

THE COUNTY ASSEMBLY OF NYAMIRA THIRD ASSEMBLY (THIRD SESSION)

Date: 6th SEPTEMBER, 2024

The Hon. Speaker, County Assembly of Nyamira

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The Clerk

County Assembly of Nyamira

COUNTY ASSEMBLY OF NYAMIRA
OFFICE OF THE SPEAKER

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NOTICE OF PROPOSED MOTION

(Under Nyamira County Standing Order 62)

TAKE NOTICE that I HON. EVANS JUMA MATUNDA a Member of the County Assembly of Nyamira propose to move a Motion for the Removal of HON. AMOS KIMWOMI NYARIBO, the Governor of Nyamira County from Office by way of IMPEACHMENT on the following grounds

- (i) Gross Violation of the Constitution of Kenya and Other Laws, and
- (ii) Abuse of Office and Gross Misconduct.

The Motion, Grounds and Particulars are hereto attached.

DATED at NYAMIRA this......6th...... day ofSeptember...... 2024

HON. EVANS JUMA MATUNDA

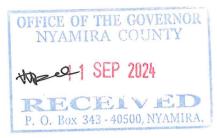
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OFFICE OF THE GOVERNOR
NYAMIRA COUNTY

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THE COUNTY ASSEMBLY OF NYAMIRA THIRD ASSEMBLY (THIRD SESSION)

FROM OFFICE OF COUNTY GOVERNOR, NYAMIRA COUNTY BY WAY OF IMPEACHMENT PURSUANT TO ARTICLE 181(1)(a),(b)AND(c) OF THE CONSTITUTION OF KENYA, 2010, SECTION 33 OF THE COUNTY GOVERNMENT ACT, 2012 AND NYAMIRA COUNTY ASSEMBLY STANDING ORDER 62.

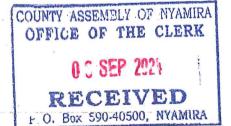
Mr. Speaker, Sir

AWARE that Article 232(2) of the Constitution of Kenya 2010 prescribes the values and principles of public service for all state organs in both levels of government and all state corporations which are inscribed in Article 232(1) as follows:

- (a) high standards of professional ethics;
- (b) efficient, effective and economic use of resources;
- (c) responsive, prompt, effective, impartial and equitable provision of services;
- (d) involvement of the people in the process of policy making;
- (e) accountability for administrative acts;
- (f) transparency and provision to the public of timely, accurate information;
- (g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
- (h) representation of Kenya's diverse communities; and
- (i) affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of—
 - (i) men and women;
 - (ii) the members of all ethnic groups; and
 - (iii) persons with disabilities;

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Mr. Speaker, Sir



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FURTHER, Article 10, 73 and 75 (1) of the Constitution provide for National Values and Principles of Governance, the Responsibilities of Leadership and the Conduct of State Officers respectively, which requires all state office holders to exercise the authority and public trust assigned to the office in a manner that demonstrates and brings- Respect for the People; Honor to the Nation and Dignity to the Office; Promotes Public Confidence in the Integrity of the Office and the Accountability to the Public for Decisions and Actions, and in a manner that Avoids Conflict between Personal Interests and Public or Official Duties; comprising any public or official interest in favour of a personal interest; or Demeaning the Stature of the Office that officer holds as a key guiding principles of Leadership and Integrity;

Mr. Speaker, Sir

FURTHER AWARE of the letter and the spirit of Article 174 and 175 of the constitution on Objects and Principles of Devolved Government as read together with section 30(2)(3) of the County Government Act, 2012 which provides for the functions and responsibilities of a County Governor and performance of those functions;

NOTING that the Doctrine of Separation of powers and its inherent demand for the dutiful and equitable distribution of resources by Public Officials to citizens. Article 174 and 175 essentially provide for accountable service delivery to all Kenyan citizens. Article 181 (1) which lays the grounds upon which a County Governor may be removed from office keeps to the spirit of providing a check and balance in keeping with the objects and principles of devolved government.

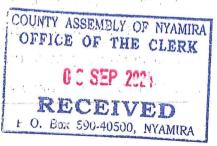
This Assembly now **RESOLVES** to remove His Excellency Hon. AMOS KIMWOMI NYARIBO, from the office of County Governor of Nyamira County **by impeachment**, pursuant to Article 181(1)(a)(b)(c) of the Constitution, Section 33 of the County Government Act, 2012, and Standing Order 62 of the Nyamira County Assembly Standing Orders, on the following grounds and the particulars there-under;



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GROUNDS AND PARTICULARS OF IMPEACHMENT

GROUND 1: GROSS VIOLATION OF THE CONSTITUTION AND OTHER LAWS

The Governor grossly violated the Constitution and other laws as demonstrated below:

(a) Gross Violation of the Constitution by Illegal Recruitment of County Staff WHEREAS Articles 10, 27(4) and Article 232 (1)(g) of the Constitution of Kenya, 2010 (Values and Principles of Public Service) require fair competition and merit as the basis of appointments;

AND WHEREAS Section 5(2) of the Employment Act, 2007 requires an employer to promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice; the Governor openly violated this section of the law by singlehandedly sourcing Mr. Godfrey Kiriago and Ms. Elmelda Nyaberi for appointment in the County Public Service to the position of Director Human Resource Management and Human Resource Officer respectively to the position of Director Human Resource Management and Human Resource Officer respectively by way of cherry-picking, a process that was devoid of competitiveness. This recruitment did not satisfy the standards set out in law. This violation was affirmed by the Honourable Court in Employment and Labour Relations Court at Kisumu ELRC Petition No. E047 of 2021 which declared the appointment and secondment of Godfrey Kiriago Nyangau and Elmelda Kemunto Nyaberi as illegal, discriminatory and unconstitutional

The decisions of the County Public Service Board will be communicated through the Secretary, County Public Service Board", the Governor and the Chairperson County Public Service Board jointly usurped the functions of the Secretary/ Chief Executive Officer Nyamira County Public Service Board and issued appointment letters to the two officers.

Article 10 and Article 27(4) of the Constitution of Kenya, 2010 on principles of patriotism, the rule of law, good governance, integrity, transparency, accountability, sharing and devolution of power.

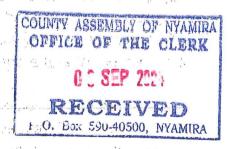
The Governor's illegal recruitment of county staff violated Article 232 (1)(g) of the Constitution of Kenya, 2010 which provides for the values and principles of public service which include but not limited to fair competition and merit as the basis of appointments

and promotions.



