caused the agenda to be amended. The CS accompanied the Deputy Governor outside the Cabinet meeting room and when the CS returned to the meeting, he informed the members present that he had already organized a room for the Deputy Governor to sit as he waited to be called back in.

I expected that the Deputy Governor would come back to the meeting after the procedure drawing up the allegations against him. I confirm that the matters indicated in the minutes of the 20<sup>th</sup> Cabinet Meeting, including the serious allegations of misconduct and abuse of office by the Deputy Governor, as indicated by various CEC Members are a true record of the deliberations of the meeting. In fact, I participated in the meeting from the beginning to the end. I also heard that during the Cabinet discussions and drawing up on the allegations, the Cabinet made a media update that the Deputy Governor had already updated his Facebook page with a false account that he had been ejected from the Cabinet Meeting for raising issues about corruption and nepotism. This information also subsequently appeared in the print media that the Deputy Governor has been in the habit of interfering with procurement, and as much as he had accused our government of improprieties associated with procurement and employment as the CEC holding the public service portfolio, that during the recruitment of grader operators, he approached me with eight names and he insisted that I employ them as operators. But when I interviewed them, only two qualified and, therefore, he took offence. That allegation, that people from other counties are taking employment positions, is misplaced and ill-advised as it has been Government policy that 30 per cent of employees be picked from outside the county. Should he have had any complaints, he ought to have addressed the same in the Cabinet as opposed to inciting the public against the government that he serves. His conduct is an affront to the principles of collective responsibilities expected to be embraced by all Members of the CEC.

That he has explicitly disrespected the role of policy formulation that ought to be espoused by all Members of the CEC and staying away from interfering with implementation of policies which is the work of the chief officers and other officers of the county government. That he has always mounted pressure on Cabinet colleagues when seeking to have his people employed and even tenders, while reminding them that he is the Deputy Governor. That on the 22<sup>nd</sup> of June, 2014, the Deputy Governor, while at a church service in Ndalani, he publicly stated that the reasons as to why there are problems in Machakos Government is because there are two tortoises from Makueni and Kitui counties who have occasioned the employment and award of tenders to outsiders. This was captured by all the three vernacular media stations serving in Ukambani, namely Mbaitu, Musyii and Athiyani FM. That it is surprising that the Deputy Governor, who rarely contributes in Cabinet proceedings, is passionately vocal when it comes to criticism against our government.

That, I wish to further state that all the foregoing and having served in the same Cabinet with the Deputy Governor, Mr. Bernard Kiala, is unfit to serve in the CEC of Machakos; and that, what is stated herein is true to the best of my knowledge.

This was sworn in Machakos by myself on the 7<sup>th</sup> of July, 2014 before a Commissioner of Oaths.

**Mr. Kioko Kilukumi:** Please, Mr. Luka, do you wish this Special Committee of the Senate to rely on that evidence that you have read out from your affidavit?

**Mr. George Kioko Luka:** Yes, I do.

**Mr. Kioko Kilukumi:** I will only ask you one or two things for clarification.

**The Chairperson** (Sen. Mutahi Kagwe): Sorry, counsel. I want to seek a small clarification. Did you say the 7<sup>th</sup> or the 9<sup>th</sup>?

**Mr. Kioko Kilukumi:** The 9<sup>th</sup> of July.

**The Chairperson** (Sen. Mutahi Kagwe): Very well.

**Mr. George Kioko Luka:** It is the way it is written.

**Mr. Kioko Kilukumi:** Now, please tell this Special Committee; was the Deputy Governor evicted from a Cabinet meeting?

**Mr. George Kioko Luka:** Like I said in my affidavit, the Deputy Governor was not evicted from the Cabinet meeting. He was asked to step out of the meeting room to enable his colleagues to discuss him freely. The CS was instructed by the Governor to give him a room where he can be comfortable as we deliberated, and called him back to answer to the allegations.

**Mr. Kioko Kilukumi:** Please, tell the Special Committee how many official vehicles are assigned to the Deputy Governor?

**Mr. George Kioko Luka:** The Deputy Governor is assigned two vehicles; KBG 266C and KBY 215 B, both Toyota Prado's as at that time when we were asking him to stay out to discuss him. Thereafter, the Government of Machakos had already issued instructions through my Ministry that all vehicles must bear the county green number plates, including those of the Deputy Governor. We had been unable to get his vehicle; you know he is our boss. So, on that day, we drove him in KBY 215B and we took it away temporarily so that we can fix those numbers once we get them from the Kenya Revenue Authority (KRA). We reallocated him another vehicle, KBY 32B(?), a Subaru Outback.

I wish to state that in the social media reports that he was posting, he said that after the vehicle was taken away from him---

**Sen. Hassan Omar Hassan:** Mr. Chairman, Sir, just as a matter of procedure maybe to the counsel, I thought that the examination will be on matters raised or alluded to in the affidavit. Just as a way of moving the proceedings forward, some of us also served somehow and have been lawyers; I thought that usually in the examination or even in the cross examination, it would be on matters in the affidavit.

**The Chairperson** (Sen. Mutahi Kagwe): He is reading the affidavit, is he not?

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, and Members of the Senate, the witness has read through his affidavit and asked this Special Committee to consider it as his evidence; and he has said in his affidavit that he is the man in charge of transport. The allegations that are made against the Deputy Governor is that he made false information to the public that his vehicle had been taken away. This witness is giving evidence that, indeed, he had how many motor vehicles officially allocated to him? That is the evidence supporting this.

**The Chairperson** (Sen. Mutahi Kagwe): Very well.

**Mr. Kioko Kilukumi:** According to the rules of procedure of this Special Committee, this was a summary of the evidence he would give. It was not everything that will fall from his mouth.

**The Chairperson** (Sen. Mutahi Kagwe): We are here for cross-examination anyway. So, proceed.

**Mr. George Kioko Luka:** Mr. Chairman, Sir, I just said that the Deputy Governor is allocated two Toyota Prado vehicles and I gave their registration numbers. Of course, he came in one vehicle; the other one must have been at home. The KBY 215B is the one which we wanted to go and fix number plates, awaiting at an opportune time to also affix

green number plates to the other one. We allocated him KBY 32B, a Subaru Outback. I had said that he was posting in the social media that his vehicle had been taken away from him. He does not need two vehicles at the same time, so once that one was left at the yard awaiting the KRA to approve the number plates, we gave him another vehicle, which he rode back to his office. Yet the information we got from the Closed Circuit Television (CCTV), because we have embraced CCTV technology, he was recorded boarding a matatu. That is not correct because he had a vehicle and he did not need to board a matatu. I consider that to be serious misconduct for a person of his status.

**Mr. Kioko Kilukumi:** Could you kindly tell the Special Committee whether you have had occasion to review the CCTV images taken on the material date?

**Mr. George Kioko Luka:** Yes, I did.

**Mr. Kioko Kilukumi:** Do you like those CCTV images captured on that day to be played before this Special Committee?

**Mr. George Kioko Luka:** I would appreciate to see them and check whether they are the same.

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, and hon. Senators, we wish to play the CCTV footage. We are asking for your assistance for your technical people to assist us in that regard.

**The Chairperson** (Sen. Mutahi Kagwe): You can proceed; I would like to confirm that, that was part of the list that was given to the Senate from the assembly. We apologize to the people sitting on my right; you might have to--- This is the screen; not all the others.

**Mr. Harun Ndubi:** Mr. Chairman, Sir, if you permit me, I know that in the Senate or in Parliament, the rules of procedure may not be as strict as those in court, however, the connection between the witness in the stand and the material that we are being asked to see needs to be noted. I know that grounding has been made in that regard to say (a) He manages that CCTV or that technology or handles it in some way or he is the one who downloaded the content that he has now supplied to the *ad hoc* Committee as well as the Senate. So, that needed to be established before, because he could as well produce any DVD from the streets.

**The Chairperson** (Sen. Mutahi Kagwe): I think the Committee will determine very effectively whether it is from the streets, but I will allow the DVD. Counsel for defence, on cross examination, these are the issues that you can bring out.

*(The Committee viewed the DVD)*

**The Vice Chairperson** (Sen. (Dr.) Zani): Mr. Chairman, Sir, I would like to intervene at this point and request for your guidance even as we watch this video, because we are

seeing different people. Could we have a commentary as that is going on if we have to really understand what is happening in this video?

**Mr. Kioko Kilukumi:** Mr. Kioko, could you explain to the Committee what the arrows appearing there indicate?

**Mr. George Kioko Luka:** They are indicating movements. The arrows are pointing where there is a bus park where *matatus* stop. This is the county headquarters.

**Mr. Kioko Kilumi:** Having revealed the CCTV, did the Deputy Governor use a vehicle supplied by the county government to leave the Governor's office on the material day?

**Mr. George Kioko Luka:** Yes, he did.

**Mr. Kioko Kilukumi:** Was the information that he had to use public means namely *matatu* correct or incorrect and false information?

**Mr. George Kioko Luka:** It was incorrect and false information.

**Mr. Kioko Kilukumi:** I want to refer you to the *Standard* newspaper which appears on that document. Hon. Chairman and Members of the Senate, we are looking at Page 222 in the bundle that has been compiled for the Special Committee. Could you kindly tell the Special Committee which newspaper that is, the date and then we go to the photograph of the Deputy Governor appearing there?

**Mr. George Kioko Luka:** It is the Standard newspaper, page 25.

**Mr. Kioko Kilukumi:** Could you tell this Special Committee whether that is the image of the Deputy Governor, Hon. Bernard Kiala?

**Mr. George Kioko Luka:** This is the Deputy Governor, Machakos County in a *matatu*.

**Mr. Kioko Kilukumi:** Did you see the news item on that day about this particular episode?

**Mr. George Kioko Luka:** I saw it on Citizen Television, including the CCTV footage.

**Mr. Kioko Kilukumi:** Do you now tell this Special Committee that indeed he did not use that *matatu* as he purported to have done?

**Mr. George Kioko Luka:** I wish to confirm and reconfirm that he used a vehicle assigned to him to go back to his office.

**Mr. Kioko Kilukumi:** Thank you. I will go to another aspect. You have said in paragraph 18 that the Deputy Governor has been interfering with procurement. Are you able to give this Special Committee instances that are known to you?

**Mr. George Kioko Luka:** One is a Short Messaging Service (SMS) sent to me on January 9<sup>th</sup>, 2014. Also another one was sent to me on February 3<sup>rd</sup>, 2014.

**Mr. Kioko Kilukumi:** Could you kindly read the first message to the Special Committee giving the number from where the message emanated from?

**Mr. George Kioko Luka:** I want to read the messages not in any order. On February 3<sup>rd</sup>, 2014, the message is forwarded from telephone No.0721211457 and in my phone book, I have saved it as Deputy Governor Kiala. It reads:-

“Your Excellency, Sir, I have already returned my documents, Gitone Construction Limited, Plot No.3. Please you can assist there. Kindly, Your Excellency. Good lovely evening.

Bye (Limo).

**Mr. Kioko Kilukumi:** Before you go to the next message, in what way do you say that message was interfering with procurement processes?

**Mr. George Kioko Luka:** During that time we had advertised for 11 tenders for the construction of Makutano-Kithimani Road, a 33 kilometre road, and by the time he was sending the message, the process of evaluation was on going, and I had already appointed a technical committee to evaluate and send the same to the tender committee. So it is the context in which he sent me that message and two others which I will read.

**Mr. Kioko Kilukumi:** Please, go to the other messages.

**Mr. George Kioko Luka:** The other message is dated January 29<sup>th</sup> 2014. It was sent from the same number which I have read. In my understanding, this message had been sent to someone and therefore he forwarded it to me. I will explain what he wanted me to do with it. There were a number of tenderers, one was --- quoting Kshs41 million, Zoa Kshs48 million, Wak, Kshs49 million, Muratha Ksh14,000,049, Shemiland quoting Kshs51 million, Jubilee quoting Kshs54 million, Transline quoting Kshs54 million, Snow quoting Kshs56 million, Silver Kshs57 million, Gishosho quoting Kshs59 million, Westbuild quoting Kshs59, Sano quoting Kshs15 million, Centrestar quoting Kshs66 million and Countrycross quoting Kshs72 million.

Sir, he had also quoted for this section as Shemiland and so the Deputy Governor in the meantime asked me to visit his office. I met a lady who was introduced as the Director of that company called Shemiland.

**Mr. Harun Ndubi:** Mr. Chairman, Sir, I am completely conscious of the ruling that you have made, but we are finding ourselves in some considerable difficulty. This evidence has been known to the witness. It should have also been known to counsel even if it fell within the category that we would say is continuing to prove the allegations as framed previously before the County Assembly. It would have been courteous if you made

copies for us to see this morning. Here cross-examination will be difficult considering that he is reading from his own phone and I would not get his phone without breaching his rights to privacy. So, I would seek your direction as to whether it is possible to get a print out of what he is reading so that when we cross-examine him we have a fair chance of dealing with it.

**The Chairperson** (Sen. Mutahi Kagwe): I think that is a fair request. That printout should be made to the counsel immediately.

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, it will be complied with.  
Proceed, Witness.

**Mr. George Kioko Luka:** He sent me another SMS in connection with the same tender. This was Lot No.11, as we were calling them. They were listed in the order in which they were ranked in terms of financial bid: Rirona, Kshs45 million and some hundreds; Worldwide, Kshs47 million; Zoa, Kshs48 million, Joronu, Kshs48 million; Wak Kshs48 million; Shemiland, Kshs49 million; Posh, Kshs49 million; Kakslan, Kshs50 million; Daisy, Kshs51 million; Igratek, Kshs55 million; Sivav, Kshs56 million; Samar, Kshs51 million; Magik, Kshs66 million; Sosmut, Kshs82 million; Spion, Kshs93 million and Sospat, Kshs101 million.

Beyond, it says:-

“Sir, kindly note that our company is Shemiland.”

**The Chairperson** (Sen. Mutahi Kagwe): Just before you proceed, I want to make it clear that I will not allow you to proceed so far without those copies being given to the counsel for the Deputy Governor. So, I would urge that you make arrangements as quickly as possible.

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, I assure you that, that will be complied with immediately we finish with the evidence in chief.

**The Chairperson** (Sen. Mutahi Kagwe): Very well.

**Mr. Kioko Kilukumi:** Is there any other SMS or those are the ones that you want this Special Committee to look at?

**Mr. George Kioko Luka:** There was another one with regard to the Ministry of Health community hospitals. I can also read it, with the permission of the Chair. It is the one for Gitone Construction Company. In the roads tender opening, Gaps was number five, between West Bid and Zoa Company Limited and not number 8.

In the Ministry of Health tenders, Githioko Health Centre, Gaps Company, with a quotation of Kshs13,980,020 was number five, following Joscom Company Limited, which was number four in the proposed Kyumvi Health Centre. Gaps Limited, with a quotation of Kshs17 million was number 11; between WJ and Comlex.

That, again, was being forwarded so that I could influence tendering, which I was not in a position to do. My officers were only involved in the technical evaluation. I will stop there in relations to the SMSs related to procurement.

**Mr. Kioko Kilukumi:** Could you, please, tell the Special Committee whether you had a discussion with the Deputy Governor about these SMSs? Was there any follow up communication with the Deputy Governor?

**Mr. George Kioko Luka:** Yes. With regard to Shemiland, he called me to his office and I met a lady called Pauline. He told me:-

“This lady is the owner of the company whose name I sent you. I would like you to do your best to ensure that she is awarded the tender.” I told him that I was not in a position to do that because my role starts with the appointment of the evaluation team. I wait until the entire process is completed and the matter has been determined by the county tender committee and I inform my ministry, as the client ministry, to issue the letter of award. By the time the list was sent to me, I did not know who had quoted and how much each had quoted. So, once I receive the information about whoever was awarded those tenders, then my chief officers will design the tender award. That is the time that I get to know who has been awarded what.

**Mr. Kioko Kilukumi:** Thank you. Let us now move to paragraph 18 of your affidavit which you read to the Special Committee. Who was the County Executive Committee Member responsible for public service portfolio?

**Mr. George Kioko Luka:** It is the Deputy Governor. In addition to being the Deputy Governor, he is also the County Executive Committee Member responsible for Public Service, ICT and Labour.

**Mr. Kioko Kilukumi:** If there are allegations of nepotism in recruiting county public civil servants, will that be under his responsibility?

**Mr. George Kioko Luka:** It is squarely under him. He is answerable to the Cabinet on matters of public service, ICT and labour.

**Mr. Kioko Kilukumi:** Has the Deputy Governor at any stage raised in Cabinet meetings issues of nepotism in the recruitment of public servants in the county?

**Mr. George Kioko Luka:** The Deputy Governor has never raised any issue to do with recruitment in the Cabinet.

**Mr. Kioko Kilukumi:** Kindly, let us move to paragraph 21 of your affidavit, where you talk of people from other counties who have been employed. In the ministry that you are responsible for, are there Kenyans from other counties who have been employed there?

**Mr. George Kioko Luka:** Yes. In the Ministry of Roads, Public Works, Transport and Housing, the chief officer, who is actually the most senior officer, is from Kakamega. He is called Alwanga. His No.2 is called Omae, who is an Engineer from Nyamira. There is also an Engineer called Githinji from Nyeri. There is another Engineer called Thumbi who is from Murang'a. There is also a Senior Engineer called Wachira who is from Nyeri. There is an Architect called Makana who is from Trans-Nzoia. The Chief Architect is called Mwangi who is from Murang'a. I have only one Quality Surveyor called Njoka who is from Embu County. There are many others, particularly amongst grader operators and other staff that we inherited from the defunct Local Authority of Machakos. They come from different parts of the country.

When the Motion to discuss his conduct was introduced, I said in my affidavit that we were concerned as the Executive Committee Members that he was going round informing the general public that Machakos should not employ people from outside Machakos. The Chief Engineer came to see me and asked whether they were safe to work in Machakos. I assured him that since they were professionals who were hired on the basis of their professional qualifications, nobody would remove them from office, so long as they were performing.

The issue was broadcast by the vernacular stations in our area and around the same time, there appeared some leaflets. I come from Matungulu which neighbours Nairobi. I was called from Machakos and told that there were some leaflets circulating around Matungulu, which is on the Nairobi-Kangundo Road, just before you reach Kangundo Town. The leaflets were saying: - "*Nguu toka.*"

When I went home, I was shown one of the leaflets. My wife runs a school on the Nairobi-Kangundo Road. One leaflet had been brought---

**Mr. Harun Ndubi:** Mr. Chairman, Sir, I do not see in the rules of this Committee or evidence admissibility of hearsay. A lot of things that he has stated about vernacular radio stations and things being said or him being told about the *nguu* issue and leaflets are hearsay really. I do not know whether it is right to continue allowing him to tender hearsay evidence.

**The Chairperson** (Sen. Mutahi Kagwe): We cannot predict what evidence or otherwise, they will bring to support what they are saying. Therefore, I will expect that during cross-examination, you will ensure that, that happens.

**Mr. Harun Ndubi:** With respect, Mr. Chairman, Sir, actually, the contrary is that we need to know what they have, so that we take instructions and be able to respond during cross-examination. It cannot be for us to look for evidence from him, if he is unable to give it to you now. So, either you advise or direct the witness to give us those audios, if they are available and transcribed from Kikamba to some other language that we understand. Otherwise, now we are completely disadvantaged unfortunately.

**The Chairperson** (Sen. Mutahi Kagwe): Am I to understand that you do not have those audios that we are talking about? I would likewise direct that those audios must be given to the counsel.

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, the evidence of this witness has not been understood by the opposite side. He said in his evidence that he heard the broadcast in the Kikamba vernacular radio stations, and he has given them in his affidavit; the three of them. It is not that we have downloaded or written what was broadcast. He said that he heard those broadcasts about *nguu*.

**The Chairperson** (Sen. Mutahi Kagwe): I do not know whether it is something that he heard and we do not have it here. It would be nice if we heard the conversations that he is talking about, so that we can also adhere to the fact that, that is actually what happened. I am not sure even whether we have that in the Senate.

**Mr. Harun Ndubi:** Mr. Chairman, Sir, actually, you have put your finger on the pulse; that, that is the hearsay that we are talking about. The hearsay is that he heard on radio and he is talking about it, when we do not know what it is that he heard.

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, clearly Mr. Harun Ndubi has a very narrow interpretation of what hearsay evidence is. Hearsay evidence is evidence from third parties; a person who says "I listened to a radio or television broadcast", that is not hearsay, that is first hand evidence. More significantly, this is a special investigative committee not bound by strict rules of evidence in a court of law. The only way an investigative committee can work is to have a wide latitude in evaluating evidence. What the Committee will then do is to look at the weight it can attach to this piece of evidence. With due respect, I think the rules of hearsay evidence do not come to a committee of this nature.

**The Chairperson** (Sen. Mutahi Kagwe): Irrespective of the wording that is given, all I am saying is that it would have been good for the Committee if those recordings that we are referring to had been presented so that we know exactly what we are talking. However, my problem, counsel, is that we are unable to know or hear what these things are.

**Mr. Anthony Oluoch:** Mr. Chairman, Sir, just one more point; the terms of reference of this Committee in the final analysis will be to establish whether the allegations that have been made out have been substantiated both by the Committee itself, the counsel and the Deputy Governor. Disadvantaged to that extent, how will this Committee arrive at the conclusion to the extent of what he is saying about the radio presentation? We do not know them, the Chair does not know them and the Committee does not know them. With utmost respect, they ought to be availed to the opposite side.

**The Chairperson** (Sen. Mutahi Kagwe): Will that be possible, counsel?

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, that is not possible because we do not have those broadcasts ourselves. It is what the witness told us in his affidavit that he listened to them. Having said that, you have the powers to summon anyone to give evidence. We have named the FM stations which carried out these broadcasts and this Committee has the power either through the Communication Authority of Kenya (CAK) or directly through FM stations to get the broadcasts brought to the Committee, if it is trying to establish the truth about this issue.

**The Chairperson** (Sen. Mutahi Kagwe): Very well, the ruling on this matter shall be as follows: That we will indeed pursue in order to ensure that those kinds of messages exist, we need the time, the place and the hour. More importantly when we are examining those matters, if no such records exist, we will not entertain whatever is being said here as evidence.

**Mr. Kioko Kilukumi:** Thank you, Mr. Chairman, Sir and hon. Senators, we are guided. Could the witness proceed?

**Mr. George Kioko Luka:** I had not finished about what happened when I was informed that there were leaflets circulating in town around Nairobi-Kangudo Road, specifically in Joska, Kantafu and Komarock Shopping Centre in Matungulu. Somebody had brought a copy of those leaflets saying “*nguu toka*”. I called the District Commissioner (DC) and the Officer Commanding Police Division (OCPD) – Matungulu. They told me that they were aware and were going to hold a security meeting in those towns. That security meeting was organized in Joska. This is the town bordering Matungulu and Mavoko.

The meeting was attended by the Member of Parliament for Mavoko, hon. Wamakau, the Member of County Assembly (MCA) for Matungulu West, hon. Ndawa and other leaders. They implored upon people to live harmoniously because the leaflets were saying “*nguu toka*” and it was understood that people who do not come from Machakos should not stay in Machakos. Joska Town has very many people from Kisii and from the Mt. Kenya area. These people were not allocated land there by the Government but they bought the land from willing sellers. The DC told me that they will organize a meeting and address people. For one week, young people were not allowed to be out at night until the situation was calmed. That message from the leaflets “*nguu toka*” and the radio talk were connected, according to me.

