REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

(CORAM: OGOLA, MRIMA AND MUGAMBI, JJ.)

CONSTITUTIONAL PETITION NO. E565 OF 2024

(CONSOLIDATED WITH

NAIROBI PETITION NO. E550 OF 2024, NAIROBI PETITION NO. E570 OF 2024, NAIROBI PETITION NO. E572 OF 2024, KERUGOYA PETITION NO. E013 OF 2024, KERUGOYA PETITION NO. E014 OF 2024 AND KERUGOYA PETITION NO. E015 OF 2024, NAIROBI PETITION NO. E506 OF 2024, NAIROBI PETITION NO. E509 OF 2024, NAIROBI PETITION NO. E525 OF 2024, NAIROBI PETITION NO. E528 OF 2024, NAIROBI PETITION NO. E537 OF 2024, NAIROBI PETITION NO. E541 OF 2024, NAIROBI PETITION NO. E567 OF 2024, NAIROBI PETITION NO. E576 OF 2024, AND NAIROBI PETITION NO. E598 OF 2024)

BETWEEN

1. **H.E. RIGATHI GACHAGUA**
2. **THOMAS KIMOTHO MAINGI**
3. **HON. JANE NJERI MAINA**
4. **HON. DAVID MUNYI MATHENGE**
5. **PETER GICHOBI KAMOTHO**
6. **GRACE MUTHONI MWANGI**
7. **CLEMENT MUCHIRI MURIUKI**
8. **EDWIN MUNENE KARIUKI**
9. **SHERIA MTAANI NA SHADRACK WAMBUI**
10. **FATHER EDDIE WAIGURU**
11. **ANTHONY MWITHAGA**

12. **VICTOR NGATIA**
13. **ASSUMPTA WANGUI MUIRURI**
14. **CHRISTINE MUKAMI NJUGUNA**
15. **PETER KIMANI KOIRA**
16. **ALICE WAMUHU MBUGUA**
17. **MWANGI MANYEKI**
18. **MBUGUA WA MUMBI**
19. **KIGO KAHARI**
20. **PRISCILLAH WAMBUI GITARI**
21. **F. MUCHIRI NGATIA**
22. **MARIA NJERI**
23. **ERICK WARUI MWANIKI**
24. **BRIAN HUNJA**
25. **SERAH MUMBI N.**
26. **MARAGARET WANJIRA**
27. **SAMUEL NJENGA**
28. **HEBRON GAKIRU**
29. **SAMWEL NGARI**
30. **JULIET WANGARE**
31. **JAMES NYAGA**
32. **DERRICK MAINA**
33. **JOHN NJOROGE**
34. **PETER WAWERU**
35. **BONIFACE MUNIU**
36. **RUTH M. KAMAU**
37. **JANE NAMU**
38. **MERCY NKATHA**
39. **ANN KARIMI MBAE**
40. **DANIEL MUNGAI**

41. **GEMA WATHO ASSOCIATION**
42. **BERNARD WANGOMBE KIRUNGUMI**
43. **MORARA OMOKE**
44. **OBULI NAMEYA**
45. **KENNEDY KAMITHI GACHEGE**
46. **DENIS OKUMU**
47. **SIMON MUCHANGI**
48. **PETER MAINA**
49. **JOHN MUGO KIRAGU**
50. **NJOMO JOHN**
51. **CAROLINE WAMBUI MWANGI**
52. **DR. CLARENCE EBOSO MWERESA**
53. **WANJIRU MWANGI**
54. **EMMANUEL ELIJAH OTIENO**
55. **STEPHEN MBUGUA WANJIRU**
56. **GLADYS NYAMBURA GATUHA**
57. **EDWIN GEKONGE…… PETITIONERS**

VERSUS

1. **SPEAKER, NATIONAL ASSEMBLY**
2. **NATIONAL ASSEMBLY OF KENYA**
3. **SPEAKER, SENATE**
4. **SENATE OF KENYA**
5. **HON. ATTORNEY GENERAL**
6. **H.E. WILLIAM RUTO**
7. **CLERK OF THE NATIONAL ASSEMBLY**
8. **DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY**
9. **HON.ECKOMAS MWENGI MUTUSE**

10. **UNITED DEMOCRATIC ALLIANCE**
11. **ORANGE DEMOCRATIC ALLIANCE**
12. **KENYA KWANZA ALLIANCE**
13. **FORD KENYA PARTY**
14. **AMANI NATIONAL CONGRESS**
15. **REGISTRAR OF POLITICAL PARTIES**
16. **INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION**
17. **HON. MOSES MASIKA WETANGULA**
18. **HON. AMASON KINGI JEFFA**
19. **HON. JAMES ORENGO**
20. **HON. OTIENDE AMOLLO**
21. **HON. CHIEF JUSTICE OF KENYA**
22. **HON. MUSALIA MUDAVADI**
23. **MERCY K. WANJAU**
24. **FELIX KIPRATUS KOSKEI**
25. **ETHICS AND ANTI-CORRUPTION COMMISSION**
26. **THE INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE**
27. **THE PUBLIC SERVICE COMMISSION … RESPONDENTS**

AND

1. **THE LAW SOCIETY OF KENYA**
2. **PROF. KITHURE KINDIKI**
3. **WIPER DEMOCRATIC PARTY**
4. **JUBILEE PARTY OF KENYA**
5. **KATIBA INSTITUTE**
6. **MT. KENYA JURISTS ASSOCIATION**

7. **KITUO CHA SHERIA**
8. **DR. JOHN KHAMINWA**
9. **H.E WILLIAM SAMOEI RUTO …… INTERESTED PARTIES**

JUDGMENT

Introduction & Background:

1. In the General Election of 9th August 2022, the 1st Petitioner (hereinafter referred to as **"H.E. Gachagua**") was elected as the Deputy President of the Republic of Kenya alongside H.E William Ruto as President (hereinafter referred to as **"H.E. President Ruto**"). Their election was upheld by the Supreme Court, paving the way for their swearing-in on 13th September 2022, beginning what was expected to be a full constitutional term under **Articles 142(1) and 148(6).** That expectation, however, was cut short following the successful impeachment proceedings against H.E. Gachagua.

2. The process leading to his removal commenced on 1st October 2024, when Hon. Mwengi Mutuse, the 9th Respondent and Member of Parliament for Kibwezi West Constituency, (hereinafter referred to as "**Hon. Mutuse**"), introduced an impeachment motion pursuant to **Articles 145 and 150** of the Constitution. The motion (hereinafter referred to as ***'the impeachment motion'***) cited multiple grounds, including allegations of gross violation of the Constitution, incitement, and undermining government policy. The eleven grounds were as follows:

i. ***Ground 1****: Gross Violation of Articles 10 (2) (a), (b) and (c); 27(4), 73 (1) (a) and (2) (b); 75 (1) (c), and 129 (2) of the Constitution and Articles 147 (1), as read with Article 131 (2) (c) and (d) of the Constitution;*

ii. ***Ground 2****: Gross Violation of Articles 147 (1) and 152 (1) of the Constitution by undermining the President and the Cabinet and effective discharge of the national government's executive mandate;*

iii. ***Ground 3****: Gross Violation of Articles 6(2), 10(2)(a), 174, 186(1), 189(1) and the Fourth Schedule to the Constitution by undermining Devolution;*

iv. ***Ground 4****: Gross Violation of Article 160 (1) of the Constitution on the institutional and decisional independence of Judges;*

v. ***Ground 5****: Gross Violation of Articles 3(1) and 148(5)(a) of the Constitution and fidelity to the Oath of Office and Allegiance;*

vi. ***Ground 6****: Serious reasons to believe that Rigathi Gachagua has committed crimes under sections 13(1)(a) and 62 of the National Cohesion and Integration Act;*

vii. ***Ground 7****: Serious reasons to believe that Rigathi Gachagua has committed crimes under sections 45 (1), 46, 47 (a) (3), and 48 (1) of the Anti-Corruption and Economic Crimes Act and sections 2, 3, 4, and 7 of the Proceeds of Crime and Anti-Money Laundering Act;*

viii. ***Ground 8****: Serious reasons to believe that Rigathi Gachagua has committed crimes by continuously misleading members of the public through false, malicious, divisive and inciteful remarks contrary to the provisions of Section 132 of the Penal Code and Section 29 of the Leadership and Integrity Act;*

ix. ***Ground 9****: Gross Misconduct under Article 150(1)(b) of the Constitution by publicly attacking and undermining the work of the National Security Intelligence Service and its Officers;*

x. ***Ground 10****: Gross Misconduct (Insubordination) by openly or publicly insubordinating the President, who is the Head of State and Government; and*

xi. ***Ground 11****: Gross Misconduct by persistently bullying state and public officers.*

3. The impeachment motion was formally initiated before the 2nd Respondent (hereinafter referred to as "**the National Assembly").** In response, several constitutional petitions were filed in the High Court challenging both the legality and constitutionality of the National Assembly's proceedings. These petitions-***(Consolidated with Nairobi Petition No. E550 of 2024, Nairobi Petition No. E570 of 2024, Nairobi Petition No. E572 of 2024, Kerugoya Petition No. E013 of 2024, Kerugoya Petition No. E014 of 2024 and Kerugoya Petition No. E015 of 2024 Nairobi Petition No. E522 of 2024, Nairobi Petition No. E506 of 2024, Nairobi Petition No. E509 of 2024, Nairobi Petition No. E525 of 2024, Nairobi Petition No. E528 of 2024, Nairobi Petition No. E537 of 2024, Nairobi Petition No. E541 of 2024, Nairobi Petition No. E567 of 2024, Nairobi Petition No. E576 of 2024, Nairobi Petition No. E598 of 2024*** were consolidated and are collectively referred to as the "Cohort 1" petitions, with Petition No. E522 of 2024 designated as the lead file.

4. On 8th October 2024, the National Assembly passed the impeachment motion. Subsequently, the resolution was transmitted to the Senate. As

the impeachment process unfolded further, applications seeking conservatory reliefs were filed in the High Court to restrain the Senate from proceeding with the impeachment hearings. The Senate thereafter conducted its hearings and upheld five of the eleven charges against H.E Gachagua as a result of which he effectively ceased to hold office as Deputy President of the Republic of Kenya. The Senate's decision was communicated to the public through a *Gazette Notice* issued on 17th October 2024. Following the impeachment, H.E President Ruto nominated Prof. Kithure Kindiki, the 2nd Interested Party (hereinafter referred to as "**H.E. Kindiki**") to fill the vacancy in the office of the Deputy President. The National Assembly voted in favour of the nomination and H.E. Kindiki was sworn into office on 1st November 2024.

5. As the Senate proceedings that culminated in the impeachment of H.E. Gachagua were underway, and while the National Assembly was concurrently addressing the vacancy created in the office of Deputy President, further petitions were filed in the High Court at Nairobi and Kerugoya including; **Nairobi Petition No. E565 of 2024,** ***(Consolidated with Nairobi Petition No. E550 of 2024, Nairobi Petition No. E570 of 2024, Nairobi Petition No. E572 of 2024, Kerugoya Petition No. E013 of 2024, Kerugoya Petition No. E014 of 2024 and Kerugoya Petition No. E015 of 2024 Nairobi Petition No. E522 of 2024, Nairobi Petition No. E506 of 2024, Nairobi Petition No. E509 of 2024, Nairobi Petition No. E525 of 2024, Nairobi Petition No. E528 of 2024, Nairobi Petition No. E537 of 2024, Nairobi Petition No. E541 of 2024, Nairobi Petition No. E567 of 2024,***

Nairobi Petition No. E576 of 2024, Nairobi Petition No. E586 of 2024, Nairobi Petition No. E598 of 2024 as the "Cohort 2" petitions, with **Petition No. E565 of 2024** being designated as the lead file. Conservatory orders were initially issued restraining the swearing in of H.E Kindiki as Deputy President, but those orders were later lifted by this Court in its ruling of 31st October 2024 paving way for the swearing in as earlier stated.

6. Thereafter, the pleadings were amended and Cohort 2 petitions proceeded for hearing culminating in the present judgment. We will now proceed to summarize the parties' pleadings and submissions.

SUMMARY OF PLEADINGS AND SUBMISSIONS:

A. H.E. Gachagua's Case (1st Petitioner):

7. H.E. Gachagua anchored his case on the Further Amended Petition dated 13th August 2025 supported by his affidavits deposed to on 18th October 2024 and 27th October 2024.