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EVIDENCE:

Witness:

Witness No.2: Mr. Douglas Mecha Osoro

Annexure:

Annex I: Certified Copy of the Judgement in ELRC Petition No. E047 of 2021

Annex II: Letters requesting for Mr. Godfrey Kiriago and Ms. Elmelda Nyaberi from their former workstations

Annex III: Appointment Letter for Mr. Godfrey Kiriago

Annex IV: Extract of Employment Act, 2007

Annex V: County Human Resource Manual, 2013

Annex VI: Affidavit of Mr. Douglas Mecha Osoro

(b) Violation of the Constitution by Denying Students their right to Education

WHEREAS Article 27(4) of the Constitution of Kenya requires that the state shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth; the Governor, in January 2024 at Uhuru Gardens in Nyamira town, the Governor uttered words to the effect that "those who don't vote in Nyamira, if your father or your mother does not vote in Nyamira, you belong to where your parents are voters, hence you should apply there and get the bursary there", words that depicted and/or portrayed discrimination contrary to Article 27(4) of the Constitution of Kenya, 2010.

EVIDENCE:

Annexure:

Annex VII: The Constitution of Kenya, 2010.

Annex VIII: Video Marked "EJM001"

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(c) Violation of the Nyamira County Persons With Disabilities Act, 2023 by failing to constitute the Nyamira County Persons With Disability Board

WHEREAS the Nyamira County Persons With Disabilities Act, 2023 provides for among other issues, the rights and privileges of persons with disabilities – the most vulnerable members of society, nine months down the line, despite agitation and numerous pleas

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from persons living with disabilities, the Governor has failed, ignored and/or neglected to cause the constitution of the Board contrary to the Nyamira County Persons with Disabilities Sections 4, 5 and in particular Section 6(1) that states as follows:

The Governor shall appoint with approval of the County Assembly a Chairperson and a Vice Chairperson from amongst the persons nominated under Section 5(1)(a)(b) COUNTY ASSEMBLY OF NYAMIRA respectively.

EVIDENCE:

Witnesses:

Witness No.3: Mr. Jared Wilberforce Nyaribo

Annexure

Annex IX: The Nyamira County Persons with Disabilities Act (No.4), 2023

Annex X: Affidavit of Mr. Jared Wilberforce Nyaribo

(d) Violation Under the Public Finance Management Act, 2012 by failing to Contain the County Wage Bill within the legal threshold

WHEREAS Section 102. (1)(a) and (b) of the Public Finance Management Act, 2012 requires each county government to ensure adherence to—

- (a) the principles of public finance set out in Chapter Twelve of the Constitution;
- (b) the fiscal responsibility principles provided in section 107 under this Act;

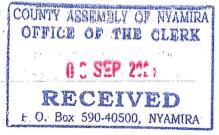
AND WHEREAS Section 107. (2)(c) of the Public Finance Management Act, 2012 requires each County Government to enforce the following fiscal responsibility principles-

The county government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the county government's total revenue as prescribed by the County Executive member for finance in regulations and approved by the County Assembly;

FURTHER WHEREAS Regulation 25(1) (a) and (b) of the Public Finance Management (County Governments) Regulations, 2015 expounds the above section of the Public Finance Management Act, 2012 as follows:

- (a) the County Executive Committee Member with the approval of the County Assembly shall set a limit on the county government's expenditure on wages and benefits for its public officers pursuant to section 107(2) of the Act;
- (b) the limit set under paragraph (a) above, shall not exceed thirty five (35) percent of the county government's total revenue; Og SEP 2024





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AWARE THAT the County Assembly froze all recruitments on 1st July 2021 and communicated the same to the County Executive through the Approved Report of the Committee on Budget and Appropriations on the County Estimates of Revenue and Expenditure for the FY: 2021/22 and further Communications to the County Secretary and the County Public Service Board; the Governor has violated the above provisions by causing the County Wage Bill to balloon ever since 2022 as shown in the analysis below.

	FY:2022/2023		FY:2024/2025	
Percentage	46.4%	48.9%	49.22%	
Source	Controller of Budget Review Report	eview Report Approved County Budgets		-

FURTHER AWARE THAT Regulation 53(1) of The Public Finance Management (County Governments) Regulations, 2015 on Unauthorized Spending stipulates that except as provided for in the Act and the Regulations, an Accounting Officer of an entity may not authorize payment to be made out of funds earmarked for specific activities for purposes other than those activities, the Governor has violated the law by causing continuous Recruitment without approved budget allocations by the County Assembly of Nyamira.

EVIDENCE:

Annexure:

Annex XI: Extract of the Office of the Controller of Budget — County Budget Implementation Review Report for the FY: 2022/23

Annex XII: Office of the Controller of Budget Inquiry into Recruitment of Staff without a Budget by the County Government of Nyamira

Annex XIII: County Assembly Resolutions on County Wage-bill

Annex XIV: Approved Report of the Committee on Budget and Appropriations on the County Estimates of Revenue and Expenditure for the FY: 2021/22

Annex XV: Approved Report of the Committee on Budget and Appropriations on the County Estimates of Revenue and Expenditure for the FY: 2023/24

Annex XVI: Approved Report of the Committee on Budget and Appropriations on the County Estimates of Revenue and Expenditure for the FY: 2024/25

Annex XVII: Advertisement for Vacancies

Annex XVIII: List of the Recruited Staff in the year 2023



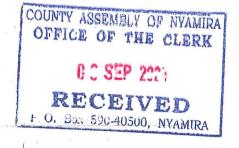
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(e) Violation of the Nyamira County Mortgage Scheme Fund Regulations and Nyamira County Car Loan Scheme Fund Regulations by benefitting from an unsecured Car and Mortgage Loans

The Governor has benefited from a Mortgage facility from the County Government of Nyamira without meeting the laid down requirements in Nyamira County Mortgage Scheme Fund Regulations.

