

KERICHO COUNTY ASSEMBLY

THE HANSARD

Third Assembly

Third Session

Tuesday 24th September, 2024 A

(The House met at 11.02 a.m.)

[The Speaker (Hon. (Dr.) Patrick Mutai) in the Chair]

PRAYERS

The Speaker (Hon. (Dr.) Patrick Mutai): Good morning Honourable Members and welcome to our morning session. First things first, apologies for starting the session late and this was because of the technical hitch that the staff encountered. Nevertheless, you are welcome to this morning session. I can see quite a number of visitors in our Public Gallery. I hope they have been inducted on our proceedings.

Before we begin, I would like to know who are in the Public Gallery so that we can recognize them.

(The Hon. Speaker consulted with the Clerk)

We can proceed. Honourable members, I am made aware that the visitors in the Public Gallery are the members of the Fourth Estate and I think they have been here many times. I think it's an opportunity to welcome them on behalf of this County Assembly as we continue with our proceedings. Honourable Members, please also note that we are also live on our Facebook Page. We can now proceed with the Order of Business of today.

Order Number One! Next Order!

COMMUNICATION FROM THE CHAIR**RETREAT FOR SECTORAL AND HOUSE KEEPING COMMITTEES**

Honourable Members, I have one communication to make. This is in regards to our House Business Committees and the Sectoral Committees and I am informed that from this morning, which is from today, they shall retreat to go and do their various Sectoral Committees reports. Is the Deputy Speaker who is the Chairman of the Liaison Committee in?

Oh yes, please coordinate that and you report back to my office immediately after this session.

Next Order!

NOTICES OF MOTION**REMOVAL FROM OFFICE OF H.E DR. ERIC MUTAI, GOVERNOR KERICHO COUNTY BY
IMPEACHMENT**

The Speaker (Hon. (Dr.) Patrick Mutai): Honourable Members, we have a Notice of Motion by the Honourable Kiprotich Rogony, that is, Member of the County Assembly for Sigowet Ward. Honourable Kiprotich Rogony, proceed to give your Notice of Motion.

Hon. Kiprotich Rogony (Member for Sigowet Ward): Mr. Speaker, I rise to give a Notice of the following Motion.

Honourable Speaker, I beg, with the support of the Members of the County Assembly of Kericho whose names and signatures I have annexed hereto as Annexure I, to give Notice of Motion for the impeachment of His Excellency Honourable Eric Kipkoech Mutai, the Governor of Kericho County, for Number one, Gross Violation of the Constitution, Number two, Gross Violation of various National and County laws, Number three, Abuse of Office, Number four, Gross Misconduct.

Mr. Speaker, the specific grounds of the Motion are organized thematically as: number one, outlined below, and number two, elaborated in the ensuing pages of this Motion. Mr. Speaker, the evidence in support of the Motion is set out in, number one, my affidavit in support of the Motion, duly sworn on 23rd of September 2024, number two, the exhibits annexed to my affidavit in support of the Motion, number three, the witness statements/ affidavit presented herewith.

Further, the affidavit presented herewith verifies the accuracy and reliability of the exhibits to the Motion.

Whereas, number One, Article 2 of the Constitution of Kenya 2010, (hereinafter “*the Constitution*”) restates the supremacy of the Constitution as the supreme law of the Republic and binds all persons and state organs at both levels of government;

Number Two, Article 10 of the Constitution, Sections 3 and 16 of the Leadership and Integrity Act, 2012, and Section 9, 10, and 12 of the Public Officers Ethics Act, 2003 establish, among others, the rule of law, democracy, human dignity, courtesy, respect, social justice, inclusiveness, equality, human rights, probity, professionalism, non -discrimination, protection of the marginalized, good governance, transparency, and accountability as part of the national values and principles of governance;

Number Three, Article 10, 73, and Article 75 of the Constitution requires State Officers at all times, whether in public or private life, to behave in a manner that, *inter alia*, number one, brings honour to the nation and dignity of the office that a state officer holds, and number two, portrays selfless service based solely on the public interest demonstrated by honesty in execution of public duties and declaration of any personal interest, that may conflict with the public interest; Number three, ensures decisions made by the State Officer are not influenced by nepotism, favouritism and improper motives; demonstrates discipline and commitment in service to the people; and number four, avoids demeaning the office that the State Officer holds;