8. Speaking to the deficiencies in the process before the National Assembly, H.E Gachagua deposed that the impeachment motion lacked the particularization and specificity required by **Article 145(1)** and **Standing Order 64(1A).** He took issue with the lack of credibility in respect of the charges against him in the National Assembly and the Senate. As regards the constitutional imperative of public participation, H.E Gachagua contended that the National Assembly's process was deficient

in that the notice was unreasonably short and that it lacked adequate designated venues. It was his case that the exercise was biased, with organizers framing it as meant for invited members of specific parties. He stated that the process utilized unverified feedback forms thus resulting in fictitious data.

9. In alleging bias exhibited by the Speaker and Deputy Speaker of the National Assembly, H.E Gachagua deposed that, they made partisan statements and also failed to recuse themselves despite having conflict of interest, as they were signatories to the coalition agreements that formed a substantial part of the evidence. It was his case that the Senate violated **Articles 145(3) to (6)** by skipping the appointment of a special committee to investigate the charges against him, thereby denying him a crucial layer of fair hearing. He stated that Senate imposed an unconstitutional ten-day deadline on the plenary proceedings and unlawfully permitted the National Assembly to introduce new evidence by ambush. He was emphatic that the Senate violated his right to a fair hearing and dignity guaranteed under **Article 50** and **Article 28** respectively when he was denied an adjournment.

10. In further support of this position, ***Dr. Daniel Kibuka Gikonyo***, a Consultant Cardiologist and founder of the Karen Hospital, swore an affidavit on 28th April 2026 to confirm the medical status of H.E Gachagua on the day he was scheduled to defend himself before the Senate. Speaking to the key medical events, it was his evidence that on 17th October 2024, at approximately 3:00 PM, H.E Gachagua arrived at

Karen Hospital with severe chest pain. He deposed that given his age and underlying risk factors including hypertension, history of diabetes, stress, he conducted ECGs and blood tests, and recommended a 48 to 72-hour admission to enable close monitoring, further evaluation and appropriate medical management. It was his evidence that he supervised H.E Gachagua's care until discharge on 20th October 2024.

11. Far from the impeachment process, H.E Gachagua impugned the subsequent nomination and approval of H.E Kindiki. He asserted that the process was rushed and there was no public participation despite the dictates of **Article 10 and 118** of the **Constitution**. It was his case that the clearance from the Independent Electoral and Boundaries Commission (hereinafter referred to as **"the IEBC**" or **"the Commission**") was null and void since the Commission lacked commissioners, and as such the secretariat was legally incompetent to clear the nominee. Further to the foregoing, it was H.E Gachagua's position that H.E Kindiki was disqualified under **Chapter Six** due to gross human rights violations including, abductions and extrajudicial killings during the ***Finance Bill*** protests when he served as Interior Cabinet Secretary.

12. Finally, H.E Gachagua averred that H.E Kindiki was not a member of the UDA party for the requisite three months preceding his nomination and it was his case that the National Assembly unconstitutionally metamorphosed the process into an election rather than an approval under **Article 149(1).**

13. For these reasons, H.E. Gachagua sought the following reliefs:

i. *A declaration that the Respondents have contravened the provisions of Article 10 and Article 118 (1) of the Constitution by initiating a process leading to the removal from office by impeachment against the Petitioner without first putting in place adequate legislative and procedural measures for effective public participation. In particular, the Senate's decision was not informed by any input from public engagement;*

ii. *A declaration do issue that the impeachment motion lacks the particularization and specificity required by Article 145(1) of the Constitution and Standing Order 64(1A) of the Standing Orders of the National Assembly and is thus incapable of invoking the jurisdiction of both the National Assembly and the Senate under Articles 145 and 150;*

iii. *A declaration that the resolution passed on 8th October 2024 by the National Assembly purporting to impeach the Petitioner pursuant to the provisions of Articles 145 and 150 and the communication dated 8th October 2024 sent by the Clerk of the National Assembly to the Clerk of the Senate titled "Resolution of the National Assembly on a special motion on the removal from office by impeachment of HE Rigathi Gachagua, Deputy President of the Republic of Kenya" are both founded on a process that is inconsistent and in violation of the Constitution of Kenya and are thus both void and invalid;*

iv. *A declaration that for the purpose of impeachment of the President or Deputy President of the Republic of Kenya, adequate public*

participation must be undertaken in all the 290 electoral Constituencies in Kenya, the Diaspora constituency and the 1450 electoral wards where the Presidential election takes place;

v. *A declaration that the period of 12 days provided under Standing Orders No. 64(2) and (6) of the Standing Orders of the National Assembly is grossly insufficient time for the National Assembly to facilitate any meaningful and reasonable public participation during the process of impeachment of the President or Deputy President of the Republic of Kenya. Thus the Standing Order is unconstitutional in so far as it has the effect of abridging the time for public participation;*

vi. *A declaration that the proceedings before whole house/plenary of the Senate of Kenya under Article 145 of the Constitution of Kenya are not limited/ time bound to 10 days as would be if a special committee is appointed under Article 145(4)(a);*

vii. *A declaration that the Petitioners right to fair administrative action under Article 47, right to a fair hearing under Article 50(1) of the Constitution were violated on account of the Petitioner being denied an adjournment occasioned by illness thus violating his right to appear in person before the Senate of Kenya to be heard and present his case;*

viii. *A declaration that the National Assembly and the Senate in their evaluation of the impeachment proceedings before them, failed to properly assess each of the specified grounds and determine if they collectively or individually constituted gross violation of the Constitution warranting voting to uphold the impeachment charges against the Petitioner, hence the resolution of 8th October, 2024 in*

the National Assembly and the vote upholding the impeachment charges that of the Senate passed on 17th October 2024 do not meet the threshold for impeachment set out under Article 150 as read with Article 145 of the Constitution, hence the same be and are hereby set aside;

ix. *An order of certiorari to remove into this Honourable Court and quash the decision and/or resolution of the National Assembly and the Senate made on the 8th October 2024 and 17th October 2024 respectively, resolving to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy-President Republic of Kenya;*

x. *An order of certiorari to bring up into this court to be quashed the resolution of the Senate of Kenya made on 17th October 2024 to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy-President Republic of Kenya on the grounds expressed in Gazette Notice No. 13400;*

xi. *A declaration does issue that the IEBC could not clear Kithure Kindiki without the involvement or approval of commissioners under Article 88 and 250(1) of the Constitution as read with sections 4 and 11A of the IEBC Act. The purported clearance was therefore null and void. Further, the overnight clearance violated Article 10 of the Constitution on openness and transparency;*

xii. *A declaration does issue that Kithure Kindiki is disqualified under Article 10 and 73 of the Constitution due to unresolved concerns from his tenure as Cabinet Secretary for the Interior and National Administration during which Kenyan endured gross violations of human rights;*

xiii. *A declaration does issue that the National Assembly violated Articles 124(4) and 149(1), section 6 of the Public Appointments (Parliamentary Approval) Act, Cap 7F, and Standing Order 45 in the method it adopted to approve Kithure Kindiki's nomination as Deputy President;*

xiv. *A declaration does issue that Kithure Kindiki was illegally appointed, un-procedurally cleared, and unlawfully approved as nominee for Deputy President in violation of Articles 1, 10, 88, 118, 124(4), 137, 148, 149(1) and 250 of the Constitution so that his appointment, clearance, and approval for that position is null and void;*

xv. *A declaration that the petitioner suffered harm and is therefore entitled to constitutional damages as compensation for the violations against him:*

a) *General damages;*
b) *Punitive and aggravated damages;*
c) *Security to be specified at the hearing;*
d) *Special damages, under Gazette Notice 10346 of 2023, for loss of:*
    i. *Salary at Kshs 1,227,188 per month x 35 months (from October 2024 to August 2027) = Kshs 42,951, 580/=;*
    ii. *Official transport under the prevailing transport policy for 35 months (from October 2024 to August 2027) (details to be supplied);*
    iii. *Medical cover and benefits (details to be supplied); (iv) Airtime at Kshs 20,000*35 months=700,000/= (v) Gratuity at 31%Kshs 14,726,2565 (31% of annual salary for 5 years) = Kshs 22,825,696/=.*

xvi. Pension and other benefits, under The Retirement Benefits (Deputy President and Designated State Officers) Act, Chapter 197B of the Laws of Kenya being:

(i) A monthly pension equal to eighty per cent of the 1st Petitioner's last monthly salary while in office;

(ii) A lump sum payment on retirement, calculated as a sum equal to one year's salary paid for each termed served in office;

(iii) Two saloon vehicles of an engine capacity not exceeding 2000 cc which shall be replaceable once every four years;

(iv) One four-wheel drive vehicle of an engine capacity not exceeding 3000cc which shall be replaceable once every four years;

(v) A fuel allowance equal to fifteen per cent of the current monthly salary of the office holder;

(vi) Full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the 1st Petitioner, the 1st Petitioner's spouse and the 1st Petitioner's child who is below eighteen years or is under twenty-five years of age and is undergoing a course of full time education, and in the case of a female child is not married or is not cohabiting with any person;

(vii) Two drivers;

(viii) One personal assistant;

(ix) One accountant;

(x) One secretary;

(xi) Two housekeepers;

(xii) Two senior support staff;

(xiii) Two cooks;

(xiv) Two gardeners;

(xv) Two cleaners;

(xvi) Armed security guards who shall be provided on the request of the 1st Petitioner;

(xvii) Diplomatic passports for the 1st Petitioner and his spouse;

(xviii) Office and office equipment;

(xix) Maintenance expenses for the vehicles provided;

(xx) Access to the V.I.P. lounge II at all airports within Kenya.

xvii. Costs of this Petition be provided for; and

xviii. Such other or further remedies as this honourable court may deem just.

H.E Gachagua's submissions:

14. H.E Gachagua advanced his case further through written submissions dated 7th October 2025 which were orally highlighted in Court by his Counsel, *Paul Muite SC, Elisha Ongoya SC*, and *Mr. Ochiel Dudley*. The unifying premise of their submissions was that the impeachment proceedings were not purely political processes insulated from judicial scrutiny, instead, they constituted constitutionally regulated proceedings subject to the supremacy of the Constitution, the doctrine of legality, and the supervisory jurisdiction of this Court under **Articles 23, 47, 50, and 165.** Overall, they came up with the following issues for the Court's determination:

a) *Whether the National Assembly motion met the constitutional threshold under Article 145;*

b) *Whether the Senate violated Article 145(3) – (6) by failing to appoint a special committee to investigate the charges;*

c) *Whether the Senate, misled by its misinterpretation of Article 145, rushed the process and denied the Petitioner a fair hearing;*

d) *Whether there was adequate public participation at both the National Assembly and Senate;*

e) *Whether the Speakers of the National Assembly and Senate were biased in reality or perception;*

f) *Whether the overnight clearances and approval of a replacement Deputy President evidenced a predetermined process;*

g) *Whether Standing Order No. 64(2) of the National Assembly is valid; and*

h) *What are the appropriate reliefs.*

15. They collectively submitted that while Parliament undeniably possesses the authority to undertake impeachment, such authority is neither absolute nor immune from judicial review when allegations of constitutional violations, irrationality, or procedural impropriety arise. They characterized the proceedings as a politically engineered process disguised as constitutional compliance submitting that Parliament superficially observed procedural forms while deliberately undermining constitutional substance, thereby necessitating judicial intervention to preserve the rule of law.

16. Leading the charge on the constitutional standards of the process, Learned Senior Counsel Elisha Ongoya anchored his arguments on

constitutionalism and legitimacy within Kenya's presidential order. He submitted that the Constitution transformed governance from unrestrained political discretion to a system founded on constitutional limitation and accountability, which rendered all exercise of public power, including parliamentary impeachment, subordinate to the Constitution and amenable to judicial scrutiny.

17. Describing the proceedings as an exercise in *"malicious compliance,"* he drew parallels to the historical trials of Socrates, Sir Thomas More, and Jesus Christ to demonstrate how processes can appear outwardly lawful while being fundamentally unjust and predetermined. He maintained that constitutional democracy depends on good faith adherence to fairness and constitutional morality, not merely technical compliance.

18. In analysing the text of **Articles 145 and 150**, he noted that the threshold language, "gross violation," "gross misconduct," and "serious reasons", prove impeachment is a mechanism reserved strictly for the gravest constitutional transgressions. To that end, he drew support from the cases of ***Mike Sonko Mbuvi Gideon Kioko & Another V Clerk, Nairobi City County Assembly & 9 Others, [2021] KEHC 13091 (KLR)*** and ***Muya V Tribunal Appointed to Investigate the Conduct of Justice Martin Mati Muya, Judge of the High Court of Kenya [2022] KESC 16 (KLR)***, to argue that grounds must be substantiated by cogent evidence to an intermediate standard higher than a balance of probabilities.