COUNTY ASSEMBLY OF NYAMIRA SPEAKER

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EVIDENCE:

Annexure:

Annex XX: Nyamira County Mortgage Scheme Fund Regulations Legal Notice No.1 of 2015

Annex XXI: Nyamira County Car Loan Scheme Fund Regulations Legal Notice No.2 of 2015

GROUND 2: ABUSE OF OFFICE AND/OR GROSS MISCONDUCT

The governor abused his office through his conduct as demonstrated herein below:

(a) Violation of Article 2 of the Constitution of Kenya by Disobeying Court
Orders

The Governor disobeyed the Court Judgement or Court Orders delivered by Justice Christina N. Baari on 16th December 2021 vide Employment and Labour Relations Court at Kisumu ELRC Petition No. E047 of 2021 which declared the appointment and secondment of Godfrey Kiriago Nyangau and Elmelda Kemunto Nyaberi as illegal, discriminatory and unconstitutional and further ordered the revocation of the appointment and secondment of the aforesaid Godfrey Kiriago Nyangau and Elmelda Kemunto Nyaberi to the service of the County Government of Nyamira.

EVIDENCE:

Annexure:

Refer to Annex: I - Certified Copy of the Judgement in ELRC Petition No. E047 of 2021

Annex XXII: Letter of Appointment of Mr. Godfrey Kiriago as Deputy County Secretary and Deputy Public Service dated 24th October 2022.

Annex XXIII: Ms. Elmelda Nyaberi's Renewal of Contract dated 6th June 2022

Annex XXIV: Mr. Godfrey Kiriago's August 2023 Pay slip

Annex XXV: Ms. Elmelda Nyaberi's April 2023 Pay slip

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(b) Devising and effecting a systematic scheme to defraud the County Government of Nyamira by manipulation of the payroll through the assistance of illegally and un-procedurally recruited members of Staff

The Governor, by Cherry-picking and appointing Mr. Godfrey Kiriago Nyangau and Ms. Elmelda Kemunto Nyaberi to the County Service had a clear intention of manipulating the payroll and defrauding the County Government of Nyamira public funds that are meant for delivery of services and development to the people of Nyamira. The two officers illegally paid huge, irregular and unexplained salaries and special allowances to the Governor and his cronies as shown below:

- (a) H.E. Amos Nyaribo Governor (P.F. No. 20130001017); Salary Arrears of Kshs. 5,649,706 Vide Pay-slip September 2021
- (b) Mr. Godfrey Kiriago Nyangau of PF. No.2007040920 with unexplained **Salary**Arrears of Kshs. 629,720; vide Pay slip (July 2023)
- (c) Ms. Elmelda K. Nyaberi of PF. No. 1986020054 with Unexplained Salary Arrears of Kshs.464,640 vide Pay slip (July 2023)
- (d) Ms. Rose Bosibori Guto, an ECDE teacher of PF. No. 20160093881 with Basic Salaries of Kshs.4,770; **Special House Allowance of Kshs.25,018,852**; etc vide Payslip (March-2023).
- (e) Ms. Gladys Moraa Nyambane of PF. No.20140155228 with Rental Allowance of Kshs.1,200; **Special Salary of Kshs.1,100,467**; etc.-vide Pay-slip (January-2023).
- (f) Mr. Isaac Kerongo Onchiri of PF. No.20160092357 with a Special Salary of Kshs. 700.836 vide Pay-slip (January-2023).

These irregular payments caused the County Government of Nyamira a loss of public funds amounting to **Kshs.33,564,221** thereby denying the people of Nyamira the much needed essential Services and infrastructure developments.

EVIDENCE:

Witnesses:

Witness No.2: Mr. Douglas Mecha Osoro

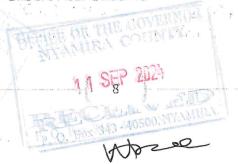
Witness No.4: Mr. Gilbert Atei Onsomu

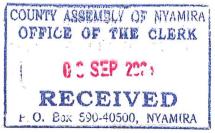
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Annexure:

Refer to Annex: VI - Affidavit of Mr. Douglas Mecha Osoro

Annex XXVI: Affidavit of Mr. Gilbert Atei Onsomu





Annex XXVII: H.E. Amos Nyaribo (P.F. No. 20130001017); Gross Monthly Pay Arrears of Kshs. 5,649,706 Vide September 2021 Pay-slip

Annex XXVIII: Ms. Rose Bosibori Guto of PF. No. 20160093881 with Basic Salaries of Kshs.4,770; Special House Allowance of Kshs.25,018,852; vide Payslip (March-2023)

Annex XXVIX: Letter from Mr. Godfrey Kiriago Nyangau to Rose Bosibori Guto admitting Salary Overpayment

Annex XXX: Mr. Godfrey Kiriago Nyangau of PF. No.2007040920 with unexplained Salary Arrears of Kshs. 629,720; vide Pay slip (July 2023)

Annex XXXI: Ms. Elmelda K. Nyaberi of PF. No. 1986020054 with unexplained Salary Arrears of Kshs.464,640 vide Pay slip (July 2023)

Annex XXXII: Ms. Gladys Moraa Nyambane of PF. No.20140155228 with Rental Allowance of Kshs.1,200; Special Salary of Kshs.1,100,467; etc vide Pay-slip (January-2023)

Annex XXIII: Mr. Isaac Kerongo Onchiri of PF. No.20160092357 with a Special Salary of Kshs.700,836 vide Pay-slip (January-2023)

Mr. Speaker, Sir

I beg to move.

EVIDENCE IN SUPPORT OF THIS MOTION

Witness:

Witness No.1: Hon. Evans Juma Matunda

Annexure:

Annex XXXIV: Affidavit of the Mover - Hon, Evans Juma Matunda.

Annex XXXV: Signatures in Support of this Motion

Annex XXXVI: Public Participation Report (to be included in the bundle of documents

later)

Signed this6th......day ofSeptember.....2024

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HON/EVANS JUMA MATUNDA

Member of County Assembly of Nyamira

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COUNTY ASSEMBLY OF NYAMIRA

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THE COUNTY ASSEMBLY OF NYAMIRA THIRD ASSEMBLY (THIRD SESSION)

Affirmation Under Standing Order 62 (1)

I, Hon. EVANS JUMA MATUNDA being a Member of the County Assembly of Nyamira

AFFIRM THAT:

- The particulars of allegations contained in the Impeachment Motion presented herewith are true to my knowledge and belief.
- 2. Each Member whose name and signature appear in **Annex 1** has informed me that they have sufficiently verified the particulars of allegation of the Impeachment Motion.
- 3. Each Member whose name and signature appearing in **Annex 1** has informed me that particulars of allegations in the Impeachment Motion are true to their knowledge and belief based on their reading and appreciation of information pertinent to the Impeachment Motion.
- 4. The matters in this Affirmation are accurate to the best of my knowledge and belief, safe where I have relied on advice or information whose sources are disclosed.