Number Four, by dint of Section 11 of the Leadership and Integrity Act, 2012 enjoins the Governor as a State Officer to treat members of the public and other public officers with courtesy and respect; and further, by dint of Section 34 of Leadership and Integrity Act, 2012, the Governor, being a State Officer, is precluded from bullying any person by engaging in a behaviour that is vindictive, cruel, malicious, humiliating, and is intended to undermine a person;

Number Five, Article 73 (2) (d) and (e) of the Constitution provides for accountability of a State Officer to the Public for all decisions made in exercise of the powers of the office they hold, and that accountability is critical principle of leadership and integrity;

Number Six, Article 10, 232, 235, and 236 of the Constitution and Section 59, 59A, 60, 62, 63, 64, and 65 of the County Governments Act, 2012 provides for the values and principles of public service and establish and elaborate framework for the establishment of the county public offices and the recruitment, employment and dismissal of public officers;

Number Seven, Article 179 (4) of the Constitution reaffirms the Governor's position as the chief executive of the County hence, the Constitution and the law vests primary responsibility

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for the decision making and ensuring the well-being of the County on the Governor. This is a strong expression of the County Governor's commitment and expectation to provide effective leadership, strategic vision and direction to the County in ensuring efficient and prudent use of public resources for the good of the county. This is a strong expression of the county governor's commitment and expectation to provide effective leadership, strategic vision, and direction to the county in ensuring efficient and prudent use of public resources for the good of the County;

Number Eight, Article 181 of the Constitution, Section 33 of the County Governments Act, and Standing Order Number 74 of the Standing Orders of the County Assembly of Kericho provides for the impeachment of the Governor on grounds of gross violation of the Constitution, gross violation of other written laws, gross misconduct and abuse of office;

Number Nine, Articles 201, 205 and 207 of the Constitution, forms a constitutional basis that guides the Counties in raising and utilization of public finances. In particular, Article 207 has even established the County Revenue Fund and clearly stipulates that the money shall not be withdrawn from the Revenue Fund unless the Controller of Budget has approved;

Number Ten, Section 30 (3) of the County Governments Act obligates the Governor to provide leadership in the County governance, be accountable for the management and use of county resources, and to promote amongst others, good governance and competitiveness of the County;

Number Eleven, the Governor has, in multiple occasions, directly and indirectly engaged in acts and conduct which, severally and collectively, constitute gross violation of the Constitution, gross violation of other written laws, gross misconduct and abuse of office;

Number Twelve, by his acts and conduct, the Governor has exposed the Office of the Governor, the Assembly, and the People of Kericho to ridicule, embarrassment, shame, and disrepute;

Number Thirteen, the conduct of the Governor has been scandalous and embarrassing to the highest office of the County Governor, an office held in public trust, and whose authority ought to be exercised in a manner consistent with the purpose and object of the Constitution;

Number Fourteen, the conduct of the Governor has made it impossible for the County to be governed, as it ought to be, compromised service delivery and jeopardized the functions of both arms of the County Government of Kericho. It has therefore become untenable for the Governor to continue being in office;

Number Fifteen, the Governor has variously committed constitutional wrongs that subvert the structure of government, and undermine the integrity of the office and even the Constitution

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itself. The significant effects of the conduct, that is, undermining the integrity of the office, disregard all constitutional duties and oath of office, arrogation of power, and abuse of the governmental process has had an adverse impact on the running and administration of the Kericho County Government;

And number sixteen, the Governor continued staying in office has and will continue to undermine effective service delivery to the detriment of the people of Kericho, in whose trust the Governor holds the office.

Mr. Speaker, the Assembly resolves to impeach the Governor under Article 181 of the Constitution, Section 33 of the County Governments Act, and Standing Order Number 74 of the County Assembly Standing Orders on the following grounds:

Number (a), gross violation of the Constitution and other laws. Mr. Speaker, gross violation of the Constitution of the Republic of Kenya 2010 of the County Governments Act, 2012, the Public Procurement and Asset Disposal Act, Public Finance Management Act, 2012, and Kericho County Laws. Number one of (a), misappropriation, misallocation, and illegal drawing of county revenue and county finances. Mr. Speaker, number one, on various occasions, since his election as a Governor and subsequent assumption of office, the Governor has engaged in various acts of gross violation of Article 10, Article 183, and Article 201 of the Constitution, Section 102 and Section 109 of the Public Finance Act, Cap. 412A, and the provision of the Kericho County Rating Act, Number 5 of 2019, as follows:

Number (a), presiding over an administration which has deliberately refused, failed, neglected, and omitted to automate revenue collection thus opening up the Counties' Own-Source-Revenue to pilferage, misappropriation, and theft.