19. *SC Ongoya* further submitted that since impeachment directly interferes with the sovereign will of the electorate expressed through universal

suffrage, Courts could not abdicate their responsibility by treating it as a purely political, immune process. It was his case that the grave consequences of removal brought the matter squarely within the High Court's supervisory jurisdiction, requiring it to interrogate whether Parliament met the heightened constitutional standards.

20. *SC Muite* submitted on the democratic mandate and the political question doctrine. He was emphatic that impeachment in Kenya's presidential system is an extraordinary constitutional remedy of last resort. He distinguished Kenya's architecture from parliamentary systems where executive tenure relies on legislative confidence. It was his case that the Deputy President derives direct democratic legitimacy from the electorate through universal suffrage and cannot be removed due to transient political dissatisfaction or partisan convenience.

21. In view of the fact that impeachment effectively overturns the democratic will, it was his position that the **Constitution** deliberately imposed strict procedural and substantive safeguards that Courts are duty-bound to enforce. Learned Senior Counsel drew support from the decision in ***Mike Sonko Mbuvi Gideon Kioko(supra)*** to reiterate that the threshold for removal could not be reduced to political expediency. He further called to his aid the Court of Appeal decision in ***Martin Nyaga Wambora V County Assembly of Embu & 37 Others, [2015] eKLR*** to argue that judicial review of the impeachment proceedings affirmed constitutional supremacy rather than offending the concept of separation of powers. He firmly rejected the Respondents' invocation of the political

question doctrine, asserting that the Constitution creates no autonomous islands immune from accountability and he maintained that all constitutional power remains subordinate to the Judiciary's review.

22. Learned Counsel *Mr. Ochiel Dudley* submitted on jurisdiction and the mandatory duty to adjudicate. At the outset, he pointed out an alleged internal contradiction in the Respondents' case: simultaneously conceding the Court's jurisdiction while urging it to abstain from exercising it. He submitted that constitutional adjudication could not be avoided simply because a dispute implicated political institutions or carried political consequences. He took the position that once allegations of procedural impropriety or rights infringements arose, the process ceased to be purely political.

23. Drawing on the United States Supreme Court decision in ***Cohens V Virginia, 19 US (6 Wheat.) 264 (1821),*** he argued that a Court acts just as improperly when it declines constitutionally vested jurisdiction as when it arrogates jurisdiction it does not possess. It was his case that **Article 165** imposes a mandatory obligation on the High Court to determine disputes where constitutional violations are alleged and as such, the Judiciary would itself violate the Constitution by declining to hear politically sensitive questions.

24. *Mr. Ochiel* submitted further that separation of powers does not establish institutional immunity and that judicial review ensures Parliament acts within its boundaries. Citing the Supreme Court's advisory opinion ***In***

the Matter of Kenya National Commission on Human Rights [2014] KESC 33 (KLR), he concluded that constitutional interpretation in such disputes must be transformative, holistic, and purposive rather than mechanical.

25. In the written submissions, H.E Gachagua specifically impugned Ground 8 of the charges, noting that it relied on **section 132** of the Penal Code, a provision already declared unconstitutional in ***Robert Alai V The Hon Attorney General & Another, [2017] KEHC 6090 (KLR)***. On the right to a fair hearing, he maintained that the Senate violated his inalienable rights by proceeding in his absence due to illness, contrary to **Article 50(2)(f) and Article 25(c).** He drew support from ***Kariuki V Attorney General, [2014] KECA 713 (KLR)***, where it was argued that denying an adjournment impacting a citizen's constitutional rights warrants careful circumspection. He further submitted that the rushed manner of the proceedings mirrored the predetermined and unjust actions condemned in ***Oloo V Kisumu County Assembly Service Board & another; O.C.S. Kisumu Central Police Station & 2 Others (Interested Parties), [2025] KECA 333 (KLR)*** rendering the resulting decisions absolute nullities.

26. Submitting on public participation and institutional incapacity, it was H.E Gachagua's case that both Houses entirely failed the threshold. He referred to the decisions in ***Mohamed & 6 Others V County Assembly of Wajir & 9 Others, [2022] KEHC 169 (KLR)*** and ***Names Expunged (Suing on their behalf and on behalf of the Mui Coal Basin Local Community) & 15***

Others V Permanent Secretary Ministry of Energy & 6 Others; Fenxi Mining Industry Company Ltd & 11 Others (Interested Parties), [2015] KEHC 473 (KLR), to reiterate that engagement must be substantive, one that allows reasonable time, and utilizes satisfactory mechanisms.

27. In addition to the foregoing, H.E Gachagua, while drawing support from the decision in ***Independent Electoral and Boundaries Commission V Attorney General, [2025] KESC 57 (KLR)***, discredited the involvement of the IEBC, arguing that constitutional functions requiring Commission approval could not be lawfully discharged by the Secretariat without a properly constituted Commission.

28. In their rejoinder submissions, the legal team also spoke to procedural illegality in plenary investigation. It was H.E Gachagua's submission that the Senate lacked a lawful resolution to appoint a plenary investigation. They submitted that the word "may" in **Article 145(3)(b)** regarding the appointment of a special committee is a mandatory obligation. Relying on a set of authorities including ***Sony Holdings Ltd V Registrar of Trade Marks & Another [2015] KECA 904 (KLR)***, they submitted that Courts routinely interpret "may" as mandatory to effectuate legislative intent. Tracing the constitutional drafting history from the *Ghai* and *Bomas* Drafts to the *Wako* and *Harmonised* Drafts, it was their case that it proved the framers consistently intended for a special committee to investigate charges prior to any plenary vote.

29. In conclusion, H.E Gachagua drew inspiration from the Filipino Supreme Court in ***Sara Duterte V House of Representatives, G.R. No. 278353*** to reiterate that impeachment processes remain strictly subject to the Bill of Rights to check grave abuses of discretion. Consequently, they urged the Court to utilize its discretion, as established in ***Imanyara & 2 Others V Attorney General, [2016] KECA 557 (KLR)*** to award damages for the constitutional violations to vindicate H.E Gachagua's rights and deter future legislative infringements.

B. Thomas Kimotho Maingi's case (2nd Petitioner):

30. Thomas Kimotho Maingi, the 2nd Petitioner in the consolidated petitions filed a petition dated 25th September 2024 before the High Court at Kerugoya. The Petitioner described himself as a former member of the National Intelligence Service (NIS) and contended that his constitutional rights had been violated by statements allegedly made by H.E. Gachagua, on 26th June 2024 concerning the conduct of the NIS during the ***Finance Bill, 2024*** protests. He averred that, having served in the NIS for over twenty years before retiring in May 2022, he was publicly associated with the intelligence service within his community and that the remarks by H.E. Gachagua portrayed NIS officers as incompetent and responsible for the unrest and loss of life witnessed during the protests.

31. He asserted that the remarks exposed him to ridicule, hostility, threats and psychological distress, forcing him to temporarily leave his home in Kirinyaga County and seek refuge in Embu County out of fear for his

safety. Mr. Maingi further contended that the Attorney General (AG), failed in his constitutional duty as the principal legal adviser to the Government by failing to advise H.E. Gachagua appropriately regarding the provisions of **sections 24, 25 and 26** of the ***National Security Intelligence Service Act*** relating to complaints against the NIS.

32. The Petitioner alleged violations of **Articles 10, 27, 28, 29 and 47** of the Constitution, claiming that the impugned statements amounted to discrimination, infringement of human dignity, psychological torture and unfair administrative conduct. Consequently, the Petitioner sought the following reliefs:

i. That there be a declaration that the Constitutional rights of the applicant as provided for under Articles 10,27, 28, 29 and 47 of the Constitution have been violated by the respondents;

ii. That the 1st Respondent be ordered to issue an apology to the NIS members and staff for the utterances and/or speech made on the 26/6/2024;

iii. Costs of the petition; and

iv. Any other relief the court may deem fit.

33. The 2nd Petitioner did not file any written submissions.

C. <u>The 3rd Petitioner's case:</u>

34. Hon. Njeri Maina, the 3rd Petitioner, in the consolidated petitions filed the petition dated 2nd October 2024 that was later amended on 9th October 2024 before the High Court at Kerugoya. She is the current Woman Representative in the National Assembly for Kirinyaga County. She stated that she brought the petition on her own behalf, on behalf of the residents of Kirinyaga County, and in public interest. Her Petition also principally challenged the constitutionality, legality and procedural propriety of the impeachment proceedings commenced against H.E. Gachagua. She contended that the public participation process undertaken by the National Assembly in relation to the impeachment motion was ineffective, inadequate and unconstitutional owing to the short notice periods and inaccessible venues. She took issue with the insufficient dissemination of information, defective response templates, lack of proper facilitation of members of the public, and the alleged failure by Parliament to comply with court orders directing constituency-level public participation.

35. She further asserted that the impeachment process violated **Articles 10, 47, 48, 145 and 150** of the **Constitution** and challenged the constitutionality of **Standing Order 64(2)** of the National Assembly **Standing Orders** on the basis that it imposed an unconstitutional 7-day timeline for disposal of impeachment proceedings, thereby undermining meaningful public participation.

36. Hon. Maina also questioned the legality of the Senate's decision to conduct the impeachment proceedings in plenary instead of through a special committee under **Article 145(3)(b)** of the **Constitution**, arguing

that investigation of impeachment charges could only lawfully be undertaken by a select committee of the Senate. In addition, she challenged the legality of the National Assembly as constituted, contending that it failed to comply with the constitutional two-thirds gender principle under **Articles 27, 81(b), 100 and 261** of the **Constitution** and was, therefore, incapable of lawfully entertaining an impeachment motion. As such, Hon. Maina sought the following reliefs:

i. *A declaration that the modalities put in place by the 1st Respondent in respect of the public participation forums that were scheduled for 4th October 2024 regarding the Special Motion fell below the threshold of a proper, effective, and meaningful public participation as envisaged under Article 10 of the Constitution;*
ii. *A declaration that the modalities put in place by the 1st Respondent in respect of the public participation forums held 4th and 5th October 2024 as ordered by this Honourable Court regarding the Special Motion were in disregard of the court orders, and fell below the threshold of a proper, effective, and meaningful public participation as envisaged under Article 10 of the Constitution;*
iii. *A declaration that the impeachment process as against the 1st Interested Party undertaken by the 1st and 3rd Respondents, in view of modalities of public participation forums held on 4th and 5th October 2024 falling well below the threshold of a proper, effective, and meaningful public participation as envisaged under Article 10 of the Constitution, were unconstitutional and therefore void;*
iv. *A declaration that the appointment of a Select Committee by the Senate under Article 145(3)(b) of the Constitution is not*

discretionary in the impeachment of a President or Deputy President in light of Article 259 of the Constitution;

v. *A declaration that any proceedings in regard to impeachment of the 1st Interested Party taken by the 2nd and 4th Respondent outside of a Select Committee of Senate under Article 145(3)(b) of the Constitution are unconstitutional and void;*

vi. *A declaration that the 1st Respondent is not legally constituted in light of the mandatory provisions of Articles 27, 81(b), 100 and 261 of the Constitution on the two-thirds gender requirement;*

vii. *A declaration that the 1st Respondent as currently constituted cannot entertain and deliberate the Special Motion for the removal from of the 1st Interested Party by impeachment;*

viii. *Costs of this suit; and*

ix. *Any other order(s) as this Honorable Court shall deem just.*

The 3rd Petitioner's submissions:

37. Hon. Maina supplemented her positions by filing written submissions dated 9th January 2026 which she orally highlighted in Court. She identified the following issues for determination:

i. *Whether the public participation exercise conducted by the National Assembly on 4th October 2024 met the constitutional threshold under Article 118;*

ii. *Whether the YES/NO template deployed by the National Assembly violated constitutional requirements for meaningful public participation;*

iii. *Whether the Senate violated Article 118 by not conducting public participation at the Senate stage;*

iv. *Whether the Senate violated Article 145(3)(b) by failing to appoint a special committee of eleven members;*

v. *Whether Standing Order 64(2) (prescribing a twelve-day impeachment timeline) is constitutional;*

vi. *Whether the impeachment process violated Article 50 on fair hearing protections; and*

vii. *Whether the impeachment proceedings were conducted by impartial officers as required by Article 50(1).*

38. Hon. Maina submitted that on 3rd October 2024, Hon. Justice Mwongo, a Judge of the High Court sitting at Kerugoya, ordered *inter alia* that public participation be undertaken at the constituency levels as to accord the public an opportunity to engage and offer their representations. That these orders were duly served and were never appealed, stayed, varied, or reviewed and as such they remained binding on the respondents absolutely. Speaking to the obligation to obey Court orders, Hon. Maina submitted that such obedience is foundational to the rule of law as was held in ***Law Society of Kenya & 3 Others V Inspector General of Police & 4 Others, [2024] KEHC 10634 (KLR).***

39. She maintained that this obligation extended even to cases where the person affected by an order believes it to be irregular or void as was held in ***Refrigerator & Kitchen Utensils Ltd V Gulabchand Popatlal Shah & Others, Civil Application No. NAI 39 of 1990*****.** She further submitted that

proper compliance required reasonable notice and not the same day or next day notice, physical accessibility at constituency level with open, identifiable venues in each of the 290 constituencies, facilitation of engagement including civic sensitization, information, language diversity, disability access and hearings as the primary mode including oral and interactive engagement.