Dated at Nyamira this6th......day ofSEPTEMBER.......2024

Hon. EVANS JUMA MATUNDA

Member County Assembly of Nyamira

REPUBLIC OF KENYA

IN THE MATTER OF: THE OATHS AND STATUTORY DECLARATION ACT (CHAPTER 15 OF THE LAWS OF KENYA)

IN THE MATTER OF: SECTION 106 OF THE EVIDENCE ACT CAP 80 LAWS OF KENYA AND ALL OTHER LAWS RELATING TO ADMISSIBILITY OF ELECTRONIC EVIDENCE

IN THE MATTER OF: ARTICLE 181 OF THE CONSTITUTION OF KENYA 2010

IN THE MATTER OF: SECTION 33 OF THE COUNTY GOVERNMENTS ACT 2012 (REV.2020)

IN THE MATTER OF: THE MOTION FOR REMOVAL OF H.E AMOS K. NYARIBO GOVERNOR NYAMIRA COUNTY BY IMPEACHMENT.

AND

IN THE MATTER OF: AFFIDAVIT OF DOUGLAS OSORO MECHA

- I **Douglas Osoro Mecha** of ID No. 22398075 of Post office Box Number 434-40500, Nyamira and a resident of Nyamira County in the Republic of Kenya do hereby make oath and state as follows;
 - 1. THAT I am a male adult of sound mind well versed with the facts of the impeachment herein and hence competent to make swear this affidavit.
 - 2. <u>THAT</u> I am an employee in the County Government of Nyamira and a former Nyamira County Acting Payroll Manager.
 - 3. THAT I am currently a Director of Administration in the department of Transport, Roads and Public Works in Nyamira County.
 - 4. <u>THAT</u> at the time I was working, I followed the regulations and adhered to the law and all the set procedures to the letter.

- 5. THAT upon assumption of office, the Governor from time to time issued verbal instructions, inter alia, he directed me to effect promotions of William Mwencha Nyasimi, Purity Nyamboga and others.
- 6. THAT in early January 2021, the Governor demanded that I surrender my payroll password to Godfrey Kiriago and Elmelda Nyaberi, both who were strangers to me, to enable them perform urgent instructions that were of interest to him and extract reports from the Payroll for his consumption, which I obliged on account of immense pressure.
- 7. THAT In about one week, upon discovery that the said Godfrey Kiriago and Elmelda Nyaberi were not employees of Nyamira County Government, I changed my Payroll Password to protect the System from further infiltration. To my dismay, the two officers continued to report to office as though they were employees of the County Government.
- 8. THAT in mid January 2021, the Governor convened a meeting of Senior County Government officers at Pinecone Hotel, where I was in attendance. In the said meeting, the Governor directed creation of several vacancies which were not based on any need.
- 9. THAT I drafted the indent for recruitments for the said vacancies which I handed over to the Chief Officer for Public Service Management. The Chief Officer refused to forward the intent to the County Public Service Board.
- 10. THAT the Governor directed Mr. Godfrey Kiriago to forward the said indent to the County Chairperson County Public Service Board, which he did via email. The positions were eventually advertised and filled.
- 11. <u>THAT</u> I was ordered by the Governor, the County Executive Committee Member for Public Service Management and the Chief Officer for Public Service Management to un-procedurally handover payroll rights to one Elmelda Nyaberi.
- 12. THAT the aforesaid Elmelda Nyaberi lacked the pre-requisite documentation to cause integration.

- 13. THAT Further on the 9th of June 2021, at around 11:50am, I was called by the County Chief Officer Public Service Management Ms. Christine Moraa Ogechi to the Governor's Office which I obliged. H.E the Governor was in his office with the Executive Committee Member for Public Service Management, Mr. Thomas Nyariki and Ms. Christine Moraa Ogechi. In their presence, the Governor gave verbal instructions that I speedily integrate Mr. Godfrey Kiriago and Ms. Elmelda Nyaberi to the County Payroll before running of the June 2021 Payroll.
- 14. <u>THAT</u> I explained to the Governor that his directive to integrate Mr. Godfrey Kiriago and Ms. Elmelda Nyaberi and payment of Kshs.5.6Million could not be honoured because the officers' secondments were irregular and un-procedural and fictitious respectively. This made the Governor furious and he banged the table, I actually left his office crying and baffled.
- 15. THAT I declined to pay H.E. Amos Nyaribo, Governor Nyamira County Kshs.5.6Million despite his verbal instructions. The amount was christened as salary arrears in the period he served as Deputy Governor and as a Governor, and yet I adjusted his pay slip in January 2021 and the governor's salary was captured.
- 16. THAT a keen look at the IPPD System revealed that the County Government of Nyamira did not owe H.E the Governor any salary arrears and that his salary scale was changed from that of Deputy Governor upon assumption of office in January, 2021. Therefore, I treated the instructions with suspicions, and the claim of salary arrears as fictitious.
- 17. <u>THAT</u> fact that the letter of interdiction is copied to the Governor against common practice says a lot on where the instructions for the interdiction emanated from.
- 18. <u>THAT</u> I did not allow myself to succumb to intimidations, I had a duty of protecting the integrity of the payroll and the supreme law. The payroll was run in the afternoon of the 16th June 2021 and I did not integrate the two officers since the officers did not have any appointment letters or any supportive documents on the purported secondment.
- 19. THAT I did not pay the Governor the Ksh.5.6Million