**Mr. Kioko Kilukumi:** I will show you the leaflet and you will confirm whether this is the ones you saw.

*(The witness was shown the leaflet)*

**Mr. George Kioko Luka:** Yes, this is the leaflet I saw.

**Mr. Kioko Kilukumi:** For the record, could you read the wordings that are on that leaflet?

**The Chairperson** (Sen. Mutahi Kagwe): Does the counsel for the Deputy Governor have that leaflet?

**Mr. Kioko Kilukumi:** We have copies of these ones. We only had three of those but we made copies. Could you kindly read the contents of that leaflet?

**Mr. George Kioko Luka:** It reads: “*nguu toka, Machakos County is under siege from tortoise, operation nguu zirudi kwao, Machakos in ya watu wa Machakos.*”

**Mr. Kioko Kilukumi:** Thank you. Could you kindly confirm to this Special Committee whether you, yourself, listened to the broadcasts in the vernacular radios about the “nguu” issue?

**Mr. George Kioko Luka:** Every morning at 7.00 p.m. when I am on my way to the office. I would tune separately to Musyi FM, Athiani FM and Mbaitu FM. These broadcasts were done for several days almost over a week. There is a recording they used to play for the Deputy Governor saying “*Machakos ni ya watu wa Machakos and I cannot allow people from other counties to come and enjoy the wealth of Machakos.*” They would play it beginning of every news item for almost one week and everybody in Machakos who listens to those radio stations can attest. I can attest myself that I heard it, I was not told by anybody. I listen to those stations regularly because I would like to know what is happening in Machakos. As a person working in Machakos, I would like to know what my people are being told and what they say about the government. Sometimes they say something and when I go to the office I take action on the basis of that information. There are even occasions when they hold one hour discussions about matters affecting Machakos. So, the “nguu” issue was discussed widely for almost one week.

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, and hon. Senators, that is the end of examination in chief and the witness can be handed over to my colleagues on the other side.

**The Chairperson** (Sen. Mutahi Kagwe): Very well, I want to ask counsel on this side whether they would like to cross-examine them one by one or how do you want to proceed?

**Mr. Harun Ndubi:** Mr. Chairman, Sir, we are a little disadvantage here. The difficulty we have here, the things he reviewed; the things he referred to on his phone, they are key. We are making this proposal, either we stand him down, we take the next witness as they prepare that so that he comes back for cross-examination or we take a break for a few minutes as they give us the print out.

**The Chairperson** (Sen. Mutahi Kagwe): We will not take a break. I think I will go with your first proposal. If the counsel so desires, we can have the second witness while the documents we agreed are being given to him.

You can stand down, you will be recalled again for cross-examination.

*(The witness was stood down)*

**Mr. Harun Ndubi:** Mr. Chairman, Sir, as the other witness comes, could they give us a copy of the DVD recording?

**The Chairperson** (Sen. Mutahi Kagwe): In fact, I ordered that you get all that.

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, I will call my next witness and his evidence is to be found on page 176. This is Ms. Naomi Mutie.

As we wait for the witness to come, in our document of response, we had tagged all these witnesses and this one appears as Tag No.9, Ms. Naomi Mutie.

**The Chairperson** (Sen. Mutahi Kagwe): Please, as you proceed, do so – for clarity on this matter – we will hold your time, assuming that counsel also moves with grace and speed during the cross-examination and we will do likewise on the other side.

*(Ms. Naomi Mutie took the oath)*

**Mr. Kioko Kilukumi:** For the record, please, confirm to this Special Committee that your names are Ms. Naomi Mutie?

**Ms. Naomi Mutie:** I do confirm.

**Mr. Kioko Kilukumi:** Please, also confirm that you swore an affidavit on the 9<sup>th</sup> of July, 2014.

**Ms. Naomi Mutie:** I do confirm.

**Mr. Kioko Kilukumi:** Confirm whether the contents of that affidavit are truthful.

**Ms. Naomi Mutie:** I do confirm that the contents in that affidavit that I swore on the 9<sup>th</sup> of July are true to the best of my knowledge.

**Mr. Kioko Kilukumi:** For the record, could you kindly read that evidence? Do you have it with you there?

**Ms. Naomi Mutie:** I do not have it. I need a copy.

**Mr. Kioko Kilukumi:** I am sorry.

**Ms. Naomi Mutie:** In the matters of the Oath and Statutory Declaration Act, Cap.15 and in the matter of Machakos County Executive Committee (CEC) and in the matter of Deputy Governor, Machakos County Government, Mr. Bernard Kiala Affidavit.

1. I, Ms. Naomi Mutie of Box 1996-90100 Machakos, make an oath and state that I am a community health and development professional, having studied and the holder of a Masters Degree in Community Health and Development in the Great Lakes University of Kisumu (GLUK) and I am the CEC Member responsible in the Department of Health and Emergency Services in the Government of Machakos County, which position I have held since 15<sup>th</sup> April, 2013.
2. I attended the 20<sup>th</sup> Cabinet Meeting for Machakos County held on the 7<sup>th</sup> July, 2014, at the Governor's Office, Machakos, from 10.00 a.m.
3. At the preliminary stage of the meeting, the Deputy Governor, Mr. Bernard Kiala, said that he wanted to raise a personal matter regarding his security. He stated that sometimes back, the security at his rural residence had been withdrawn and that, thereafter, somebody called and issued death threats against him.
4. He told the meeting that after his own investigations, he can report that the Chief of Staff wanted to kill him.
5. At that point, the Governor said that these were serious allegations and he inquired from the Deputy Governor if he had reported them to the police or made a statement to the police, and what action the police had taken.
6. The Deputy Governor claimed that he had reported the matter to the police at Embu and that he had also recorded a statement there and the police had told him that they were investigating.
7. Immediately thereafter, the Cabinet discussed briefly and resolved that all Members of the Cabinet should confirm whether or not they were facing any criminal charges or whether or not any Member had a complain for investigations pending before the police, and the Members replied negatively except the Chief of Staff, who said that he had a political case filed by hon. Harun Mwau, arising from the Wiper campaigns in Kibwezi, which was ongoing.
8. The Governor concluded the issue by saying that it was only fair that the police are given an opportunity to conclude the investigations and take action in accordance with their decision.
9. The Deputy Governor then said that he was feeling uncomfortable to sit in the same forum with the people who were threatening his life.
10. At that point, hon. (Eng.) Francis Maliti, the CEC Member responsible for the Department of Water, Irrigation and Sanitation, rose on a point of order and requested an amendment to the agenda to insert as an agenda item "Discussion of

- the Deputy Governor's Conduct." He justified this by saying that the Deputy Governor had been widely covered in the media on several occasions in various for a while criticizing the County Government while he is also serving the same Government.
11. Hon. Hellen Kiilu, the CEC Member responsible for the Department of Decentralized Units, Urban Areas and Municipalities, seconded the proposal for the amendment of the agenda to include as an item of the agenda for the meeting "Discussions of the Deputy Governor's Conduct."
  12. The Cabinet Meeting then resolved collectively to amend the agenda; the County Secretary (CS) therefore amended it accordingly by including the new agenda item as agenda item No.2 and titled "Discuss Conduct of the Deputy Governor."
  13. The Cabinet, therefore, requested the Deputy Governor to step outside so that his conduct could be discussed, allegations are drawn and, thereafter, he would be called back to respond on the allegations of misconduct which had caused the agenda to be amended.
  14. The CS accompanied the Deputy Governor outside the Cabinet Meeting room. When the CS returned to the meeting, he informed the Members present that he had already organized a room for the Deputy Governor to sit as he waited to be called back in.
  15. I expected the Deputy Governor would come back to the meeting after the procedure drawing up the allegation against him.
  16. I confirm that the matters indicated in the minutes of the 20<sup>th</sup> Cabinet Meeting includes the serious allegations of misconduct and abuse of office by the Deputy Governor as indicated by various CEC Members are a true record of the deliberations of the meetings and that I participated in the meeting from the beginning to the end.
  17. I would also add that during the Cabinet discussions and drawing up of the allegations, the Cabinet got a media update that the Deputy Governor had already updated his Facebook account with a false account that he had been ejected from the Cabinet meeting for raising issues about corruption and nepotism. This information subsequently appeared in the print media.
  18. Upon conclusion of the meeting, the Cabinet resolved that it was only fair notwithstanding the social media updates, that the Cabinet was still following up the updates from the Deputy Governor, the Deputy Governor should be formally

- informed of the allegations made against him by way of a written letter, and that he be required to attend the next Cabinet Meeting, which was resolved to be held on 9<sup>th</sup> July, 2014, to respond to these serious allegations of abuse of office and misconduct.
19. I attended the meeting of the Cabinet held on 9<sup>th</sup> July, 2014, at the Governor's Office and the CS circulated to the Cabinet a copy of the letter dated 7<sup>th</sup> July, 2014, which he had written to the Deputy Governor informing him in writing of the detailed allegations against him and also confirming that he had invited the Deputy Governor to attend the meeting of 9<sup>th</sup> July, 2014.
  20. I also confirm that the Deputy Governor attended today's meeting where he sought more time to prepare his responses.
  21. The Cabinet resolved to give the Deputy Governor seven days to prepare his responses and the Cabinet will hear his response during the Cabinet Meeting scheduled for 16<sup>th</sup> July, 2014.
  22. I wish also to add that sometimes in January, 2014, the Deputy Governor telephoned me and told me that his brother, Mr. Boniface Kiala, funded the campaigns of this Government to come to power and he spent a lot of money; and that his brother has always been asking why he has not been given a tender to supply drugs. He wanted me to call his brother to come for a tender to supply drugs.
  23. I told the Deputy Governor via telephone that I do not think this was possible because under the Kenya Gazette Notice No.168 of 9<sup>th</sup> August, 2013, all counties were instructed to procure drugs from the Kenya Medical Supplies Agency (KEMSA).
  24. The Deputy Governor kept on telephoning me and pushing me to award his brother with the tender, which forced me to have a meeting with the Department's technical officers and consulted them on how to handle the situation. I instructed my officers that the procurement should be handled by KEMSA in accordance with the applicable Kenyan law.
  25. I never officially communicated the instructions of KEMSA procuring officially to the Deputy Governor because I knew that his actions were not in accordance with the law.

26. Apparently, the Deputy Governor gave my personal cell phone number to his brother, namely Boniface Kiala, who kept on telephoning me and I did not answer his telephone calls.
27. I recall that sometimes in October, 2013, the Deputy Governor telephoned me and told me that his sister-in-law, Mrs. Mary Kiala, announced at Matuu Level Four Hospital that he wanted a transfer to Machakos Level Five Hospital. He also said that I should assist her to transfer and get accommodation within the hospital. He suggested that I should appoint the sister-in-law as a matron in charge of Level Five Hospital.
28. I decided to investigate the matter of the transfer and found out that the Level Five Hospital Matron, Mrs. Jacinta, had been posted as the County Nursing Officer and left her deputy, Mr. Richard Ongech, as the acting hospital matron. Mr. Ongech was apparently heading to the Kenya Medical Training College (KMTC), Machakos, as a lecturer, leaving Machakos Level Five Hospital without an active matron.
29. I instructed the former hospital matron to identify a senior nursing officer to take over from Mr. Richard Ongech.
30. Later in November, 2013, a posting order came from Nairobi in which the Deputy Governor's sister-in-law, Mrs. Mary Kiala, was posted to work in Machakos Level Five Hospital, although not as a hospital matron.
31. One of the directors, Dr. Jack Siganga, without consultation, did an internal posting indicating that Mrs. Mary Kiala be deployed as the hospital matron.
32. When I received Dr. Siganga's posting order, I instructed that it be cancelled immediately because this contravened the agreement between the national Government and the county government in the forum on health.
33. What was agreed was that the national Government will not interfere or transfer staff in the counties without consultation.
34. I then appointed Mrs. Bonita Mueni Musau, who had been identified following my earlier directive for the identification of a suitable replacement as the hospital matron in my powers conferred upon me under the transfer of functions from the national Government to the county.
35. This action effectively cancelled the transfer of Mrs. Mary Kiala from Matuu to Machakos and she is, therefore, still based in Matuu.

36. This is where I have to state that I make this affidavit consciously based on my whole knowledge, save for information that I believe I am the source, which I have disclosed.

**Mr. Kioko Kilukumi:** Ms. Naomi Mutie, please confirm to this Special Committee that you want the Committee to take the contents of your affidavit as your evidence before it?

**Ms. Naomi Mutie:** I do wish to confirm to this Committee.

**Mr. Kioko Kilukumi:** Thank you, Mr. Chairman, Sir, and hon. Senators. That is all for the examination in-chief.

**The Chairperson** (Sen. Mutahi Kagwe): Very well. Counsel for Deputy Governor, do you wish to cross examine the witness?

**Mr. Harun Ndubi:** Yes, Mr. Chairman, Sir. This will be done by my colleague, Celestine.

**The Chairperson** (Mutahi Kagwe): Please, proceed.

**Ms. Celestine Anyango Opiyo:** Thank you, Mr. Chairman, Sir; hon. Senators and counsel for the County Assembly. Ms. Naomi Mutie?

**Ms. Naomi Mutie:** Yes.

**Ms. Celestine Anyango Opiyo:** You have indicated that you wish to confirm and you wish to adopt this affidavit?

**Ms. Naomi Mutie:** Yes, I have confirmed.

**Ms. Celestine Anyango Opiyo:** In paragraph 1 of your affidavit, you have indicated that you are a Community Health and Development professional, having studied at the Great Lakes University. How many years of experience do you have?

**Ms. Naomi Mutie:** I have worked for the Ministry of Health for more than 20 years, rising from the lowest rank to the level of being the head of a district before I was appointed to the county as the CEC Member.

**Ms. Celestine Anyango Opiyo:** Do you have any certificate from the Medical Practitioners and Dentists Board that confirms what you have adduced today?

**Ms. Naomi Mutie:** Through the Chair, the matter under discussion is not about my qualifications, it is discussing about the conduct of the Deputy Governor---

**Ms. Celestine Anyango Opiyo:** Honorable, the answer is either a "yes" or "no". Do you have any certificate?

**Ms. Naomi Mutie:** I have the certificate, but---

**Ms. Celestine Anyango Opiyo:** Do you have it here?

**Ms. Naomi Mutie:** I do not have it here but if I am allowed, I can bring all my certificates from the KMTC and Kenyatta University.

**Ms. Celestine Anyango Opiyo:** You have indicated that you are a County Executive Committee Member in the Department of Health and Emergency Services. Is that right?

**Ms. Naomi Mutie:** Yes.

**Ms. Celestine Anyango Opiyo:** When did you apply for this job?

**Ms. Naomi Mutie:** I applied for this job immediately after the elections. I was shortlisted and attended an interview. I was appointed by the Governor. I was also vetted by the County Assembly. My name was gazetted and I was sworn-in.

**Ms. Celestine Anyango Opiyo:** When were you vetted?

**Ms. Naomi Mutie:** I was vetted in early April. There is a record in the Machakos County Assembly, a record of the proceedings of the vetting. I was not vetted alone, we were all vetted.

**Ms. Celestine Anyango Opiyo:** Did you receive an appointment letter to that effect?

**Ms. Naomi Mutie:** I was given a copy of the gazette notice where my name was gazetted.

**Ms. Celestine Anyango Opiyo:** Did you receive an appointment letter to that effect? Your answer should be either “yes” or “no”.

**Ms. Naomi Mutie:** Mr. Chairman, Sir, I wish to be protected. The matter under question is not about my appointment or my qualifications. It has to do with the conduct of the Deputy Governor. I am being harassed, I need protection.

**Ms. Celestine Anyango Opiyo:** Mr. Chairman, Sir, I have reasons as to why I am asking you these questions.

**The Chairperson** (Sen. Mutahi Kagwe): Please, answer the questions.

**Ms. Naomi Mutie:** I said I was given a copy of the gazette notice that appointed me as a CEC member responsible for Health and Emergency, Machakos County.

**Ms. Celestine Anyango Opiyo:** So it is safe to say that you do not have an appointment letter and you are not responsible to the---

**Ms. Naomi Mutie:** I was appointed to that position through a gazette notice.

**Ms. Celestine Anyango Opiyo:** I would like to refer you to paragraph seven of your affidavit. Could you kindly read that paragraph?

**Ms. Naomi Mutie:** It states:-

“Immediately thereafter, the Cabinet discussed briefly and resolved that all members of the Cabinet should confirm whether or not they were facing any criminal charges or whether or not any member had a complaint for investigations pending before the police and all the members replied negatively except the Chief of Staff who said that he had a political case filed by Hon. Harun Mwau arising from Wiper campaigns in Kibwezi, which was ongoing.”

**Ms. Celestine Anyango Opiyo:** Was the content of paragraph seven an agenda to that meeting?

**Ms. Naomi Mutie:** That matter was brought about when the Deputy Governor said he wanted us to discuss about his security because he alleged that security had withdrawn from his home.

**Ms. Celestine Anyango Opiyo:** What is the connection? Was there a policy that had been adopted? It is either a “yes” or “no”.

**Ms. Naomi Mutie:** The security that had been withdrawn in his rural home, and not from his official residence.

**Ms. Celestine Anyango Opiyo:** Was there a policy that had been adopted?

**Ms. Naomi Mutie:** I will not respond to that.

**Ms. Celestine Anyango Opiyo:** Who brought the complaint about the criminal allegations?

**Ms. Naomi Mutie:** Let me go by my sworn affidavit that when the Governor did his opening remarks, immediately the Deputy Governor, the hon. Bernard Kiala, said he wanted a matter surrounding his security to be discussed. He said that after the security was withdrawn from his rural home, he received a death threat. That is a serious matter. Again, he also said he did his own investigations and realized that one of the people seated in that Cabinet was the one behind a threat to his life. The Governor said that was a serious matter than cannot be wished away. At that point, we were asked: “Does anyone of you seated here have a criminal case or is being investigated over something?” As a Governor, if your deputy is being threatened, you cannot just take the matter lightly and call it rumours. You have to take it seriously. The matter was tabled in the Cabinet and it

was minuted. So, he had a responsibility to ensure that his deputy was secure. That is why he raised the matter.

**Ms. Celestine Anyango Opiyo:** Who raised the matter?

**Ms. Naomi Mutie:** The Governor is the one who asked that we all state whether we had any criminal case pending in a court of law.

**Ms. Celestine Anyango Opiyo:** Is there a connection or a nexus between the fact that your life is at threat and the criminal charges?

**Ms. Naomi Mutie:** Remember the Deputy Governor said that he is aware that the Chief of Staff who was present in that meeting was the one who was planning to kill him. That is a very serious allegation.

**Ms. Celestine Anyango Opiyo:** Are you aware that there are no criminal charges against the Deputy Governor?

**Ms. Naomi Mutie:** We were discussing---

**Ms. Celestine Anyango Opiyo:** Are you aware? It is a "yes" or "no".

**Ms. Naomi Mutie:** It came out later in the press. But during that meeting, he never disclosed whether he had any criminal case he was facing. I read it in the press.

**Ms. Celestine Anyango Opiyo:** Please, let me interject you. What came out in the press?

**Ms. Naomi Mutie:** In my affidavit, in paragraph 7, the Cabinet Members were requested to confirm if any of us was facing a criminal charge. Only the Chief of Staff said he had a case pending in Kibwezi, but the Deputy Governor never disclosed anything. Later, I read it in the newspaper that he had a criminal case that he was facing.

**Ms. Celestine Anyango Opiyo:** Which criminal case? That is why I am asking: Are you aware that the Deputy Governor had a criminal case pending in court?

**Ms. Naomi Mutie:** I read in the newspaper that he had a criminal case with his previous employer. He used to work in a bank. It was in the newspaper.

**Ms. Celestine Anyango Opiyo:** Where is the newspaper? Where is the article?

**Ms. Naomi Mutie:** Given time, it can be produced.

**Ms. Celestine Anyango Opiyo:** Very well. I would like to refer you to paragraph 22. Can you read that paragraph, please?

**Ms. Naomi Mutie:** It says:-

“I wish to add that sometimes in January, 2014 the Deputy Governor telephoned me and told me that his brother, Mr. Boniface Kiala, funded the campaigns of this Government to come into power and he spent a lot of money and that his brother has always been asking why he has not been given a tender to supply drugs and that he wanted me to call his brother to come for a tender to supply drugs.”

**Ms. Celestine Anyango Opiyo:** You have indicated in that paragraph that sometime in January, 2014, you cannot confirm on which date?

**Ms. Naomi Mutie:** He called several times, but I remember that it was in the month of January. He called me to his office and told me that his brother kept on asking him why he had not been given the tender to supply drugs.

**Ms. Celestine Anyango Opiyo:** Did you report the instances anywhere?

**Ms. Naomi Mutie:** I did not report because his actions were not within the Public Officer Ethics Act where you are not supposed to solicit for business for your relatives.

**Ms. Celestine Anyango Opiyo:** If you are alleging that the Deputy Governor telephoned you, and his actions are against the Public Officer Ethics Act, do you not think that is one of the grounds that should be reported to the appropriate body, organ or tribunal?

**Ms. Naomi Mutie:** It should be reported. I did not report it, but I told him---

**Ms. Celestine Anyango Opiyo:** Was there any witness to that conversation?

**Ms. Naomi Mutie:** I have an SMS which he sent me.

**Ms. Celestine Anyango Opiyo:** You said it was a telephone call. Was there a witness?

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, witnesses who appear before a Committee like this one need to be protected. We have phones, we receive phone calls and you cannot ask somebody: “Do you have a witness who saw you receiving the call?” It is nonsensical.

**Mr. Anthony Oluoch:** With all due respect to the learned counsel, there will be an opportunity to re-examine. He should let the defence conduct their defence in the manner they deem fit. The interruption is unnecessary.

**The Chairperson** (Sen. Mutahi Kagwe): Well, let us decide whether it is unnecessary. But nonetheless if there was no witness, just say: “There was no witness.” Answer the question.

**Ms. Naomi Mutie:** There was no witness, but there is a message that he sent me as late as April this year.

**Ms. Celestine Anyango Opiyo:** This is in regard to paragraph 22. Was there any witness to the telephone conversation?

**Ms. Naomi Mutie:** There was no witness.

**Ms. Celestine Anyango Opiyo:** Do you have any telephone print out that can allude to that conversation?

**Ms. Naomi Mutie:** There is an SMS.

**Ms. Celestine Anyango Opiyo:** This is in regard to paragraph 22. Is there any telephone print out with regard to the telephone call on January, 2014. This is not in regard to the SMS that you are alleging, which I do not see here. Is there any telephone conversation print out, be it Safaricom or Airtel?

**Ms. Naomi Mutie:** The number of times that the Deputy Governor called me, if my line be retrieved from Safaricom, it can be seen how many times he called me.

**Ms. Celestine Anyango Opiyo:** Do you have it here?

**Ms. Naomi Mutie:** I have my line. It can be given to the counsel for the County Assembly to print out the calls to see how many times he called me.

**Ms. Celestine Anyango Opiyo:** You have kept on mentioning the SMS that was sent to you by the Deputy Governor sometime in April. Can you read it out? Can we also get the print out?

**Ms. Naomi Mutie:** The print out will be brought but I can read the message it is here. Allow me to retrieve it.

“It has started with a number +254711970313 – Boniface Kiala, please call him on the very issue we talked about.”

**Ms. Celestine Anyango Opiyo:** I beg your pardon?

**Ms. Naomi Mutie:** The message which I received in April, it starts with the telephone number for the brother, then the name Boniface Kiala and goes on to say:-

“Please call him on the very issue we talked about.”