40. Learned Counsel submitted that the orders were not obeyed and that only 200,000 participants countrywide, who made up 0.4% of the Kenyan population, turned up for the exercise. She decried the one-day notice published on a Saturday, whose contents were vague as they referred to "constituency offices" without addresses and times. She also pointed out that no hearings were ever organized, no facilitation was provided and that CDF offices were closed and MPs absent. Hon Maina submitted that she became aware of the purported exercise only past midday, and that none of her counterparts within the Kirinyaga County were aware of the said exercise. She further submitted that even the citizens who visited the constituency venues found them locked and no officials or staff were in sight.

41. It was submitted that the National Assembly faced a binary choice of obeying the **Constitution** through the Court's orders or preserve ***Standing Order 64(2)'s*** 7-day deadline. They chose the latter which Hon. Maina describes as contempt dressed as obedience. That a legislative outcome obtained in defiance of a binding Court order cannot stand in a constitutional democracy governed by the rule of law as discussed by

Lord Denning in ***Macfoy V United Africa Co Ltd, [1961] 3 All ER 1169***, where the Learned Judge held that: *"If an act is void, then it is in law a nullity... You cannot put something on it and expect it to stay there. It will collapse".*

42. Hon Maina also took issue with the YES/NO template as constitutional fraud as the National Assembly deployed a standardized template reducing eleven complex constitutional allegations into binary tick-box questions. That citizens were asked whether they supported impeachment on each ground, without being supplied with evidentiary material, explanatory memoranda and H.E Gachagua's response. Relying on the Supreme Court in ***British American Tobacco (BAT) V Cabinet Secretary for Health, [2019] KESC 15*** she articulated attributes of meaningful participation to include clarity of the subject matter for the public to understand, structures and processes that are clear and simple, opportunity for balanced influence from the public, commitment to the process such that views can influence outcomes and inclusive and effective representation.

43. She also listed integrity and transparency of the process and capacity to engage on the part of the public, including sensitization on the subject matter. Hon. Maina submitted that the digital-only, English-only mechanism systematically excluded rural residents, the elderly, persons with disabilities, and non-English speakers. She stated that there were no physical venues for explaining the template or receiving oral views, that there were only 10 pictures of people attached as evidence of attendance

for the 5th October exercise and that there were conflated responses from 4th and 5th October without distinction, obscuring the impact of the Court's orders. She submitted that the template was not a procedural imperfection but a plebiscitary endorsement mechanism designed to manufacture numerical support for a predetermined outcome and was therefore constitutionally void.

44. It was her further submission that **Article 118** imposes an independent obligation on each House of Parliament to facilitate public participation in its own business. That the Senate is not a subordinate appendage of the National Assembly as was held in ***Speaker of the Senate V Attorney General, [2013] KESC 7*.** She stated that the Senate's role in impeachment is determinative under **Article 145(7)** as it performs a quasi-judicial function of the highest constitutional order. She held the position that the Senate could not constitutionally rely on the National Assembly's defective process, particularly where that process was conducted in defiance of Court orders. That the Senate was aware of these defects as they were documented, litigated, and judicially acknowledged.

45. She submitted that in ***Mwangaza V Speaker of the Senate, [2025] KEHC 3069***, this Court held that the Senate must satisfy itself that public participation was adequate and satisfaction requires inquiry, assessment, and independent judgment but the Senate undertook none. That the Senate conducted no public participation whatsoever as no notices were issued, no invitations were extended, no hearings were conducted and

no submissions were received and that this is not a case of inadequate participation but a case of none at all.

46. It was also her submission that **Article 145(3)(b)** provides that the Senate *"may appoint a special committee comprising eleven of its members to investigate the matter."* She submitted that this "may" was a grant of power, not a license to bypass the Constitution and that once the Senate had elected to proceed under **Article 145**, it must proceed within the architecture prescribed, which includes a Special Committee. That Article **145(6)** provides that the Senate's jurisdiction to vote is triggered only if a Special Committee reports that allegations have been substantiated and absent a committee report, the gateway to plenary determination was not open. She also stated that the constitutional function of the Special Committee was structured investigation not political debate and was for receiving, interrogating, and testing evidence, producing a reasoned report and insulating investigation from the volatility of plenary politics. That **Article 145(5)** guaranteed the Deputy President the right to appear and be represented before the Special Committee and by bypassing the committee, the Senate extinguished an entire constitutional hearing stage guaranteed to the Deputy President thus violating the non-derogable right to a fair hearing.

47. Learned Counsel submitted that the ***Standing Orders*** confirmed this distinction as ***Standing Order 79*** on the Deputy President's impeachment provided for a Special Committee but no alternative. That Standing ***Order 80*** of the Governor's impeachment expressly provides two

alternatives, that is, a Special Committee, or plenary investigation. It was then posited that where the drafters intended to permit plenary investigation, they could have said so and that the omission for the Deputy President must be respected.

48. She drew parallels to **section 33(3)(b)** of the ***County Governments Act*** which provides that the Senate "may" appoint a Special Committee in governor impeachments and that Courts, including ***Wambora (supra)*** have held that this confers discretion, and the Senate has lawfully proceeded in plenary. That those decisions underscore the opposite point that where the law expressly provides alternatives, discretion exists but where the ***Constitution*** provides only one investigative pathway, discretion does not extend to inventing another. She submitted that by proceeding to plenary determination without appointing a Special Committee, the Senate acted without jurisdiction, bypassed a constitutionally mandated investigative stage and extinguished a guaranteed hearing right. She also submitted that Senate had collapsed constitutionally distinct phases into a single political exercise and the impeachment proceedings were therefore unconstitutional, null, and void *ab initio.*

49. It was her further submission that **Standing Order 64(2)** lay at the heart of the constitutional infirmity, as it imposed unreasonable timelines that rendered compliance with the Constitution impossible. Counsel invoked **Article 2(4),** which provides that *"Any law… that is inconsistent with this Constitution is void to the extent of the inconsistency."* She placed reliance on

Orange Democratic Movement Party V Speaker of the National Assembly, [2024] KEHC 11494, where this Court affirmed that Standing Orders cannot override the Constitution nor substitute the constitutional requirements of public participation as expounded by the courts. In that light, Parliament's invocation of good faith was faulted, it being argued that **Standing Order 64(2)** structurally precluded constitutional compliance. She submitted that where a Standing Order made adherence to constitutional obligations impossible, such a Standing Order is itself unconstitutional.

50. It was further submitted that **Standing Order 64(2)** embodied a deliberate parliamentary choice to prioritize political expediency over constitutional safeguards. By prescribing rigid timelines, it ensured that once an impeachment motion gained initial traction, the process would be driven to conclusion before public sentiment could evolve, before courts could intervene meaningfully, or before the affected office-holder could mount an effective defence. Counsel argued that this was precisely what the Constitution sought to prevent, since impeachment is not a mere vote of no confidence but a quasi-judicial constitutional process carrying grave consequences. On that basis, it was urged that this Court should declare **Standing Order 64(2)** unconstitutional, null, and void to the extent that it prescribes timelines incompatible with constitutional requirements, and that any impeachment conducted under its terms is tainted with illegality from inception.

51. On the question of whether H.E. Gachagua was accorded a fair hearing, Hon. Maina submitted that he was hospitalized with chest pains on the eve of the Senate proceedings. Despite medical evidence of incapacity, the Senate proceeded with the hearing and voted, thereby violating the most basic tenet of the fair hearing rule—*audi alteram partem*, meaning no person shall be condemned unheard. Counsel further argued that the twelve days between service of the motion and the National Assembly vote were constitutionally inadequate, given that Article 50(2)(b) guarantees the right to have sufficient time and facilities to prepare a defence. H.E. Gachagua, it was emphasized, faced eleven complex constitutional allegations, including gross violation of the Constitution, abuse of office, and corruption, for which twelve days was structurally insufficient. As the Supreme Court affirmed in ***Sonko (supra),*** impeachment proceedings attract the protections of **Article 50**, and where a fair hearing is denied, the process collapses.

52. On the issue of bias and predetermination, Learned Counsel submitted that both Speakers of Parliament, as presiding officers over the impeachment motion, were constitutionally required to maintain impartiality but acted to the contrary. It was argued that they assumed the role of initiators and proponents of the impeachment, thereby transforming into advocates for the motion rather than neutral arbiters. In particular, Speaker Moses Wetangula of the National Assembly was said to have participated in public statements endorsing the impeachment before presiding over the proceedings. Counsel emphasized that the test for bias is objective whether a reasonable,

fair-minded observer would conclude that there exists a real possibility of bias—and submitted that the Speakers' public statements and advocacy for impeachment satisfied this threshold. Where the presiding officer is biased, she argued, the proceedings are fundamentally unfair, and the failure of the Speakers to recuse themselves irredeemably tainted the process.

53. For the above reasons, Hon. Maina urged the Court to grant the reliefs sought in her petition.

D. <u>The 4th - 8th Petitioners' case:</u>

54. The 4th to 8th Petitioners in the consolidated proceedings—Hon. David Munyi Mathenge, Peter Gichobi Kamotho, Grace Muthoni Mwangi, Clement Muchiri Muriuki, and Edwin Munene Kariuki, jointly filed a petition dated 18th October 2024 before the High Court at Kerugoya. They described themselves as residents and leaders drawn from various constituencies within Kirinyaga County, and stated that they instituted the petition both in their personal capacities, on behalf of the residents of their respective constituencies, and in the wider public interest.

55. The Petitioners challenged the constitutionality, legality, and procedural propriety of the impeachment proceedings undertaken against H.E. Gachagua, together with the subsequent nomination and approval process relating to HE Kindiki as Deputy President nominee. They contended that the public participation process conducted by the

National Assembly on 4th and 5th October 2024 was illusory, inaccessible, and unconstitutional. In particular, they pointed to the issuance of short and ineffective notices, lack of sensitization, inaccessible venues, absence of parliamentary officials at designated constituency sites, closure of the Kirinyaga Central CDF Hall, and the overall failure by both the National Assembly and the Senate to facilitate meaningful participation as required under Articles 10 and 118 of the Constitution.

56. The Petitioners further asserted that the Senate unlawfully conducted the impeachment proceedings in plenary instead of through a special committee under **Article 145(3)(b)** of the **Constitution** and that the rushed timelines imposed under **Standing Order 64(2)** of the National Assembly **Standing Orders** were unconstitutional as they curtailed effective public participation and fair hearing rights. They also alleged that the Senate violated H.E. Gachagua's non-derogable rights under **Articles 25(c) and 50** of the **Constitution** by refusing to adjourn proceedings on 17th October 2024, despite his hospitalization and medical emergency, thereby denying him an adequate opportunity to be heard.

57. In addition, the Petitioners challenged the legality of the nomination and approval process of Hon. Kindiki as Deputy President nominee, contending that the process contravened **sections 3 and 6** of the ***Public Appointments (Parliamentary Approval) Act (Chapter 7F of the Laws of Kenya)*** for want of adequate notice and public participation.