- 20. <u>THAT</u> In a quick succession of events, Ms. Christine Ogechi was transferred from the Public Service Management to Gender, Culture, Sports and Social Services swapping with Mr. Emmanuel Mokoro.
- 21. THAT hardly had Mr. Emmanuel Mokoro familiarized with his new posting, when he in quick succession issued handing over of payroll rights instructions. He seemed less bothered with the fundamental issues I had raised in regard to procedure of handing over of payroll rights.
- 22. <u>THAT</u> despite Mr. Emmanuel Mokoro being the authorized officer of the department of Public Service Management (PSM), he instructed me to handover the payroll rights to him.
- 23. <u>THAT</u> pressure was too much on me so I wrote back to Mr. Emmanuel Mokoro requesting him to inform the natural witnesses (Executive Committee Member Public Service Management Mr. Thomas Nyariki and the County Secretary and Head of Public Service Mr. James Ntabo) to oversee the handing over to no avail.
- 24. <u>THAT</u> on 9th June 2021, the County Chief Officer was instructed to release me to take up my transfer in the Department of Transport, Roads and Public Works.
- 25. THAT I was interdicted from the position by the Chief Officer Department of Public Service Management despite having been transferred to the department of Transport, Roads and Public Works.
- 26. THAT the Chief Officer who interdicted me did not have powers to cause the interdiction.
- 27. THAT my interdiction was as a result of my refusal to implement unlawful instructions in the government of Nyamira Payroll. I remained on interdiction for a period of close to three (3) years.
- 28. THAT I did not finally hand over the payroll rights, only to learn that the rights were irregularly obtained by the two officers Ms. Elmelda Nyaberi and Mr. Godfrey Kiriago who were unprocedurally integrated to the County Payroll and one more officer who was also un-procedurally seconded and integrated.
- 29. <u>THAT</u> in the month of September 2021, H.E Amos Nyaribo was irregularly paid Kshs.5.6Million by Ms. Elmelda and Mr. Kiriago, the same payment I had objected to implement.

- 30. THAT in the handing over report captioned NCG/PSM/PAYROLL/09/06/2021/1 dated June 2021, had clearly elaborated how actions or inactions on the part of the Executive or the County Public Service Board had affected the management of the County Public Service affairs.
- 31. THAT I aver the following instances: arbitrary transfer of officers rendering critical offices dysfunctional; recruitment of personnel without advertisements and/or budgetary provisions and prerequisite authorization; secondment of officers in total disregard of laid down procedures; arbitrary promotions and demotions; interference in the management of the payroll; intimidation, threats and political expedience.
- 32. THAT the actions or inactions have led to a paralysis in the County Executive, accumulation of salary arrears, litigations, over-recruitment and subsequent unsustainable wage bill.
- 33. THAT The depositions in this Affidavit and the averments in the Impeachment Motion are accurate to the best of my knowledge and belief, save where I have relied on advice or information whose sources are disclosed.

SWORN BY THE SAID)
Douglas Osoro Mecha,)
At Nyamira on 6 this September 202	4)
CO. NYAMWANGE ADVOCATE COMMISSIONER FOR OATHS P. O. Box 275-40500 NYAMIRA) Equal le lap) DEPONENT
)

COMMISSIONER FOR OATHS

DRAWN BY:

M/S C.O NYAMWANGE & CO. ADVOCATES NYAITWE COMPLEX 1ST FLOOR OPPOSITE PUBLIC WORKS DEPOT P.O BOX 275, NYAMIRA

Email: charlesnyamwange@yahoo.com

REPUBLIC OF KENYA

IN THE MATTER OF: THE OATHS AND STATUTORY DECLARATION ACT (CHAPTER 15 OF THE LAWS OF KENYA

IN THE MATTER OF: ARTICLE 181 OF THE CONSTITUTION OF KENYA 2010 IN THE MATTER OF: SECTION 33 OF THE COUNTY GOVERNMENTS ACT 2012

(REV.2020)

IN THE MATTER OF: THE MOTION FOR REMOVAL OF H.E AMOS K. NYARIBO GOVERNOR NYAMIRA COUNTY BY IMPEACHMENT.

AND

IN THE MATTER OF: AFFIDAVIT OF JARED WILBERFOCE NYARIBO

AFFIDAVIT IN SUPPORT OF THE MOTION FOR REMOVAL FROM OFFICE OF H.E AMOS NYARIBO GOVERNOR NYAMIRA COUNTY BY IMPEACHMENT

I, **Jared Wilberforce Nyaribo** of Post office Box Number 46-40506, Kebirigo and a resident of Nyamira County do hereby make oath and state as follows;

- 1. THAT I am an adult male of sound mind and disposition with the respect of whom the matter deponded to herein and thus competent to make this declaration.
- 2. <u>THAT</u> I am an employee of the County Government of Nyamira under the Department of Sports, Youth, Gender, Culture and Community Servies.
- 3. <u>THAT</u> I am a person with disability with sight impairment a condition that I was born since childhood.
- 4. <u>THAT</u> I am aware of the impending removal from office of H.E Amos K. Nyaribo by a Motion of Impeachment by the County Assembly of Nyamira.

- 5. <u>THAT</u> in the year 2016 together with a number of persons with disabilities we started agitating for fair representation and none discrimination in Nyamira County.
- 6. THAT for eight years we suffered government setbacks in the legislation of disability legal framework process of fairness and none discrimination.
- 7. THAT in the year 2022 we mobilized persons with disabilities and held public demonstrations pushing for the enactment of legal framework to address pertinent rights and privileges for persons with disabilities in Nyamira County.
- 8. <u>THAT</u> in the year 2023 the County Government of Nyamira through the Department of Sport, Youth, Gender, Culture, and Community Services drafted Nyamira County Persons with Disability Bill 2023.
- 9. THAT the Nyamira County Persons with Disability Act 2023 was enacted on 1st December 2023 addressing among other issues rights and privileges of the persons with disability in Nyamira county. Annexed Copy of the Nyamira County Persons with Disability Act 2023 Marked JWN-1
- 10. <u>THAT</u> the Nyamira County Persons with Disability Act 2023 provides for Establishment of the Board, Membership and Composition of the Board Sections 4, 5, and 6 respectively.
- 11. THAT despite the long rigorous, demanding, laborious, severe and difficulty process of enacting the Nyamira County Persons with Disability Act 2023 providing for a critical Board to operationalize programs addressing the needs, rights and privileges of persons with disability the H.E Amos K. Nyaribo Governor Nyamira County has again abdicated and abandoned the duty of establishing the Board in total disregard of the continued plight and suffering upon the County Persons with disability.
- 12. THAT the Nyamira County Persons with Disability have continued suffering in the hands of the Governor who has blatantly neglected, refused and or ignored to adhere and comply with the provisions of the Constitution of Kenya 2010 and the Nyamira County Persons with Disability Act 2023.

- 13. THAT the Governor at some point dismissed me from his office when I visited the office to inquire on the constitution of the Board as provided in Nyamira County Persons With Disabilities Act, 2023 Sections 4, 5 and 6. The Governor while dismissing me from his office uttered words to the efffect "I am not the one who made you blind", words that shocked me coming from my Governor. I felt so dejected and left the officed dismayed by the actions of the Governor. I have suffered trauma and mental anguish and as a resident of Nyamira and a person living with disability I feel that my rights have been violated.
- 14. The depositions in this Affidavit and the averments in the Impeachment Motion are accurate to the best of my knowledge and belief, save where I have relied on advice or information whose sources are disclosed.