**Ms. Celestine Anyango Opiyo:** Do you not think that message is very ambiguous, it does not state anything?

**Ms. Naomi Mutie:** I have said and I will repeat again that the Deputy Governor kept on calling me on various days and asked me to call his brother to come for a tender to supply drugs. I want to state in this Committee that no Minister is involved in tender awards. So, for him to call me and ask me to call his brother, that was intimidating and an abuse of office. He knows well---

**The Chairperson** (Sen. Mutahi Kagwe): Let me just interrupt for a minute. I want to point out to counsel that you have already gone for over 12 minutes on cross-examination. I would like to limit the time.

**Ms. Celestine Anyango Opiyo:** Very well, Mr. Chairman.

On paragraph 24 to paragraph 26 of your affidavit to which you are alleging that the Deputy Governor kept on telling you and pushing you to award his brother with the tender, can you confirm that you did receive a call from the Deputy Governor?

**Ms. Naomi Mutie:** I can confirm that the Deputy Governor called me several times.

**Ms. Celestine Anyango Opiyo:** Where is the telephone print out?

**Ms. Naomi Mutie:** The council for County Assembly is going to print it out.

**Ms. Celestine Anyango Opiyo:** On paragraph 25, you have indicated that you never officially communicated the instruction to KEMSA, why did you not?

**Ms. Naomi Mutie:** The Deputy Governor by virtue of being second in command is my boss. Therefore, protocol does not allow a junior officer to write a letter to a senior officer. So I could not communicate to him.

**Ms. Celestine Anyango Opiyo:** I put it to you that you did not communicate to KEMSA for the reasons that there was no such allegations. Those are things that you made up. You do not have any evidence.

**Ms. Naomi Mutie:** I said I never officially communicated the instructions of KEMSA procurement officially to the Deputy Governor. I was not communicating to KEMSA. I was to communicate to him the instructions. Again, there is a gazette notice No.168.

**Ms. Celestine Anyango Opiyo:** Hon. Mutie, the answer should be just “yes” or “no”. Why did you not?

**Ms. Naomi Mutie:** I did not communicate to him because by protocol, he is my boss and I cannot communicate to my boss and especially if he is telling me to do something which is not in accordance to the law.

**The Chairperson** (Sen. Mutahi Kagwe): Counsel, your time is up.

**Ms. Celestine Anyango Opiyo:** Mr. Chairman, Sir, I will leave the reminder of the cross-examination to my senior counsel, Mr. Harun Ndubi.

**The Chairperson** (Sen. Mutahi Kagwe): Actually, I am saying that, that part of the cross-examination is over. In fact, you took more time than I had originally given.

**Ms. Celestine Anyango Opiyo:** If you could allocate us five minutes.

**The Chairperson** (Sen. Mutahi Kagwe): I will decline to give the five minutes given the amount of time you have taken on this one. So, you must step down.

Let us all be clear about the time that we are going to allow for cross-examination.

**Mr. Harun Ndubi:** That is what I was going to say because we seem to have taken a long time.

**The Chairperson** (Sen. Mutahi Kagwe): We will allow ten minutes for cross-examination on both sides just to be fair. You have actually taken 15 minutes. Otherwise we will be here forever.

**Mr. Harun Ndubi:** Probably, Mr. Chairman, Sir, with tremendous respect to you, the examination has been taken largely by the first two witnesses reading through a statement which was served on us. There is a presumption that we know how to read and write. But everybody was given notice of the affidavits. Perhaps, with tremendous respect to my colleague, Mr. Kioko, if the witnesses do not have to read through, if they say, for example: "I tender this as evidence." If we do this we will save time to enable us as well cross-examine adequately otherwise, we will be disadvantaged as has been demonstrated that we are really not at the same footing as the accuser.

**The Chairperson** (Sen. Mutahi Kagwe): I want to clarify that during cross examination, we are holding the time. We will do this for both parties. However, what we are saying is that there is a limit to how long we can take on cross-examination. You have all your time. Are we together counsel?

**Mr. Harun Ndubi:** No, I do not think I understand you, Mr. Chairman, Sir.

**The Chairperson** (Sen. Mutahi Kagwe): What I am saying is that as a matter of procedure, when they are making their submissions and the hearing is on their side, whatever cross-examination time you take on this side – and I presume ten minute or thereabouts per witness, then that time will hold for them. When you do the same, that time will hold for you. Are we together so far?

**Mr. Harun Ndubi:** I understand you now. But remember that these are almost *quasi* criminal proceedings. They are the ones making the allegations. Once the allegations have been made, it is our duty to be able to rebut whatever they are saying through the witnesses that are here. Therefore, it is not so much about who owns what time, but we need to be given sufficient time to be able to cross-examine adequately without losing our time.

**The Chairperson** (Sen. Mutahi Kagwe): Are you saying that you want more than ten minutes because we cannot operate without limitation?

**Mr. Harun Ndubi:** Mr. Chairman, Sir, what I am saying is that this direction of the number of minutes for cross examination, I did not understand it earlier if it had been given. Perhaps there is a lapse that I did not understand.

**The Chairperson** (Sen. Mutahi Kagwe): Counsel, let me help you so that we walk together. Considering that you are saying that you had no idea that there was going to be this time limit, I will allow you a few minutes to cross examine the witness. But thereafter, let us all understand that I propose that ten minutes is more than enough to cross examine a witness. Are we together?

**Mr. Harun Ndubi:** Thank you and most obliged, Mr. Chairman.

**The Chairperson** (Sen. Mutahi Kagwe): Given that I had initially given fifteen minutes, I will allow you five minutes.

**Mr. Harun Ndubi:** Ms. Naomi Mutie, you said that you were unable to report the Deputy Governor for these mistakes because you thought they were in excess of his authority?

**Ms. Naomi Mutie:** I did not report him because I did not have the appropriate opportunity to report him.

**Mr. Harun Ndubi:** What do you mean when you talk of the appropriate opportunity?

**Ms. Naomi Mutie:** When we were discussing his conduct in the Cabinet, that is when it hit me that what the Deputy Governor had been doing to me by calling me all the time, that was an act of abuse of office and intimidation.

**Mr. Harun Ndubi:** That is your interpretation of what he was allegedly doing to you. You have stated in paragraph 24 that you actually on account of your not being happy, you called a departmental meeting with your technical officers to discuss the conduct of the Deputy Governors. Is that correct?

**Ms. Naomi Mutie:** No, that is not what I said.

**Mr. Harun Ndubi:** What is it that you said under paragraph 24?

**Ms. Naomi Mutie:** I will read that paragraph. It says:-

“Later the Deputy Governor kept on telephoning me and pushing me to award his brother with the tender which forced me to have a meeting with my Department’s technical officers and consulted on how to handle the instruction. I instructed my officers that procurement should be handled by KEMSA in accordance with applicable Kenya law.”

**Mr. Harun Ndubi:** I am happy with your explanation that you consulted, but there is nowhere in your affidavit where you said you reported to the Governor, who is your appointing authority.

**Ms. Naomi Mutie:** One thing I would like to tell you is that the Governor has given every Minister a free hand to run the Ministry.

**Mr. Harun Ndubi:** I am saying, when somebody is abusing office, he or she is committing crimes which require him to be removed from office of Deputy Governor. You did not report him to the Governor to say: "I am facing undue pressure from the Deputy Governor." Did you do that?

**Ms. Naomi Mutie:** Remember the words that the Deputy Governor used: That my brother used a lot of money to bring this Government to power." That in itself is intimidating.

**Mr. Harun Ndubi:** That is okay.

**Ms. Naomi Mutie:** And, therefore, he was piling pressure on me.

**Mr. Harun Ndubi:** Madam witness, we will interpret what you say. My point is simple: Did you or did you not tell the Governor you were facing pressure from his deputy?

**Ms. Naomi Mutie:** I did not report.

**Mr. Harun Ndubi:** Thank you. Look at paragraph 22, you said that he started pestering you in January with these sms's and telephone calls. Is that correct?

**Ms. Naomi Mutie:** Yes.

**Mr. Harun Ndubi:** You did not do anything until 9<sup>th</sup> July when you were swearing an affidavit rather than reporting him? Do you not find that curious?

**Ms. Naomi Mutie:** Let me explain myself. Before the swearing of the affidavit, one of my colleague said he wanted the agenda to be amended so that we have Agenda No.2 to discuss his conduct. We sit with him in the Cabinet. He has never raised any issues. What we saw were issues in the media.

**Mr. Harun Ndubi:** I see. So, you, as a Member of the Cabinet were wondering from media reports and other things you were hearing that the Deputy Governor is raising issues outside of Cabinet and you were concerned about that. Were you not?

**Ms. Naomi Mutie:** I was concerned. The matter was raised in the Cabinet but we discussed his conduct. Then, he was told: "Kindly step outside---

**Mr. Harun Ndubi:** You have already said that. You do not have to repeat because we are pressed for time. I am putting it to you that you swore this affidavit on account of pressure from someone else other than matters known to you?

**Ms. Naomi Mutie:** One thing I want to bring to the attention of this Committee is that the swearing of the affidavit had nothing to do with the impeachment of the Deputy Governor.

**Mr. Harun Ndubi:** Okay, one brief question, where did you go to sign this affidavit? Was it brought to your office?

**Ms. Naomi Mutie:** No.

**Mr. Harun Ndubi:** Where did you go?

**Ms. Naomi Mutie:** I signed it at the Governor's office where we hold our Cabinet meetings.

**Mr. Harun Ndubi:** Thank you very much. That is all for this witness.

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, I only have one issue for cross-examination. Can I, please, do it?

**The Chairperson** (Sen. Mutahi Kagwe): You have got five minutes to do that.

**Mr. Kioko Kilukumi:** Ms. Naomi, could you please tell this Special Committee the telephone numbers which were being used consistently by the Deputy Governor to call you, if the number is available?

**Ms. Naomi Mutie:** He has two numbers, but there is this number he was calling so many times.

**Mr. Kioko Kilukumi:** Please, first give your own number and then the two, if they are two, for the Deputy Governor.

**Ms. Naomi Mutie:** My number is 0725153190.

**Mr. Kioko Kilukumi:** Please, give this Special Committee the numbers of the Deputy Governor which he was calling you with?

**Ms. Naomi Mutie:** 0721211457 and 0700253515.

**Mr. Kioko Kilukumi:** Thank you very much, Ms. Naomi.

Thank you, Mr. Chairman and hon. Senators.

**The Chairperson** (Sen. Mutahi Kagwe): Thank you. Please, step down. I am aware that there is another witness that counsel for the Deputy Governor has not cross examined. Would you like to do that at this juncture or would you like us to proceed to other witnesses?

**Mr. Harun Ndubi:** We would like to go on with them if they have printed what we requested for. If they have not, then we might take the next witness.

**The Chairperson** (Sen. Mutahi Kagwe): Very well, counsel.

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, we are sorry we have not finalized printing those messages. As soon as we do, we will let you know but we are proposing to call our next witness. With the permission of the Chair, my colleague, Mr. Benjamin Musau, will lead the next two witnesses.

**Mr. Harun Ndubi:** Mr. Chairman, Sir, could counsel confirm who the next witness is, so that we look at the affidavit? It appears they did not give me. I am asking if they can advise us who the next witness is to be able to look at the affidavit quickly.

**The Chairperson** (Sen. Mutahi Kagwe): We also want to know.

**Mr. Benjamin Musau:** Mr. Chairman and Members of the Special Senate Committee, the next witness is the driver. His name is John Mutinda Pascal.

**Mr. Harun Ndubi:** Mr. Chairman, for the record, earlier on we took a break as we were considering the ruling that you delivered. I requested my colleagues on the other side to tell us which witness they have and are calling. They actually gave me a certain sequence; the ones that you see I have highlighted on the copy of my record. That person is not here. I am saying this not so much that it is wrong to call the driver or whoever else it is, but it is not right to try by ambush. They have already ambushed us with these new testimonies. But a ruling has been made on it and I am not going back to it. But it is important that common ordinary courtesies be extended to each one of us.

**The Chairperson** (Sen. Mutahi Kagwe): It is so noted.

**Mr. Benjamin Musau:** The next witness after the driver will be the conductor of the *matatu*, Joseph Kasio Musembi. This is in our folder that we submitted to the Senate. The evidence of this particular witness is tagged as No.24.

*(John Mutinda Pascal took the oath)*

Can you, please, confirm to the Special Committee that your name is Mr. John Mutinda Pascal?

**Mr. John Mutinda Pascal:** That is correct.

**Mr. Benjamin Musau:** And that you are a driver by profession?

**Mr. John Mutinda Pascal:** Mimi ni dereva *by profession*. Naendesha gari nambari KBE 716Y.

**Mr. Benjamin Musau:** Can you, please, confirm that you swore the affidavit dated 30<sup>th</sup> July, 2014?

**Mr. John Mutinda Pascal:** Yes.

**Mr. Benjamin Musau:** Would you like to tender it as evidence to this Special Committee of the Senate?

**Mr. John Mutinda Pascal:** That is okay.

**Mr. Benjamin Musau:** Can you please read it to this Special Committee?

**Mr. John Mutinda Pascal:** “I am a driver by profession and I operate Nissan Matatu (Maptra Sacco) Registration No.KBE 716Y, which normally plies the route of Machakos-Mlolongo.

On Monday, 7<sup>th</sup> July, 2014 (popularly known as *Saba Saba*), I was on my normal duties of the *matatu* business and I had just left the Machakos Bus terminus on my way with fare paying passengers en route Mlomongo.

When I reached Machakos County headquarters opposite Machakos Catholic Cathedral Church at around 12.30 p.m., a number of motor vehicles blocked the road and forced me to stop.

Mr. Chairperson, Sir, at around 12.30 p.m. a number of motor vehicles blocked the road and forced me to stop. When I stopped a gang of about ten people led by Hon. Cornelius Kitheka who I know as the ward representative of Machakos Central Ward opened the front passengers’ seat. At that time, I had two passengers in the front seat. The gang forced one of my passengers out, who had not yet paid fare, and a man dressed in a suit entered the vehicle. I later on came to learn that he is the Deputy Governor, Machakos County, Hon. Bernard Kiala. After a short while, the other front-fare paying passenger was forced out of the matatu after the Deputy Governor alighted and boarded again. As he was seated in front, he never uttered a single word to me, but was busy talking to Hon. Cornelius and other people who were part of the gang together with members of the press who were busy taking photographs.

Mr. Chairperson, Sir, I recognized one of the media men by the name Jonathan Mutiso who has dreadlocks and works for the Kenya Broadcasting Corporation (KBC) in Machakos. This exercise took about ten minutes. During that time, all the other passengers ran away without paying their fare. After about ten minutes, the Deputy Governor, members of the press and the rest of the people left me in the matatu without

passengers, except the conductor. They never even thanked me or disclosed the nature of their mission. I was then forced to go back to Machakos terminus to look for other passengers. I later on went to Mlolongo leaving Machakos Town at 3.00 p.m. I lost about three hours of thriving matatu business time.

Mr. Chairperson, Sir, I heard the Deputy Governor, Hon. Cornelius Kitheka and the gang complaining that the Governor had deprived the Deputy Governor of his vehicle forcing him to use public means. I wish to state that the Deputy Governor did not travel even an inch in my matatu. As a result of the detention, there were matatus who were in the terminus that overtook me in the business of the day. They reaped from the detention that I was put into. I lost control of operation as a matatu driver for the ten minutes I was under detention of the Deputy Governor and his company. They left me dumfounded, harassed and confused. I later on learnt from the media that the Deputy Governor travelled in a matatu which is not true. I have been shown a newspaper cutting of the incident which is *The Standard* newspaper of July 8<sup>th</sup>, 2014. I wish to confirm that this is my matatu and I can recognize the person sitting next to the Deputy Governor who is a fare paying passenger who was thrown out of my matatu. I recognize the person by the checked top he was wearing at the time. This is all I have to state.

**The Vice Chairperson** (Sen. (Dr.) Zani): Thank you very much. Counsel for the County Assembly, before you proceed, we would like to have a clarification on paragraph 15.

**Mr. John Mutinda Pascal:** What special clarification would you require?

**The Vice Chairperson** (Sen. (Dr.) Zani): It reads:-

“The Deputy Governor, Hon. Cornelius Kitheka”.

Is there an end in between because it implies the Deputy Governor being somebody else?

**Mr. Benjamin Musau:** Mr. Chairperson, Sir, it says:-

“I heard the Deputy Governor, Hon. Cornelius Kitheka and the gang of apparent supporters murmur complains”.

**The Vice Chairperson** (Sen. (Dr.) Zani): Thank you for that clarification. You may proceed.

**Mr. Benjamin Musau:** Mr. Chairperson, Sir, I would like to refer the witness to the annexure. Do you recognize the newspaper cutting you have referred to in the affidavit?

**Mr. John Mutinda Pascal:** Yes, I can.

**Mr. Benjamin Musau:** Looking at the photograph, is that your matatu?

**Mr. John Mutinda Pascal:** Yes, it is my matatu.

**Mr. Benjamin Musau:** Can you see the Deputy Governor, Machakos County?

**Mr. John Mutinda Pascal:** Yes, Madam Chairperson, Sir. He is seated.

**Mr. Benjamin Musau:** There is this other person in a checked top that you mentioned in your affidavit?

**Mr. John Mutinda Pascal:** Yes.

**Mr. Benjamin Musau:** That is all for this witness.

**The Vice Chairperson (Sen. (Dr.) Zani):** Thank you very much. We may move on to cross examination for 15 minutes. So, we shall stop at 4.50 p.m.

**Mr. Harun Ndubi:** Mr. Pascal, how long have you been a driver?

**Mr. John Mutinda Pascal:** For ten years.

**Mr. Harun Ndubi:** How long have you been a matatu driver?

**Mr. John Mutinda Pascal:** I worked five years as a conductor and four years as a driver.

**Mr. Harun Ndubi:** You have been shown an exhibit of a newspaper cutting. I am looking at Page 222 of the record of the Special Committee. Is that the one that you are looking at?

**Mr. John Mutinda Pascal:** Yes, Sir.

**Mr. Harun Ndubi:** You have stated that, that is the picture of the Deputy Governor and that is your matatu?

**Mr. John Mutinda Pascal:** Yes, Sir.

**Mr. Harun Ndubi:** What mark on that picture can you see to show that that is your matatu? Where are you in that picture?

**Mr. John Mutinda Pascal:** I am not in the picture.

**Mr. Harun Ndubi:** The registration number of the matatu is not in the picture; is it?

**Mr. John Mutinda Pascal:** Yes.

**Mr. Harun Ndubi:** Yes, it is or yes it is not?

**Mr. John Mutinda Pascal:** Yes, it is.

**Mr. Harun Ndubi:** In the picture, you are seeing the registration number of that vehicle shown?

**Mr. John Mutinda Pascal:** No, Sir.

**Mr. Harun Ndubi:** How many men in Machakos Town wear checked shirts?

**Mr. John Mutinda Pascal:** Very many.

**Mr. Harun Ndubi:** If we go back to your affidavit, you say in paragraph four that you were confronted by a gang of about ten people led by Cornelius Kitheka.

**Mr. John Mutinda Pascal:** Yes, Sir.

**Mr. Harun Ndubi:** What did they do so that you recognized that he was leading them?

**Mr. John Mutinda Pascal:** Nilipatana na wao hapo na niliwaona.

**Mr. Harun Ndubi:** Let me rephrase the question; were you driving the matatu at the time you were confronted or were you stationary?

**Mr. John Mutinda Pascal:** I was driving.

**Mr. Harun Ndubi:** You were on the road?

**Mr. John Mutinda Pascal:** Yes.

**Mr. Harun Ndubi:** So, how did you know that this group of people you call a gang was being led by Cornelius Kitheka?

**Mr. John Mutinda Pascal:** Wakati nilipatana nao, mwenyewe nilimjua Cornelius Kitheka.

**Mr. Harun Ndubi:** Ulipata kumjua tu lakini si kwamba yeye ndiye alikuwa kiongozi wao?

**Mr. John Mutinda Pascal:** Ndio.

**Mr. Harun Ndubi:** Do you know for a fact that he was part of that gang? Was he far or he was walking on the road?

**Mr. John Mutinda Pascal:** Alikuwa kwa hiyo group kwa sababu alikuwa akiongea sana.

**Mr. Harun Ndubi:** You do not have evidence to prove that. Do you, so that we do not spend time on small point?

**Mr. John Mutinda Pascal:** Alikuwa nao.

**Mr. Harun Ndubi:** How do you know?

**Mr. John Mutinda Pascal:** Vile alivyokua akiongea na Naibu Gavana na wale watu waliokuwa mahali hapo.

**Mr. Harun Ndubi:** So, you have said that the gang came and forced open your matatu and people were forcibly removed.

**Mr. John Mutinda Pascal:** Yule passenger aliambiwa amuondokee mkubwa hapo mbele na aende akakae kule nyuma.

**Mr. Harun Ndubi:** You said they were forced out. Is that not what you said? If you look at your paragraph six it reads:-

“After they opened the front passenger seat, they then forced out of the passenger seat one of my fare paying passengers”.

Is that true?

**Mr. John Mutinda Pascal:** Ndio; hivyo ndivyo ilivyokuwa.

**Mr. Harun Ndubi:** Were you at that point apprehensive that maybe you were being hijacked because you said that they were forceful?

**Mr. John Mutinda Pascal:** Nilifikiri ni mambo ya siasa na ndipo walinifungia katika hiyo gate.

**Mr. Harun Ndubi:** Do not say it was siasa. You said---

**Mr. John Mutinda Pascal:** Niliogopa. Sikujua nia yao.

**Mr. Harun Ndubi:** If you look at paragraph 12, you are alleging that you were actually forcibly detained for about ten minutes. Huo ni ukweli?

**Mr. John Mutinda Pascal:** Ndiyo.

**Mr. Harun Ndubi:** This is one of the reasons you were completely afraid?

**Mr. John Mutinda Pascal:** Yes.

**Mr. Harun Ndubi:** Did you report this matter to the nearest police station after you were set free?

**Mr. John Mutinda Pascal:** Hapana. Niliendelea na shughuli zangu. Hata nilirudi kwa stage. Sikuenda mahali popote.

**Mr. Harun Ndubi:** Forcible detention and restraint is a criminal offence. Is it not? Ni kosa la jinai. Sivyoy?

**Mr. John Mutinda Pascal:** Ndio.

**Mr. Harun Ndubi:** Uliripoti kwa kituo cha polisi chochote wakati ulipoachiliwa?

**Mr. John Mutinda Pascal:** Hapana.

**Mr. Harun Ndubi:** You have said in paragraph 14 that you lost three hours of business. Why three hours and you said you were only detained for three minutes? I am just curious.

**Mr. John Mutinda Pascal:** Waliniweka hapo kwa dakika kumi na nikarudi kwa stage na nikakaa kule kwa masaa matatu. Ilibidi nifuate laini ya magari.

**Mr. Harun Ndubi:** We are now on paragraph 15. You heard the Deputy Governor, Cornelius Kitheka and the gang of supporters murmur complaints. Who was speaking about what because all of us cannot keep murmuring about one thing simultaneously?

**Mr. John Mutinda Pascal:** Cornelius Kitheka ndiye alikuwa analalamika. Alikuwa akisema kwamba Naibu Gavana amenyang'anywa gari.