Number (b), the County Government advertised for the procurement of Integrated Revenue Management System, vide an advertisement dated 14th December 2023. Despite the tender being responsive and compliant, the tenderer being proposed by the Tender Committee for the purpose of the award of the tender, there is evidence that the Governor frustrated the award of the same tender.

Number (c), the absence of Automated Payment System has adversely impacted on the revenue raising ability by the county through deliberate undercharging of business permit fees and mis-categorization of zones where businesses are actually situated. For instance, Single Business Permits are issued to the business owners at Zone B and Zone C, which attract less charge when actual business is situated at Zone A to avoid payment of the actual charges. Similarly, properties situated in areas that attract higher rates are mis-categorized, charged, and issued clearance certificates for areas that are zoned for the lower rates, thus perpetuating revenue leakages.

Number (d), the Governor presided over an administration that has totally disregarded the Valuation Roll prepared and passed by the County Assembly in 2016, pursuant to the Valuation and Rating Act, Cap. 266, thus the County continues to collect property rates under the old Valuation roll occasioning the County substantial revenue losses.

Number (e), revenue leaks and losses has seen the county miss revenue targets for two consecutive financial years, whereby the revenue collection fall short of the projected revenue by more than 50%.

Number (f), the Governor has violated a provision of Section 104 of the Public Finance Management Act 2012, whence through his act of omission, commission, and inaction, he continues to preside over a broken Public Finance Management System, which has made the County Treasury ineffective.

Number (g), there is a nexus between the disappearance and/or the loss of county revenue and the Governor's opulent lifestyles since he was elected. Indeed, within two years since his election, the Governor's wealth has grown exponentially, so much so that he can now afford to contribute up to Kenya's shillings one million, in a single *Harambee*. Indeed, in one church function, the Governor was captured bragging that whereas he didn't have the resources, when he first vied, "*ra ko mi tuguk*" loosely translated, "this time I have enough resources".

Number two, Mr. Speaker, on the first charge, on or about 31st August 2023, the Governor engaged in gross violation of Article 10, 103, 201, 207, and 208 of the Constitution, and Section 102, 109, and 110 of the Public Finance Management Act, 2012 by launching a program dubbed "*Equalizer Kazi Mtaani Initiative*" and drawing County funds towards the initiative without a legislation to anchor the initiative, public participation, prior approval of the County Assembly, and Controller of budget and prior approval of the Budget and Appropriation.

Number three, Mr. Speaker, of the first charge, the present and the former County Executive Committee Members and Chief Officers have variously reported coercion by the Governor to make financial allocation for Governor's own use from the funds allocated to their respective departments and which funds they were required to remit through the Governor's Personal Assistant.

Number four, violation of Article 201 (a), (d), (e) of the Constitution of Kenya 2010, on principles of Public Finance Management and Article 226 as read with Article 227 of the Constitution, by presiding over glaring irregularities evidenced by Number (a), irregular award of contracts and evasion of accountability; Number (b) wilfully interfering in the procurement processes and the award of tenders; Number (c), skewed tender awards to various contractors at inflated rate and in collusion with fraudulent contractors and suppliers; Number (d), irregular implementation of various programs in the County; and Number (e),

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intentionally and negligently presiding over massive theft of County public funds as evidenced by the Auditor General's Report for the Financial Year ended 30th June 2023 which raised red flags over various projects.

Number five, Mr. Speaker, on 15th of August 2023, the Governor compensated the victims of Londiani accident from the County Emergency Fund to cover up for the funds raised by the public and misappropriated by a Committee he had formed to steer the fund drive and without a cogent explanation of how the funds publicly raised for the victims had been expended.

Evidence, Mr. Speaker, of the Governor's engagement, connivance, and complicity in the aforementioned acts of misappropriation, misallocation, and illegal drawing of County revenues and County finances is to be found in, Number (i), Invitation to Tender dated 14th December 2023-KCA exhibit 1;