SWORN BY THE SAID)
Jared Wilberforce Nyaribo	
At Nyamira on 6th this Septemb 2024)
CO. NYAMWANGE ADVOCATE COMMISSIONER FOR OATHS P. O. Box 275-40500 NYAMIRA	DEPONENT)
COMMISSIONER FOR OATHS	

DRAWN BY:

M/S C.O NYAMWANGE & CO. ADVOCATES NYAITWE COMPLEX 1ST FLOOR OPPOSITE PUBLIC WORKS DEPOT P.O BOX 275, NYAMIRA Email: charlesnyamwange@yahoo.com

SPECIAL ISSUE

Kenya Gazette Supplement No. 16 (Nyamira County Acts No. 4)



THIS IS THE EXHIBIT MARKED JWN-1"
ANNEXED TO THE AFFIDAVIT.
DECLARED OF MACK NYMARS
SWORN/DECLARED BEFORE ME
THIS 674 DAY OF 202 LC
COMMISSIONER FOR OATHS

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NYAMIRA COUNTY ACTS, 2023

NAIROBI, 1st December, 2023

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The Nyamira County Persons with Disabilities Act, 2023	1

(c) generally, protect persons with disabilities from any form of discrimination and promote their welfare.

PART II—ADMINISTRATION

Establishment of the Board

- 4. (1) There is established Nyamira County Board for Persons with Disabilities.
 - (2) The Board shall be-
 - (a) a body corporate with perpetual succession;
 - (b) a common seal;
 - (c) capable of suing and being sued;
 - (d) acquiring, holding and disposing of movable and immovable property.

Membership of the Board

- 5. (1) The Board shall consist of the following members appointed by the County Executive Committee Member and approved by the County Asembly—
 - (a) three persons nominated by organizations of persons with disabilities in the County;
 - (b) two persons with disabilities appointed from a panel of names submitted to the County Executive Committee Member by organizations for persons with disabilities;
 - (c) five members representing County Departments responsible for the following—
 - (i) Chief Officer gender, youth, sports, culture and social services;
 - (ii) Chief Officer education and vocational training;
 - (iii) Chief Officer public service management;
 - (iv) Chief Officer health services;
 - (v) Chief Officer finance, ICT and economic planning responsible for finance matters.
 - (d) A Representative of the National Council for Persons with Disabilities;
 - (e) Such other member who may be invited for a specific meeting by the Board.

Composition of the Board

- 6. (1) The Governor shall appoint with approval of the County Assembly a Chairperson and a Vice-Chairperson from amongst the members nominated under Section 5 (1) (a) (b) respectively.
- (2) The Chairperson and the Vice-Chairperson shall be of the opposite gender.
- (3) In nominating Chairperson, Vice-Chairperson and members of the Board the County Executive Committee Member shall ensure that the process is carried out in an open and transparent manner and that—
 - (a) the membership of the Board shall equitably represent different categories of disabilities in the County;
 - (b) not more than two-thirds of the members shall be of the same gender;
 - (c) the composition of the Board shall reflect the five sub-counties of Nyamira County reflecting ethnic diversity of the people of Nyamira.

Tenure of office

- 7. (1) The Chairperson, Vice-Chairperson and members shall hold office for a period not exceeding three years and shall be eligible for reappointment for another term not exceeding three years.
- (2) Whenever a vacancy occurs under Section 7 (1) the County Executive Committee Member shall appoint an interim Chairperson, Vice-Chairperson and members for a period not exceeding ninety days.

Chief Executive Officer

- 8. (1) There shall be a Chief Executive Officer of the Board.
- (2) The Chief Executive Officer shall be appointed by the County Public Service Board with approval of the County Assembly through a competitive process.
- (3) To qualify for appointment as a Chief Executive Officer, a person shall—
 - (a) possess a social science degree or its equivalent from a university recognized in Kenya;
 - (b) have had experience in management for a period of not less than five years.
- (4) The Chief Executive Officer shall hold office for a period of four years renewable for another final four years term subject to

REPUBLIC OF KENYA

IN THE MATTER OF: THE OATHS AND STATUTORY DECLARATION ACT (CHAPTER 15 OF THE LAWS OF KENYA)

IN THE MATTER OF: SECTION 106 OF THE EVIDENCE ACT CAP 80 LAWS OF KENYA AND ALL OTHER LAWS RELATING TO ADMISSIBILITY OF ELECTRONIC EVIDENCE

IN THE MATTER OF: ARTICLE 181 OF THE CONSTITUTION OF KENYA 2010

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IN THE MATTER OF: THE MOTION FOR REMOVAL OF H.E AMOS K. NYARIBO GOVERNOR NYAMIRA COUNTY BY IMPEACHMENT.

AND

IN THE MATTER OF: AFFIDAVIT OF GILBERT ATEI ONSOMU

AFFIDAVIT IN SUPPORT OF THE MOTION FOR REMOVAL FROM OFFICE OF H.E AMOS K. NYARIBO GOVERNOR NYAMIRA COUNTY BY IMPEACHMENT

I **Gilbert Atei Onsomu** of Post office Box Number 245-40500, Nyamira and a resident of Nyamira County do hereby make oath and state as follows;

- 1. THAT I am a male adult of sound mind well versed with the facts of the impeachment herein and hence competent to swear this affidavit.
- 2. THAT I am a citizen of the Republic of Kenya of identification 5299247, a duly registered voter at Masosa Primary School, Nyamaiya ward, in West Mugirango Constituency in within Nyamira County hence competent to make to swear this Affidavit.
- 3. THAT I am aware that H.E Amos Kimwomi Nyaribo became the governor of Nyamira County after the death of the then elected governor and in disregard of the laid down