**Mr. Harun Ndubi:** On paragraph 21, you say that you have been shown newspapers. When did you first see those newspapers?

**Mr. John Mutinda Pascal:** Niliona tarehe nane nikiwa hapo *stage*. Nilipigiwa simu na *mdosi* akisema kuwa aliliona gari lake kwa televisheni likimbeba Deputy Governor.

**Mr. Haroun Ndubi:** When did you sign this affidavit?

**Mr. John Mutinda Pascal:** Tarehe 30<sup>th</sup>.

**Mr. Harun Ndubi:** Where did you sign it? Do not read because you must have signed it physically somewhere. Where is this that you went to sign it at?

**Mr. John Mutinda Pascal:** Kwa Advocate Musau. Alinipatia hata kadi yake.

**Mr. Harun Ndubi:** Kule Machakos?

**Mr. John Mutinda Pascal:** La, huku Nairobi.

**Mr. Harun Ndubi:** Which building?

**Mr. John Mutinda Pascal:** Re-insurance Plaza.

**Mr. Harun Ndubi:** At what time did you go there?

**Mr. John Mutinda Pascal:** Nilitoka Machakos saa Sita. By saa nane nilikuwa---

**Mr. Harun Ndubi:** Did you sign it at the reception or in Mr. Musau's office?

**Mr. John Mutinda Pascal:** In Mr. Musau's office.

**Mr. Harun Ndubi:** That is all.

**The Vice Chairperson** (Sen. (Dr.) Zani): Counsel for the county assembly, would you like to re-examine?

**Mr. Benjamin Musau:** Wakili wa Benard Kiala amekuuliza kama ulipeana ripoti mahali popote. Ni nani amekuajiri?

**Mr. John Mutinda Pascal:** Anaitwa Muthoni.

**Mr. Benjamin Musau:** Wakati hiki kisa kilitendeka, je uliwahi kuripoti kwa Muthoni?

**Mr. John Mutinda Pascal:** Ndio. Nilimueleza na akaniambia kwamba aliona katika habari ya siku hiyo gari lake katika televisheni.

**Mr. Benjamin Musau:** Thank you. That is all for the witness.

**The Chairperson** (Sen. Mutahi Kagwe): Thank you very much, you may step down.

*(The witness was stood down)*

I believe that we have got time for one more witness before we take a short break and then resume.

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, kindly, can we have an indication as to when we shall have what we were supposed to get, so that we do not lose memory of what that witness said?

**Mr. Kioko Kilukumi:** Mr. Chairperson, Sir, I am following on this document. We will be able to give them during the break, once we finish with this witness.

**The Chairperson** (Sen. Mutahi Kagwe): Very well. Please, call your next witness.

**Mr. Benjamin Musau:** Mr. Chairperson, Sir, the next witness is Mr. Joseph Kasio Musembi, who was the conductor of the Nissan *Matatu*.

*(Mr. Joseph Kasio Musembi took the oath)*

**Mr. Benjamin Musau:** Could you, please, confirm that your name is Joseph Kasio Musembi?

**Mr. Joseph Kasio Musembi:** Yes.

**Mr. Benjamin Musau:** Could you also, please, confirm to the Committee that you were the matatu conductor of the Nissan Matatu Registration No. KBE 716 which normally plies the Machakos-Mlolongo route?

**Mr. Joseph Kasio Musembi:** Yes, I am.

**Mr. Benjamin Musau:** Could you, please, also confirm that you swore the affidavit which is before the Committee on 31<sup>st</sup> July, 2014, before Kanyi Ngakuya, Commissioner for Oaths, having been drawn by the firm of B.M. Musau and Company Advocates?

**Mr. Joseph Kasio Musembi:** Yes.

**Sen. Hassan Omar Hassan:** Tafadhali ongea kupitia hicho kipaza sauti.

**Mr. Benjamin Musau:** Could you, please, read paragraphs 2 up to 22?

**Mr. Joseph Kasio Musembi:** On Monday 7<sup>th</sup> July, 2014, popularly known as *Saba Saba*, I was on my normal duties of---

**The Chairperson** (Sen. Mutahi Kagwe): Hold on! Please, come close to the microphone. Your mouth should be close to the microphone.

**Mr. Joseph Kasio Musembi:** On Monday 7<sup>th</sup> July, 2014, popularly known as *Saba Saba*, I was on my normal duties of a conductor of a Nissan *Matatu*. I had just left Machakos bus terminus on my way with passengers enroute Mlolongo. The driver of the *matatu* at the time was John Mutinda. When I reached the Machakos County Headquarters, opposite the Machakos Catholic Cathedral Church at around 12.30 p.m., a number of motor vehicles blocked the road, forcing the driver to stop the *matatu*. I saw a pick-up which had blocked the road. When the *matatu stopped*, I was seated at the back. First, I opened the glass window, peeped out and then opened the door by sliding it. I saw a number of people, including hon. Cornelius Kitheka, whom I know as the ward representative for Machakos Central Ward and a group of women who were shouting. I suspected that these were private people who were possibly going to hire the *matatu* on private business.

Mr. Chairperson, Sir, when I got out of the *matatu*, I saw a person whom I later came to learn was hon. Benard Kiala, the Deputy Governor of Machakos County. I approached and asked him what he wanted, but he did not answer. The members of the press were busy taking photos of the scene. At the time, there were two passengers on the front seat.

The gang forced out one of my fare-paying passengers who had not yet paid the fare. Hon. Kiala sat on the front seat and the press continued taking photographs.

After a short while, the other passenger on the front seat forced out of the matatu, after the Deputy Governor alighted and boarded again. The press took more photographs. This exercise took about ten minutes and during that time, all the other passengers who were ten in number ran away without paying their fares. After 10 minutes or so, of what amounted to forceful detention and restraint, the Deputy Governor, members of the press and the gang left me with the driver, without even thanking me or disclosing the nature of their mission.

I only heard the women arguing that the Deputy Governor should not use matatus because he could be killed.

Thereafter, we were forced back to the Machakos Bus Terminus to look for new passengers while the onlookers mentioned that, that was the Deputy Governor for Machakos County, hon. Benard Kiala. Eventually, I later on went to Mlolongo after leaving Machakos at 3.00 p.m. I, therefore, lost almost three hours of prime matatu business time.

I wish to state that the Deputy Governor did not travel even an inch in our matatu. In fact, as a result of detention, a matatu which we had left at the terminus immediately passed by and overtook us in the business of the day, apart from the hour that must have passed during the detention and delay caused thereby.

I was intimidated into a level where we lost control of my operation as a matatu conductor for the ten minutes or so that I was under the detention of the Deputy Governor and the people in his company. In fact, when I took the proceedings of the day to the owner, about Kshs3,000, she complained that the proceedings were too low. If we had not been interrupted we would have delivered a profit of about Kshs5,000. Therefore, we incurred a loss of Kshs2,000. The incident left me dumbfounded, harassed, confused and inconvenienced.

I later on learnt from the media that it was alleged that the Deputy Governor travelled in our matatu, which is not true. I have been shown a newspaper cutting of the incident; *The Standard* of 8<sup>th</sup> July, 2014. I wish to confirm that, indeed, this is the matatu in respect of which I was conductor on the material day. I recognize that the person seated next to the Deputy Governor was the second fare-paying passenger who was subsequently thrown out of my *matatu*. I recognize the person by the checked top that he was wearing at the time. The cutting is exhibited in this affidavit and marked J, K, L, I.

**Mr. Benjamin Musau:** Mr. Chairperson, Sir and hon. Senators, in view of the time factor, it is not necessary that the witness reads each word. We have asked him go to through the substance.

Kwa hivyo umeeleza kwamba hiyo ni affidavit yako ambayo ilitengenezwa na B.M. Musau and Company na ukaweka sahihi?

**Mr. Joseph Kasio Musembi:** Kweli.

**Mr. Benjamin Musau:** Umeona hiyo picha? Iko hivyo kwa hiyo nakala yako?

**Mr. Joseph Kasio Musembi:** Picha iko.

**Mr. Benjamin Musau:** I want to show you the photograph which you have referred to; hiyo ndio picha ya gazeti ya *The Standard* ambayo umesema kwa affidavit yako?

**Mr. Joseph Kasio Musembi:** Na hiyo ndio picha ya gari lenu?

**Mr. Benjamin Musau:** Huyu ambaye amepigwa picha hapo ni Naibu wa Gavana, Hon. Kiala?

**Mr. Joseph Kasio Musembi:** Ndio.

**Mr. Benjamin Musau:** Umeeleza kwamba umetambua picha ya gazeti na hiyo matatu kwamba ni gari lenu kwa sababu ya msafiri ambaye alikuwa na “checked top”?

**Mr. Joseph Kasio Musembi:** Hata ukiona kwa kioo unaweza kuona vile nilikuwa nimefungua.

**Mr. Benjamin Musau:** Umeeleza kwamba ulikuwa unafungua ndio uone?

**Mr. Joseph Kasio Musembi:** Ndio.

**Mr. Benjamin Musau:** Thank you very much. That is all.

**The Vice Chairperson (Sen. (Dr.) Zani):** Thank you very much counsel. You can cross-examine.

Endelea kuketi hapo kidogo uulizwe maswali mengine na wakili.

**Mr. Anthony Oluoch:** Madam Chairperson, hon. Members of the Committee, I will just ask two questions then I refer to my learned colleague for the remainder of the questions.

Umesema jina lako ni nani?

**Mr. Joseph Kasio Musembi:** Kwa majina naitwa Joseph Kasio Musembi.

**Mr. Anthony Oluoch:** Umefanya kazi ya matatu miaka ngapi?

**Mr. Joseph Kasio Musembi:** Miaka kumi na mbili.

**Mr. Anthony Oluoch:** Hapo hapo Machakos?

**Mr. Joseph Kasio Musembi:** Ndio.

**Mr. Anthony Oluoch:** Kwa kawaida ukirudi nyumbani unarudi na pesa ngapi?

**Mr. Joseph Kasio Musembi:** Inategemea vile kazi iko.

**Mr. Anthony Oluoch:** On a good day.

**Mr. Joseph Kasio Musembi:** Kama elfu moja.

**Mr. Anthony Oluoch:** Nikikuonyesha kwa affidavit yako inasema siku mzuri mwenye gari hupata Kshs5,000. Wewe ukienda na moja na dereva anaenda na ngapi?

**Mr. Joseph Kasio Musembi:** Anaenda na elfu moja mia mbili.

**Mr. Anthony Oluoch:** Na mafuta? Ukitoa mafuta kwa hiyo Kshs5,000, unaona mwenye gari anabaki na nini?

**Mr. Joseph Kasio Musembi:** Hatuweki mafuta kwa hiyo pesa. Hiyo ni ile tunapelekea mwenyewe.

**Mr. Anthony Oluoch:** Machakos County inaendelea vizuri sana. Maendeleo inasaidia sana hata private sector.

**Mr. Benjamin Musau:** Mr. Chairperson, Sir, the witness cannot be asked to form an opinion on how the county government is performing.

**Mr. Anthony Oluoch:** Mr. Chairperson, Sir, I have asked him a question because he is a member of the Machakos County. Let me rephrase the question.

Unaona biashara ya Machakos tangu county inaendelea vizuri sana?

**Mr. Joseph Kasio Musembi:** Inaendelea vizuri.

**Mr. Anthony Oluoch:** Inaendelea vizuri mpaka unaweza kuvaa suit ya pesa ngapi hivi. Hiyo suit naona ni nzuri kuliko yangu. Ni kama pesa ngapi hivi?

**Mr. Joseph Kasio Musembi:** Mimi hufanya kazi.

**Mr. Anthony Oluoch:** Ulinunua lini? Ukisha sign affidavit ama leo?

**Mr. Benjamin Musau:** I think it is out of order!

**The Chairperson** (Sen. Mutahi Kagwe): I think that is totally out of order. Do you have any further questions?

**Mr. Anthony Oluoch:** I will hand over to my colleague.

**Ms. Celestine Opiyo:** Mr. Chairperson, Sir, and hon. Senators, I can proceed and ask Joseph Kasio Musembi other questions.

Joseph, umesema wewe ni conductor wa gari gani?

**Mr. Joseph Kasio Musembi:** KBE 716Y.

**Ms. Celestine Opiyo:** Fungua hiyo picha na uangalie vizuri. Unaona kama hiyo ndio gari lako?

**Mr. Joseph Kasio Musembi:** Ndiyo

**Ms. Celestine Opiyo:** Umejua aje? Unaona number plate?

**Mr. Joseph Kasio Musembi:** La.

**Ms. Celestine Opiyo:** Kwa hiyo Machakos nzima ni gari yako tu ndio inafanana hivi? Ni nini inaonyesha ni gari yako? Umesema gari yako ni KBE 716Y, Matra SACCO. Kuna maandishi kwa hiyo picha.

**Mr. Joseph Kasio Musembi:** Hakuna maandishi lakini najua---

**Ms. Celestine Opiyo:** Hakuna maandishi. Ulisema kwamba uliona pick up yenye iliwafungia barabara?

**Mr. Joseph Kasio Musembi:** Hiyo pick up niliiona.

**Ms. Celestine Opiyo:** Unajua number plate ama registration?

**Mr. Joseph Kasio Musembi:** Singeshika namba wakati huo.

**Ms. Celestine Opiyo:** Uliona watu wengi na Mhe. Cornelius Kitheka alikuwa hapo?

**Mr. Joseph Kasio Musembi:** Nilimuona.

**Ms. Celestine Opiyo:** Unamjua?

**Mr. Joseph Kasio Musembi:** Namjua na hata yeye ananjua.

**Ms. Celestine Opiyo:** Ulisema kwamba ulishuku ni watu wanataka *kuhire* gari?

**Mr. Joseph Kasio Musembi:** Niliona kama nimeangukia.

**Ms. Celestine Opiyo:** Hauwezi kusema kwamba uliona umeangukia na kwa affidavit yako unasema kwamba uliona watu wakipiga kelele. Ukiona vita utafuatilia.

**Mr. Joseph Kasio Musembi:** Venye niliona wako na kelele nikafikiri wanaweza kunikomboa niwapeleke mahali.

**Ms. Celestine Opiyo:** Pia ulisema ulikuwa haumjui Deputy Governor. Je, ulimjua aje baadaye?

**Mr. Joseph Kasio Musembi:** Nilimjua baadaye kwa sababu hata abiria waliokuwa ndani wakishuka walisema kwamba ni deputy governor.

**Ms. Celestine Opiyo:** Hiyo inaweza kuwa afterthought kwa sababu hili gari si lako na number plate halionyeshi. Hili gari si lako. Utajua aje huyu ni deputy governor kama haukuwa umembeba kwa sababu hii gari haionyeshi.

**Mr. Joseph Kasio Musembi:** Abiria ndio walikuwa wakisema kwamba huyo ni deputy governor.

**Ms. Celestine Opiyo:** Ulisema kwamba abiria walikuwa wametoroka wote. Joseph ni heri useme kwamba gari halikuwa na number plate, hukumjua deputy governor na siku hiyo haukuonana na yeye.

Twende paragraph 13, ulisema baada ya dakika kumi mlishikwa kwa nguvu au mkafungiwa kihalali?

**Mr. Benjamin Musau:** Mr. Chairperson, Sir, the issue of language, when the counsel puts to the witness that “mlikuwa mmefungiwa kihalali, it is misleading because it will change the witness’ testimony.

**Ms. Celestine Opiyo:** Mr. Chairperson, Sir, on paragraph 13, they said that it amounts to forceful detention and restrain. What is that? But let me rephrase.

Mlikuwa mmeshikwa kimabafu bila ruhusa yenu?

**Mr. Joseph Kasio Musembi:** Tulifungiwa.

**Ms. Celestine Opiyo:** Je, hiyo matatu yenu ni ya kubeba watu wangapi?

**Mr. Wilfred Nyamu:** Mr. Chairperson, Sir, with due respect to the counsel, I do request that she lets the witness answer questions as opposed to interjecting before he answers.

**The Chairperson** (Sen. Mutahi Kagwe): I think it is only fair. Please, proceed. Si lazima ufanye haraka haraka. Nitaongeza dakika moja kwa sababu ya shida ya lugha. Yafaa ueleze kabisa vile mambo yalienda.

**Ms. Celestine Opiyo:** Ulisema kwamba mlishikwa kimabafu, unaweza kuelezea?

**Mr. Joseph Kasio Musembi:** Tulifungiwa. Kuna pick up ilikuwa mbele. Sasa ikabaki kwamba gari haliwezi kusonga na kukakuwa na jam.

**Ms. Celestine Opiyo:** Kwa hivyo hii paragraph yako 13 si sawa.

**Mr. Joseph Kasio Musembi:** Mimi sielewi.

**Ms. Celestine Opiyo:** Soma.

**The Chairperson (Sen. Mutahi Kagwe):** Do you want him to read? We are running out of time.

**Mr. Joseph Kasio Musembi:** It says:-

“After about ten minutes to what amounted to possible detention the deputy governor, members of the press and the gang left me together with the driver without even thanking me or disclosing the nature of their mission.”

**Ms. Celestine Opiyo:** Kwa hivyo si sawa kwamba mlishikwa kimabafu?

**Mr. Joseph Kasio Musembi:** Kwa sababu walitufungia tu na hakuna kitu niliwauliza.

**Ms. Celestine Opiyo:** Hii affidavit uliandika lini?

**Mr. Joseph Kasio Musembi:** Labda niangalia tarehe.

**Ms. Celestine Opiyo:** Haukumbuki ama haujui uliandika lini?

**Mr. Joseph Kasio Musembi:** Sikumbuki.

**Ms. Celestine Opiyo:** Uliandikia wapi? Mlienda wapi?

**Mr. Joseph Kasio Musembi:** Kwa lawyer fulani.

**Ms. Celestine Opiyo:** Ulikuwa pekee yako ama mlikuwa na nani?

**Mr. Joseph Kasio Musembi:** Nilikuwa na driver.

**Ms. Celestine Opiyo:** Jengo lipi?

**Mr. Joseph Kasio Musembi:** Reinsurance Plaza.

**Ms. Celestine Opiyo:** Kisha umesema kwamba mlikaa masaa matatu ndio mkafika mlolongo.

**Mr. Joseph Kasio Musembi:** Sasa hiyo confusion ilifanya nikarudi kwa stage kutafuta watu tena.

**Ms. Celestine Opiyo:** Ulisema ulikuja na driver huku Nairobi?

**Mr. Joseph Kasio Musembi:** Tulikuwa na yeye.

**Ms. Celestine Opiyo:** Ulisema ulikuja lini?

**Mr. Joseph Kasio Musembi:** Siwezi kukumbuka.

**Ms. Celestine Opiyo:** Soma hiyo affidavit yako.

**Mr. Benjamin Musau:** Mr. Chairperson, Sir, I thought the witness had already given to Counsel the date he swore his affidavit, the date he went to the lawyer and so on.

**Ms. Celestine Opiyo:** Angalia hiyo affidavit. Hiyo ni tarehe gani?

**Mr. Joseph Kasio Musembi:** Hatukukuja na yeye the same day.

**Ms. Celestine Opiyo:** Ni tarehe gani?

**Mr. Joseph Kasio Musembi:** It is 30<sup>th</sup>.

**Ms. Celestine Opiyo:** That is all, Mr. Chairperson, Sir.

**Mr. Benjamin Musau:** Swali la kwanza, uko na ile picha ya gazeti?

**Mr. Joseph Kasio Musembi:** Ndio.

**Mr. Benjamin Musau:** Angalia tena na uangalie Kamati Maalum ya Seneti vile unavyoweza kujua kwamba ni ile gari yenu. Eleza vizuri; kinagaubaga.

**Mr. Joseph Kasio Musembi:** Ukiangalia kwa hiyo kioo ya nyuma utaona kwamba ilikuwa imefunguliwa na kuna jamaa moja alikuwa amevaa kiislamu.

**Mr. Benjamin Musau:** Ni yule ambaye ulisema kwamba alikuwa na checked top?

**Mr. Joseph Kasio Musembi:** Ndio.

**Mr. Benjamin Musau:** Naweza kumbuka gari yenyewe kwa sababu ni huyu.

**Mr. Haroun Ndubi:** Mr. Chairperson, Sir, the counsel is testifying. It is not for the counsel and telling 'this is how I want you to answer'. It is not like that.

**The Chairperson** (Sen. Mutahi Kagwe): Yes, do ask a question, counsel.

**Mr. Benjamin Musau:** Mr. Chairperson, Sir, already the witness has testified in the affidavit and has said that he is able to recognize to it paragraph 21 the matatu because the person sitting to the Deputy Government was the second fare-paying passenger. I am not giving evidence by repeating what the witness has said in re-examination. It is permitted by the rules of the court.

Secondly, wakili alikua anajaribu kukuuliza juu ya ile siku ambayo ambayo uli swear affidavit ambayo iko katika page 2. Je, unaweza kuangalia hiyo page 2 ya affidavit yako; mahali umeweka sahihi? Kulingana na hiyo affidavit, ulitoa huo ushuhuda ama uliandika hiyo affidavit tarehe gani?

**Mr. Joseph Kasio Musembi:** 31<sup>st</sup> July.

**Mr. Benjamin Musau:** Na hiyo ndio ile siku ambayo ulienda kwa wakili B.A. Musau & Company Advocates?

**Mr. Joseph Kasio Musembi:** *Ndio*

**Mr. Benjamin Musau:** Okay; asante.

**The Chairperson** (Sen. Mutahi Kagwe): Very well; asante sana ndugu. You may step down.

At this juncture, it is now 5.15 p.m.; we will take a short break of 15 minutes and then we will continue thereafter.

*(The Special Committee adjourned temporarily at 5.16 p.m.)*

*(The Special Committee resumed at 5.40 p.m.)*

**The Chairperson** (Sen. Mutahi Kagwe): Okay, *karibuni* once again. I just want to clarify one or two things as we begin this session. Counsel for the assembly, you have got one hour and 47 minutes to continue with your session and you may proceed.

I am told to clarify that cross examination is still 10 minutes.

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, with regard to this particular one, we might request for a slight extension to 15 or 20 minutes on account of the enormity and gravity of the evidence-in-chief that he gave; remembering that he referred us to something he watched and the short messages that have just come, and which we are still trying to connect them with the allegations.

**The Chairperson** (Sen. Mutahi Kagwe): I will oblige you with 15 minutes.

**Mr. Harun Ndubi:** Thank you very much, Mr. Chairperson, Sir.

**Mr. Kioko Kilukumi:** Thank you, Mr. Chairperson, Sir, and hon. Members of the Senate. We have now given printed copies of the short messages and I have completed leading evidence-in-chief. So, it is now up to the other side to deal with the questioning.

**Mr. Harun Ndubi:** Thank you. Because of the lapse of time since we began, Mr. Kioko Luka, I may not be as systematic as you were in terms of the issues, but I will try to cover as much as I can.

Now, regarding the Closed Circuit Television (CCTV), hoping we do not have to replay it, you will recall that the CCTV we saw had writings on it. Will you answer, because we are being recorded on HANSARD. Put the microphone on and respond.

**Mr. George Kioko Luka:** That is correct.

**Mr. Harun Ndubi:** You also noticed that there were arrows showing various directions; is that correct?

**Mr. George Kioko Luka:** That is correct.

**Mr. Harun Ndubi:** You also saw images of human beings and motor vehicles in movement?

**Mr. George Kioko Luka:** That is correct.

**Mr. Harun Ndubi:** Do you recall seeing the image of the Deputy Governor at all?

**Mr. George Kioko Luka:** Yes, I recall.

**Mr. Harun Ndubi:** If your memory serves you well and if you refresh mine, where exactly do you see the Deputy Governor on the image?