Number (ii), appointment of Tender Committee dated 27th December 2023-KCA exhibit 2; Number (iii) Tender opening record dated 28th December 2023-KCA Exhibit 3; is also attached. Number (iv) Appointment of Tender Evaluation Committee dated 4th January 2024-KCA Exhibit 4; Number (v) Tender Evaluation Report dated 5th February 2024-KCA Exhibit 4; Number (vi), Kericho County Revenue Administration and Management Act, 2019-KCA Exhibit 5; Number (vii), Kericho County Rating Act, 2019-KCA Exhibit 6; Number (viii), Kericho County Finance Act, 2023-KCA Exhibit 7; Number (ix) A bundle of copies of single business permits-KCA Exhibit 8; Number (x), Report of the Ad-hoc Committee on *Kazi Mtaani Project*, and that is the *Equalizer Mtaani Project*-KCA Exhibit 9; Number (xi) Affidavit of Mr. David Kipkorir Rop and Mr. Eric Koech-KCA Exhibit 10; Number (xii), Auditor General's Report for the year ended 30th June 2023-KCA Exhibit 11; Number (xiii) A schedule of revenue streams vis-à-vis performance as at 30th April 2024-KCA Exhibit 12. case year exhibit number 10. Number (xiv) Video clips numbered "KCAV-1" and "KCAV-2" and they are contained in here Mr. Speaker.

And then number two: Misappropriation and/or Abetting Misappropriation of publicly raised funds. Number one, on various dates between 4th July 2023 and 9th July 2023 the Governor grossly violated the provisions of Article 10, 73 and 75 of the Constitution and Section 29 and 34 of the Leadership and Integrity Act, 2012 by:

- (a) Overseeing misappropriation of funds raised for the victims of horrendous Londiani Junction accident tragedy in which over Kshs. 9 million of public raised funds were lost.
- (b) Reneging on is undertaking to implement the Report of the County Assembly's Ad-hoc committee formed to probe the misappropriation of funds meant for the victims of the accident. There is evidence that the Governor filed a suit and/or supported a suit by those implicated in the Report of the County Assembly's Ad-hoc Committee

in Kericho ELRC Petition No. E006 of 2023, that is, *Dr. Wesley Bor & 5 Others vs. The Governor, Kericho County Government & Others* and Kericho ELRC petition No. E014 of 2023-*Victor Tum & Others vs. The Governor, Kericho County Government & Others*.

- (c) Being personally and directly complicit in the flawed award of direct tenders for service provision during the fundraiser and requiem mass of the victims of the accident
- (d) The County Governor has in his regard committed numerous and various acts in the course of his duties that are contrary to and in violation of the Constitution and the laws of Kenya. These include:

Number (i) the authenticity of the various payments made cannot be confirmed. The fact that the exact amount of money expended from the sum collected during the fundraiser points to impropriety and suggests a clear fraud on those whom the funds ought to have benefited.

Number (ii) a total of Ksh. 13,682,660 was collected during the fundraiser. A sum of Kenya Shillings Four Hundred and Twenty-Three Thousand was purportedly expended as: Pastors' facilitation, transport, refund, field preparation, lunches and refreshment, printing and publishing and radio announcements. Other payments that were approved from the fund were: Kericho County Referral Hospital Kshs. 2,037,524; Londiani Hospital Kshs. 1,534,190; Supertix Limited Kshs. 2,945,000; Supershine Limited Kshs. 411,000; Rays Hotel-Kshs 100,000; County Commissioner's fuel-Kshs. 300,000; etc.

Number (iii) That when Kenyans from all walks of life voluntarily made contributions to aid the victims of the tragedy, it was never intended, or anticipated that the funds would be misappropriated with the blessings of the Governor who had a higher calling to ensure the money is accounted for to the last coin and on whom the people bestowed their trust.

Number (iv) the Governor has issued contradictory statements in so far as the use of the funds is concerned. The contradictory statements points to his being complicit in the matter.

Number (v) while the Governor is on record indicating that the medical bills for all the victims would be waived and taken care of by the County Government; it is not clear why money had to be paid out from the fund collected to various public hospitals against the express and unequivocal representations of the Governor.

- (e) By his acts of omission and commission, the Governor has grossly violated the provisions of Article 75 of the Constitution which demands that a State Officer shall, whether in private or in public, behave in a manner that avoids conflict of interest

between personal interest and public or official interest, or compromises public interest in favour of personal interest.