- procedures influenced the secondment of Mr. Godfrey Kiriago and Ms Elmelda Nyaberi to the position of the Director human resource and assistant Director payroll despite the position having substantive officers within the staff establishment.
- 4. THAT the process of recruitment of one Mr Godfrey Kiriago and Ms. Emelda Nyaberi did not satisfy the standards set out in law, a gross violation of Article 10, 27 (4), 56(c) and Article 232 (1) (g) of the Constitution of Kenya, 2010 on values and principles of Public Service, which require fair competition and merit as the basis of appointments.
- 5. <u>THAT</u> the governor orchestrated the transfer of the County Chief Officer in charge of Public Service Management after she gave an advisory opinion on the secondment of Mr Kiriago and Ms. Elmelda Nyaberi that did not support the governor's position.
- 6. THAT the governor ordered the transfer of the Director Administration, who at the time was holding brief as the payroll manager after he failed to honor the governor's unlawful demand to integrate Mr. Godfrey Kiriago and Ms. Elmelda Nyaberi to the County Payroll and make payment of KSh. 5.6 Million christened as salary arrears to him.
- 7. THAT indeed the said persons Mr. Godfrey Kiriago and Ms Elmelda Nyaberi were integrated to the county payroll and proceeded to pay the governor Ksh.5.6 Million in the month of September, 2021.
- 8. THAT when the governor faced backlash from the citizens of Nyamira on the colossal amount paid as salary arrears, he, on the 10th November, 2021 through his press secretary Mr. Julius Nyabicha issued a press statement captioned 'PRESS STATEMENT ON ALLEGATIONS ON NYAMIRA COUNTY GOVERNOR'S SALARY' attributing the colossal pay to accumulated salary arrears that were never paid in the entire period he served as the deputy governor as well as the 8 months he assumed office of the governor.

- 9. THAT I am aware, the County Government of Nyamira did not owe the governor any salary arrears in the period he served as the deputy governor and that his salary was changed from that of deputy governor to Ksh. 924, 000 for governor in January, 2021.
- 10. <u>THAT</u> the governor later contradicted his earlier assertion that the KSh.5.6 Million was arrears and admitted that the monies were irregularly remitted to his account and stated that the same would be returned back.
- 11. <u>THAT</u> to date, the governor has failed, refused and or ignored to return the said monies to the county government.
- 12. <u>THAT</u> further, under the stewardship Mr. Godfrey Kiriago and Ms. Elmelda Nyaberi the Governor caused the irregular payment of salaries to the following,
 - a) Ms Rose Bosibori Guto an ECDE teacher, PF No. 20160093881; special House allowance of Ksh. 25, 018, 852 vide payslip March, 2023
 - b) Ms Gladys Moraa Nyambane an ECDE teacher, PF No. 20140155228; special salary of Ksh.1,000,467 vide payslip January, 2023.
 - c) Mr Isaac Kerongo Onchiri of PF No. 20160092357; Special Salary of Ksh.700, 836 vide payslip January, 2023.
 - d) Mr. Samuel Mokua Maiko of PF NO. 20180004586; Ksh. 477 750 as basic salary arrears vide payslip October, 2021.
- 13. <u>THAT</u> since H.E Amos Nyaribo became governor, he has recruited a huge number of staff without the requisite budgetary allocation thus deviating from the financial objectives outlined in the County fiscal Strategy Paper (CFSP) without the approval of the County Assembly of Nyamira.

- 14. <u>THAT</u> the governor is aware the County Assembly of Nyamira did not provide budgetary allocation nor approve any expenditure for recruitment in the 2021/2022/2023/2024 financial years' budget estimates.
- 15. <u>THAT</u> it is within the governor's knowledge that the County Assembly of Nyamira froze recruitment as from the financial year 2021/2022.
- 16. <u>THAT</u> I am aware the county public service board through the secretary/Chief Executive Officer reiterated the position taken by the county assembly on freezing further recruitment as a means of addressing the rising wage bill.
- 17. THAT further, it is within the knowledge of the governor that the senate public accounts Committee has pending business with regards to feedback on mitigation measures by the County Executive of Nyamira to address the Auditor General's report for the year ended June, 2020 on irregularities in personnel management.
- 18. THAT the declaration of vacancies in the Daily Nation of 9th March, 2023 by the County Public Service Board without an approved staff establishment, approved budget estimates for the years 2021/2022/2023/2024 and requisition from the respective departmental chief officers is a breach of the Constitution of Kenya, 2010 Articles 10, 201, 232, Chapter six of the Constitution of Kenya, the County government Act, 2012 Public Officer Ethics Act, 2003 and other enabling laws.
- 19. <u>THAT</u> the declaration of vacancies in advertisement made in 2021 and 2023 by the public service Board with no budgetary provision has not only exacerbated the wage bill but led to loss of colossal amounts of public funds in salary payments.

- 20. THAT I am aware that the Auditor General and the Controller of Budget have severally raised concerns on the huge personnel emoluments that are unsustainable and way beyond the legal threshold of 35% of the County Revenues.
- 21. THAT I am fully aware that H. E. Amos Kimwomi Nyaribo (the Governor) has no academic qualifications befitting the position of County Governor. He has no University Degree from any recognized University and therefore does not qualify for the position of Governor. The Governor deliberately, and in my presence, connived with the Independent Electoral and Boundaries Commission County Returning Officer, Mr. Njoroge, to cause clearance for his candidature for Governor in the Year 2022.
- 22. THAT The depositions in this Affidavit and the averments in the Impeachment Motion are accurate to the best of my knowledge and belief, save where I have relied on advice or information whose sources are disclosed.

SWORN BY THE SAID	
Gilbert Atei Onsomu)
At Nyamira on 6th de Sept)
BEFORE ME)
CO MYAMWANGE ADVOCATE) TE () !
P. O. Box 275-40500 NYAMIRA) To mario
P. U. BOX 215-40300 HTAILING) DEPONENT
COMMISSIONED)

COMMISSIONER FOR OATHS

DRAWN BY:

M/S C.O NYAMWANGE & CO. ADVOCATES NYAITWE COMPLEX 1ST FLOOR OPPOSITE PUBLIC WORKS DEPOT P.O BOX 275, NYAMIRA

Email: charlesnyamwange@yahoo.com

THE COUNTY ASSEMBLY OF NYAMIRA THIRD ASSEMBLY (THIRD SESSION)

AFFIDAVIT IN SUPPORT OF THE MOTION FOR REMOVAL FROM OFFICE OF
H.E AMOS K. NYARIBO GOVERNOR NYAMIRA COUNTY BY IMPEACHMENT.