**Mr. George Kioko Luka:** First, I am sorry about my voice. First, when he was leaving the Governor's Office. Again, as he was getting into the vehicle that my department allocated him.

**Mr. Harun Ndubi:** Do you notice that in the whole CCTV pictures, there was no signpost saying that this is the Machakos Governor's Office? There was none; is that correct?

**Mr. George Kioko Luka:** There was none that I am very familiar with---

**Mr. Harun Ndubi:** No! No! No! I am asking if there was anything that could have been anybody's location.

Now, tell me, who inserted those writings and the arrows that you saw?

**Mr. George Kioko Luka:** The CCTV is managed by an office.

**Mr. Harun Ndubi:** Right; the office inserted them?

**Mr. George Kioko Luka:** I do not know.

**Mr. Harun Ndubi:** Did hon. George Kioko Luka insert the writings and the arrows?

**Mr. George Kioko Luka:** No.

**Mr. Harun Ndubi:** Some office did; which office?

**Mr. George Kioko Luka:** The Office of the Deputy Governor is in charge of Information Communication Technology (ICT). There are officers in his office and in the Governor's Office, so any of those officers, could have inserted those arrows.

**Mr. Harun Ndubi:** Thank you; so, you do not know who did it?

**Mr. George Kioko Luka:** The arrows, no.

**Mr. Harun Ndubi:** The writings, no either?

**Mr. George Kioko Luka:** I do not know.

**Mr. Harun Ndubi:** Thank you.

Let us discuss about this question of procurement. To some extent, you have explained about interference from the Deputy Governor in procurement, is that correct?

**Mr. George Kioko Luka:** That is correct.

**Mr. Harun Ndubi:** It is obviously one of the issues you discussed on the 7<sup>th</sup> of July, 2014, when you, in your words, said that you requested him to go outside so as to discuss him.

**Mr. George Kioko Luka:** That is one of the allegations---

**Mr. Harun Ndubi:** No; not the allegation. The evidence you heard and which you have given us; that is, the SMSs and all other forms of interference is what you discussed at that meeting of 7<sup>th</sup> of July.

**Mr. George Kioko Luka:** No! We had an agenda. That was one of the agendas that was inserted after we requested that he leaves the meeting room to discuss his conduct.

**Mr. Harun Ndubi:** That is correct. I am with you on that. You had an agenda. However, after he raised the question of insecurity, then you decided to add an agenda item to discuss him?

**Mr. George Kioko Luka:** Yes, in his presence.

**Mr. Harun Ndubi:** But after that agenda had been agreed on, you asked him to step out?

**Mr. George Kioko Luka:** Yes, the purpose of asking him---

**Mr. Harun Ndubi:** No! No! No! Do not worry about the purpose. We do not have much time, so I want short and smart answers.

**Mr. George Kioko Luka:** And you cannot force me to answer the question the way you want.

**Mr. Harun Ndubi:** You answer my questions.

**Mr. George Kioko Luka:** You ask me questions.

**Mr. Harun Ndubi:** Your questions will be answered later.  
You discussed him, nonetheless.

**Mr. George Kioko Luka:** Yes, we discussed his conduct.

**Mr. Harun Ndubi:** Correct. The issues of his interference which is part of his conduct, you discussed it?

**Mr. George Kioko Luka:** Yes, we did.

**Mr. Harun Ndubi:** I want to show you your Cabinet minutes of 7<sup>th</sup> July, but is it your evidence that this material you have given us today about the various text messages was also provided at that meeting by yourself?

**Mr. George Kioko Luka:** That is not possible. I mean, the issue of discussing his conduct was not part of the agenda circulated earlier. It came because he said that he does not want to sit down in a meeting attended by people who want to kill him. Therefore, when the County Executive Committee (CEC) Member for Water raised the issue of a new agenda to be inserted, we discussed the conduct of the Deputy Governor.

**Mr. Harun Ndubi:** Now, in terms of processing, we are together. What I want you to answer right “yes” or “no” is this; did you give your CEC or the Cabinet details related to these SMSs you allege to have received from the Governor?

**Mr. George Kioko Luka:** We discussed his conduct in the Cabinet meeting, including---

**Mr. Harun Ndubi:** Mr. Chairman, Sir, I would like you to ask the witness to answer the question and I am very clear.

**The Chairperson** (Sen. Mutahi Kagwe): I think the question is clear. Please, answer the question.

**Mr. Harun Ndubi:** Thank you, Mr. Chairman, Sir.

**Mr. George Kioko Luka:** We discussed---

**Mr. Harun Ndubi:** No! No! No! Let me ask you the same question again. These SMSs that you have testified to before this Committee today, did you provide them to the Cabinet in the meeting of 7<sup>th</sup> of July, when you were discussing his conduct?

**Mr. Kioko Luka:** As a contributor in the Cabinet, I said that one of my comrades is interfering with the procurement---

**Mr. Harun Ndubi:** Now, can you answer the question---

**The Chairperson** (Sen. Mutahi Kagwe): Can I make it clear just so that we move together? There are two issues here; there is the issue of SMSs that you might have had and which you might have discussed. There is also the issue of printing out these SMSs and printing them out to the Cabinet at the time that you discussed. I think the matter is very clear. I mean, part "a" is, did you distribute the papers that you have distributed today?

**Mr. George Kioko Luka:** No.

**Mr. Harun Ndubi:** You did not?

**Mr. George Kioko Luka:** I did not. It was not---

**Mr. Harun Ndubi:** But they were available to you on that date?

**Mr. George Kioko Luka:** Yes, they are still in my phone.

**Mr. Harun Ndubi:** No, no, no; they were available to you on that date, the 7<sup>th</sup> of July? Were they not?

**Mr. George Kioko Luka:** In listing---

**Mr. Harun Ndubi:** No, these SMSs were inside your phone data.

**Mr. George Kioko Luka:** Yes, they were there. They were in my phone. They have been there since the date he sent them to me.

**Mr. Harun Ndubi:** Yes, and you realize that from the minutes which I will show you---

Mr. Chairperson, Sir, I want to show him the minutes of the 20<sup>th</sup> meeting at page 249 of the Senate records. Can you show us from those minutes where the question of his misconduct is discussed and the deliberations by the Cabinet?

**Mr. George Kioko Luka:** Which page?

**Mr. Harun Ndubi:** I do not know; that is why I am asking you.  
In summary, they are not there.

**Mr. George Kioko Luka:** These minutes are not complete.

**Mr. Harun Ndubi:** The minutes are not complete; that is what the Senate was given.

**Mr. George Kioko Luka:** Mr. Chairperson, Sir, could the Counsel, please, help the witness? What page of the document is he referring to? We are also quite disadvantaged because we do not know the page he is referring to.

**Mr. Harun Ndubi:** There is the record that was received by the Senate, can you see those minutes?

**Mr. George Kioko Luka:** I can see the minutes of---

**Mr. Harun Ndubi:** Do you see anywhere where the deliberations on the Deputy Governor is provided for?

**Mr. George Kioko Luka:** These minutes are incomplete.

**Mr. Harun Ndubi:** No; so, you do not see it. Complete or not complete is the conclusion the Committee will make.

**Mr. George Kioko Luka:** But I have seen the minutes.

**Mr. Harun Ndubi:** So, you confirm that from the minutes presented to the Senate, there is nothing to show that the document that was discussed---

**Mr. George Kioko Luka:** From the incomplete minutes, it is not indicated whether it was discussed.

*(Laughter)*

**Mr. Harun Ndubi:** Thank you.

Before I go to the point of appointment, you realize that from the SMSs that you have given us, it is, probably, the most indicting evidence against the Deputy Governor rather than the things you swore to on oath on 9<sup>th</sup> of July, 2014.

**Mr. George Kioko Luka:** I do not know that.

**Mr. Harun Ndubi:** The evidence that you have provided through this SMS printout is far more “conclusive” than the general statements that you have made in your affidavit of that date.

**Mr. George Kioko Luka:** I do not know; I am not the judge.

**Mr. Harun Ndubi:** All right; do you think that they are of equal weight or value?

**Mr. George Kioko Luka:** All the evidence I am giving, in my view, is of value to the subject matter we are discussing.

**Mr. Harun Ndubi:** Okay. Very briefly, I want us to deal with the question of public service, especially the appointment of the County Executive Committee (CEC) Members, part of which you are.

**Mr. George Kioko Luka:** Yes.

**Mr. Harun Ndubi:** How were you appointed?

**Mr. George Kioko Luka:** By gazette; we were gazzetted.

**Mr. Harun Ndubi:** Was there an advertisement for the vacancies available to the Cabinet?

**Mr. Kioko Luka:** To the best of my knowledge, it is not necessary.

**Mr. Harun Ndubi:** No! No! No! You are saying no. That is an opinion. I want the fact; was there an advertisement regarding the vacancies available to the Cabinet?

**Mr. Kioko Kilukumi:** Mr. Chairperson, Sir, and Members of the Senate, we object to that question. The question of how a CEC Member is appointed is written both in the Constitution and in the County Governments Act. Those are not jobs that are advertised. The Governor nominates and there is an approval procedure.

**Mr. Harun Ndubi:** That is for re-examination, so that we do not spend so much time. Let me rephrase the question since my colleague is unhappy. Was your name ever presented to the County Assembly for vetting prior to the appointment?

**Mr. George Kioko Luka:** Yes, it was in April.

**Mr. Harun Ndubi:** Can you give us minutes of the County Assembly where you were vetted?

**Mr. George Kioko Luka:** I do not keep minutes of the county assembly.

**Mr. Harun Ndubi:** You are a member of the CEC, do you undertake that you will provide those minutes when you go to Machakos.

**Mr. George Kioko Luka:** Maybe if I ask the county assembly to give me those minutes because I know---

**The Chairperson** (Sen. Mutahi Kagwe): Let me help you there. I think if counsel so wishes, the Committee can demand to get those minutes from the County Assembly.

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, one of the things that we need to have is the advertisement, whether or not my colleagues agree that, that should have happened, his application for nomination and the letter of invitation to the vetting panel of the County Assembly.

In which location were you vetted by the County Assembly Vetting Panel?

**Mr. Benjamin Musau:** Mr. Chairperson, Sir, with all due respect the counsel for the Deputy Governor, is completely out of order because it is not tenable for him to subject the conduct of the witness to investigation by the Special Committee of the Senate. The subject matter of this Committee is the Deputy Governor of Machakos. Unless he specifies which allegation he is proposing to disapprove, I think what he is referring to is unnecessary.

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, we have made allegations that there was malice and that they were considering extraneous factors which include their proximity to one person and their loyalty to that one person more than their loyalty to even the law. That is what we are demanding that in terms of evidence we should know whether he was appointed without following the due process of the law and then we shall understand why he must come and give the testimony he is giving. But that is a matter for submission. I think Mr. Musau is disrupting a process that is in my view safe to go.

**Mr. Benjamin Musau:** Mr. Chairperson, Sir, we will go back to the rules of procedure of this Committee because it is wasting a lot of time. We need to get the relevant evidence.

**The Chairperson** (Sen. Mutahi Kagwe): First and foremost, time is way past and so I think you better finalize. Secondly, I think it is important for us to remember that in trying to establish the credibility of the witness, let us also not forget that the witness is not on trial. These are the two things that you must balance.

**Mr. Harun Ndubi:** That is true, but they have put someone else on trial on interests that are not factored in finding the truth which is the duty of this Committee.

**The Chairperson** (Sen. Mutahi Kagwe): Sorry gentlemen. We can go on like this until we deteriorate into an area that we do not want to. I think the point is this: Mr. Ndubi are you done?

**Mr. Harun Ndubi:** Not yet, Mr. Chairperson, Sir. But I would like to leave out that point. Obviously, the record will reflect that we have left it out.

**The Chairperson** (Sen. Mutahi Kagwe): Before we do that, can we agree that you said that you needed it from the witness and why you needed it and we proceed.

**Mr. Harun Ndubi:** Our instructions from the Deputy Governor are that all the executives--- Remember that there is even a letter. Before the *ad hoc* Committee they were invited in writing. It was not a notice to people to come and complain. They were invited by the county assembly in writing. This raises questions as to how the county assembly knew that these are the people with evidence and information about the Deputy Governor in exclusion of any other person. So, that is an important point to know that there are antecedents; the transactions before---

**The Chairperson** (Sen. Mutahi Kagwe): Counsel, what do you want from the witness?

**Mr. Harun Ndubi:** What I want from the witness is evidence whether or not he was hired in accordance with the law.

**Mr. Lucas Kioko:** Mr. Chairperson, Sir, can I say something about that? Before my name was taken to the county assembly for vetting, I received a call from the Governor. He told me that he will take my name to the county assembly for vetting. He asked me for my CV. I know this was discussed in the county assembly.

**Mr. Harun Ndubi:** How do you know that?

**Mr. Lucas Kioko:** I know there are minutes which discussed the appointment of all the ten county executive committee members.

**Mr. Harun Ndubi:** One last question about this matter; is it not true that all of you members of the executive committee were part and parcel of Alfred Mutua's campaign team?

**The Chairperson** (Sen. Mutahi Kagwe): I want to protect the witness there and say that that he cannot answer.

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, I appreciate and I am grateful for the indulgence. I am coming to the last point. There two things about this leaflet. You call it *Nguu*. Is *Nguu* a Kamba word?

**Mr. George Kioko Luka:** Yes, it refers to the tortoise.

**Mr. Harun Ndubi:** Do you know a Kamba saying about the tortoise and water or pond? If you know you can say it in Kikamba and those of us who do not understand will be educated.

**Mr. George Kioko Luka:** I am not very familiar with Kamba idioms, but I speak Kikamba very fluently.

**Mr. Harun Ndubi:** Do you know any idiom that involves the word “*nguu*” in it?

**Mr. George Kioko Luka::** From the radio?

**Mr. Harun Ndubi:** No, from your own knowledge?

**Mr. George Kioko Luka:** The Deputy Governor explained what he meant by *nguu* and that is the only time I learnt of it.

**Mr. Harun Ndubi:** You learnt of this word from the radio?

**Mr. George Kioko Luka:** That is not correct. I have told you that *nguu* is a Kamba word for tortoise.

**Mr. Harun Ndubi:** Do you know whether this leaflet was ever tendered before the county assembly and the Senate?

**Mr. George Kioko Luka:** I do not know.

**Mr. Harun Ndubi:** If I told you that it was not, would you be surprised?

**Mr. George Kioko Luka:** I do not think I have an opinion on that.

**Mr. Kioko Kilukumi:** Mr. Chairperson, Sir, that piece of information is incorrect. The documents that are before this Senate show another poster being submitted and forwarded to this Senate with the same words about *nguu*.

**Mr. Harun Ndubi:** I would like us to read the other poster and that is the one which actually agrees with the ruling that we made earlier. The wordings in this flier are different from the words in the other one that he is talking about. Maybe we leave it for submission because of time. But the words here actually introduce a different complaint.

**The Chairperson (Sen. Mutahi Kagwe):** At this juncture, I would really urge that there is a lot of time for submissions.

**Mr. Harun Ndubi:** I will stop there though with anxiety because there are a lot of things I wanted to ask him.

**Mr. Kioko Kilukumi:** Hon. Senators, I have no questions in re-examination.

**The Chairperson** (Sen. Mutahi Kagwe): Very well. Mr. Kioko, you can step down.

**Mr. George Kioko Luka:** Thank you, Mr. Chairperson, Sir.

*(The Witness stepped down)*

**Mr. Benjamin Musau:** Mr. Chairperson, Sir, and Members of the Senate Special Committee, the next witness is Sheila Mueni Mukunya who is the chief officer in charge of trade, economic planning and industrialization. Her evidence is tagged in Tag No.3.

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, sorry for interrupting my colleague. This witness has just walked in as soon as the other one has finished. I hope the other witnesses are not listening to questions and then coming back through another door to testify.

**Mr. Benjamin Musau:** I can confirm for the purposes of the record and good order that our witnesses are not in a hearing distance of what is happening in this room apart from those who have testified. We had given them instructions that they cannot be here when evidence of the other witnesses is being taken.

**The Chairperson** (Sen. Mutahi Kagwe): Are you satisfied counsel?

**Mr. Harun Ndubi:** The other point is to know who the next ones are so that as we listen we take time to look at the affidavits.

**The Chairperson** (Sen. Mutahi Kagwe): That is in order.

**Mr. Benjamin Musau:** The next one will be Dr. Dhal. After him, we will consult and confirm to you. Because of the constraints of time, we are just looking at what we can present.

**Sen. Hassan Omar Hassan:** Mr. Chairperson, Sir, some of us who have been to law school know that it is only fair that they are given the list of those witnesses in the order in which they will come in so that they are prepared. This is a matter of due process and fairness. I think it will be wrong that after every intervention, they ask you for that list of witnesses.

**Mr. Anthony Oluoch:** Mr. Chairperson, Sir, I support that because as the team supporting the Lead Counsel, we are really struggling to know what we have to put ahead of what. They have given us a list of four witnesses, we have crafted questions along this. However, they came and turned that upside down, before the break we told them to give

us a list of names of other witnesses. I think it is making us look bad at this point. They should give us a list of names of three or four witnesses ahead of time.

**The Chairperson** (Sen. Mutahi Kagwe): I think that is fair. Please, try and do so.

**Mr. Benjamin Musau:** Thank you very much. I think it is our duty and responsibility to give information. I would like to point out for the record, especially because of our learned friend, Sen. Hassan, that the defence will not be prejudiced at all because we have given them a complete bundle of all the evidence and all the witnesses.

**The Chairperson** (Sen. Mutahi Kagwe): Sorry counsel. I think the request is to give them the order or sequence in which they are coming, so that they can also prepare themselves and I would like you to oblige.

**Mr. Benjamin Musau:** That is okay. The next one after Sheila will be Dr. Dhal. We will confirm to you the next one after that.

**The Chairperson** (Sen. Mutahi Kagwe): Could the witness be sworn in?

*(Ms. Sheila Mueni Mukunya took the oath)*

**Mr. Benjamin Musau:** Will you, please, confirm to the Special Committee that your name is Sheila Mueni Mukunya?

**Ms. Sheila Mueni Mukunya:** Yes, I confirm.

**Mr. Benjamin Musau:** Are you the Chief Officer as well as the Accounting Officer in charge of the Ministry of Trade, Economic Planning and Industrialization at the County Government of Machakos?

**Ms. Sheila Mueni Mukunya:** Yes, I confirm.

**Mr. Benjamin Musau:** Will you also, please, confirm that the affidavit which is before you and which is tagged as No.3 in our bundle which you do not have, but the Senators have, is the evidence that you swore on 9<sup>th</sup> July, 2014?

**Ms. Sheila Mueni Mukunya:** Yes, I confirm.

**Mr. Benjamin Musau:** Would you like to tender this as evidence?

**Ms. Sheila Mueni Mukunya:** Yes, I would like to.

**Mr. Benjamin Musau:** Would you, therefore, read it out as quickly as you can?

**Ms. Sheila Mueni Mukunya:** It says:-

“I, Sheila Mueni Mukunya, holder of passport No.A1180455 of P.O. Box 1996-90100 Machakos makes oath and states:-

1. That I am the Chief Officer and the Accounting officer in charge of the Ministry of Trade, Economic Planning and industrialization.
2. That I work under and report to the County Executive Committee Member, Trade, Economic Planning and Industrialization.
3. That in the chain of command I do not report directly to the Deputy Governor.
4. That sometime in March 2014 my department advertised tenders for the construction of market sheds.
5. That thereafter, I received two text messages from the Deputy Governor, describing names of certain companies that he wished to help get tenders awarded to.
6. That, again, I received a follow up call from the Deputy Governor, where he demanded and insisted that I ensure that those companies be awarded tenders.
7. That I explained to him that I am never involved in the tender awards and there were committees that would deal with the same.
8. That he insisted that I was employed as the Chief Officer to take care of such interests and for that matter, I must ensure that I hid to his instructions as the Deputy Governor.
9. That surprised by the text messages and the phone call, I called my immediate boss, the County Executive Committee in charge of my department, hon. (Dr.) Sunil Kumar Dhall and explained to him.
10. That I do undertake to avail my phone for purposes of retrieval of the messages aforesaid whenever called to do so.
11. That what is stated herein is true to the best of my knowledge.

Sworn at Machakos by the said, Sheila Mueni Mukunya on this 9<sup>th</sup> day of July, 2014.”

**Mr. Benjamin Musau:** Thank you very much. In reference to paragraphs 5 and 10, do you have copies of those messages which were printed out and you want to pass over?

**Ms. Sheila Mueni Mukunya:** Yes, I do.

**Mr. Benjamin Musau:** Did you also take the County Assembly through those text messages?

**Ms. Sheila Mueni Mukunya:** Yes, I did.

**Mr. Benjamin Musau:** At this point, I would like to refer the witness to the County Assembly proceedings on page 247 of the bundle, which is with the Senate Committee.

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, just a little procedural issue. I am being advised that in the room where the witnesses are kept there is a television and they are watching these proceedings live.

**The Chairperson** (Sen. Mutahi Kagwe): Serjeant-at-Arms, does the room where the witnesses are kept have a television, that they can watch these proceedings? Could you check with immediate effect? If that is the case, could you relocate them to another room immediately? Meanwhile, we will proceed.

**Mr. Benjamin Musau:** Did you appear before the County Assembly and is that page which I have shown you – page 247 – the same reproduction of this text messages that you refer to in those paragraphs that I have pointed out to you?

**Ms. Sheila Mueni Mukunya:** Yes.

**Mr. Benjamin Musau:** Would you like to read out and explain the context of these SMSs to the hon. Members of this Committee?

**Ms. Sheila Mueni Mukunya:** Yes. I received the first text message on Thursday, 27<sup>th</sup> March. I would like to read it out. It was received from the Deputy Governor (D.G.), Benard Kiala, from cell phone number +254721211457. The message read as follows:-

“Patron Agencies, Katangi, Mwala, Gitone, Tumba Markets; at least, give them two markets.”

That was sent at 12.04 p.m.

The second text message was sent on 28<sup>th</sup> March, 2014 and it read as follows:-

“Morning Sir! Jana I bought Mutituni, Machakos/161/2013-2014 and Tumba NKS/191/2014-2014, all in Machakos Central and under the youth category. Jenyco International Limited. Thanks in advance (Sheila, kindly consider this one too.)”

**Mr. Benjamin Musau:** You say that the messages came from the Deputy Governor through his cell phone number 0721211457. Is that correct?

**Ms. Sheila Mueni Mukunya:** Yes.

**Mr. Benjamin Musau:** Does this number belong to Mr. Kiala? Is it the number that he regularly uses to communicate with you?

**Ms. Sheila Mueni Mukunya:** Yes, that is the number that he regularly uses to communicate to me.

**Mr. Benjamin Musau:** What is your cell phone number, for purpose of the record and future investigation, if it becomes necessary?

**Ms. Sheila Mueni Mukunya:** 0722365857.

**Mr. Benjamin Musau:** That is all, Mr. Chairperson, Sir. Thank you very much.

**The Chairperson** (Sen. Mutahi Kagwe): Very well.  
Cross-examination.

**Ms. Celestine Anyango Opiyo:** Madam Sheila Mueni Mukunya, you have indicated that you are the Chief Officer and the Accounting Officer in charge of the Ministry of Trade.