- (f) By overseeing the misappropriation of the funds aimed at assisting the victims of the accident, the Governor violated Article 73 (2) which demands from him selfless service based solely on public interest, demonstrated by honesty in the execution of his duties, accountability to the public for decisions and actions and discipline and commitment in service.
- (g) By allowing himself to be a master of double speak in such a grave matter that shook the conscience of the nation, the Governor violated Article 73 (1) (a) (ii), (iii) of the Constitution which demands that he at all times demonstrate respect to the people; and brings honour and dignity to the office he holds.
- (h) By allowing himself and senior officials close to him to benefit from the funds, the Governor violated Article 76 (2) (b) of the Constitution which prohibits a State Officer from accepting a benefit in circumstances that compromise the integrity of the State Officer
- (i) By failing to ensure that the decision making in the executive office of the County Governor are not influenced by corruption, nepotism and other callous and improper motives, the Governor has failed to exercise objectivity and impartiality thus violating Article 73 (2) (b) of the Constitution Kenya, 2010.

Evidence of the Governor's engagement, connivance and complicity in the acts of misappropriation and/or abetting misappropriation of publicly raised funds is to be found in:

- (i) The Report on the Investigation of Londiani Accident Victims' Fundraising held on 4th of July 2024- KCA Exhibit number 13; (ii) Affidavit filed by the Governor in Kericho ELRC Petition No. E014 of 2023- KCA Exhibit number 14; and (iii) Video clips numbered KCAV-3", KCAV-4" and KCAV-5".

Number (b) Mr. Speaker, Abuse of Office: Number (i), Illegal Appointments, Unlawful Dismissals and Transfers, and Usurpation of the Constitutional and Statutory Functions of the County Public Service.

Number one, the Governor has variously engaged in (i) gross misconduct and (ii) gross violations of Articles 10, 73, 75, 232, 235 and 236 of the Constitution, (iii) gross violation of Section 17 of the Public Officers Ethics Act, Section 55, 59, 59A, 60, 62, 63, 64 and 65 of the County Governments Act, Section 4 of the Public Appointments (County Assemblies Approval) Act of 2017 and variously abused his office by:

- (a) Illegally appointing one Mrs Alice Bett (now Judge of the High Court) as the County Attorney when there was a substantive office holder, an act which the Employment and Labour Relations Court (Honourable Lady Justice Wasilwa) affirmed was irregular, and unprocedural and unlawful in *Sang vs. Governor, Kericho County & 2 others (Petition No. E001 of 2023)*. In that case, the Governor was found by the Court to be in gross violation of Articles 73 and 232 of the Constitution, his actions found to

be illegal and unconstitutional and ordered to pay a cost of Kshs 2,000,000 and costs personally. Mr. Speaker it's important to emphasize this. The Governor was found by the Court to have violated the Constitution and he was forced to pay from his own pocket Kshs. 2,000,000. This is a serious crime Mr. Speaker because he was found guilty and therefore this is even sufficient ground to have the Governor cease holding the office he currently holds. The Governor has therefore been already adjudged to be in gross violation of the law and all the Assembly and the Senate are called upon to do is to remove him by impeachment and that is why we are here Mr. Speaker.

- (b) Causing the advertisement of the positions of doctors, nurses, Early Childhood Development Education (ECDE) teachers just to endear himself politically when he knew the County Government did not have the capacity to hire. The applicants were subsequently not shortlisted nor the alleged vacancies filled up.
- (c) Mr. Speaker, illegally deploying health staff vide the Notice dated 22nd July, 2024 without any justification, authority and involvement of the County Public Service Board, thus creating a crisis in health sector.
- (d) Illegally appointing Mr. George Kipngeno Kirer as the Chief Officer for Finance and forwarding his name to the County Assembly for vetting and approval when there was a substantive holder office holder in the name of Mrs Jackline C. Langat and the vacancy had not arisen. Mr. Speaker, an advert for a vacancy was put up when there already a person office and this is illegal because you cannot advertise a position where the person holding the office is still in office. The evidence of the Governor's engagement, connivance and complicity in the foregoing acts of illegal appointments, unlawful dismissals and transfers and usurpation of the constitutional and statutory functions of the county organs is to be found in (i) judgment of the Employment & Labour Relations Court in the case of *Collins Sang vs. Governor, Kericho County 2 others (Petition E001 of 2023) [2024] KEELRC* that is, KCA Exhibit number 14; and (ii) A copy of the Advertisement for vacancies- KCA Exhibit number 15;

Number two, Subversion, Discrediting and Impeding of the Oversight Role of the County Assembly. On 3rd September 2024, the Governor engaged in (i) gross misconduct and (ii) grossly violated the provisions of Article 10, 73, 75, 174 and 185 (3) of the Constitution, and abused his office by writing to the Speaker purporting to direct the Speaker on, *inter alia*, the timelines the Speaker should give the Chief Officers who are summoned by the County Assembly for questioning in exercise of the County assembly's oversight mandate.