IN THE MATTER OF: THE OATHS AND STATUTORY DECLARATION ACT
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AND

IN THE MATTER OF: AFFIDAVIT OF HON. EVANS JUMA MATUNDA

AFFIDAVIT IN SUPPORT OF THE MOTION FOR REMOVAL FROM OFFICE OF H.E AMOS NYARIBO GOVERNOR NYAMIRA COUNTY BY IMPEACHMENT

- I, Hon. Evans Juma Matunda an adult male of sound mind residing and working for gain in Nyamira County in the Republic of Kenya whose address for purposes of depositions in the Affidavit is P.O Box 590 40500 Nyamira Make Oath and Solemnly Swear as follows:
 - 1. I am a Member of the County Assembly of Nyamira ("the Assembly") duly nominated by Wiper Party of Kenya.
 - I have personal knowledge of the matters set in the Impeachment Motion of H.E Amos
 K. Nyaribo the Governor of Nyamira County ("the Governor") and hence competent to
 swear this Affidavit.
 - 3. I am sufficiently proficient in Kisii, Kiswahili and English languages. Accordingly, I am competent of providing accurate and reliable translations of utterances, writings and other forms of communication across Kisii (my mother tongue), Kiswahili and English.
 - 4. On or about 20th August 2024 i started collecting and collating evidence in support of the Impeachment Motion. This was inspired by complaints from the public and residents of Nyamira County about multiple and discreditable acts ("the discreditable acts") on the part of the Governor. Specifically:
 - (a) Downloaded from the internet/whatsapp the videos ("the videos") alluded to the Impeachment Motion, copies of which are saved in the flash disk presented herewith;
 - (b) Made the transcripts and translations respectively referred to in the Impeachment Motion;
 - (c) Collected and collated the documents referred to in the Impeachment Motion, copies of which are annexed hereto as Exhibits numbered sequentially from pages *I* to 9 with 34 supporting Annexures of this Motion.

- 5. I downloaded the videos using the **iPhone 12** mobile phone (dualism) Regulatory Certification Model **A2341 EMC 3545**.
- 6. I urge the Assembly to treat and adopt this Affidavit as A Certificate of Evidence in respect of Section 106 (4) (B) of the Evidence Act for the purposes legal requirements of admissibility of photographic and electronic Evidence.
- 7. The depositions in this Affidavit and the averments in the Impeachment Motion are accurate to the best of my knowledge and belief, save where I have relied on advice or information whose sources are disclosed.

Sworn by the Said

Hon. Evans Juma Matunda

At Nyamira on Latthis Sept 2024

, Juline

BEFORE ME

COMMISSIONE

CO. NYAMMANSE ADVOCATE
COMPOSIONERS OR DATHS

P. O. BOX 275-40500 NYAMIRA

DRAWN BY:

M/S C.O NYAMWANGE & CO. ADVOCATES NYAITWE COMPLEX 1ST FLOOR OPPOSITE PUBLIC WORKS DEPOT P.O BOX 275, NYAMIRA

Email: charlesnyamwange@yahoo.com



REPUBLIC OF KENYA COUNTY GOVERNMENT OF NYAMIRA THE COUNTY ASSEMBLY OFFICE OF THE SPEAKER

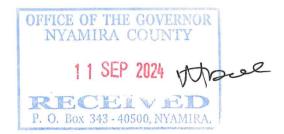


P.O Box 590-40500, Nyamira

Website: www.nyamiraassembly.go.ke E-mail: speaker@nyamiraassembly.go.ke

Our Ref: SPKR/GOV/01/10/09/24

H.E. Amos Kimwomi Nyaribo The Governor of Nyamira Nyamira County Offices



RE: INVITATION TO APPEAR BEFORE THE COUNTY ASSEMBLY OF NYAMIRA TO

RESPOND TO THE ALLEGATIONS CONTAINED IN THE MOTION FOR REMOVAL

FROM OFFICE BY WAY OF IMPEACHMENT OF THE GOVERNOR OF NYAMIRA, H.E.

AMOS KIMWOMI NYARIBO

Your Excellency,

The above subject matter refers.

A Notice of Motion for removal from office by way of impeachment of the Governor of Nyamira, H.E. Amos Kimwomi Nyaribo, hereinafter referred to as "the Motion" was received in the Clerk's Chamber on 6th September, 2024 and forwarded to my Office for approval pursuant to Order No. 62 (2) of the Nyamira County Assembly Standing Orders.

Copies of the Motion, the Affidavit in support of the Motion and other relevant documents are herewith attached for your perusal and records. Meanwhile, I would like to respectfully address you as hereunder:

THAT.

- 1. Pursuant to Order No. 62 (3) of the Nyamira County Assembly Standing Orders in the Afternoon Sitting of 10th September, 2024, the Mover of the Motion, Hon. Evans Juma Matunda, gave a seven (7) days' notice calling for the impeachment of the Governor;
- 2. The following events shall take place as per the Constitution of Kenya, 2010, the County Governments Act, 2012, relevant laws and applicable case laws:
 - a) Public participation
 - b) Placement of the Motion in the Order Paper upon expiry of the seven (7) days' notice given by the mover of the Motion;
 - c) Debate and voting which will be concluded within three (3) days from the placement of the Motion in the Order Paper.

Further, I am obliged to inform you that:

- 3. You have a right to file written response(s) to the Motion. Your written response(s) should be delivered to the Clerk's Chamber at least twenty-four hours (24hrs) before the scheduled debate and consideration of the Motion. Please provide at least fifteen (15) copies of written submissions for ease of our reference.
- 4. You have the **right to appear** before the County Assembly of Nyamira chambers, personally or through an advocate of the High Court of Kenya, or both personally and through an advocate of the High Court of Kenya, to make **submissions** and **representations** on the issues raised during the debate in the Motion.
- 5. The aforesaid Motion is scheduled for debate and consideration by the County Assembly pursuant to Section 33 (1) and (2) of the County Government Act, 2012 and Order No. 64 (4), (5), (6) and (7) of the Nyamira County Assembly Standing Orders on By this letter, you are invited pursuant to the provisions of Article 47 and Article 50 of the Constitution of Kenya, 2010, and Order No. 65 (1) of Nyamira County Assembly Standing Orders, to appear before the County Assembly in its plenary sitting of Tuesday, 17th September, 2024 at 10.00 a.m. for making submissions and representations on the issues raised during the debate in the Motion.

Forwarded herewith, find a copy of the Motion and supporting annexure.

HON. ENOCK OKERO THE SPEAKER OF THE COUNTY ASSEMBLY OF NYAMIRA

Tuesday, 10th September, 2024

Copy to: The Clerk of the County Assembly of Nyamira
Hon. Evans Juma Matunda – The Mover
File



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