

REPUBLIC OF KENYA



TWELFTH PARLIAMENT

THE SENATE

COMMUNICATION FROM THE CHAIR

RESOLUTION OF THE COUNTY ASSEMBLY OF KIAMBU ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HON. FERDINAND NDUNG’U WAITITU BABAYAO, GOVERNOR, KIAMBU COUNTY

1. **Honourable Senators**, Happy New Year.
2. It is my pleasure and privilege to welcome you back to the Senate for this special sitting. I believe that you have had an opportunity to spend quality time with your constituents and your families during the ongoing long recess and that you are re-energized and ready, as always, to conduct the business that is ahead of us.
3. **Honourable Senators**, on the request of the Senate Majority Leader and with the support of the requisite number of Senators, I appointed today,

Tuesday, 21st January, 2020 as a day for a special sitting of the Senate vide Gazette Notice No. 118 dated 10th January, 2020. The business to be transacted at this sitting shall be -

(a) hearing of the charges against Mr. Ferdinand Ndung'u Waititu Babayao, the Governor of Kiambu County; and

(b) consideration of a request for the extension of the tenure of the *Ad hoc* Committee on Managed Equipment Services.

4. On the matter of the hearing of the charges against Mr. Ferdinand Ndung'u Waititu Babayao, the Governor of Kiambu County, by a letter dated 20th December, 2019 (*Ref: CAK/1/19/10(24)*) and received in my office on Monday, 23rd December, 2019, the Speaker of the County Assembly of Kiambu informed me that at its 127th and 128th sittings held on Thursday, 19th December, 2019, the County Assembly of Kiambu passed a Resolution to impeach the Governor of Kiambu County, Hon. Ferdinand Ndung'u Waititu Babayao, pursuant to the provisions of section 33(2) of the County Governments Act, 2012.

5. The Speaker of the County Assembly also forwarded to me copies of the following documents -

(a) the Order Papers of the County Assembly of Kiambu for the 127th and 128th sittings both held on 19th December, 2019;

- (b) a Notice of Motion on the proposed removal of the Hon. Ferdinand Ndung'u Waititu Babayao from the office of County Governor of Kiambu, dated 2nd December, 2019; and
- (c) copies of documents containing the grounds and particulars on which the proposal for impeachment was made.

6. In terms of Article 181 of the Constitution, section 33(3)(a) of the County Governments Act, 2012 and standing order 75(1)(a) of the Senate Standing Orders, the Speaker of the Senate is required “*within seven days after receiving notice of a resolution from the speaker of a county assembly to convene a meeting of the Senate to hear charges against the Governor.*”
7. **Honourable Senators**, the letter of the Speaker of the County Assembly of Kiambu and the accompanying documents were received in my office on 23rd December, 2019, while the Senate was on its long recess, following the conclusion of the Third Session on 5th December, 2019.
8. **Honourable Senators**, as you may be aware, some concerns have been expressed as to the appropriate date on which the sitting of the Senate to hear the charges against the Governor of Kiambu County ought to have been held, with some commentators suggesting that, despite the Senate recess, a special sitting ought to have been convened and held within seven days of the date of receipt of the Resolution from the Speaker of the County

Assembly of Kiambu, which would have worked to a special sitting being held on or before 30th December, 2019.

9. Owing to the importance of the impeachment process as a tool of oversight and for bringing to account public leaders and the Senate's central role in this process, it is important that I make a brief comment on this matter. The County Governments Act, 2012 and the Senate Standing Orders, do not appear to contemplate a situation where the Senate is convened for a special sitting when a Session has ended and while a new Session is yet to commence. Provision is however made for the manner in which a special sitting is to be convened where the Senate stands adjourned during a Session. Standing order 30(1) of the Senate Standing Orders provides that whenever during a Session the Senate stands adjourned, whether or not a day has been appointed for the next meeting, the Speaker may, on the request of the Senate Majority Leader or the Senate Minority Leader, and in each case with the support of at least fifteen Senators, appoint a day for a special sitting of the Senate.

10. **Honourable Senators**, in the absence of specific provision and taking into account our precedents in previous matters, the Senate leadership consulted appropriately and on the request of the Senate Majority Leader, applying standing order 30(1), with the necessary modifications, and standing order number 1, I appointed the present date as the date for this special sitting. I

have directed the Procedure and Rules Committee to give careful consideration to this matter as they propose amendments to the Standing Orders.

11. In terms of the way forward, standing order 75(1)(b) of the Senate Standing Orders, gives the Senate two options on how to proceed with the matter. The Senate may -
 - (1) by Resolution, appoint a Special Committee comprising eleven of its members to investigate the matter; or
 - (2) investigate the matter in plenary.

12. In the present case, Honourable Senators will note that at Order No. 2, the Senate Majority Leader will give Notice of Motion for the establishment of a Special Committee and the Motion thereon is listed at Order No. 5. Should this Motion be carried, the Special Committee will be required, under section 33(4) of the County Governments Act, 2012, and standing order 75(2) of the Senate Standing Orders, to investigate the matter and to report to the Senate on whether it finds the particulars of the allegations against the Governor to have been substantiated.

13. If, however, the Motion for the establishment of a Special Committee does not pass, the Senate shall proceed to investigate and consider the matter in Plenary and in that event I will appoint the dates on which the Senate will sit in Plenary to hear and dispose of the matter.

14. It is noteworthy, and I wish to emphasize to all Honourable Senators, that when we come to the debate on the Motion to establish the Special Committee, the debate shall be limited to the substance of the Motion, namely, whether or not to conduct the impeachment trial by way of a Committee. It will not be a debate on the substance of the impeachment or its merits. In that debate therefore, no matters relating to the substance of the charges or the processes undertaken will be admissible.
15. **Honourable Senators**, I wish to emphasize that the Senate stands in the place of a trial court in this matter and is not itself, either as an institution or as individual Senators, party to the matter. Therefore, following the conclusion of this Communication, we will proceed immediately to the next Order, which will be the Reading of the Charges. Upon the reading of the charges, I also wish to draw your attention that it will not be possible to entertain any question or debate either on the substance of the charges or the processes so far undertaken or to be undertaken. These are all matters for the trial.
16. **Honourable Senators**, as has been stated on previous occasions, the hearing of charges for the proposed removal from office of a Governor is one of the most important functions of the Senate under the Constitution and I therefore urge that we exercise the highest level of responsibility on this matter.

I thank you.

**SEN. KENNETH LUSAKA, EGH, MP,
SPEAKER OF THE SENATE.**

21ST JANUARY, 2020