Evidence of the Governor's engagement, connivance and complicity in the foregoing acts of subversion, discrediting and impeding of the oversight role of the County Assembly is to be found in; (i) A letter by the Governor dated 20th August 2024 addressed to the Speaker of the

County Assembly of Kericho-KCA Exhibit 16 and (ii) A letter from the Speaker to the Governor dated 3rd September 2024- KCA Exhibit 17.

Number (c) Mr. Speaker is Gross Misconduct: Number one Bullying, Incitement, Vilification and Indecent Sexual Conduct. One, on various occasions, the Governor has repeatedly engaged in (i) gross misconduct and (ii) gross violation of the provisions of Articles 10, 73 and 75 of the Constitution and Section 29 and 34 of the Leadership and Integrity Act by:

- (a) Publicly vilifying the residents of Kericho County with divergent views. A case in point is a Mr. Marwa from Londiani who, while attending an event in Londiani on 4th of March 2024, the Governor publicly disparaged, demeaned, undermined and even threatened to use the services of the police officer assigned to him to manhandle him. Similarly, on 24th of August 2023 the Governor, while commissioning a Renal Unit and a Bulk Liquid Oxygen Plant at Kapkatet Sub-county Hospital, the Governor openly vilified, slighted and berated Hon. Amos Birir, MCA Kapkatet Ward who had not attended the function describing him as “mentally blind” and “stupid” and we have the record Mr. Speaker.
- (b) Further, on 15th of August 2023 while addressing the Press to counter the findings of the Ad-hoc Committee of the County Assembly on Londiani Accident, the Governor spitefully referred to the members of the said Ad-hoc Committee as “the funeral committee”- that Committee Mr. Speaker was led by the honourable Moses Rotich from Tendeno Ward- and he repeated the same words just to emphasize that indeed he did not even respect this House.
- (c) Mr Speaker, the Governor has been operating with impunity as though he is above the law. On the second day of being sworn into office, the Governor led a mob to invade a private land owned by one Mr. Joseah Kiplangat Kogo within Kericho town and tore down the fence. The Governor has since designated the subject land as an illegal dump site operated by the County Government without the consent of the registered proprietor, National Environment Management Authority, that is, NEMA approval, gazettelement by the County designating the parcel as a dump site and in total disregard of a Court Order issued by Environment and Land Court in Kericho in *ELC Petition No. E001 of 2022, that is, Joseah Kiplangat Kogo vs. County Government of Kericho*. The Governor has also obstructed the enforcement of the orders by the police administration. The actions are illegal, contemptuous to the authority and the dignity of the Court and the rule of law, unethical and demeaning the office the Governor holds. Further, as a result of the illegal actions of the Governor, the County was condemned to pay the costs. This is wrong Mr. Speaker.

- (d) There are numerous complaints of Governor's indecent and unnatural sexual behaviour by female partners who accuse him of, for instance, forcing them to unconsented anal sex, dangerous and unprotected sex, etc. The victim of the abuse seeks anonymity at this stage and the Mover of Motion shall, at the hearing of this Motion seek to have the victim heard in camera to protect her identity and dignity. Further for the sake of concealing her identity, the victim will be identified in a pseudo name. Mr. Speaker, this is real and which is unfortunate.
- (e) The Governor has persistently intimidated, molested and harassed county officers who do not sing to his tune leaving officers jittery and creating an atmosphere of fear, uncertainty and despondency in the County and thus creating toxic working environment. This violates the provisions of Section 11 and 13 of the Leadership and Integrity Act, 2012.
- (f) The Governor has persistently used divisive and unbecoming language which undermines the office he holds contrary to Section 8 of the Leadership and Integrity Act, 2012.
- (g) The Governor has violated Article 75 (1) of the Constitution by drawing hefty allowances and a salary while failing to diligently report to work to the huge detriment of the discharge of his mandate as a Governor and the performance of his functions.
- (h) The acts of the Governor enumerated above have collectively brought dishonour and disrepute into the Office of the Governor in violation of Chapter Six of the Constitution and Leadership and Integrity Act of 2012. The evidence of the Governor's engagement, connivance and complicity in the preceding acts of incitement, vilification, and indecent sexual conduct, is to be found in: (i), Affidavit of Joseah Kiplangat Kogo sworn on 23rd September 2023 in support of the Notice; (ii) Judgment of the ELC in ELC Petition No. E001 of 2022-Joseah Kiplangat Kogo vs. County Government of Kericho-"KCA Exhibit 18"; (iii) Video clips numbered "KCAV-6", "KCAV-7" and "KCAV Exhibit-8".