58. The Petitioners sought the following prayers:

i. *A declaration that the appointment of Prof. Kithure Kindiki, the 2nd Interested Party herein as the Deputy President of the Republic of Kenya is invalid null and void;*

ii. *A declaration that the National Assembly as a distinct organ is required to undertake its own distinct, proper, effective, and meaningful public participation as envisaged under Articles 10 and 118 of the Constitution in regard to the impeachment of a President or Deputy President;*

iii. *A declaration that the Senate as a distinct organ was required to undertake its own distinct, proper, effective, and meaningful public participation as envisaged under Articles 10 and 118 of the Constitution in regard to a resolution from the National Assembly to impeach a President or Deputy President;*

iv. *A declaration that the public participation of scheduled by the 1st and 2nd Respondent on 4th October 2024 regarding the Special Motion was not a proper, effective, and meaningful public participation as envisaged under Articles 10 and 118 of the Constitution;*

v. *A declaration that the extended public participation scheduled by the 1st and 2nd Respondents on 5th October 2024 was in disregard of the court orders issued by the High Court sitting in Kerugoya in Constitutional Petition E014 of 2024 – Hon. Jane Njeri Maina v The National Assembly & 4 Others and was not a proper, effective, and meaningful public participation as envisaged under Article 10 of the Constitution;*

vi. *A declaration that the impeachment process as against the 1st Interested Party undertaken by the 1st and 2nd Respondents, in view of the impugned, improper, ineffective, and meaningless public participation held on 4th and 5th October 2024 was unconstitutional and therefore void;*

vii. *A declaration that the failure by the 3rd and 4th Respondents to undertake any public participation at all in regard to the impeachment process in Senate as against the 1st Interested Party renders the whole Senate impeachment process unlawful and void;*

viii. *An order of certiorari to bring up into this Honourable Court and quash the decision and/or resolution of the 1st and 3rd Respondents made on 8th October 2024 and 17th October 2024 respectively resolving to remove the 1st Interested Party as Deputy President of Kenya by impeachment;*

ix. *A declaration that there exists no vacancy in the office of the Deputy President allowing the 5th Respondent to nominate anyone to fill such vacancy and that any such nomination is unlawful and void;*

x. *Any other order(s) as this Honorable Court shall deem just and expedient in the circumstances; and*

xi. *Costs of this suit.*

The 4th - 8th Petitioners' submissions:

59. In their submissions led by Counsel *Mr. Evans Ogada* together with *Mr. George Sakimpa*, the 4th – 8th Petitioners identified the following issues for the Court's determination:

i. *Whether the impeachment process complied with* ***Articles 10, 118, 145, and 150*** *of the Constitution;*

ii. *Whether the public participation conducted by the National Assembly and the Senate met the constitutional threshold of being meaningful, adequate, effective, and lawful;*

iii. *Whether* ***Standing Order No. 64(2)*** *of the National Assembly is unconstitutional for imposing rigid timelines that undermine constitutional safeguards; and*

iv. *Whether* ***Article 145*** *and applicable* ***Standing Orders*** *require that investigations into impeachment charges be conducted exclusively by a Special Committee of the Senate, not by the Senate sitting in plenary.*

60. They submitted that **Article 10** binds all State organs, including Parliament, to the national values such as democracy, public participation, the rule of law, accountability, and good governance. That, the impeachment process was conducted with severe haste and limited deliberation, undermining transparency, accountability, and public participation. They relied on the Supreme Court's decision in ***Speaker of the Senate V Attorney-General & Another, [2013] eKLR*** where it was held that Parliament was not exempt from constitutional discipline.

61. They submitted that **Article 118** required Parliament to conduct business openly and facilitate public participation and that this was not a formality but a substantive constitutional obligation. They contended that the National Assembly gave the public less than 48 hours to consider complex, voluminous impeachment charges which is a

manifestly inadequate timeframe, that no explanatory materials or responses from the Deputy President were provided and that in some counties like Kirinyaga, designated venues were inaccessible.

62. They further asserted that the Senate conducted no independent public participation at all as it relied on the National Assembly's deficient exercise, which cannot cure the constitutional breach, relying on the authorities in ***Law Society of Kenya V National Assembly of Kenya & 3 Others, (Petition E004 of 2025) [2025] KEHC 5472 (KLR), National Assembly & Another V Okoiti & 55 Others, (Civil Appeal E003 of 2023 & E016, E021, E049, E064 & E080 of 2024 (Consolidated), [2024] KECA 876 (KLR)*** and ***Doctors for Life Principle and Legal Advice Centre & 2 Others V County Government of Mombasa & 4 Others, [2018] KECA 381 (KLR)***.

63. On the unconstitutionality of the National Assembly Standing Order No. 64(2), Learned Counsel argued that the provision imposes rigid, and unreasonable timelines that make meaningful public participation impossible and that while **Article 124** empowered Parliament to make ***Standing Orders***, such orders are subordinate to the ***Constitution*** and cannot defeat constitutional rights and **Article 2(4)** voids any law inconsistent with the Constitution. The Petitioners urged the Court to declare Standing **Order No. 64(2)** unconstitutional.

64. As to the manner in which the Senate proceedings were to be undertaken, Counsel submitted that **Article 145(3)** provided that the Senate must appoint a Special Committee to investigate impeachment

charges and that the use of the conjunctive "and" between sub-articles (a) and (b) makes the Special Committee process constitutionally inseparable from the investigative phase. That, **Articles 145(4), (5), and (6)** refer exclusively to the Special Committee and that there is no mention of plenary investigation and under *expressio unius est exclusio alterius*, that excluded all other modes of investigation. The Petitioners submitted that the Special Committee ensured separation of investigative and adjudicative functions, preventing bias and predetermination and the Senate's decision to bypass the Special Committee and proceed in plenary fused investigation, hearing, and judgment into a single political process, violating the hierarchical and sequential structure of **Article 145.**

65. Learned Counsel placed reliance on ***Martin Nyaga Wambora & 3 Others V Speaker of the Senate & 6 Others, [2014] KECA 377 (KLR)*** where the Court of Appeal held that the removal of a Governor, which mirrors Article 145, is hierarchical and sequential in nature. Counsel argued that the Deputy President was denied a constitutionally prescribed procedural safeguard available to other state officers facing removal, thereby violating **Article 27** on equality and non-discrimination. They further submitted that **Article 50(1)** guarantees the right to a fair hearing, which is expressly protected as non-derogable under **Article 25(c)**. Proceeding with the impeachment hearings while the Deputy President was hospitalized, and rejecting a reasonable request for adjournment, amounted to a gross violation of natural justice.

66. Counsel emphasized that fairness was the unassailable foundation of any removal process. In support, they cited ***Gachagua V Speaker of the National Assembly & 3 Others, [2024] KEHC 12876 (KLR)*** where the High Court reaffirmed that the right to a fair hearing was non-derogable and that any violation renders the process null and void. Counsel concluded by submitting that the Constitution does not permit Parliament to sacrifice legality at the altar of expediency, and urged this Court to reaffirm constitutional supremacy and protect the sovereignty of the people of Kenya.

67. The Petitioners prayed for declarations that the impeachment process violated **Articles 10, 118, 145, and 150,** a declaration that **Standing Order No. 64(2)** is unconstitutional, a declaration that the Senate unlawfully bypassed the Special Committee procedure and orders quashing the impeachment resolution.

E. The 9th Petitioner's case:

68. *Sheria Mtaani na Shadrack Wambui*, a public benefit organization, filed the petition dated 18th October 2024 together with a supporting affidavit sworn by Dorcas Mwae, an Advocate of the High Court of Kenya and a Director thereof. The Petitioner stated that the organization was established to assist members of the public in accessing justice, protecting constitutional rights and promoting the rule of law, constitutionalism, accountability and good governance. The Petition challenged the constitutional and legal validity of the impeachment proceedings leading

to the removal of H.E. Gachagua from office as Deputy President, and further questioned the legality of the intended nomination and approval of HE. Kindiki, as his replacement.

69. It contended that the Senate proceedings conducted on 17th October 2024 violated H.E Gachagua's constitutional rights under **Articles 25(c), 47, 50 and 145(5)** of the **Constitution**. That the Senate unreasonably declined to adjourn the impeachment proceedings despite being informed that H.E. Gachagua had fallen ill and had been admitted at Karen Hospital, thereby denying him an opportunity to personally defend himself against the impeachment charges. It was further alleged that the Senate acted in breach of the constitutional requirements of fair hearing, procedural fairness and natural justice by proceeding with the impeachment in the absence of H.E. Gachagua while allowing the proceedings to continue on the basis of strict constitutional timelines. It asserted that although the Constitution contemplated an expeditious impeachment process, the constitutional timelines could not override H.E. Gachagua's non-derogable right to a fair hearing and adequate opportunity to defend himself.

70. *Sheria Mtaani na Shadrack Wambui* further complained that the proceedings before the Senate were rushed, insensitive and conducted in a manner that prioritized speed over substantive justice and constitutional safeguards. Additionally, the 9th Petitioner challenged the legality of the subsequent process initiated by H.E. President Ruto to nominate HE Kindiki as Deputy President under **Article 149** of the

Constitution. It was contended that the nomination violated **Articles 82, 88 and 137** of the **Constitution** because IEBC was allegedly not properly constituted and therefore incapable of lawfully verifying the constitutional qualifications of any nominee for the office of Deputy President. *Sheria Mtaani na Shadrack Wambui* also argued that HE Kindiki's nomination contravened **Article 137** of the **Constitution** on the basis that he remained a serving Cabinet Secretary for Interior and National Administration at the time of his nomination.

71. For these reasons, the organization sought the following prayers:

i. *A declaration be an is hereby issued that the rights and fundamental freedoms of the Interested Party herein to wit, his rights and fundamental freedoms under article 25 (c),50,27,47 and 145(5) were grossly violated by the 3rd Respondent on the 17th October 2024 for declining to grant him an adjournment of the Senate sitting deliberating on his removal from office by way of impeachment;*

ii. *A declaration does hereby issue that the decision by the 3rd Respondent to have the Interested Party removed from office by way of impeachment to the extent that it was done in gross violation of article 25(c), 50,27,47 and 145(5) of the Constitution is/was unconstitutional to the extent of its unconstitutionality and null and void ab initio;*

iii. *A declaration that any subsequent replacement of the Interested Party, if at all, to the office of the Deputy President of the Republic of Kenya was unconstitutional and therefore null and void ab initio;*

iv. *A judicial review order of CERTIORARI does hereby issue to bring to this court the decision of the 3d Respondent as communicated vide a gazette notice dated the 17th October 2024 communicating the removal from office of the Deputy President from office by way of impeachment;*

v. *A judicial review order of CERTIORARI does hereby issue to bring to this court the decision of the President of the Republic of Kenya nominating H.E Kindiki as the Deputy President of the Republic of Kenya for the purpose of quashing and quashing the said appointment as Deputy President for failing the qualification for the deputy president under article 137(2)(b) & 3 of the Constitution;*

vi. *Alternatively, this Honourable Court be pleased to make a declaration that the appointment of the Deputy President by the President to fill the vacancy arising from the removal of the Interested Party from office pursuant to article 149 of the Constitution must be read together with article 82 and 88 of the Constitution to give the Independent Electoral and Boundaries Commission its constitutional mandate to approve the name of the nominee as proposed under article 149 of the Constitution;*

vii. *A declaration be made that the approval of H.E Kindiki or any other person as the Deputy President of the Republic of Kenya is subject to article 82,88 and 137 of the Constitution;*

viii. *Costs of this Petition be provided;*

ix. *Interest on (i) above at court rate till payment in full; and*

x. *This court be pleased to make any further order or relief as it may deem fit to issue in the circumstances.*

The 9th Respondent's submissions:

72. Led by Learned Counsel *Shadrack Wambui*, the 9th Petitioner identified three principal issues for the Court's determination:

i. *Whether the nomination of a Deputy President can be legally finalized or approved in the absence of fully constituted commissioners of the IEBC under Articles 82 and 88 of the Constitution;*

ii. *Whether the Senate's refusal to grant H.E. Gachagua an adjournment due to documented illness during the impeachment proceedings constituted a breach of the right to a fair hearing and natural justice under Articles 25(c), 47, and 50; and*

iii. *Whether the nomination of Hon. Kindiki while serving as a Cabinet Secretary is constitutionally infirm for violating eligibility criteria under Article 148 as read with Article 137.*

73. *Mr. Wambui* submitted that H.E. Gachagua fell suddenly ill on the afternoon of 17th October 2024, when he was scheduled to defend himself before the Senate and that the Senate rushed the proceedings and unreasonably declined to adjourn to allow him time to recuperate. That the Senate proceeded with *ex parte* proceedings, leading to his removal from office in his absence which violated **Articles 25(c)**, **50(1)**, **47** and **145(5)**. The organization relied on the Supreme Court's decision in ***Kidero & 4 Others V Waititu & 4 Others, [2014] KESC 11 (KLR)*** which affirmed that fair hearing incorporates the *audi alteram partem* principle

and the Court of Appeal in ***Judicial Service Commission V Mutava & Another, [2015] KECA 741 (KLR),*** which held that rules of natural justice apply to all bodies exercising judicial, quasi-judicial, or administrative duties. It submitted that the Senate has no prescribed time limitation for completing impeachment proceedings and the rushing was unjustified.