**Ms. Sheila Mueni Mukunya:** Yes.

**Ms. Celestine Anyango Opiyo:** How many years of experience do you have as an accountant?

**Ms. Sheila Mueni Mukunya:** Once you are a Chief Officer, then you become an accounting officer and not with respect to accounting in terms of accounts.

**Ms. Celestine Anyango Opiyo:** So, it is not by virtue of you being an accountant?

**Ms. Sheila Mueni Mukunya:** No.

**Ms. Celestine Anyango Opiyo:** Very well. I would like to refer you to paragraph 5 of your affidavit to which you have indicated that you received two text messages from the Deputy Governor.

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, since we went out on an expedition, it is good that he has come back to hear what I am saying. We have gone to two rooms, I think one for Commissioners and another one downstairs and there are no television sets there. However, Mr. Dhall and other witnesses are outside here. As you speak, one can listen to the evidence while outside of this door, because there are speakers upstairs. I listened and could hear what she was saying.

**Mr. Benjamin Musau:** Mr. Chairperson, Sir, it is not open to counsel to give evidence. We have been asked by this Committee to ensure that we expedite the retrieval of witnesses and their line-up because of time. I, personally, asked that Dr. Dhal be brought in because he will be the next witness after Sheila.

**The Chairperson** (Sen. Mutahi Kagwe): Can I just make a ruling on this? Whether they are coming in next or how long they are going to take, they must be located in a place where they cannot follow the proceedings. The Serjeant-at-Arms is so directed.

**Ms. Celestine Anyango Opiyo:** I would like to refer you to paragraph 5 of your affidavit to which you have made reference that the Deputy Governor sent you two SMSs. There have been some SMSs that you have read, to which you are confirming that you received. The first SMS is on page 247, to which you are indicating that the Patron Agency, Katangi--- Can you confirm that you did receive it from the Deputy Governor?

**Ms. Sheila Mueni Mukunya:** Yes, I can confirm that.

**Ms. Celestine Anyango Opiyo:** How so?

**Ms. Sheila Mukunya:** From the number that he used to sent it to me, because it is the number that he would often call me on and I have read it out. From the text it is +254721211457.

**Ms. Celestine Opiyo:** What about the second SMS?

**Ms. Sheila Mukunya:** The second SMS was from the same number; +254721211457.

**Ms. Celestine Anyango Opiyo:** Is it possible for someone to amend his own messages?

**Ms. Sheila Mueni Mukunya:** Not when they have been sent to me. I have just read them as they are. If you need to see from my phone, you can do that.

**Ms. Celestine Anyango Opiyo:** When you look at the second SMS does it even show who sent the message?

**Ms. Sheila Mueni Mukunya:** Ideally, if I was to give you the entire phone, you will see from the number up there and the flow of conversation.

**Ms. Celestine Anyango Opiyo:** Where are the telephone records then? Are they printed out?

**Ms. Sheila Mueni Mukunya:** Yes.

**Ms. Celestine Anyango Opiyo:** You have indicated here, in paragraph 10, that you would undertake to avail your phone.

**Ms. Sheila Mueni Mukunya:** Yes.

**Ms. Celestine Anyango Opiyo:** Did you avail your phone before the county assembly?

**Ms. Sheila Mueni Mukunya:** Yes. I went with my phone, opened it before the committee and they asked me to read out the text messages, which I did and gave them the phone.

**Ms. Celestine Anyango Opiyo:** Why did you not do the due diligence to print out the records of even the phone calls?

**Mr. Benjamin Musau:** Mr. Chairperson, Sir, the defence lawyer (*off record*)---

**The Chairperson** (Sen. Mutahi Kagwe): I agree with you. Please, rephrase or move on.

**Mr. Harun Ndubi:** I will ask one or two questions and then we finish with her. Sheila, you may have been asked this, forgive me if it is a repetition. The text messages that you have presented to the county assembly, you notice that there is an element of information that is put into brackets.

**Ms. Sheila Mueni Mukunya:** Yes.

**Mr. Harun Ndubi:** Both of them.

**Ms. Sheila Mueni Mukunya:** I would like to see because I do not have it.

**Mr. Harun Ndubi:** It is 247. At the bottom of the first message, after “markets” there is “(sent on 27<sup>th</sup> March, 2014 from number---)” The same happens for the next message at the bottom, where we have two brackets. There is one which says: - “Sheila, kindly consider this one too.” Then there is a bracket saying: - (Sent on 28<sup>th</sup> March, 2014, from this number.)”

**Ms. Sheila Mueni Mukunya:** Since I was requested to forward the text messages, which I did, to explain that they were sent from this day and number. I printed out exactly from my phone and forwarded.

**Mr. Harun Ndubi:** Thank you. Do you confirm that these messages are forwarded by you and the information in brackets is inserted by you?

**Ms. Sheila Mueni Mukunya:** Yes. The information in brackets “sent on 27<sup>th</sup> March, 2014 from +254721211457 and sent on 28<sup>th</sup> March, 2014 from +254721211457” is by me.

**Mr. Harun Ndubi:** To whom were you sending the messages?

**Ms. Sheila Mueni Mukunya:** To my Minister, Dr. Dhall.

**Mr. Harun Ndubi:** I would like you to confirm that if you were writing the message, yourself, to another person or still to the Minister, it is possible to have said these things and edited it the way it appears and, therefore, there was no evidence from the record to suggest that this message was sent from the number you allege.

**Ms. Sheila Mueni Mukunya:** Counsel, if you may refer to paragraph 9 of my affidavit, I said that I was surprised at the text message and did a phone call to my minister. When I called my minister I explained and forwarded to him the text messages that I had received.

**Mr. Harun Ndubi:** We are not fighting about that. I clearly understand where you are coming from. The point is that if I wanted to write this and print it out, you would see “Harun Ndubi” and this information would be coming from my phone. Even if it does not come from my phone, it will have come from someone else. Is that likely?

**Ms. Sheila Mueni Mukunya:** I beg to differ on that.

**Mr. Harun Ndubi:** Okay. Put differently and this is what my colleague was asking you, do you have any other independent way of verifying what you are stating about this?

**Ms. Sheila Mueni Mukunya:** Yes. I have an independent way, which I have printed and submitted to this Committee.

**Mr. Harun Ndubi:** Which one?

**Ms. Sheila Mueni Mukunya:** The copies of the---

**Mr. Harun Ndubi:** Mr. Chairperson, Sir, we have not seen what she is holding.

**Ms. Sheila Mueni Mukunya:** I can avail a printed copy.

**The Chairperson (Sen. Mutahi Kagwe):** Are you holding the same documents we have in the file?

**Mr. Harun Ndubi:** We do not know what she has. We did not make any application about that because that was supplied long ago. It is actually in the original record from Machakos and that is what I am asking her about and not anything new.

**Mr. Benjamin Musau:** For the purposes of the Committee, we interpreted that order to refer to other subsequent witnesses because we did not want to catch the Committee by surprise.

**The Chairperson (Sen. Mutahi Kagwe):** Let me help you. I do not think we will lose anything by getting a copy of the original telephone message that was done and distributing it to counsel on both sides. So, if you have that particular message, please, give it to counsel.

**Mr. Harun Ndubi:** Yes. To save time, we can look at what she has.

**The Chairperson (Sen. Mutahi Kagwe):** Actually, you are running out of time and I will save the two minutes.

**Mr. Harun Ndubi:** For purposes of evidence given at Machakos County Assembly, you gave them what was printed from your boss' telephone?

**Ms. Sheila Mueni Mukunya:** Yes.

**Mr. Harun Ndubi:** What you are providing to the Committee now is from your own phone?

**Ms. Sheila Mueni Mukunya:** Yes.

**Mr. Harun Ndubi:** Would you explain when you filed this affidavit on 9<sup>th</sup> July, 2014, why you did not give them this but rather the boss'?

**Ms. Sheila Mueni Mukunya:** The reason why I did not give that is because I had carried my phone. When I appeared before the Committee, I opened my phone and gave them to confirm.

**Mr. Harun Ndubi:** So, they did not have to get the documentary evidence? This is just from your phone but not from Safaricom or any of the mobile providers?

**The Chairperson** (Sen. Mutahi Kagwe): Counsel, are you done?

**Sen. Hassan Omar Hassan:** Mr. Chairman, Sir, I just wanted to know when you forwarded these messages to your boss's number because it is not very clear here from this print out. The number of your boss is also not very clear. These are photocopies and we cannot see most of the details. We could get the date forwarded and the number.

**Ms. Sheila Mueni Mukunya:** They were forwarded on 9<sup>th</sup> July, 2014 and the number is 0722514596.

**Mr. Harun Ndubi:** Mr. Chairman, Sir, just to note the dates are of March, the messages are of March but conveniently on the date of swearing these affidavits, that is when she is forwarding this matter. I beg the Committee to take note.

**The Chairperson** (Sen. Mutahi Kagwe): Very well, I am sure that is something you can refer to at some point in any event. I want to ask for a rebuttal.

**Mr. Benjamin Musau:** Mr. Chairman, Sir and Members of the distinguished Committee of the Senate, we have no further questions to this particular witness.

**The Chairperson** (Sen. Mutahi Kagwe): Very well, there being no other re-examination then you can step down.

**Ms. Sheila Mueni Mukunya:** Thank you very much.

**Mr. Benjamin Musau:** The next witness is Dr. Sunil. Thereafter, we will have the evidence of Mr. Jackson Kala and finally, we will present the evidence of the county secretary, Mr. Francis Mwaka.

*(Dr. Sunil) took the oath*

**Mr. Benjamin Musau:** Witness, could you, please, confirm your name and position of responsibility to the Senate Special Committee?

**Dr. Sunil Kumar Dhall:** My name is Dr. Sunil, the County Executive Committee member for Trade, Industrialization and Economic Planning.

**Mr. Benjamin Musau:** Do you have a copy of the affidavit you did?

**Dr. Sunil Kumar Dhall:** Yes, I do.

**Mr. Benjamin Musau:** Would you, please, confirm that the affidavit, for purposes of the Senate Committee, it is Tag No.2?

**Dr. Sunil Kumar Dhall:** Yes.

**Mr. Benjamin Musau:** Would you like to confirm to this Special Committee that you swore this evidence as it appears on page 3 on 9<sup>th</sup> July, 2014? Would you like to tender this affidavit as evidence in the matter before the Committee?

**Dr. Sunil Kumar Dhall:** Yes, I do.

**Mr. Benjamin Musau:** Would you therefore read out the entire affidavit to the Committee, as fast as you can?

**Dr. Sunil Kumar Dhall:** It reads:-

“Hon. Dr. Sunil, holder of identity card number 6421275 of P.O. Box 1196-90100 Machakos.

1. I am the County Executive Committee Member for Trade, Economic Planning and Industrialization, a position I have held since 6<sup>th</sup> April, 2013. I attended the 20<sup>th</sup> Cabinet meeting for Machakos County held on 7<sup>th</sup> July, 2014 at the Governor’s office in Machakos at 10.00 a.m.

2. At the preliminary stages of the meeting, the Deputy Governor, Mr. Bernard Kiala said that he wanted to raise a personal matter regarding his security. He stated that sometime back, security at this rural residence had been withdrawn and thereafter somebody called and issued death threats against him.

3. He said that after his investigations, he found that the death threats had emanated before the meeting convened and planned by Mr. Mwenje Mutusi, chief of staff at the Governor’s office.

4. At this point, the Governor said that those were serious allegations and he inquired from the Deputy Governor if he had reported the matter to the police and what action the police had taken. 5. The Deputy Governor claimed that he had reported the matter to the police at Embu where he recorded a statement. The police then told him that they were investigating.

6. Immediately thereafter the Cabinet discussed briefly and resolved that all members of the cabinet should confirm whether or not they were facing any criminal charges or whether any member had complained for investigations pending before the police. All members replied negatively except the chief of staff who said that he had a political case filed by Hon. Harun Mwau, arising from the Wiper campaigns in Kibwezi which was ongoing.

7. The Governor concluded the issue by ruling that it was only fair that the police be given an opportunity to conclude investigations and take action in accordance with their decision.

8. The Deputy Governor then said that he was feeling uncomfortable to sit in the same forum with people who are threatening his life.

9. At that point hon. (Eng.) Francis Maliti, CEC Member responsible for the department of Water, Irrigation and Sanitation rose on a point of order and requested an amendment to the agenda by adding an item; discussion of the Deputy Governor's conduct. He justified by saying that the Deputy Governor had been widely covered in the media on several occasions in various fora criticizing the county government while he is also serving the same government.

10. Hon. Kiilu, CEC Member responsible for department of Decentralization of Social Units, Urban and Municipalities seconded the proposal for the amendment of the agenda to include as an item of the agenda for the meeting, discussion of the Deputy Governor's conduct.

11. The Cabinet meeting then resolved collectively to amend the agenda. The county secretary therefore amended it accordingly by including a new agenda item as agenda item no.2 – Discuss Conduct of the Deputy Governor.

12. The Cabinet, therefore, requested the Deputy Governor to step aside so that his conduct could be discussed, allegations drawn up and thereafter he would be called back to respond to allegations of misconduct, which had caused the agenda to be amended.

13. The County Secretary accompanied the Deputy Governor outside the Cabinet meeting and then informed the cabinet that he had already organized a room for the Deputy Governor to sit as he waits to be called back.

14. I expected that the Deputy Governor would come back to the meeting after the procedure of drawing up allegations against him was through.

15. I confirm that the matters indicated in the minutes of the 20<sup>th</sup> Cabinet meeting including the serious allegations of misconduct and abuse of office for the Deputy Governor as indicated by the various CEC members, are a true record of the deliberations of the meeting and that I participated in the meeting from the beginning to the end.

16. I also add that during the Cabinet discussions and drawing up of allegations, the Cabinet got media update that the Deputy Governor had already updated his facebook page with a false account that he had been ejected from the Cabinet meeting for raising issues about corruption and nepotism. That information subsequently appeared in the print media.

17. That the Deputy Governor, hon. Bernard Kiala, had exhibited the habit of misuse of his position and intimidation.

18. That during the tendering process for my department where he has demanded that tenders be awarded to his friends.

19. That sometimes in March, 2014, my department advertised for market tenders.

20. That immediately thereafter, the Deputy Governor asked me to award tenders in favour of the companies he was interested in.

21. That besides being surprised, I indicated to him that I would not interfere with the tendering process as the Chief Officer from my department and other employees would be involved in the tendering process where I would not interfere.

22. Later, I was informed by my Chief Officer, Ms. Sheila Mueni Mukunya, that he had prevailed upon her to award tenders to two of his preferred bidders.

23. That he had sent to the aforesaid Chief Officer text messages giving the names of the companies he wished to assist and made to her a follow up intimidating calls where he demanded that these companies be awarded tenders as that is why she had been appointed Chief Officer.

24. That my Chief Officer, of course, had got disturbed and forwarded the text messages sent by the Deputy Governor.

25. That I wish to state that the Deputy Governor's conduct amounts to lack of integrity, abuse of office and owing the various public statements that he has made, inciting the public against the Governor and policies formulated by the County Executive Committee (CEC), he has betrayed his obligation to adhere to the principles of collective responsibility.

26. That he, therefore, ought not to hold the position of a Member of the CEC and, consequently, the position of the Deputy Governor.

27. That I wish to express my discomfort serving in the same Cabinet Committee with the Deputy Governor.

28. That what is stated herein is true to the best of my knowledge."

**Mr. Benjamin Musau:** Dr. Dhall, in paragraph 24, you state that:-

"That my Chief Officer, of course, had got disturbed and forwarded the text messages sent by the Deputy Governor. "

**Dr. Sunil Kumar Dhall:** Yes.

**Mr. Benjamin Musau:** Do you have evidence to confirm that?

**Dr. Sunil Kumar Dhall:** Yes; I have the messages that were forwarded from her mobile phone to my mobile phone.

**Mr. Benjamin Musau:** Would you like to confirm to this Committee that your cell phone number to which the Chief Officer forwarded the SMSes---

**Dr. Sunil Kumar Dhall:** 0722514596

**Mr. Benjamin Musau:** Okay. Do you have on record there in your cell phone the Chief Officer's number from which you got the message?

**Dr. Sunil Kumar Dhall:** Yes, I do.

**Mr. Benjamin Musau:** Do you know that this Special Committee of the Senate has been deliberately constituted for the purposes of investigating the conduct or misconduct of the Deputy Governor?

**Dr. Sunil Kumar Dhall:** Yes, I know very well.

**Mr. Benjamin Musau:** Mr. Dhall, do you have anything else that could be useful to the Committee in the discharge of that investigation of the conduct?

**Dr. Sunil Kumar Dhall:** Yes, sometimes back, the Deputy Governor approached me and asked me for a loan of Kshs500,000. He came down to my offices wherein I told him that I do not have that kind of money. But he said that he desperately needed the money because he had to sort out the salaries of his people in his own personal business. However then, after pushing me against the wall, I parted with Kshs200,000 to him.

**Mr. Benjamin Musau:** So, he pushed you against the wall?

**Dr. Sunil Kumar Dhall:** Yes.

**Mr. Benjamin Musau:** And instead of parting with the Kshs500,000, which was the initial request, you were intimidated enough to part with Kshs200,000. Is that what you are telling this Committee?

**Dr. Sunil Kumar Dhall:** Yes; I had to.

**Mr. Benjamin Musau:** And---

**Dr. Sunil Kumar Dhall:** I said "maybe Kshs100,000, because I do not have that sort of money.

**Mr. Benjamin Musau:** Did the Deputy Governor repay you?

**Dr. Sunil Kumar Dhall:** Yes, he did repay me.

**Mr. Benjamin Musau:** How did he repay you?

**Dr. Sunil Kumar Dhall:** He paid me back in cash.

**Mr. Benjamin Musau:** How?

**Dr. Sunil Kumar Dhall:** After I called him, because he left me a post dated cheque and when the due date was on, I called him and he asked me to give him another week. Following that, within two or three days, when I was going for a Cabinet Meeting in Machakos, he asked me to stop by and I collected the money from his wife.

**Mr. Benjamin Musau:** Where?

**Dr. Sunil Kumar Dhall:** Somewhere before Mlolongo near City Cabanas, just off the main road.

**Mr. Benjamin Musau:** Okay; thank you. Do you have anything else that you wish to add?

**Dr. Sunil Kumar Dhall:** No.

**Mr. Benjamin Musau:** Okay, thank you. That is all, Mr. Chairman, Sir, for this witness.

**The Chairperson (Sen. Mutahi Kagwe):** Counsel, he is your witness.

**Mr. Anthony Oluoch:** Thank you very much, Mr. Chairman, Sir. Could you again confirm what your names are?

**Dr. Sunil Kumar Dhall:** Dr. Sunil Dhall.

**Mr. Anthony Oluoch:** Dr. Sunil?

**Dr. Sunil Kumar Dhall:** Dhall.

**Mr. Anthony Oluoch:** Dr. Sunil Dhall?

**Dr. Sunil Kumar Dhall:** That is right.

**Mr. Anthony Oluoch:** What is your designation at the County Assembly?

**Dr. Sunil Kumar Dhall:** At the County Assembly?

**Mr. Anthony Oluoch:** No; at the County Executive, you work as a Member of the County Executive?

**Dr. Sunil Kumar Dhall:** Yes, as the CEC Member for Trade, Industrialization and Economic Planning.

**Mr. Anthony Oluoch:** When were you appointed to this position?

**Dr. Sunil Kumar Dhall:** On 6<sup>th</sup> of April, 2013.

**Mr. Anthony Oluoch:** 6<sup>th</sup> April, 2013?

**Dr. Sunil Kumar Dhall:** That is right.

**Mr. Anthony Oluoch:** Do you confirm to this Committee that your appointment followed the laid down legal procedure?

**Dr. Sunil Kumar Dhall:** Yes, it did.

**Mr. Anthony Oluoch:** Do you know what that legal procedure is?

**Dr. Sunil Kumar Dhall:** Well, I do not know because unless you are fishing for--- unless you have some document---

**Mr. Anthony Oluoch:** Just answer me yes or no. Are you aware of the legal procedures for appointment of persons in---?

**Dr. Sunil Kumar Dhall:** Yes, I was gazetted and sworn in.

**Mr. Anthony Oluoch:** Did it follow due process? By the due process, I mean was your position advertised? How many people applied? Were you shortlisted? Did you appear before an interview panel?

**Mr. Kioko Kilukumi:** Mr. Chairman, Sir, please, permit us to raise this objection once again. These positions under the Constitution and under the County Governments Act are not open to public advertisement. The Governor nominates his Cabinet and it is approved by the County Assembly. It is a pure matter of law and my learned friend ought to know.

**Mr. Anthony Oluoch:** Mr. Chairman, Sir---

**The Chairperson** (Sen. Mutahi Kagwe): I think that matter has been clarified, so let us proceed.

**Mr. Anthony Oluoch:** Mr. Chairman, Sir, I still wish to revisit the matter. I am laying the ground for what really is the Deputy Governor's case, which is that it should interest this Committee that the case that is being made against the Deputy Governor has been laid out by executives, which in the case of the Deputy Governor, are persons who were improperly appointed. We will demonstrate that during submissions and we need it to go on record. These were persons who were improperly appointed and they owe their allegiance to a Governor who then wants to use the process of impeachment to settle personal scores. We shall demonstrate that at submission; we need to lay the basis---

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, on a point of order. As it is, to put this matter to rest, I think the best thing will be if there is anything that counsel for the Deputy Governor may have in terms of documents that they may endeavour to show a witness so that, now, he also lays in advance what he is facing rather than talk about submissions yet they have a bundle here. If they referred the witness to a particular document in their bundle demonstrating that, in fact, they were irregularly appointed, then that will be on course. Otherwise, they are off the course.

**Mr. Anthony Oluoch:** Mr. Chairman, Sir, this Committee is carrying out an investigation and the scope for carrying out that investigation---

**The Chairperson** (Sen. Mutahi Kagwe): Just one second, counsel. Yes, Sen. Hassan.

**Sen. Hassan Omar Hassan:** I think I want to agree on that matter. Counsel, I am in the Committee on Devolution and the law is succinct. It is only now that the Cabinet Secretary (CS) for Devolution has brought for the approval of the Senate and Parliament in its totality rules for the appointment of County Executives (CEs). Once these rules are adopted – and I sit in those multiple Committees – will set out those new procedures, including setting out timelines of how the members of the CEs shall be appointed. But I do agree that there was the element of vetting, which is still important and which I think was not recluded from that particular Act.

**Mr. Wilfred Nyamu:** Can I respond?

**The Chairperson** (Sen. Mutahi Kagwe): Well, counsel, you are at liberty to respond to that indeed.

**Mr. Antony Oluoch:** Notwithstanding the absence of rules and with tremendous respect to Sen. Omar, the provisions of the Constitution relating to competitive recruitment, Article 10, and the provisions of the County Governments Act relating to the same provisions on how persons ought to arrive at an office are clear and beyond peradventure; they are in the Constitution. We need to lay the basis and if the witness does not have them, this Committee has sent a precedent before when we were here that it is capable of getting this information. I would like to ask that this Committee, before it writes its report, to require the following information so that I can save him the time of this. One, the date when he was appointed; his appointment letter; when the County Assembly sat to deliberate over his appointment; what the other persons who were also presented to the county assembly---

**Sen. Ben Njoroge:** On a point of order, Mr. Chairman, Sir. The way I see it is that if we continue allowing this, it will open a new matter which is not before us. The matter being referred to is not within the charges; it is not within the affidavit of the witness and that might end up undermining the witness.