Mr. Speaker, I have affirmed to this Motion and this affirmation pursuant to Standing Order 74 (1) that I, Honourable Kiprotich Rogony, being an elected a member of the County Assembly, representing Sigowet Ward hereby affirm that: number one, the particulars of the allegations contained in this Motion are true to the best of my information, knowledge, and belief.

Number two, each member whose name and signature appears in exhibit number one, which is here, Mr. Speaker, has informed me that he or she has sufficiently verified the particulars of the allegations contained in this Motion and number three, each member whose name and signature appears in exhibit number one has informed me that he or she has sufficiently

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verified the particulars of the allegation of the Motion are true to the best of their information and belief, based on their appreciation of the information pertinent to the Motion. Number four, the matters in this affirmation are accurate to the best of my knowledge, belief, save where I have relied on advice or information whose sources are disclosed. Mr. Speaker I have signed.

Lastly, Mr. Speaker, I have a sworn Affidavit, that is, in the matter of Oaths and Statutory Declarations Act, Chapter 15 of the Laws of Kenya, in the matter, Section 106 (b) of the Evidence Act Chapter 80 of the Laws of Kenya and all other laws relating to the admissibility of electronic evidence. In the matter of Article 181 of the Constitution, 2010, and in the matter of Section 33 of the County Governments Act, 2012, In the matter of the Motion for the Impeachment of Honourable Eric Kipkoech Mutai, the Governor of Kericho County, Affidavit in support of the Motion for the removal of Eric Kipkoech Mutai, Governor of Kericho County by impeachment, I, Kiprotich Rogony, an adult of sound mind, residing and working for gain in the Kericho County of the Republic of Kenya, whose address for the purpose of dispositions in this affidavit in the Care Of H.K Moore Advocates 820 Kileleshwa, Gatundu Road Opposite Sosian Villa; of course the telephone number is there and the E-mail, the address Mr. Speaker is P.O Box 19895-00100 Nairobi, make oath and solemnly state as follows:

Number one, that I am a Member of the County Assembly of Kericho elected under the United Democratic Alliance representing the people of Sigowet;

Number two, that I have personal knowledge of all the matters set out in this Impeachment Motion, here for the impeachment of Honourable Eric Kipkoech Mutai, the Governor of Kericho; that is, the Governor, and hence competent to swear this affidavit;

Number three, that I sufficiently proficient in English, Kiswahili, and Kipsigis languages. Accordingly, I am competent in providing accurate and reliable translations of utterances, writings and other forms of communication across the English, Kiswahili, and Kipsigis language.

Number four, that I have been collecting and collating evidence to support the impeachment Motion since the beginning of this year 2024. This was motivated by concerns raised by various residents of County of Kericho over the manner in which the County Government was managed under the leadership of Honourable Eric Kipkoech Mutai on various discreditable acts on the part of the Governor, specifically, I collected and collated all the evidence referred to as KCA Exhibit 1 to KCA Exhibit 18 in the impeachment Motion, copies of which are annexed hereto and numbered sequentially and they are here Mr. Speaker.

I made the transcripts and translations referred to in the impeachment Motion and whose recordings and soft versions are saved in the flash disk hereby presented to the House Mr. Speaker; I have the Flash Disk and...what do we call this one? And a Compact Disk for

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record Mr. Speaker. I downloaded, from the Internet; the videos alluded to in the impeachment Motion, copies of which are saved in the flash disk and compact disks, presented herewith.

Number five, that I downloaded the videos using my mobile phone device of IMEI numbers, 865780069472299 and 865780069472281. That is my phone, Mr. Speaker.

Number six, that I later transferred the videos from my mobile phone and transferred the same into the flash disk presented herewith using the laptop of Make HP Elite Book Serial Number D-190022003;

Number seven, that I verified the authenticity, accuracy, availability and downloadability from the Worldwide Web of the videos at the time of making the depositions herein.

Number eight, that the computer devices alluded to in the preceding paragraph of this affidavit, that is, my mobile phone of make OnePlus-I'm the only one having this phone Mr. Speaker. It is OnePlus 11R and a laptop, model HP Elite Book Serial Number D-190022003:

(i) we're in good working condition at all times, relevant to the downloading, transfer and saving of the videos; (ii) were under exclusive access, custody, control and use of authorized persons at all times relevant to the downloading, transfer, saving of the videos and (iii) performed all relevant tasks seamlessly, free from all malware, technical defects, human sabotage and any other shortcoming that would distort or otherwise affect the accuracy and reliability of electronic evidence embodied in the videos.

