

REPUBLIC OF KENYA
THE TWELTH PARLIAMENT

THE SENATE

IN THE MATTER OF THE PROPOSED REMOVAL OF THE FERDINAND
WAITITU BABAYAO, THE GOVERNOR, KIAMBU COUNTY

AND

IN THE MATTER OF AN INVITATION TO APPEAR

AND

IN THE MATTER OF THE COUNTY ASSEMBLY OF KIAMBU

TO: THE CLERK OF THE SENATE
SENATE PARLIAMNENT OF KENYA
NAIROBI

NOTICE OF PRELIMINARY OBJECTION TO THE INVITATION TO APPEAR.

1. Hon.Ferdinand Waititu Babayao (hereinafter 'the governor'), was duly elected as the Governor of the Kiambu County under the provisions of Articles 180 of the Constitution.
2. The Governor shall appear before the Senate by his advocates. His advocates for purposes of this matter are **M/S Mbugua Nganga & Company Advocates, Mayfair Centre, 6th Floor, P.O.Box 9316, 00100 Nairobi and Charles Njenga, Advocate.**
3. The Governor shall raise the following preliminary objections at the hearing of the motion for his proposed removal by impeachment and shall seek direction that the same be heard and disposed off before the substantive hearing of the charges.



- a. **THAT** the resolution by the County Assembly of Kiambu made on the 19th December 2019, proposing his removal from office under the provisions of Article 181 of the Constitution, is invalid, irregular and unlawful for want of compliance with the number threshold of a two thirds majority provided for at Section 33 of the County Government Act. The said resolution required approval and a vote of atleast sixty two (62) members of the County Assembly of Kiambu, whereas only fifty seven (57) members were present and voting on the said date. The communication from the Speaker of the County Assembly of Kiambu to the Speaker of Senate, misrepresented this fact but which is self-evident on the available facts.
- b. **THAT** the present proceedings are unlawful and untenable for efluxion of a statutorily prescribed timeline. Section 33(3)(a) of the County Governments Act,2012,provides that within seven days after receiving the notice of the resolution of the County Assembly, the Speaker of the Senate shall convene a meeting of the Senate to hear the charges against the Governor. Such notice was given in this matter on the 23rd December 2019 and the hearing of the same on the 28th and 29th January 2020 as proposed and indicated in the invitation to appear, is well outside the prescribed statutory timeline and which cannot be extended by a resolution of the Senate or by exercise of discretion on its part. The lapse of time renders the underlying process null and void warranting dismissal,*in limine*.
- c. **THAT** the County Assembly of Kiambu in passing the underlying resolution made on the 19th December 2019,failed to conduct any public participation as required by Article 196 of the Constitution.

d. **THAT** the County Assembly of Kiambu in passing the underlying resolution made on the 19th December 2019, failed to comply with its own Standing Orders.

Dated at Nairobi.....2019..... day of.....JAN..... 2020

MBUGUA NG'ANG'A & Co.
ADVOCATES FOR THE GOVERNOR

DRAWN & FILED BY;

MBUGUA NG'ANG'A & Co.

ADVOCATES

MAYFAIR CENTRE 6TH FLOOR

RALPH BUNCHE ROAD

P.O BOX 9316 - 00200

NAIROBI

TEL; 020-2728039, 2081550,0722620536

EMAIL; info@mbugua-nganga.com, gnwakili@gmail.com