**The Chairperson** (Sen. Mutahi Kagwe): I will allow counsel to proceed.

**Mr. Anthony Oluoch:** Yes, and if it should be of any importance, the opening statement of the Deputy Governor clearly outlines what I am trying to buttress. But I shall leave it at that; may it go on record that we require that information to be inquired into.

I want to refer you to your paragraph 15. In your paragraph 15, you talk about the minutes of 20<sup>th</sup> July, 2014, in which you say and I quote:-

“I confirm that the matter is indicated in the minutes of the 20<sup>th</sup> Cabinet Meeting, including the serious allegations of misconduct and abuse of office by the Deputy

Governor as indicated by the various CEC Members are true records of the deliberations.”

The question that I want to ask you is; are you aware if there are any records of those minutes before these courts to confirm your paragraph 15? I would like to refer you to page 249 of the documents that were supplied as proceedings to the Senate. Could you kindly just confirm from this set of minutes whether you can point out to this Committee the specific instances of abuse of office which you refer to in your affidavit? Those minutes of the 20<sup>th</sup>, is the title on the first page? Could you confirm yes or no so that I can know?

**Dr. Sunil Kumar Dhall:** Yes.

**Mr. Anthony Oluoch:** Could you point out to us where you see the records of abuse of office? You referred to that in your paragraph.

**Dr. Sunil Kumar Dhall:** You see, this was---

**Mr. Anthony Oluoch:** Just answer, yes or no so that I can know.

**Dr. Sunil Kumar Dhall:** Yes.

**Mr. Anthony Oluoch:** Could you please point out to me where it says that there is abuse of office and that was a finding of the Executive Committee?

**Dr. Sunil Kumar Dhall:** I do not see it.

**Mr. Anthony Oluoch:** Thank you very much. I want to refer you to paragraph 18, where you talk about the tendering process and you say that:-

“That during the tendering process for my department where he has demanded that tenders be awarded to his friends”

**Dr. Sunil Kumar Dhall:** Yes.

**Mr. Anthony Oluoch:** We want to ask you the questions, when did this happen? When did he make those demands?

**Dr. Sunil Kumar Dhall:** This happened when the Deputy Governor called me---

**Mr. Anthony Oluoch:** When?

**Dr. Sunil Kumar Dhall:** I do not have a date.

**Mr. Anthony Oluoch:** You said that he called you and made demands, when was that?

**Dr. Sunil Kumar Dhall:** He called me and asked me to go and see him in his office.

**Mr. Anthony Oluoch:** When? Was it last year or this year? Was it in April---

**Dr. Sunil Kumar Dhall:** This year, because the tenders, as you can see in my affidavit, were---

**Mr. Anthony Oluoch:** Could you give us a month?

**Dr. Sunil Kumar Dhall:** It must be sometimes in March or April this year.

**Mr. Anthony Oluoch:** So, did you report this to anyone until this affidavit? Was there any report---

**Dr. Sunil Kumar Dhall:** I---

**Mr. Anthony Oluoch:** Yes or no, please.

**Dr. Sunil Kumar Dhall:** Who did you want me to report to?

**Mr. Anthony Oluoch:** Did you report this; yes or no? You have talked about abuse of office.

**Dr. Sunil Kumar Dhall:** Yes; no!

**Mr. Anthony Oluoch:** Is that not a serious---

**Dr. Sunil Kumar Dhall:** Because I am the head---

*(Laughter)*

**Mr. Anthony Oluoch:** You refer---

**Dr. Sunil Kumar Dhall:** Was I supposed to report to somebody?

**Mr. Anthony Oluoch:** I am asking the questions, not you!

**Dr. Sunil Kumar Dhall:** Okay.

**Mr. Anthony Oluoch:** He made certain demands to you and those are the subject of his impeachment proceedings. Is that right?

**Dr. Sunil Kumar Dhall:** Okay.

**Mr. Anthony Oluoch:** Did you report this to any authority, the Deputy Governor, the meeting of the Cabinet Secretaries? Did you make that report to anyone? Yes or no.

**Dr. Sunil Kumar Dhall:** No, I did not.

**Mr. Anthony Oluoch:** You did not?

**Dr. Sunil Kumar Dhall:** No I did not.

**Mr. Anthony Oluoch:** You have answered the question. In respect of the tenders that you are making in terms of the favours to his friends, did you have any one else who witnessed or can collaborate what you are saying?

**Dr. Sunil Kumar Dhall:** No, this was a meeting between him and me in his office.

**Mr. Anthony Oluoch:** Second last question, in your affidavit, did you indicate the question about his solicitation of Kshs500,000 to you?

**Dr. Sunil Kumar Dhall:** It is not.

**Mr. Anthony Oluoch:** Why?

**Dr. Sunil Kumar Dhall:** Because I thought he paid me back.

**Mr. Anthony Oluoch:** If you look at the proceedings, there is a letter from the County Secretary. It indicates that you said that he borrowed from you Kshs500,000. At what point did that change to Kshs200,000?

**Dr. Sunil Kumar Dhall:** He initially requested for Kshs500,000.

**Mr. Anthony Oluoch:** Very well. Since my time is up, I just want to ask you one last question. When did you swear this affidavit?

**Dr. Sunil Kumar Dhall:** On the 9<sup>th</sup>.

**Mr. Anthony Oluoch:** Before who?

**Dr. Sunil Kumar Dhall:** In the Cabinet offices.

**Mr. Anthony Oluoch:** Do you know which lawyer drew up your affidavit?

**Dr. Sunil Kumar Dhall:** The name of the lawyer is there, I guess.

**Mr. Anthony Oluoch:** Who was your lawyer?

**Dr. Sunil Kumar Dhall:** Nyamu & Nyamu Company Advocates.

**Mr. Anthony Oluoch:** Is he the one who also rubberstamped this before you?

**Dr. Sunil Kumar Dhall:** Yes, he did.

**Mr. Anthony Oluoch:** Can you read the rubberstamp there, please? Do you know a Justus Mutisya Mutia? Is that the same as Nyamu? If I showed you Justus Mutisya Mutia and he was before this meeting, would you point out Mr. Mutia to me? I put it to you that these are a series of concocted information put in an affidavit which you cannot even confirm why you signed and you do not even know before which advocate. Would I be right to say that this is concocted information?

**Dr. Sunil Kumar Dhall:** This is my signature.

**The Chairperson** (Sen. Mutahi Kagwe): Any re-examination?

**Mr. Benjamin Musau:** Dr. Dhall, just to start with the last point and jog your memory, you remember on 9<sup>th</sup> July, 2014 his affidavit was drawn by Nyamu & Co. Advocates and according to your initial evidence, you say that it was sworn on 9<sup>th</sup> because that is the date you signed it. Now on the issue of reporting this misconduct of the Deputy Governor, you wanted to elaborate but then the counsel could not allow you to elaborate. Please, elaborate to the Committee.

**Dr. Sunil Kumar Dhall:** He called me and said he wanted to see me in his office in Machakos. I drove down to his office. He told me: I can see you are advertising for the markets. I have an interest in those markets. So, I told him I am not responsible for awarding the tenders because we have a tender committee run by the chief officer and her team. So, I could not help him. That is when the meeting ended and I walked out.

**Mr. Benjamin Musau:** Okay. Did you report his conduct to the County Assembly which is the first point of responsibility for impeachment of a Deputy Governor?

**Dr. Sunil Kumar Dhall:** I did not.

**Mr. Benjamin Musau:** In the cause of the investigations, did you appear as a witness before the County Assembly?

**Dr. Sunil Kumar Dhall:** Yes, I did.

**Mr. Benjamin Musau:** Did you report the misconduct?

**Dr. Sunil Kumar Dhall:** I reported.

**Mr. Benjamin Musau:** And now you are reporting it today to the Senate?

**Dr. Sunil Kumar Dhall:** Yes.

**Mr. Benjamin Musau:** That is all.

**Sen. Hassan Omar Hassan:** Mr. Chairman, can I seek some clarity on two points? Every County Executive Member who has come here to testify has characterized something called the political case. I just want to know what is a political case because everybody has alleged to the fact that Mr. Mutuse said he has a political case filed by Hon. Mwangi somewhere. What is the definition of a political case?

**Dr. Sunil Kumar Dhall:** I think it is in relation to the campaigns that were going on.

**Sen. Hassan Omar Hassan:** In Kenya, we only have criminal and civil case. So, I wanted to know what that political case was.

**The Chairperson** (Sen. Mutahi Kagwe): As a lawyer, you are being very---

**Sen. Hassan Omar Hassan:** But everybody has stated that. I just sought to clarify what this political case is.

**Dr. Sunil Kumar Dhall:** It was in connection with the campaigns in Kibwezi. Those are political. So, I assume it is a political case.

**Sen. Hassan Omar Hassan:** Another point of clarity is that on paragraph 24, he says:-  
“The chief officer aforesaid got disturbed and forwarded the text messages sent by the Deputy Governor.”

When was that done?

**Dr. Sunil Kumar Dhall:** This was done sometime in July.

**Sen. Mong'are Okong'o:** Mr. Chairman, Sir, I had a clarification on this issue of somebody being pushed with a gun to be borrowed on request. How does this come to this place?

**Dr. Sunil Kumar Dhall:** The Deputy Governor is also my boss, then he walks into my office asking for money and says that he will not leave, I have to do something for him. So, I had no choice. I negotiated. I said: “Look, that is all I have and that is the much I can give you.”

**The Chairperson** (Sen. Mutahi Kagwe): Very well. I thank you. You may step down.

*(Dr. Dhall was stepped down)*

**Mr. Benjamin Musau:** Mr. Chairman and Members of the Special Committee, the next witness is Mr. Jackson Kala, whose evidence is tagged---

**Mr. Harun Ndubi:** Mr. Chairman, as the witness is coming, I am receiving instructions to seek a clarification from my colleagues whether one Collins Sila Kaia is in the room.

He listed as witness No.F in their list. Is it possible to confirm from my colleagues whether he is in the room?

**The Chairperson** (Sen. Mutahi Kagwe): There is the question, that there is one of your witnesses listed in your list who is apparently in the room. He will just about to be disqualified if he is here. What is the name of the individual?

**Mr. Harun Ndubi:** He is Collins Sila Kaia and he is confirming quietly that he is the one.

**The Chairperson** (Sen. Mutahi Kagwe): Is Mr. Collins Sila Kaia here in this room? Could you, please, show yourself?

*(Mr. Collins Sila Kaia stood up in his place)*

Is it my understanding then that Mr. Sila Kaia is not going to be part of the witnesses?

**Mr. Kioko Kilukumi:** We scaled down to fit into three hours. He is not one of the witnesses we are calling.

**The Chairperson** (Sen. Mutahi Kagwe): Fair enough. I think that is just a clarification that is necessary so that counsel on the other side does not keep thinking that he is talking to his future witnesses. You can proceed.

**Mr. Kioko Kilukumi:** Chairman, could you kindly guide us on how much time is left for us, so that we know.

**The Chairperson** (Sen. Mutahi Kagwe): You have one hour and 22 minutes. Let us proceed.

*(Mr. Jackson Musyoka Kala took the oath)*

**Mr. Benjamin Musau:** Witness, could you, please, confirm to the Special Committee of the Senate your names?

**Mr. Harun Ndubi:** Sorry, Mr. Chairman. I apologise to my colleague. Since they have told us that Mr. Collins is stood down, it is important at this stage we get to know how many people are not going to testify. We need to know by their names that so-and-so will not testify.

**The Chairperson** (Sen. Mutahi Kagwe): I think that is a fair request but this is a quick matter. If there are any individuals here who originally scheduled to be witnesses, clearly, they cannot be. It is a question of identifying who those are. How many do we have except from Mr. Collins?

**Mr. Benjamin Musau:** There is no other individual who is a potential witness.

**Mr. Harun Ndubi:** The point I am making is that we need to know by names. They have scaled down, so definitely they know who is not coming, so that we do not spend time reading affidavits of people who are not coming here.

**The Chairperson** (Sen. Mutahi Kagwe): In other words, who do we expect to come as witnesses?

**Mr. Benjamin Musau:** Mr. Chairman, Sir, the next witness after this witness will be the County Secretary as I indicated earlier; that is Mr. Francis Mwaka.

**Mr. Harun Ndubi:** Mr. Chairman, Sir, with tremendous respect to my senior, we are asking for the list of those people you have scaled down. Those who are going to testify you have given us and we will be happy to get the full list in the order they are coming. But those you have removed such as Collins, we need to know whether Elizabeth or Joshua are coming or not.

**Mr. Benjamin Musau:** For the avoidance of doubt, we have not removed the testimony of any witness.

**The Chairperson** (Sen. Mutahi Kagwe): Except for Collins?

**Mr. Benjamin Musau:** We have not removed his evidence either because it is already before the Senate but he is not coming as a live witness. We have to distinguish between these two.

**The Chairperson** (Sen. Mutahi Kagwe): I think we understand what he asking. Is the answer then that they have not ruled anybody out, that the only person who is not going to come here as a witness as such is the one who is currently in the Chamber?

**Mr. Benjamin Musau:** Yes.

**The Chairperson** (Sen. Mutahi Kagwe): Therefore, they have not ruled anybody else out?

**Mr. Benjamin Musau:** Yes.

**The Chairperson** (Sen. Mutahi Kagwe): Who is the next witness?

**Mr. Benjamin Musau:** Francis Mwaka.

**The Chairperson** (Sen. Mutahi Kagwe): And after Mwaka?

**Mr. Benjamin Musau:** We are likely to have Elizabeth Nzioka who is the CEC responsible for Finance.

**Mr. Harun Ndubi:** Let us proceed knowing that this is really what we have been hinting at, that we are being surprised. They are calibrating their witnesses on account possibly of the cross examination. That is uncomfortable for us. It is important it goes on record. When we make a choice as to who should testify or should not testify on account of what has been said, that is completely unfair to the defense.

**The Chairperson** (Sen. Mutahi Kagwe): Let us proceed.

**Mr. Benjamin Musau:** Witness, will you, please, confirm to the Special Committee your names and deployment office within the County Government of Machakos?

**Mr. Jackson Musyoka Kala:** My names are Jackson Musyoka Kala. I am the Chief Officer, Public Service, Labour and ICT, County Government of Machakos.

**Mr. Benjamin Musau:** Would you also confirm to the Special Committee that the affidavit which is tagged as No.8 is the evidence you want to submit and that you swore it on 9<sup>th</sup> July, 2014?

**Mr. Jackson Musyoka Kala:** I confirm.

**Mr. Benjamin Musau:** Would you like to state the matters of fact which are covered in the affidavit as quickly as you can?

**Mr. Jackson Musyoka Kala:** Yes, I will.

**Mr. Jackson Musyoka Kiala:** Mr. Chairman, Sir, in my affidavit, I have indicated that as the chief officer Public Service, Labour and ICT, I work under the direct supervision of the Deputy Governor because he is responsible for the department of Public Service, Labour and ICT as the---

**Sen. Ben Njoroge:** On a point of order, Mr. Chairman, Sir. Was he sworn in?

**Mr. Jackson Musyoka Kiala:** Yes, I took the oath. The Deputy Governor is my immediate supervisor. I wish to confirm that the Deputy Governor has not been available to discharge his functional responsibilities as an executive member in charge of Public Service, Labour and ICT because I have personally undergone untold suffering, hardship and lacking in policy formulation, oversight and direction from the Deputy Governor as my line executive committee member in charge of my department. I have had to run the department on my own because the Deputy Governor in my view has been engaged in politics and is never in the office. I can count the number of days he has been in the office. The only time he comes in is when he passing by on his way to officiate functions which are political in nature.

This can be confirmed by the mere fact that on 2<sup>nd</sup> January, 2014, he warned me or prepared me psychologically that he will not be available via a text that he sent me which I can quote verbatim.

**Mr. Harun Ndubi:** Mr. Chairman, Sir, kindly, I thought the witness was reading through his affidavit which he has now diverted from.

**The Chairperson** (Sen. Mutahi Kagwe): You are supposed to be reading the affidavit.

**Mr. Jackson Musyoka Kiala:** Okay, I will read it. My name is Jackson Musyoka Kiala of P.O. Box 996 -90100 Machakos and make oath and state as follows:-

1. That I am a business economist having studied at the University of Nairobi. I am the acting chief officer responsible, Public Service, Labour and ICT.

**Sen. Martha Wangari:** Mr. Chairman, Sir, I would request that he reads verbatim; the way it is, word for word.

**Mr. Jackson Musyoka Kiala:** I will read word for word. It reads:-

1. I am a Business Economist and the holder of a degree in Business Studies and Economics from the University of Nairobi. I am the acting chief officer responsible for the Department of Public Service, Labour and Information, Communication and Technology in the government of Machakos County which I have held since 1<sup>st</sup> May, 2013.
2. I work under the direct supervision of the Deputy Governor who is responsible for the Department of Public Service, Labour and Information, Communication and Technology.
3. I confirm that the Deputy Governor has not been available for the performance of the functions, duties and responsibilities of his portfolio in the Department of Public Service, Labour and Information, Communication Technology.
4. I have therefore experienced untold hardship in making policy formulation, oversight and direction.
5. I have in most circumstances been forced to perform some of the roles with reluctance of policy formulation, oversight and direction in the department.
6. I also have pending in my office requests for allowances for weekend travel and accommodation emanating from the Deputy Governor and staff attached to his office which I have been finding quite inappropriate to process in view of their frequency.
7. In the course of my duties, I have undertaken a staff audit in the Government of Machakos County, investigated and discovered the following relatives of the Deputy Governor in the employment of the County Government:
  - (a) Frank Kiala, the Manager of Machakos Kenyatta Stadium. I have found that Frank's late father is the brother to the father of the Deputy Governor. They are, therefore, paternal cousins;
  - (b) Purity Nthenya, the Revenue Collection Officer in Athi-River Sub-county is a daughter to the sister of the Deputy Governor. The Deputy Governor is, therefore, Purity's uncle;
  - (c) Musyoka, the Accountant at the Department of Decentralized Units, Urban areas and municipalities is the Deputy Governor's cousin;
  - (d) Carol Musyoki, now a tea girl in the Deputy Governor's office is a former employee of the Deputy Governor at Kiala Foundation, the Deputy Governor's private organization in Nairobi;

- (e) Michael Kiala Muthini, caretaker, Matuu Call Centre, is the Deputy Governor's cousin.  
This is all I have to state.

**Mr. Benjamin Musau:** Thank you very much. After recording that statement in the form of an affidavit, did the county assembly select an *ad hoc* committee and call you as a witness?

**Mr. Jackson Musyoka Kiala:** Yes, I appeared before an *ad hoc* committee.

**Mr. Benjamin Musau:** The list of names of examples of appointments by the Deputy Governor which appears on page 210 of the bundle. Can you see that list?

**Mr. Jackson Musyoka Kiala:** Yes, Mr. Chairman, Sir.

**Mr. Benjamin Musau:** Is it the list that you presented to the County Assembly of Machakos?

**Mr. Jackson Musyoka Kiala:** Yes it is.

**Mr. Benjamin Musau:** Can you please go through the list

**Mr. Jackson Musyoka Kiala:** The first one is Frank Kiala, in the Ministry of Tourism, Stadium Manager, cousin to the Deputy Governor, there is Purity Nthenya, the Revenue Collection Officer in Athi-River Sub-county niece to the Deputy Governor, Michael Kiala Muthini, caretaker, Matuu Sub-county, a cousin to the Deputy Governor, Micheal Musyoka, an Accountant at the Department of Decentralized Units, Urban areas and municipalities is the Deputy Governor's cousin; Jonathan Ndili, Sound Technician at the Deputy Governor's office who is a Standard Eight drop out, cousin to the Deputy Governor, Carol Musyoki, a tea girl in the Deputy Governor's office who is a former employee of the Deputy Governor's Kiala Foundation, Dorothy Mutuku, a Senior Administrator, Education and Social Welfare, wife to Augustine Kyalo who is the Deputy Governor's head of protocol, Philemona Ndindi, Procurement Officer, Directorate of Emergencies, sister to Anthony Nzioki who schooled with the Deputy Governor at Masinga Boys and is a close associate of the Deputy Governor, Pius Nzioka, driver to Education Minister and neighbour to the Deputy Governor and formerly his employee at his private office, Anastacia Mutuku, an Assistant Director in the Ministry of Finance, a very close friend of the Deputy Governor, Damaris Matata, Revenue Collector Matuu, cousin to the Deputy Director's wife, Erastus Kioko Mutua, formerly driver to Minister of Agriculture, cousin to the Deputy Governor, Mueni Kioko, Revenue Collector, Machakos Town, cousin to the Deputy Governor's wife, Rosemary cousin to Deputy Governor's wife.

**Mr. Benjamin Musau:** Would you like to tender both the affidavit and the evidence that you submitted to the county assembly as evidence for the charges facing the Deputy Governor?

**Mr. Jackson Musyoka Kiala:** Yes, Sir.

**Mr. Benjamin Musau:** That particular list which you have taken the Committee through, how did you come across it? Would like to elaborate? I know that you have said that you are in the Public Service docket.

**Mr. Jackson Musyoka Kiala:** I as the Chief Officer, Public Service, Labour and ICT, on a daily basis interact with employees on various HR matters in the county across all the departments because the Public Service department is the mother Ministry that is concerned with staff employment and staff welfare. In the process of interacting with these employees, this information came to my knowledge.

**Mr. Benjamin Musau:** Do you have any other evidence of impropriety in office of the conduct of the Deputy Governor that you would like to bring to the attention of the Committee?

**Mr. Jackson Musyoka Kiala:** There are several and if the Chairman allows me, I will quickly state them. First I confirm that the Deputy Governor has not been around to discharge his duties as an executive committee member in charge of my department and therefore, leaving my department the only department that is manned by a PS who also doubles as the Minister of that department. The reason being that he has been busy politicking. The only times I have had occasion to sit with him have been very rare and mostly---

**Mr. Harun Ndubi:** Mr. Chairman, Sir, I do not know whether it is right for the witness to give his opinion as evidence. I do not know what politicking is. Is that an opinion or a fact? If it is a fact, what is it based on?

**The Chairperson** (Sen. Mutahi Kagwe): Counsel you should come out with evidence and show us where this is going so that we can move along with you.

**Mr. Benjamin Musau:** I actually wanted this particular witness to elaborate on what it means when he says that he works under direct supervision of the Deputy Governor but the Deputy Governor has not been available for the functions, duties and functions of this particular portfolio and that he has experienced untold hardship in lacking policy formulation, oversight and direction. I think the witness is quite in order to elaborate that to the Committee unless the Committee deems it not necessary.

**Mr. Jackson Musyoka Kiala:** I was confirming that the Deputy Governor has not been able to discharge his duties as is required and I have confirmed that most of the time he spends it on politicking. He warned me in advance to prepare me psychologically.

**Mr. Benjamin Musau:** What do you mean by politicking so that people can understand?

**Mr. Jackson Musyoka Kiala:** He has not been engaged in the day to day running of the department but I as the chief officer in charge of the public service, labour and ICT, I am

also in charge of the staff welfare. There is no time that I have received medical reports that he has been indisposed yet---

**The Chairperson** (Sen. Mutahi Kagwe): I think the question being asked by the counsel for clarification is; how do you know that he was not coming? It is very important to be clear about this. Just say he was not in the office unless you are very sure where he was.