Number nine, that I urge the County Assembly to treat this affidavit as proper certificate for purposes *inter alia*, of the Evidence Act and all other legal requirements governing the admissibility of the photographic and electronic evidence.

Number ten, that I swear this affidavit to confirm that the averments I have made, the videos, transcripts, translations and copies of documents presented herewith in support of the impeachment Motion for the removal of Honourable Eric Kipkoech Mutai, Governor of Kericho County are accurate and verifiable; descriptions of acts, utterances, publications by the Governor and his privies and cronies.

Number eleven, that I reiterate all the averments that I made in the impeachment Motion and verify the same to be true, accurate to the best of my knowledge, information and belief.

Number twelve Mr. Speaker, that all the depositions in this affidavit are true to the best of my knowledge, information and belief, save where I have relied on advice whose sources I have disclosed.

Mr. Speaker, I only wish to just make a correction for record because it might have serious implications. We have affidavit of two former CECs; we used one. So, for purposes of records in this House, we do not have the affidavit of Daniel Kipkorir Rop, we only have the affidavit of Eric Koech. So, that is for records Mr. Speaker so that I may not misrepresent this Notice. Thank you, Mr. Speaker!

The Speaker (Hon. (Dr.) Patrick Mutai): Thank you the Hon. Kiprotich Rogony for the Notice. Hon. Members I can confirm that I have received compact Disc and the USB.

Hon. Kiprotich Rogony (Member for Sigowet Ward): Yes Mr. Speaker. Both have the videos, which are annexed here, Mr. Speaker, as KCA Exhibits 1 to 18.

The Speaker (Hon. (Dr.) Patrick Mutai): Thank you Hon. Kiprotich Rogony. Hon. Members, the member of the Motion has given Notice of his Motion, I confirm to this house that it's true that we have the exhibits as well as the flash disc and the compact disc here with us, which also has gone through the Office of the Clerk and my office. So Clerk, we proceed with the Next Order.

Honourable Members, before that, let me pronounce myself on this matter of the Notice of Motion by Hon. Kiprotich Rogony. As you are aware where our Standing Orders, more so Standing Order number 77, which any State Officer mentioned or whose name has been mentioned adversely has a right to be heard and therefore H.E the Governor Dr. Eric Kipkoech Mutai will appear before this House on 2nd October 2024 and he is free of course to be accompanied by lawyers so that he can defend himself before his House. So please note that and therefore this means that this Motion shall be moved and debated to its conclusion on the same date of 2nd October 2024. Please be advised.

Yes, the Honourable Leader of Majority!

MOTION

ADJOURNMENT OF THE HOUSE TO 2ND OCTOBER 2024

Hon. Philip Rono (Leader of Majority and Member for Kamasian Ward): Thank you very much Mr Speaker for the opportunity. Mr Speaker I beg based on Standing Order number 34, to move a Motion to adjourn the House to next week 2nd October 2024, that is, Wednesday Mr Speaker, to allow various committees enough time to finalize on their respective Sectoral committees and report to the House after 3rd October, and number two Mr. Speaker to support the same, you know tomorrow we are still mourning one of our colleague in the previous First and Second County Assemblies and that the colleague will be

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buried tomorrow on Wednesday in his Kipchimchim home and majority of members of this House will be attending the funeral and that is the reason to support the House to adjourn the House until Wednesday 2nd of October 2024 at 9.30 a.m. and I kindly request Hon. Albert Kipkoech to second the Motion. Thank you!

The Speaker (Hon. (Dr.) Patrick Mutai): Hon. Albert Kipkoech!

Hon. Albert Kipkoech (Member for Soliat Ward): Thank you Mr. Speaker. Based on the scope, depth, and length of the reports before the committees, I second the Motion that we adjourn the House until Wednesday next week. Thank you Mr. Speaker!

The Speaker (Hon. (Dr.) Patrick Mutai): Okay, thank you! Honourable Members I now rise to put the Question.

(Question put and agreed to)

ADJOURNMENT

The Speaker (Hon. (Dr.) Patrick Mutai): Honourable Members, there being no other Order of Business, this Assembly stands adjourned until 2nd October 2024 at 9.30 a.m. Thank you!

[The House rose at 12.09 p.m.]