74. It was the organization's submission that **Article 148(1)** requires that a person nominated as Deputy President must satisfy the requirements of **Article 137**. **Article 137(1)(b)** provides that a person is not eligible for nomination as President and by extension Deputy President if they hold any other State office and that **Article 260** defines "State officer" to include a Cabinet Secretary. It submitted that at the time of his nomination and parliamentary approval on 18th October 2024, H.E Kindiki was serving as the Cabinet Secretary for Interior and therefore, he did not satisfy the constitutional eligibility criteria, rendering his nomination null and void *ab initio*.

75. It was the organization's further submission that at the material time in October 2024, the IEBC was not fully constituted and it lacked the requisite number of commissioners as the previous commissioners had resigned or retired. **Articles 82 and 88** establishes a constitutional architecture requiring a lawfully and fully constituted IEBC to oversee electoral and nomination processes and that the Supreme Court in ***IEBC V Attorney General, (Advisory Opinion E004 of 2024) [2025] KESC 57*** held that a clear distinction must be drawn between administrative continuity by the Secretariat and the exercise of constitutional authority vested in

the Commission as a collegial entity. It submitted that the exercise of constitutional functions reserved for the Commission under **Article 88(4)** cannot be lawfully discharged in the absence of a properly constituted Commission with the requisite quorum.

76. It was further submitted that in the absence of commissioners, IEBC was constitutionally incapacitated from undertaking its mandated electoral processes and that the approval of a Deputy President, the second highest constitutional office, is no less a substantive constitutional responsibility than delimitation of boundaries and the same principle applies with equal force.

77. The organization urged the Court to apply **Article 10** on national values and principles of governance that binds all State organs, **Article 20(3)(b)** on the *in dubio pro libertate* doctrine that where in doubt, the Court ought to adopt the interpretation that most favours enforcement of a right or freedom as enunciated in ***Jacqueline Okuta & Another V Attorney General & 2 Others, [2017] KEHC 8382 (KLR)*****.** It further submitted that the unconstitutional exercise of a legislative mandate cannot be shielded from judicial scrutiny as was held in ***Commission for the Implementation of the Constitution V National Assembly of Kenya & 2 Others, [2013] KEHC 6919 (KLR)*****.** In the end, the Petitioner prayed that the petition be accordingly allowed.

F. The 10th - 41st Petitioners' case:

78. The 10th - 41st Petitioners are a group of Kenyan citizens and one registered association primarily from the Central Kenya region. They filed the petition dated 17th October 2024 that was amended on 18th June 2025 and re-amended on 16th December 2025. They challenged the constitutional validity of the impeachment process and subsequent removal of H.E. Gachagua as Deputy President of Kenya stating that the National Assembly and the Senate failed to comply with **Article 150(2)** of the **Constitution**, which requires them to modify the presidential impeachment procedure under **Articles 144 and 145** for the Deputy President. That instead, they applied the same rules under **Standing *Orders* 64 and 65** for the National Assembly and Standing Orders **78 and 79** for the Senate without necessary modifications, ignoring that the Deputy President does not have the same powers, prestige, or legal immunities as the President. The Petitioners aver that this failure rendered the entire impeachment process invalid, null and void *ab initio* and violated the right to a fair hearing under **Articles 25, 27 and 50**.

79. It was their further position that the impeachment was not a genuine parliamentary process but was engineered, sponsored, and bulldozed by political and financial inducements to capture Parliament, turning it into a tool to remove the Deputy President and settle political scores, thereby subverting the sovereign will of the people who elected the Deputy President in the August 2022 general election. They asserted that the President and the Deputy President were elected on a joint ticket and

that the impeachment violated the rights of the Petitioners and other voters from the Central Kenya region who voted for that joint mandate.

80. The petitioners also highlighted and incorporated arguments from ***Nairobi High Court Constitutional Petition No. E356 of 2024***. In that matter, it was alleged that both H.E. President Ruto and H.E. Gachagua had violated their oaths of office and the Constitution through various actions. Specifically, it was claimed that the President accepted foreign gifts valued at approximately Kshs. 240 million in the form of paid-for jet hire and fuel costs for a state visit to the United States, thereby exceeding the legal threshold permitted for such. It was further alleged that the President entered into a secretive treaty with the United States to designate Kenya as a non-NATO ally without tabling the agreement before the National Assembly and Senate as required by constitutional oversight. Additional claims included intimidation and threats directed at Members of Parliament to bypass oversight, as well as inducement of political defections to artificially control the majority party coalition.

81. The Petitioners accused the President of using state violence to criminalize and suppress the "Generation Z" (Gen Z) good governance protests, as well as the July 2023 protests against oppressive taxation and the high cost of living and that he distributed state appointments along acute ethnic lines. Additionally, H.E. Gachagua was faulted for publicly dividing Kenyan citizens into "shareholders" and "non-shareholders" based on political alignments whereas H.E. President Ruto is accused of spending hundreds of millions of public funds to conduct avoidable by-elections caused by appointing sitting MPs and Senators to the Cabinet.

82. The Petitioners further argued that the *Kenya Kwanza* Coalition Agreement binds H.E. President Ruto to nominate a replacement Deputy President from the Gikuyu, Embu, or Meru communities which is the same region as the impeached Deputy President. They Sought a declaration that the President's power to nominate a new Deputy President was subject to certification by the IEBC that the nominee meets qualifications under **Articles 99 and 137** stating that the 14-day and 60-day timelines in **Article 149** ensure public participation across all 290 constituencies. Consequently, the Petitioners asked the Court to declare the nomination and approval of HE Kindiki as the new Deputy President as unlawful, null and void.

83. The Petitioners thus sought the following reliefs from this Court:

i. A Declaration be issued to declare that the 1st Petitioner was impeached by the National Assembly and removed by the Senate under a procedure that violated Articles 27, 50 and 150(2) of the Constitution;

ii. A Declaration be issued to declare that the 1st and 2nd Respondents have violated the rights of the Petitioners and other voters and residents of Central Kenya region by failing to govern together in accordance with their joint mandate secured during the presidential election held on 9th August, 2022;

iii. A Declaration be issued to declare that the 1st Petitioner was impeached by the Parliament under the respective ***Standing Orders***

*of the National Assembly and the Senate that offends **Article 150(2)** of the **Constitution**;*

iv. *A Declaration be issued to declare that the impeachment of the 1st Petitioner is null and void ab initio on account of the violation of **Articles 25, 27 and 50** of the Constitution read with **Articles 144, 145 and 150** of the **Constitution**;*

v. *A Declaration be issued to declare that the 2nd and 3rd – 14th Respondents have conspired and schemed to remove the 2nd Respondent from office through impeachment in violation of **Articles 1, 27 and 38** of the **Constitution**;*

vi. *A Declaration be issued to declare that the 2nd Respondent violated **Articles 10, 118 and 150** of the **Constitution** in passing a resolution on 8th October, 2024 to remove the 2nd Respondent from office;*

vii. *An order of Certiorari be issued to quash the Resolution of the 2nd Respondent passed on 8th October, 2024 to approve the Motion of Impeachment of the 1st Petitioner tabled on 1st October, 2024 by the 9th Respondent;*

viii. *A Declaration be issued to declare that the 6th Respondent's power under **Article 149** of the **Constitution** to nominate a person to occupy the office of the Deputy President is subject to certification by the Independent Electoral and Boundaries Commission under **Articles 99 and 137** of the **Constitution**;*

ix. *A Declaration be issued to declare that the 14 days period prescribed under **Article 149** for the President to nominate a person to occupy*

the office of Deputy President is to ensure compliance with ***Articles 10, 38, 99 and 137*** *of the* ***Constitution****;*

x. *A declaration be issued to declare that the 60 days period prescribed under* ***Article 149(1)*** *of the Constitution for the National Assembly to vote on the President's nomination to fill the vacancy in the office of Deputy President is to ensure compliance with requirement of public participation in all the 290 Constituencies in accordance with* ***Article 1, 10, 27, 38, 118 and 136*** *of the* ***Constitution****;*

xi. *By dint of* ***Articles 1, 10, 27 and 38*** *of the Constitution the 1st Respondent is bound by the Kenya Kwanza Coalition Agreement dated 5th April, 2022 to nominate a qualified person from either of the Gikuyu, Embu and Meru Communities to fill the vacancy in the office of the Deputy President occasioned by the impeachment of the 2nd Respondent;*

xii. *A declaration be issued to declare that the 6th Respondent's nomination and of approval thereof by the National Assembly of H. E. Hon. Kindiki – the 2nd Interested Party herein – as Deputy President is unlawful, null and void ab initio;*

xiii. *The Honourable Court be pleased to issue an Order of Certiorari to quash the nomination by the National Assembly of HE Kindiki as Deputy President vide Gazette Notice No. 13401 published in a special issue of The Kenya Gazette dated 18th October, 2024;*

xiv. *A Declaration be issued to declare that by dint of* ***Articles 1, 10, 27, 38, 91 and 132*** *of the* ***Constitution*** *the citizens of Kenya from the Gikuyu, Embu and Meru communities have a right secured by the results of the presidential election held on 9th August, 2022 to have*

one of them to occupy the office of the Deputy President during the tenure of the 1st Respondent as President of Kenya;

xv. *A Declaration be issued to declare that **Standing Orders No. 64 and 65** of the National Assembly **Standing Orders (6th Edition)** violates **Article 150(2)** of the **Constitution**;*

xvi. *An Order of Certiorari be issued to quash **Standing Order No. 64 and 65** of the National Assembly **Standing Orders (6th Edition)** to the extent that they apply to the Deputy President;*

xvii. *A Declaration be issued to declare the **Standing Orders No. 78 and 79** of The Senate adopted on 16th June, 2024 violates **Article 150(2)** of the Constitution;*

xviii. *An Order of Certiorari be issued to quash **Standing Orders No. 78 and 79** of The Senate adopted on 16th June, 2024 to the extent that they apply to the Deputy President;*

xix. *An Order of Mandamus be issued to compel the National Assembly and the Senate – the 2nd and 4th Respondents herein – to promulgate a procedure for removal of the Deputy President by impeachment envisaged by **Article 150(2)** of the **Constitution**;*

xx. *THAT a Declaration be issued to declare that the 1st Petitioner was impeached through a procedure that amounted to political persecution and vendetta prescribed by **Articles 1, 3, 38 and 50** of the **Constitution**;*

xxi. *THAT a Declaration be issued to declare that the 6th Respondent engineered, sponsored and bulldozed the impeachment of the 1st Petitioners in a manner that amounts to abuse of power in violation of **Articles 1, 3, 38, 50 and 131(2)** of the **Constitution**; and*

xxii. Costs of this Petition be borne by the 1st and 5th Respondents.

The 10th - 41st Petitioners' submissions:

84. In their submissions, the Petitioners reiterated that the impeachment proceedings did not stem from legitimate constitutional violations, instead, they arose directly from a severe political fallout and a "politics of betrayal" between H.E. President Ruto and H.E. Gachagua. They submitted that that the impeachment motion was originally assigned to Sirisia MP Hon. John Waluke, however, due to his "tainted image" from a high-profile corruption case, Hon. Mutuse was brought in as a substitute mover to table the motion on 1st October 2024.