**Mr. Jackson Musyoka Kiala:** I am guided, Mr. Chairman, Sir. I know because I have been his PS and I know when he is out there having functions. He comes to my office to process allowances for himself and the staff working in his office. Of course where the Deputy Governor is in the county is public knowledge. When he is attending a function in a certain place, the media broadcasts it and so we are able to know where he was and what comments he has made in those public forums. That is why I am saying that he has been busy politicking; he has not been indisposed but was not available to discharge his duties. I have been left to run the department on my own and this is negligence of duty.

**Sen. Hassan Omar Hassan:** Mr. Chairman, Sir, I think you guided this witness and I think he has to stand guided. We want you to table that evidence of politicking. If you say somebody is in a market place and you have processed funds for that person to travel that is a public function that is supported by the county assembly. So, I think what you need to substantiate is this idea of politicking. It cannot just be an opinion; we are not in a market place here. We are in a Committee that relies on evidence and we will be able to present a report. So we cannot tabulate your remarks. There is a HANSARD of the Senate that is a permanent record and 30 years from today someone can still revisit this case. If you continue to use that word, we will take you strict proof.

**The Chairperson** (Sen. Mutahi Kagwe): That is why Sen. Hassan said that I guide you. If I were you, I would stay guided.

**Mr. Jackson Musyoka Kala:** I am properly guided, Mr. Chairman, Sir.

**Mr. Benjamin Musau:** Mr. Kala, I would like to refer you to paragraph 6 of your affidavit in which you state that:-

“I also have pending in my office requests for allowances for weekend travel and accommodation emanating from the Deputy Governor and staff attached to his office, which I have been finding quite inappropriate to process in view of their frequency.”

**Mr. Jackson Musyoka Kala:** That is true. I have those pending requests. I find it difficult to process most of them simply because the frequency is just too much. The Government cannot fund somebody to travel to his rural home. So, always when somebody is travelling to Masinga, every weekend, I get requests. That can be confirmed.

**Mr. Benjamin Musau:** Can you make available to this Special Committee of the Senate copies of those requests to prove that most of these claims, as well as the time spent outside the normal docket of public service? Is it available for you to bring to the Senate?

**Mr. Jackson Musyoka Kala:** Of course, because it is part of the record, given some time, I can be able to trace it.

**Mr. Benjamin Musau:** That is all I have for this witness.

**The Chairperson** (Sen. Mutahi Kagwe): Let us move on to cross examination.

**Mr. Harun Ndubi:** Jackson Musyoka Kala, you have stated many important things but I want to begin from the last one where you were saying because of the frequency of the claims you are unable to pay. Is it because they are too many, there is lack of money or they are fraudulent?

**Mr. Jackson Musyoka Kala:** I would say, fraudulent because you cannot travel every weekend.

**Mr. Harun Ndubi:** I am satisfied. You said you believe they are fraudulent. Do you know that fraud is a crime?

**Mr. Jackson Musyoka Kala:** Yes, I am aware.

**Mr. Harun Ndubi:** Even one is bad enough?

**Mr. Jackson Musyoka Kala:** Yes, of course.

**Mr. Harun Ndubi:** Have you reported any of those claims to the police, the Governor or to any other Cabinet Executive?

**Mr. Jackson Musyoka Kala:** Part of my duties as the Chief Officer in that department include that I am the authorized and accounting officer of that department. It is within my discretion to determine if something is payable or not. I do not have to report.

**Mr. Harun Ndubi:** Listen to me, I am taking you on your assertion that those claims which are still pending now are fraudulent. You agree that fraud is a crime?

**Mr. Jackson Musyoka Kala:** Yes.

**Mr. Harun Ndubi:** Have you reported to the relevant authorities to investigate and prosecute the Deputy Governor or his staff for fraud? The answer is yes or no.

**Mr. Jackson Musyoka Kala:** I have not reported that matter but I have been able to reject the claims because that is within---

**Mr. Harun Ndubi:** You said they are pending. Are you changing your evidence?

**Mr. Jackson Musyoka Kala:** They are pending because I refused to authorize them.

**Mr. Harun Ndubi:** If they are rejected, they stand rejected. They cannot be pending. So, what is your evidence? Are you saying they are pending or they are rejected?

**Mr. Jackson Musyoka Kala:** They are rejected.

**Mr. Harun Ndubi:** What is the evidence of rejection with you here today?

**Mr. Jackson Musyoka Kala:** As I said, the documents can be made available.

**Mr. Harun Ndubi:** But you knew you were coming to testify. You even swore an affidavit on 7<sup>th</sup> July, 2014. That is more than one month ago.

**Mr. Jackson Musyoka Kala:** Yes, of course, your honour.

**Mr. Harun Ndubi:** So, how come you did not bring the evidence or you just brought your opinion?

**Mr. Jackson Musyoka Kala:** When it is required, we shall be able to submit as it has been said.

**Mr. Harun Ndubi:** Do you recall attending a retreat of the executive in Mombasa between 16<sup>th</sup> and 20<sup>th</sup> March?

**Mr. Jackson Musyoka Kala:** Yes, I do.

**Mr. Harun Ndubi:** Do you recall if the Deputy Governor attended?

**Mr. Jackson Musyoka Kala:** Yes, he was in attendance.

**Mr. Harun Ndubi:** Do you recall his remarks to the meeting?

**Mr. Jackson Musyoka Kala:** He made many remarks.

**Mr. Harun Ndubi:** Did he in his remarks accuse you of having relatives working within the county assembly?

**Mr. Jackson Musyoka Kala:** No, he did not.

**Mr. Harun Ndubi:** If he told this Special Committee of the Senate that he did so, in your view, he would be lying?

**Mr. Jackson Musyoka Kala:** Of course.

**Mr. Harun Ndubi:** Do you know a person called Mbithe Kala?

**Mr. Jackson Musyoka Kala:** Yes, I do.

**Mr. Harun Ndubi:** Who is she?

**Mr. Jackson Musyoka Kala:** She is my mother.

**Mr. Harun Ndubi:** Is she working?

**Mr. Jackson Musyoka Kala:** Yes.

**Mr. Harun Ndubi:** Where?

**Mr. Jackson Musyoka Kala:** She is a nominated Member of the County Assembly of Machakos County.

**Mr. Harun Ndubi:** Do you know one Salome Ngina Kioko?

**Mr. Jackson Musyoka Kala:** Yes, I do.

**Mr. Harun Ndubi:** Is she working?

**Mr. Jackson Musyoka Kala:** Yes, she is working.

**Mr. Harun Ndubi:** How are you related with her?

**Mr. Jackson Musyoka Kala:** She is my wife.

**Mr. Harun Ndubi:** Where is she working?

**Mr. Jackson Musyoka Kala:** County Government of Machakos, Department of Water as a Procurement Officer.

**Mr. Harun Ndubi:** Did you influence either your mother's nomination or your wife's employment?

**Mr. Jackson Musyoka Kala:** That is a long shot. Nominations are normally party matters. I am not a politician.

**Mr. Harun Ndubi:** Did you influence?

**Mr. Jackson Musyoka Kala:** I cannot influence and I am not in a position to do so!

**Mr. Harun Ndubi:** Do not be too clever, Mr. Kala. It is not my habit to be rude. Just answer the question.

**Mr. Jackson Musyoka Kala:** I did not influence.

**Mr. Harun Ndubi:** You have given us a long list on page 210 where you have stated the names of people and their relationship with the Deputy Governor. First question regarding the affidavit, on paragraph 7, when did you undertake this audit which led you to making this scientific discovery?

**Mr. Jackson Musyoka Kala:** We have done several audits.

**Mr. Harun Ndubi:** What about this one?

**Mr. Jackson Musyoka Kala:** I am just answering the question. We have done several audits. One of that was required by the Transition Authority. There was also another one that was for our own consumption and another one that had been ordered by the Ministry of Devolution and Planning.

**Mr. Harun Ndubi:** In all those audits, you have given the evidence against the Deputy Governor only or against all people including yourself, who has relatives working within the County Government of Machakos?

**Mr. Jackson Musyoka Kala:** I wish to clarify an issue here. Can we be specific? Ask me how I have influenced and I will be able to answer whether I have influenced or not.

**Mr. Harun Ndubi:** The question is: All the people you have given the Senate are people you allege are related to the Deputy Governor. Where are those who are related to you? Where are those who are related to the Governor or any other Member of the executive in Machakos?

**Mr. Jackson Musyoka Kala:** I can submit before this Committee that the only person related to me in the County Government of Machakos is my wife. My mother is not an employee of the County Government of Machakos, she is a nominated MCA. That is a party matter. My wife---

**Mr. Harun Ndubi:** You are taking my time from me---

**Mr. Benjamin Musau:** Mr. Chairman, Sir, with all due respect, it is important to give the witness time to complete answering a question.

**The Chairperson** (Sen. Mutahi Kagwe): I think the witness will have time if he would answer the questions. I think there are some questions that are pending. Counsel, I will give you an extra minute. Let the witness not be harassed.

**Mr. Harun Ndubi:** Could you respond to that question I asked you where the list of other people who are connected with others is?

**Mr. Jackson Musyoka Kala:** In this particular matter, nobody else is on trial here. I also submitted information for the consumption of this Committee. If you require any other information, then a request can be made.

**Mr. Harun Ndubi:** When you answer the question, just be brief. You have stated that you did not influence the employment of your wife. Is this correct?

**Mr. Jackson Musyoka Kala:** Yes, of course.

**Mr. Harun Ndubi:** Where is the evidence that the Deputy Governor influenced the employment of any of these people?

**Mr. Jackson Musyoka Kala:** The evidence is very clear. The Deputy Governor is the Executive Committee Member in charge of Public Service, Labour and ICT. This list of employees did not go through the County Public Service Board. My wife was employed by the County Public Service Board after proper advertisement.

**Mr. Harun Ndubi:** It is not about your wife, we are past that. I will tell you something, you are the first witness who incidentally is working under the Deputy Governor, who has not alleged that he has put pressure on you to do something. Everyone else is saying the Deputy Governor has put pressure on them whether by text message---

**Mr. Jackson Musyoka Kala:** You have cut me short. I was about to say it. I have evidence.

**Mr. Harun Ndubi:** I asked you how the Deputy Governor has influenced---

**Mr. Jackson Musyoka Kala:** The evidence is here, even in SMSes. I can submit it.

**Mr. Harun Ndubi:** That evidence was not supplied to the County Assembly, neither was it supplied to the Senate. Correct?

**Mr. Jackson Musyoka Kala:** It was supplied to the Senate. It is my evidence.

**Mr. Harun Ndubi:** I want to understand what you meant in paragraphs 4, 5 and 6. Are you the Deputy Governor's supervisor?

**Mr. Jackson Musyoka Kala:** It is obvious he is my supervisor.

**Mr. Harun Ndubi:** But you are accusing him of dereliction of duty?

**Mr. Jackson Musyoka Kala:** That is not rocket science. He has been absent and he has not been performing his duties. It is obvious.

**Mr. Harun Ndubi:** Do you know whether the Governor knows when the Deputy Governor is absent or what the Deputy is doing wherever he is?

**Mr. Jackson Musyoka Kala:** When he knows, we all know because it is normally communicated. When he is making political statements calling people “*Nguu*”, that is a different matter.

**Mr. Harun Ndubi:** I see you might make a better politician.

**The Chairperson** (Sen. Mutahi Kagwe): I do not think that is a question you had been asked.

**Mr. Jackson Musyoka Kala:** I apologise, Mr. Chairman, Sir.

**Mr. Harun Ndubi:** Lastly, when you signed this affidavit, do you recall the date?

**Mr. Jackson Musyoka Kala:** Yes, I do.

**Mr. Harun Ndubi:** When was that?

**Mr. Jackson Musyoka Kala:** 9<sup>th</sup> July, 2014.

**Mr. Harun Ndubi:** At what place did you sign this affidavit?

**Mr. Jackson Musyoka Kala:** I signed it in my office.

**Mr. Harun Ndubi:** Was it brought to you by a lawyer?

**Mr. Jackson Musyoka Kala:** A lawyer came and I made the statement.

**Mr. Harun Ndubi:** Which lawyer is that?

**Mr. Jackson Musyoka Kala:** That lawyer is B.M. Musau.

**Mr. Harun Ndubi:** Did he stamp the affidavit after you signed it?

**Mr. Jackson Musyoka Kala:** The copy that I have---

**Mr. Harun Ndubi:** No. This is, in fact, off your memory.

**Mr. Jackson Musyoka Kala:** The 9<sup>th</sup> of July is a long time, surely---

**Mr. Harun Ndubi:** You even remember the lawyer came to your office. So you cannot really say you cannot remember.

**Mr. Jackson Musyoka Kala:** Some facts I can remember. Like---

**Mr. Harun Ndubi:** Some you remember, some you do not!

**Mr. Jackson Musyoka Kala:** Like if I ask you the amount of salt you put in your food last night, you will not remember. Some things are not material!

*(Laughter)*

**Mr. Harun Ndubi:** What is so routine---

**The Chairperson** (Sen. Mutahi Kagwe): The witness will refrain from being smart.

**Mr. Jackson Musyoka Kala:** Most obliged, Mr. Chairman, Sir.

**Mr. Harun Ndubi:** Do you know Mr. Justus Mutisya Mutia?

**Mr. Jackson Musyoka Kala:** Advocate?

**Mr. Harun Ndubi:** Look at me. Do you know this lawyer?

**Mr. Jackson Musyoka Kala:** Yes, I know Mr. Mutia.

**Mr. Harun Ndubi:** You do know Mr. Mutia, but the person who came to you was Ben Musau. Is he present in this room?

**Mr. Jackson Musyoka Kala:** Yes he is present in this room and is in the company of Mr. Mutia himself.

**Mr. Harun Ndubi:** Does Mr. Mutia practise from the offices of the County Government?

**Mr. Jackson Musyoka Kala:** You can call a lawyer anywhere, my brother.

**Mr. Harun Ndubi:** I can see another witness called B.M. Musau – sorry I apologise.

**Mr. Benjamin Musau:** I do not think my learned friend is in order to cast aspersion on my professional conduct in public.

**Mr. Harun Ndubi:** I apologise.

**The Chairperson** (Sen. Mutahi Kagwe): I think you are out of order.

**Mr. Harun Ndubi:** I apologise, Mr. Chairman, Sir.

**The Chairperson** (Sen. Mutahi Kagwe): Very well. I think your time is up on the cross examination.

**Mr. Harun Ndubi:** Can I ask only one last question? This is important. Mr. Kala, you have said the difficulty you had was in lack of policy formulation and oversight. Oversight means supervision?

**Mr. Jackson Musyoka Kala:** Yes, of course.

**Mr. Harun Ndubi:** Why did you require supervision?

**Mr. Jackson Musyoka Kala:** The county government is run by laws. The law requires that the County Executive Member supervises the department, the functions and oversight. He has been absent and that is an oversight. That is why probably the functions we have undertaken, he is not aware. He is not aware of the projects that have been undertaken by his own department. That is why he was caught on CCTV installed by his own department, without his knowledge, that the county has CCTV.

*(Laughter)*

**Mr. Harun Ndubi:** There is an English expression of saying: "Being too clever by half." I did not ask you that question. I have asked you a simple question: What is it in supervision you lacked, not what he knows or does not know?

**Mr. Jackson Musyoka Kala:** There are so many things that you require. One, two heads are better than one. You require direction and consultation. He has been absent.

**Mr. Harun Ndubi:** Assuming he was absent, would you be surprised that he trusted you?

**Mr. Jackson Musyoka Kala:** I will not be surprised because he has been absent. That is not an excuse in law. One excuse he gave me was very political. In a text that he sent me on 2<sup>nd</sup> January, 2014 on a Thursday at 4.28 p.m., he told me: "Happy New Year. I hope you are doing well. You are the only PS working with a political Minister. So, the responsibility is heavy on you. I know you are equal to the task. Have a nice day."

**Mr. Harun Ndubi:** Which date is that?

**Mr. Jackson Musyoka Kala:** January, 2014.

**Mr. Harun Ndubi:** And you swore your affidavit on 9<sup>th</sup> July, 2014?

**Mr. Jackson Musyoka Kala:** Yes, please.

**Mr. Harun Ndubi:** Why did this matter not concern you to report to somewhere until July unless it is just made up like many others, appreciating the fact that he has a right to politic? Or now after 9<sup>th</sup> of July, he lost that right. You do not lose a right---

**The Chairperson** (Sen. Mutahi Kagwe): I think we are not really making progress on that one. Do you have a re-examination?

**Mr. Benjamin Musau:** Yes, Mr. Chairman, Sir. With your permission, on very straightforward issues, and they are two only. The first issue is on this issue of nepotism on which my learned friend, counsel for Bernard Kiala was trying to lead you into assuming responsibility. Who is the County Executive Committee (CEC) Member responsible for the Ministry of Public Service in the County of Machakos?

**Mr. Jackson Musyoka Kala:** It is hon. Bernard Kiala, the Deputy Governor.

**Mr. Benjamin Musau:** So, if there is nepotism within the County Government, who would, therefore, be responsible?

**Mr. Jackson Musyoka Kala:** The buck stops at the top. Of course, it is the Deputy Governor.

**Mr. Benjamin Musau:** The second question is on the issue of reporting. There have been suggestions that you never reported. Did you appear – and I think you said; just to make it quite clear – before the County Assembly or *ad hoc* Committee that was investigating this matter?

**Mr. Jackson Musyoka Kala:** Yes, I appeared.

**Mr. Benjamin Musau:** Did you report the matter there?

**Mr. Jackson Musyoka Kala:** Yes, I did and I also made a statement.

**Mr. Benjamin Musau:** And now you have reported here?

**Mr. Jackson Musyoka Kala:** I have again reported to a higher authority.

**Mr. Benjamin Musau:** And you have read out a short text message (SMS) there; from which number was that SMS transmitted?

**Mr. Jackson Musyoka Kala:** It was transmitted from the Deputy Governor's number, 0721211457.

**Mr. Benjamin Musau:** What is your cell phone number for the purposes of this Senate?

**Mr. Jackson Musyoka:** My cell phone number is 0722376052.

**Mr. Benjamin Musau:** Would you like to tender that SMS as evidence to this misconduct?

**Mr. Jackson Musyoka Kala:** Yes, I will.

**Mr. Benjamin Musau:** Thank you very much. That is all for this witness.

**Mr. Harun Ndubi:** Mr. Chairman, Sir, I will object to that last question about tendering it. Tendering is in cross examination in chief that he will tender his testimony plus evidence. He cannot now come after cross examination and say “we are giving this new evidence that was not there.”

**The Chairperson** (Sen. Mutahi Kagwe): You are quite correct, counsel.

**Mr. Harun Ndubi:** Thank you.

**Mr. Benjamin Musau:** I was only pointing it out because I know the duty and mandate of this Special Committee is investigatory. So, I was pointing out just in case the Members of the Special Committee are interested with it; I was opening it up for that purpose only.

**The Chairperson** (Sen. Mutahi Kagwe): I hear you, but I quite agree with counsel for the Deputy Governor. You may step down.

**Sen. Mong’are Okong’o:** Mr. Chairman, Sir, I want to seek a small clarification. I would like to hear from the witness. Who is in charge of policy formulation at the county level?

**Mr. Jackson Musyoka Kala:** The CEC; but in a department, it is the CEC member of that department.

**Sen. Hassan Omar Hassan:** When the Governor sent you a message telling you that you are the only one with a political Ministry or something, what was your understanding of that?

**Mr. Jackson Musyoka Kala:** My understanding initially is that I understood it to mean that him, having been elected through universal suffrage, that he would be involved in political activities. But when he became too much that he neglected his duties, then that is when I understood what he meant then.

**Sen. Hassan Omar Hassan:** So, I think when you have, let us say, a Government where one or two people are elected – the Governor and his Deputy are the only elected people in the construct of the County Government. Is it not?

**Mr. Jackson Musyoka Kala:** Yes, of course.

**Sen. Hassan Omar Hassan:** Then number two, in the dereliction of duty – I am just trying to understand this for my own clarity because I have been taking a lot of notes, if you have noticed – the only duty the Deputy Governor you alleged performed was to employ his people. So what time was he doing that; he was never in the office; he had

derelicted his duties, but yet he was able to get his people employed, he was able to influence award of contracts and all that kind of stuff?

**Mr. Jackson Musyoka Kala:** He was a phone call away; and him, being a Deputy Governor, of course, it carries weight even if he is a phone call away.

**Sen. Hassan Omar Hassan:** All this---

**The Chairperson** (Sen. Mutahi Kagwe): Very well---

**Sen. Hassan Omar Hassan:** Just one last one. So, all these employments were done through him calling people to employ people?

**Mr. Jackson Musyoka Kala:** Yes---

**The Chairperson** (Sen. Mutahi Kagwe): Yes, Sen. Njoroge?

**Sen. Ben Njoroge:** Mr. Chairman, Sir, I think with due respect, my colleague is going too far with those questions. He is almost like cross examining the witness, which is not right.

**Sen. Hassan Omar Hassan:** Mr. Chairman, Sir, my opinion will matter in the final decision and outcome and in that case, I am trying to understand because this is for me one of the heavier charges which is glaring – nepotism and tribalism. I fight against that all the time. So, if it is substantiated, it is an important area. So, I want to know, in that regard – and I do not think I am going overboard; I am just trying to clarify facts for myself.

**The Chairperson** (Sen. Mutahi Kagwe): Excuse me; no, no; hold on. I am the one to decide at this juncture whether a matter is being taken too far or not. I do not think that Sen. Omar has taken it too far, but I do think that it is good for Sen. Omar to be cautious lest one is construed in other ways.

**Sen. Hassan Omar Hassan:** But I would want just that clarity in terms of how that influenced employment of his relatives in the county. I think we have said that you are going to table the evidence during the cross examination and it will be important for us to demonstrate how he influenced the relatives that were employed.

**Mr. Jackson Musyoka Kala:** Mr. Chairman, Sir, we even have evidence when he attempted to influence the employment of drivers. He sent me a text message to confirm whether his drivers have been employed or not. That evidence is available and we can tender it; we have text messages which are very clear.

**The Chairperson** (Sen. Mutahi Kagwe): Very well. I think the Senators are satisfied. You may now step down.

**Mr. Jackson Musyoka Kala:** I am most obliged, Mr. Chairman, Sir.

*(Mr. Jackson Musyoka stepped down)*

**Mr. Harun Ndubi:** Mr. Chairman, Sir, I am looking at the clock there; I take note of the clarification I sought earlier in the morning when Mr. Kioko Kilukumi and I approached the bench there. The energy is running low; some of us are not as resilient as yourselves. Is it possible that we adjourn the proceedings until tomorrow?

**The Chairperson** (Sen. Mutahi Kagwe): Well, could both counsel please approach the bench?

*(Counsel for both parties consulted with the Chairperson)*

Thank you very much. I am sure quite a number of you were feeling like Counsel Ndubi, and you will be happy to know that following discussions and consensus, we have agreed that we adjourn for tonight and resume from where we have left the proceedings tomorrow at 9.00 o'clock. So, tomorrow when we get here, counsel for the County Assembly will start and conclude the matter that is left, which is about 45 minutes, give or take a few minutes. Then we will start the hearings from the Deputy Governor's side.

#### **ADOURNMENT**

**The Chairperson** (Sen. Mutahi Kagwe): That being the case, I now adjourn the proceedings until tomorrow at 9.00 o'clock.

Have a good evening.

The Special Committee adjourned at 7.54 p.m.