



(Third Assembly)



(Third Session)

(077)

COUNTY ASSEMBLY OF KERICHO

THIRD ASSEMBLY – (THIRD SESSION)

SUPPLEMENTARY ORDER PAPER

TUESDAY 24th SEPTEMBER 2024 AT 9.30A.M

ORDER OF BUSINESS

PRAYER

1. Administration of Oath
2. Communication from the chair
3. Messages
4. Petitions
5. Papers
6. Notices of Motion (Hon. Kiprotich Rogony)

HONOURABLE SPEAKER, I beg, with the support of the Members of the County Assembly of Kericho ("the *County Assembly*") whose names and signatures I have annexed hereto as "*Annexure 1*" to move the motion for impeachment of His Excellency Hon. Erick Kipkoech Mutai, the Governor of Kericho County, for:

- (i) Gross violation of the Constitution of Kenya;
- (ii) Gross violation of various national and county laws;
- (iii) Abuse of office; and

(iv) Gross misconduct.

THE SPECIFIC GROUNDS of the motion are organized thematically as: (i) outlined below; and (ii) elaborated in the ensuing pages of this Motion.

THE EVIDENCE in support of the Motion is set out in:

(i) My **AFFIDAVIT** in support of this Motion duly sworn on 23rd September, 2024;

(ii) the **EXHIBITS** annexed to my Affidavit in support of the Motion;

(iii) the witness statements/affidavits presented herewith.

Further, the Affidavit presented herewith verifies the accuracy and reliability of the Exhibits to the Motion.

WHEREAS:

1. **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;
2. **Article 10** of the Constitution, **Sections 3 and 16** of the *Leadership and Integrity Act, 2012*, and **Sections 9, 10 and 12** of the *Public Officer 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**;
3. **Articles 10, 73, and 75** of the Constitution require State Officers, at all times, whether in public or private life, to behave in a manner that, *inter alia*; (i) *brings honour to the nation and dignity of the office* that a State Officer holds (ii) *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 public interest; *(iii)* 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 *(iv)* avoids *demeaning the office* that the State Officer holds;

4. 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 officer with courtesy and respect; and, further, by dint of **Section 34** of the Leadership and Integrity Act, 2012, the Governor, being a state officer, is precluded from bullying any person by engaging in a behavior that is vindictive, cruel, malicious, humiliating and is intended to undermine a person;
5. **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 a critical principle of leadership and integrity;
6. **Articles 10, 232, 235 and 236** of the Constitution and **Sections 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 an elaborate framework for the establishment of county public offices and the recruitment, employment and dismissal of county public officers;
7. **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 for decision making and ensuring the wellbeing 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;
8. **Article 181** of the Constitution, **section 33** of the **County Governments Act**, and **Standing Order No. 74** of **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*;

9. Articles 201, 205 and 207 of the Constitution forms a constitutional basis that guide the Counties in the raising and utilization of public finances. In particular, **Article 207** established the county Revenue Fund and clearly stipulates that money shall not be withdrawn from the Revenue Fund unless the Controller of Budget has approved;
10. **Section 30 (3) of the County Government's Act** obligates the Governor to provide leadership in County governance, be accountable for the management and use of County resources, and to promote amongst others, good governance and competitiveness of the County;
11. 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;
12. 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*;
13. The conduct of the Governor has been scandalous and embarrassing to the high 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 objects of the Constitution;
14. 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;

15. The Governor has variously committed constitutional wrongs that subvert the structure of government, and undermine the integrity of office and even the Constitution itself. The significant effects of the conduct i.e. undermining the integrity of office, disregard of 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
16. The Governor's continued stay in office has, and will continue to undermine effective service delivery to the detriment of the people of Kericho County, in whose trust the Governor holds the office.

THE ASSEMBLY RESOLVES TO IMPEACH THE GOVERNOR under Article 181 of the Constitution, Section 33 of the County Governments Act, and Standing Order 74 of Kericho County Assembly Standing Orders on the FOLLOWING GROUNDS:

A. GROSS VIOLATION OF THE CONSTITUTION AND OTHER LAWS

(Gross Violation of the Constitution of the Republic of Kenya, 2010; the County Governments Act, 2012; the Public Procurement and Asset Disposal Act; the Public Finance Management Act, 2012; and Kericho County Laws)

I. MISAPPROPRIATION, MISALLOCATION, AND ILLEGAL DRAWINGS OF COUNTY REVENUE AND COUNTY FINANCES

1. 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 Articles 10, 183 and 201 of the Constitution, Sections 102 and 109 of the Public Finance Management Act, Cap 412A, and the provisions of the Kericho County Rating Act, No. 5 of 2019 as follows:

- (a) Presiding over an administration which has deliberately refused, failed, neglected and omitted to automate revenue collection thus opening up the County's own-source revenue to pilferage, misappropriation and theft.
- (b) The County Government advertised for the procurement of the *Integrated County Revenue Management System* vide an advertisement dated 14th December, 2023. Despite the tender being responsive and a compliant tenderer being proposed by the tendering committee for the award of the tender, there is evidence that the Governor frustrated the award of the said tender.
- (c) The absence of the automated payment system has adversely impacted on the revenue raising ability by the County through deliberate undercharging of business permits fees and miscategorization of zones where businesses are actually situate. For instance, single business permits are issued to the business owners at zones B and C which attract less charges when the actual business is situated at zone A to avoid payment of the actual charges. Similarly, properties situated in areas that attract higher rates are miscategorized, charged and issued clearance certificates for areas that are zoned for lower rates, thus perpetrating revenue leaks.
- (d) The Governor presides over an administration that has totally disregarded the **Valuation Roll** prepared and passed by the County Assembly in 2019 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.
- (e) The revenue leaks and losses has seen the County miss revenue targets for two consecutive financial years whereby the revenue collections fall short of the projected revenue by more than fifty percent (50%).
- (f) The Governor has violated the provisions of **Section 104 of the Public Finance Management Act, 2012** whence through his acts of omission, commission, and

inaction, he continues to preside over a broken public finance management system which has made the County Treasury ineffective.

- (g) There is a nexus between the disappearance and/ or loss of the County Revenue and the Governor's opulent lifestyle 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 **Kshs. 1,000,000.00** 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 translating to *"this time I have enough resources"*.
2. On or about 31st August, 2023, the Governor engaged in gross violation of **Articles 10, 183, 201, 207 and 208** of the Constitution and **Sections 102, 109 and 110** of the Public Finance Management Act, 2012 by launching a programme 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 the Controller of Budget, and prior approval of the budget and appropriation approval.
 3. The present and former chief executive committee members and chief officers have variously reported coercion by the Governor to make financial allocations 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 assistants.
 4. 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:
 - (a) Irregular award of contracts and evasion of accountability;
 - (b) Willfully interfering in the procurement processes and the award of tenders;

- (c) Skewed tender awards to various contractors at inflated rate and in collusion with fraudulent contractors and suppliers;
 - (d) Irregular implementation of various programs in the County; and
 - (e) 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.
5. On 15th 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 of the Governor's engagement, connivance, and complicity in the aforementioned acts of misappropriation, misallocation, and illegal drawings of county revenue and county finances is to be found in:

- i. *Invitation to Tender dated 14th December, 2023 – KCA Exh. 1;*
- ii. *Appointment of the Tender Committee dated 27th December, 2023 – KCA Exh. 2;*
- iii. *Tender opening record dated 28th December, 2023 – KCA Exh. 3;*
- iv. *Appointment of Tender Evaluation Committee dated 4th January, 2024 – KCA Exh. 4;*
- v. *Tender Evaluation Report dated 5th February, 2024 – KCA Exh. 5;*
- vi. *Kericho County Revenue Administration and Management Act, 2019 – KCA Exh. 6;*
- vii. *Kericho County Rating Act, 2019 – KCA Exh 7;*
- viii. *Kericho County Finance Act, 2023 – KCA Exh. 8;*
- ix. *A bundle of copies of single business permits – KCA Exh. 9;*
- x. *Report on the Ad hoc Committee on Kazi Mtaani Project – KCA Exh. 10;*
- xi. *Affidavits of Mr. Erick Koech – KCA Exh. 11;*

- xii. Auditor General Report for the year ended 30th June, 2023 - KCA Exh. 12;
- xiii. A schedule of revenue streams vis-à-vis performance as at 30th April, 2024 - KCA Exh. 13;
- xiv. Video clips numbered "KCAV-1" and "KCAV-2".