85. The Petitioners listed the following issues for the court's determination:

i. *Whether the impeachment of H.E. Gachagua was a political witch-hunt or a genuine constitutional procedure;*
ii. *Whether H.E. Gachagua was impeached by the National Assembly and the Senate under a procedure that violated* ***Articles 27, 50 and 150(2)*** *of the* ***Constitution****;*
iii. *Whether H.E. Gachagua was lawfully found guilty of Ground 1 of the Articles of Impeachment;*
iv. *Whether the* ***Standing Orders No. 64 and 65*** *of the National Assembly and the* ***Standing Orders No. 78 and 79*** *of the Senate under which H.E. Gachagua was impeached violate* ***Article 150(2)*** *of the* ***Constitution****;*

v. *Whether the Senate's failure to establish a special committee under **Article 145(6)** of the **Constitution** rendered the removal of H.E. Gachagua as null and void ab initio;*

vi. *Whether H.E. Gachagua was subjected to a lawful and fair trial by the Senate; and*

vii. *Whether the 1st – 11th Respondents conspired or schemed to remove H.E. Gachagua from office in violation of **Articles 1, 27 and 38** of the Constitution.*

86. On the weaponization of impeachment for political settlements, the Petitioners maintained that the impeachment was completely manufactured by a political fallout rather than the genuine existence of any lawful grounds under ***Article 150(1)(b)*** of the **Constitution**. That, it was fundamentally unconstitutional for the Executive and Parliament to use the sacred device of impeachment as an administrative tool to resolve purely political disputes and vendetta. They submitted that the impeachment proceedings inside both the National Assembly and the Senate were weaponized and conducted in absolute violation of substantive and procedural provisions guaranteed under the ***Constitution***, as well as the ***Standing Orders*** of both chambers. They specifically maintained that the current rules governing the process, that is, **Standing Orders 64 and 65** of the National Assembly and **Standing Orders 78 and 79** of the Senate, violate **Article 150(2)** of the ***Constitution*** and must be quashed.

87. The Petitioners equally submitted that H.E. President Ruto's power to nominate a replacement under **Article 149** was strictly subject to certification by IEBC under **Articles 99 and 137** and because the 14-day and 60-day constitutional windows under **Article 149** are designed to guarantee rigorous public participation across all 290 constituencies, the rushed nomination and approval of Hon. Kindiki was unlawful, null, and void *ab initio*. That rushing this process directly violated the political rights of the Petitioners under **Article 38**.

88. *Afortiori*, the Petitioners argued that this Court has an obligation to step in and quash the impeachment to halt an ongoing executive scheme to re-establish an imperial presidency in Kenya and they warned that Parliament has become subservient and sycophantic to the Executive, acting like the single-party rubber-stamp parliaments of the late 1980s, which presents an existential threat to Kenya's constitutional democracy. They restated the prayers that sought to declare the impeachment null, void, and an act of political persecution that violated **Articles 25, 27, 50, and 150** of the ***Constitution*** and orders of Certiorari quashing the National Assembly's 8th October 2024 resolution approving the impeachment motion, and *Gazette Notice No. 13401*, which appointed H.E. Kindiki as Deputy President. They also sought to quash the National Assembly **Standing Orders 64 & 65** and Senate **Standing Orders 78 & 79** to the extent that they apply to the removal of a Deputy President and orders to compel both chambers of Parliament to promulgate a legally compliant, constitutionally envisaged procedure for removing a Deputy President under **Article 150(2).**

89. The Petitioners relied on various local authorities including ***Sonko V County Assembly of Nairobi City & 11 Others, (2022) KESC 36 KLR***, ***Commissioner of Police & Director of Criminal Investigation Department & Another V Kenya Commercial Bank & Others, (2013) KECA 182 KLR*** and ***Jirongo V Soy Developers Ltd & 9 Others, [2021] KESC 32 (KLR)*.** They also relied on foreign authorities including ***Krieger V Law Society of Alberta, (2002) 3 SCR 372, R V Beaudry (2007) 1 SCR 190, R V Campbell, 1999 CanLII 676 (SCC)*** and ***R V Regan, [2002] 1 S.C.R. 297, 2002 SCC 12*** all from the Supreme Court of Canada. Further reliance was placed on Books, Articles, Speeches and Reports as well as an interview statement by Senator Edwin Sifuna on the Senate floor as per the Hansard of 9th October, 2024 and Interview statement by H.E. Gachagua on *Inooro* TV.

90. In the end, the Petitioners prayed their petition be allowed as prayed.

G. The 43rd Petitioner's case:

91. *Mr. Morara Omoke* filed the petition dated 9th October 2024 before the High Court of Kenya at Eldoret together with a supporting affidavit sworn on the same date in his capacity as a Kenyan citizen and patriot acting in defence of constitutionalism, the rule of law and democratic governance. The Petition challenged the constitutionality and legality of the impeachment proceedings commenced against H.E. Gachagua by

the National Assembly and the Senate. He contended that the impeachment process was politically motivated, procedurally defective, unconstitutional and undertaken in violation of the sovereign will of the people expressed during the 2022 General Election.

92. His case centered on alleged violations of **Articles 1, 10, 38, 47, 48, 50, 73, 75, 94, 118, 145 and 150** of the **Constitution**, that the impeachment motion tabled by the Hon. Mutuse, had not been preceded by adequate public participation and that the MPs who appended their signatures in support of the motion failed to consult their constituents before supporting the impeachment process. He further alleged that the process of collecting signatures in support of the impeachment motion was tainted by bribery, undue influence, intimidation and forgery of signatures belonging to some MPs. He contended that the subsequent public participation exercise conducted on 4th and 5th October 2024 was merely cosmetic and incapable of constituting meaningful public participation because it was hurried, poorly coordinated, inadequately publicized and conducted through only one center per county and constituency. He also complained that the public participation forms contained only the allegations against H.E. Gachagua and omitted his responses, thereby condemning him unheard and violating principles of fairness and natural justice.

93. He also alleged bias and conflict of interest on the part of the Speaker and Deputy Speaker of the National Assembly. He contended that both office holders publicly supported the impeachment process before the

motion was tabled and debated in Parliament, thereby compromising their constitutional obligation to act as neutral and impartial arbiters during the proceedings. He asserted that the impeachment motion was politically motivated and arose from internal disputes within the UDA Party, yet the parties involved failed to exhaust internal party dispute resolution mechanisms under the party constitution before initiating impeachment proceedings. He also argued that there existed no comprehensive statutory framework governing impeachment proceedings and the collection of signatures for impeachment motions, thereby rendering the process legally deficient and constitutionally uncertain.

94. Mr. Omoke then sought the following orders:

i. *A declaration that the Impeachment Motion moved by the 3rd Respondent does not meet the threshold set out in article 145 as read with article 150 of the Constitution;*
ii. *A declaration that the Impeachment of Geoffrey Rigathi Gachagua was unconstitutional;*
iii. *A declaration that both the Speaker and the Deputy Speaker of the National Assembly were biased and ought to have disqualified themselves from the Impeachment process;*
iv. *A declaration that the Impeachment Motion violated the Interested Party's rights under article 32, 33, 38, 47, 48, 50, 73 and 75 of the Constitution of Kenya, 2010;*
v. *A declaration that the Impeachment Motion against the Interested Party was tabled in a manner that violates article 1, 10, 94 and 118 of the Constitution as no public participation was conducted by*

Hon. Mutuse Eckomas Mwengi and by the members who appended their signatures prior to moving the Impeachment Motion in the National Assembly;

vi. *A declaration that the Impeachment Motion which was a result of a dispute in the United Democratic Alliance party was tabled before National Assembly without exhaustion of internal remedies contrary to the exhaustion doctrine and article 159 of the Constitution of Kenya, 2010;*

vii. *A declaration that in the absence of an enabling legislation operationalizing the provisions of Article 150 of the Constitution of Kenya 2010, there is no legislative and administrative framework within which the impeachment of the deputy president was anchored; and*

viii. *That each party bears its own costs.*

The 43rd Petitioner's submissions:

95. In his submissions, Mr. Omoke focused on two main issues namely: -

i. *Whether the impeachment of Hon Gachagua was unconstitutional; and*

ii. *Whether the lack of legislation to operationalize Article 150 of the Constitution vitiates the impeachment.*

96. He wholly adopted H.E. Gachagua's submissions dated 7th October 2025 submitting that the constitutionality of the impeachment transcends him and must be evaluated with a view to advancing constitutionalism and the rule of law. He maintained that public participation was inadequate and a sham as the mover of the motion and the 291 MPs who appended their signatures in support of the impeachment motion did not conduct any public participation in their constituencies before signing, contrary to **Articles 1, 10, 94, and 118** of the **Constitution.**

97. That public participation was an afterthought and when questions arose on 1st October 2024 about whether public participation should be conducted, the Speaker directed that it be held on 4th October 2024. The advertisement appeared on 2nd October 2024 which Mr. Omoke submitted was not a genuine intention to conduct real public participation from the outset. That the public participation form provided by the National Assembly contained only the allegations against H.E. Gachagua and conveniently left out his

response, denying the public the ability to effectively weigh the grossness of the alleged violations.

98. He submitted that public hearings occurred for only 9 hours from 8:00 am to 5:00 pm on a normal work day which was on a Friday, meaning most Kenyans could not attend. That venues were changed on the eve of the exercise, for example, in Embu it changed from *IFAD* Hall to *Talent* Academy and in Nairobi it changed from KICC to *Bomas of Kenya*. He submitted that in Kiambu constituency, only about 2,000 people attended in a county with over a million registered voters, that there was no proper coordination and he described the situation as *"utter pandemonium akin to the tower of Babel".*

99. He contended that in some areas, especially in "Mt. Kenya", public participation forms were faulty, there were incidents of pre-filled forms and a vehicle ferrying pre-filled forms was torched in Nyeri County. That the National Assembly extended the exercise to the following day on 5th October 2024 but no proper notification was made and MPs kept away from the exercise. He added that in some constituencies like West Mugirango, the MP never opened the constituency office and that the one center per county and one center per constituency is too deficient as public participation should have been conducted at least at each polling station or, at minimum, each ward. Mr. Omoke submitted that the National Assembly neither processed nor considered the feedback collected and the entire exercise was a mere sham to hoodwink innocent Kenyans. He accused Deputy Speaker *Gladys Boss Shollei* of being biased

in that on 23rd September 2024, while speaking at a function in Uasin Gishu County, she swore to spearhead the impeachment motion and put the Deputy President on notice, stating *"Mimi mwenyewe nitakupeleka nyumbani"* ("I will personally take you home"). That she also hinted at some of the grounds of impeachment before the motion was even tabled.

100. He further argued that Speaker Moses Masika Wetangula, on 29th September 2024, while attending a church function at Wamunyu Catholic Church in Machakos County, publicly took a stand on the impeachment motion before it was tabled. Using the Biblical description in Mark 9:38-50, he stated that H.E. Gachagua, being a part of the body that leads to sin, should be cut off. These utterances, he submitted, violated **Articles 47, 50, and 150** of the Constitution and that neither the Speaker nor the Deputy Speaker should have presided over the impeachment motion. Mr. Omoke submitted that the Constitution sets a high standard for impeachment as the measure is the grossness of alleged violations and that grudges and squabbles cannot be the basis for removal. He contended that extraneous grounds were introduced on the floor on 8th October 2024 as it was alleged that H.E. Gachagua had referred to *Hon. Florence Jematiah Sergon*, the County Woman Representative of Baringo, as "a harlot." That, *Hon. Caroli Omondi*, MP Suba North, referred to conversations he had with H.E. Gachagua without providing any proof. *Hon. Patrick Makau*, MP Mavoko, also made references to conversations without providing any proof.

101. On the vote that 281 MPs supported the motion, 44 opposed and there was 1 abstention, Mr. Omoke submitted that MPs abdicated their obligation to weigh the grounds against the intermediate standard of proof set by the Supreme Court in ***Odinga & 5 Others V Independent Electoral and Boundaries Commission & 3 Others, [2013] KESC 6 (KLR)***. That the impeachment overturned the decision of 7,176,141 Kenyans who voted for the joint ticket on 9th August 2022, a decision upheld by the Supreme Court and that the motion was "an egregious overthrow of the decision of the majority with that of the few." It was Mr. Omoke's further submission that no statutory legislation exists on the process of impeachment of the President and Deputy President from start to completion as no legal framework exists on the collection of signatures in support of an impeachment motion. Therefore, there is no framework upon which the impeachment of the Deputy President was anchored.

102. That, in ***Ndii & Others V Attorney General & Others, [2021] KEHC 9746 (KLR)***, this Court was persuaded by Mr. Omoke, who was a petitioner therein, that the lack of legislation on signature collection and verification, and on the conduct of referenda, vitiated the *BBI* process. He submitted that the same principle applies here and that legislation is so central to the fairness of the process that the Court ought to, at minimum, issue a structural edict requiring enactment of this legislation.