II. MISAPPROPRIATING AND/OR ABETTING MISAPPROPRIATION OF PUBLICLY RAISED FUNDS

1. On various dates between 4th July, 2023 and 9th July, 2023, the Governor grossly violated the provisions of **Articles 10, 73 and 75** of the Constitution, and **sections 29 and 34** of the Leadership and Integrity Act, 2012 by:
 - (a) Overseeing misappropriation of the 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 his 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 - 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 providers during the fund raiser and requiem mass of the victims of the accident.
 - (d) The County Governor has in this 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:

- i) The authenticity of 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.
- ii) A total of Kshs. 13,682,660/- was collected at the fund raiser. A sum of Kenya Shillings Four Hundred and Twenty- Three Thousand (Kshs. 423,000/-) was purportedly expended as: Pastor's facilitation, transport refund, field preparation, lunches and refreshments, printing, 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.*
- 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.
- iv) The Governor has issued contradictory statements in so far as the use of the funds is concerned. The contradictory statements point to his being complicit in the matter.
- 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 interests and public or official interests, 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 demand that he at all times demonstrates 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 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 misappropriating and/or abetting misappropriation of publicly raised funds is to be found in:

- i. The Report on the Investigations of Londiani Accident Victims Fundraising Held on 4th July, 2023 – KCA Exh. 13;*
- ii. Affidavit filed by the Governor in Kericho ELRC Petition No. E014 of 2023 – KCA Exh. 14; and*
- iii. Video clips numbered “KCAV-3”, “KCAV-4”, and “KCAV-5”.*

B. ABUSE OF OFFICE

I. ILLEGAL APPOINTMENTS, UNLAWFUL DISMISSALS AND TRANSFERS, AND USURPATION OF THE CONSTITUTIONAL AND STATUTORY FUNCTIONS OF COUNTY PUBLIC SERVICE

1. 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 Officer Ethics Act, Sections 55, 59, 59A, 60, 62, 63, 64 and 65 of the County Governments Act, Section 4 of the Public Appointments (County Assemblies Approval) Act, 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 (Hon. Lady Justice Wasilwa) affirmed was irregular, unprocedural and unlawful in *Sang v Governor Kericho County & 2 others (Petition 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 costs of **Kshs. 2,000,000** and costs personally. 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.
 - (b) Causing the advertisement of the positions of doctors, nurses, early childhood education (ECDE) teachers just to endear himself politically when he knew the

County Government did not have capacity to hire. The applicants were subsequently not short listed nor the alleged vacancies filled up.

- (c) Illegally deploying health staff vide the Notice dated 22nd July, 2024 Without any justification, authority and involvement of County 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 office holder in the name of *Ms. Jackline C. Langat* and the vacancy had not arisen.

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 county organs is to be found in:

- i. *Judgment of the Employment and Labour Relations Court in Kericho in the Case of Collins Sang v Governor Kericho County & 2 others (Petition E001 of 2023) [2024] KEELRC – KCA Exh. 14; and*
- ii. *A copy of the Advertisement for vacancies – KCA Exh. 15;*

II. **SUBVERSION, DISCREDITING AND IMPEDING OF THE OVERSIGHT ROLE OF THE COUNTY ASSEMBLY**

1. On 3rd September, 2024 the Governor engaged in (i) *gross misconduct* and (ii) *grossly violated* the provisions of **Articles 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 Assembly for questioning in exercise of the 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 Exh. 16; and
- ii. A letter from the Speaker to the Governor dated 3rd September, 2024 - KCA Exh. 17.

C. GROSS MISCONDUCT

I. BULLYING, INCITEMENT, VILIFICATION AND INDECENT SEXUAL CONDUCT

1. 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 sections 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 March, 2024, the Governor publicly disparaged, demeaned and undermined and even threatened to use the services of the police officer assigned to him to manhandle him. Similarly, on 24th 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 event describing him as “*mentally blind*” and “*stupid*”.

(b) Further, on 15th 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*".

- (c) The Governor has been operating with impunity as though he is above the law. On the second day of being sworn in to 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 dumpsite operated by the County Government without the consent of the registered proprietor, National Environment Management Authority (NEMA) approval, gazettelement by the County designating the parcel as a dumpsite and in total disregard of a court order issued by the Environment and Land Court in Kericho in *ELC Petition No. E001 of 2022 - 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 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.
- (d) There are numerous complaints of Governor's indecent and unnatural sexual behavior by female partners who accuse the Governor 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 the 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.
- (e) The Governor has persistently intimidated, molested, 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 a toxic work environment. This violates the provisions of **Sections 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 6 of the Constitution and the Leadership and Integrity Act, 2012.

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, 2024 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 Exh. 18”;*
- iii. *Video clips numbered “KCAV-6”, “KCAV-7” and “KCAV Exh – 8”.*

7. Statements

Martin Epus Patrick
Clerk to the Assembly