103. He submitted that areas requiring legislation include initiation of the impeachment process, how Parliament is to process impeachment, particularly public participation and the actual impeachment trial, the replacement of an impeached Deputy President, provision for judicial intervention before an impeached President/Deputy President is replaced, including grant of conservatory orders to preserve the rights of the impeached official and expeditious hearing of petitions arising from an impeachment. Mr. Omoke saw no reason why the Court could not have maintained conservatory orders in favor of H.E. Gachagua and heard the petitions within a week or two. That the discharge of the orders, followed by an immediate declaration of a public holiday for the swearing-in of a new Deputy President, left a "mind-boggling question on the efficacy of **Article 50** of the **Constitution**.

104. For these reasons, Mr. Omoke prayed for a declaration that the impeachment of H.E. Gachagua was unconstitutional and that a declaration that the absence of legislation operationalizing **Article 150** of the Constitution rendered the impeachment of the Deputy President flawed.

H. <u>The 44th - 48th Petitioners' case:</u>

105. *Obuli Namenya, Kennedy Kariithi Gachege, Denis Okumu, Simon Muchangi* and *Peter Maina Kanene* jointly filed the petition dated 30th September 2024 before the High Court of Kenya at Nairobi. They described themselves as Kenyan citizens committed to constitutionalism, the rule

of law, and the defence of the ***Constitution*** and that they also instituted the petition in the public interest to challenge the proposed impeachment of H.E. Gachagua as Deputy President of the Republic of Kenya. As per their Petition and the supporting affidavit sworn by Obuli Namenya, the Petitioners challenged the constitutionality of the impeachment process on the basis that Parliament had failed to establish a proper legal and procedural framework governing public participation in impeachment proceedings under **Articles 118 and 124** of the **Constitution**.

106. The Petitioners contended that neither the National Assembly **Standing Orders** nor the Senate **Standing Orders** provided mechanisms, procedures, thresholds, timelines, verification methods, venues, or modalities for meaningful public participation in impeachment proceedings, thereby rendering the contemplated impeachment process unconstitutional. They further argued that public participation was a mandatory constitutional prerequisite which ought to precede any impeachment process and asserted that the 7-day timelines prescribed under **Standing Orders 64 and 73** for disposal of impeachment proceedings were inadequate and unconstitutional as they undermined effective public participation and violated the rights to fair administrative action and fair hearing under **Articles 47 and 50** of the **Constitution**.

107. The Petitioners additionally alleged that the impeachment process was politically motivated and tainted by bias and lack of impartiality on the part of parliamentary leadership, citing public pronouncements by parliamentary leaders in support of the impeachment motion. They

advanced a historical argument concerning the office of the Vice President and Deputy President in Kenya, contending that successive Deputy Presidents had historically been subjected to political hostility, dismissals and frustration, which informed the constitutional design of the 2010 Constitution requiring the President and Deputy President to be elected jointly.

108. The Petitioners thus sought the following prayers:

i. ***A DECLARATION*** *that the impeachment process of a Deputy President is a sui generis, in nature, and that public participation forms a fundamental background that plays a significant role in attaining the right to a fair trial enshrined under article 50 of the Constitution;*

ii. ***A DECLARATION*** *that public participation is the only avenue or means through which the people can exercise their sovereignty contemplated under Article 1 of the Constitution, in determining whether an office created under this constitution ought to be abolished or whether the accountability mechanisms created under this Constitution ought to be put into motion or otherwise, and that the lack of the elaborate procedure or certainly as to when the same should commence or conducted will ordinarily amount to usurpation of the peoples' power, and subsequently amount to a violation of the Constitution;*

iii. ***A DECLARATION*** *that the Article 118(2) the clearly providing for a mandatory public participation, and Article 124 creating the requisite parliamentary standing orders, neither the National Assembly nor the Senate has enacted an Act of Parliament*

providing for the procedure on how the impeachment of either the president or the Deputy President is to be undertaken, nor has the National Assembly Standing Order 64 or 65 or the Senate Standing Order No. 74 has provided the for the procedure governing the crucial element of public participation relating to the impeachment of a Deputy President;

iv. ***A DECLARATION*** *that the National Assembly Standing Order 64 and 65 or the Senate Standing Order No. 74 are unconstitutional, as they were never subjected to the mandatory public participation during their enactment;*

v. ***A DECLARATION*** *the standing orders must with certainty and clarity provide that the public participation contemplated under Article 118 should be a conditional precedent, that must precede all other processes relating, connected or incidental to the impeachment of the Deputy President;*

vi. ***A DECLARATION*** *that Article 27 requires that all Kenyans must be subjected to the principle of equality and equal protection by the law, while Article 47 requires that a person must be subjected to an administrative process that is procedurally fair, expedient, reasonable and lawful irrespective of one status in the society, and that the Respondents herein, have violated the same by commencing an impeachment process that is constitutionally tainted with illegalities;*

vii. ***A DECLARATION*** *that public participation in an impeachment process is a fundamental infrastructure that facilitates the enjoyment of Article 50 and that the absence of the same will amount to the*

Respondents herein violating, denying, threatening, or infringing the Interested party's right to a fair trial during his impeachment;

viii. ***A DECLARATION*** *that time is an important resource for any judicial or quasi-judicial trial contemplated under the constitution, and that the Seven (7) days period for impeachment provided for under Standing Order 64(2)(b) of the National Assembly Standing Orders, and the Senate Standing Order No. 73(1) amounts to conducting a sham trial and the same will amount to a violation Article 50;*

ix. ***A DECLARATION*** *that Standing Orders 64(2)(b) of the National Assembly Standing Order, and the Senate Standing Order No. 73(1), does not provide for the sufficient and adequate time for carrying out a qualitative, quantitative, meritorious, accurate and secure public participation, the hearing and determination of the impeachment trial before parliament that will result into a fair, just, impartial and judicious determination of the impeachment trial as contemplated under Article 47 and Article 50 of the Constitution; and*

x. ***A DECLARATION*** *that for purposes of authenticating and verifying the results of the participants taking part in the public participation, confirming all the requisite legal threshold like that of citizenship, the total number of the participants, public participation ought to be undertaken by an impartial state organ separate from parliament.*

The 44th - 48th Petitioners' submissions:

109. Led by Learned Counsel, *Mr. Njiru Ndegwa*, the Petitioners focused on the constitutional architecture governing impeachment of a Deputy President, submitting that the process was fundamentally flawed because impeachment is a measure of last resort, not a primary accountability tool and that the Senate failed to apply the mandatory modification rule under **Article 150(2)** which requires that **Articles 144 and 145** be applied "with necessary modifications" to the Deputy President. Mr. Ndegwa submitted that the proceedings violated fair hearing rights under **Article 50**, including the refusal to adjourn when the Deputy President fell ill, that the process was infected with bias, irrelevant considerations, and procedural violations of **Standing Orders 75, 78, and 80** and that the cumulative defects render the entire impeachment null and void.

110. The Petitioners adopted and relied on H.E. Gachagua's submissions and the ***Wambora (supra)*** principles on quasi-judicial impeachment proceedings and identified the following issues for determination:

i. *Whether the impeachment of the Deputy President met the constitutional threshold of a measure of last resort, in light of the availability of alternative constitutional and statutory mechanisms;*
ii. *Whether the constitutional framework governing the impeachment of a Deputy President under Article 150(2) was properly invoked, applied, and distinguished from the regime governing the impeachment of a President under Article 145;*

iii. *Whether the Senate complied with the mandatory requirement to apply Articles 144 and 145 with necessary modifications as contemplated under Article 150(2) and Standing Order 79;*

iv. *Whether the failure to apply the modification rule undermined the constitutional principles of sovereignty of the people (Article 1), national values (Article 10), and political rights (Article 38), including the legitimate expectation of tenure;*

v. *Whether the impeachment process satisfied the constitutional and jurisprudential standards applicable to quasi-judicial proceedings, as articulated in the Wambora decisions;*

vi. *Whether the Senate's failure to comply with constitutional requirements renders the impeachment process null and void;*

vii. *Whether the impeachment process violated the Deputy President's right to equality and equal protection of the law under Article 27;*

viii. *Whether Parliament, in conducting the impeachment proceedings, acted as an impartial and unbiased quasi-judicial body as required by law;*

ix. *Whether the debates and proceedings in both the Senate and the National Assembly were confined to the substantiation of the charges, or were contaminated by irrelevant, extraneous, and prejudicial considerations;*

x. *Whether the refusal to grant an adjournment upon the Deputy President falling ill violated his right to a fair hearing under Article 50, including the right to be present and to adequately present his defence;*

xi. *Whether the Senate misapplied Standing Order 78 by proceeding under a plenary hearing without affording procedural safeguards, and by improperly treating the proceedings as time-bound;*

xii. *Whether the impeachment proceedings violated the Deputy President's right to adequate time and facilities to prepare a defence under Article 50(2)(a), and the right to be heard under Standing Order 80;*

xiii. *Whether the Senate acted in violation of its own Standing Orders, including Standing Orders 75, 78, and 80, and the legal effect of such violations;*

xiv. *Whether sufficient time existed within the constitutional and procedural framework to accommodate adjournment and ensure a fair hearing, and whether failure to utilize such time rendered the process unconstitutional;*

xv. *Whether the continuation of proceedings in light of the Deputy President's illness violated his fundamental rights to life, dignity, health, and access to justice under Articles 26, 28, 48, and the State obligations under Articles 10, 19, 20, and 21;* and

xvi. *What reliefs are available where a constitutional process is found to be procedurally and substantively defective.*

111. Counsel submitted that impeachment is not intended to be a primary or convenient mechanism for addressing alleged misconduct, but rather an extraordinary remedy reserved for the clearest and most compelling cases where no other lawful avenue exists. They argued that the Constitution establishes a graduated hierarchy of accountability — beginning with civil liability, criminal prosecution, and administrative

sanction — and only thereafter impeachment. It was emphasized that Article 143 expressly removes immunity from civil and criminal proceedings for the Deputy President, unlike the President. According to Mr. Ndegwa, this signals that allegations against a Deputy President should, in the first instance, be addressed through ordinary legal processes. Parliament, however, bypassed these mechanisms and resorted to impeachment as a first recourse, which Counsel contended offends the principles of proportionality, rationality, and legality. They further submitted that no evidence exists that Parliament considered whether the allegations could have been addressed through criminal investigation or civil proceedings before invoking impeachment.

112. Counsel also drew attention to Article 150(2), which provides that Articles 144 and 145 apply to the Deputy President *"with the necessary modifications".* They argued that this phrase is not ornamental but a deliberate constitutional command requiring contextual adaptation of the presidential impeachment framework to the distinct office of the Deputy President. In their view, the requirement imposes an active obligation on the Senate to interrogate, adjust, and tailor the procedure, rather than merely transplant it without reflection. Standing Order 79, they submitted, operationalizes this obligation by requiring the Senate to consciously and expressly apply the modification principle.

113. Mr. Ndegwa submitted that nowhere in the Senate Hansard is the Speaker recorded guiding the House on the necessity, scope, or content of the required modifications as the Senate proceeded as though **Article**

145 applied *mutatis mutandis* and in *toto* without any modification. He stated that this failure is not merely procedural but a substantive and jurisdictional issue which renders the entire process constitutionally defective *ab initio*. The Petitioners submitted that this modification requirement ensures that impeachment is not invoked where alternative legal mechanisms such as the courts, EACC or DCI are adequate.

114. It was their case that the failure to modify denied the Deputy President the procedural safeguards that would have arisen from a properly tailored process, including consideration of alternative accountability mechanisms, flexibility in procedure to ensure fairness and enhanced scrutiny of the necessity and proportionality of impeachment. It was their submission that the office of Deputy President derives its legitimacy from the sovereign will of the people expressed at the ballot under **Article 1** and impeachment without proper modification undermines this sovereign will and defeats the legitimate expectation of tenure for both the office holder and the electorate. That **Article 38** guarantees citizens the right to elect leaders and to have them serve their full term, subject only to lawful and constitutionally compliant removal processes and that the failure to modify the process resulted in an unjustified interruption of the people's sovereign mandate.

115. Mr. Ndegwa submitted that the Deputy President fell ill during the proceedings while actively engaged in his defence and that this is not disputed and is recorded in the Senate Hansard. That the Senate refused to grant an adjournment, proceeding instead to conclusion in his absence

and he submitted that this violated **Article 50(2)(a)** on the right to adequate time and facilities to prepare a defence, **Article 50(2)(f)** on the right to be present when being tried and **Standing Order 80** on the right to be heard within Senate proceedings. That a hearing conducted in the absence of the principal defence participant, due to verified illness, cannot satisfy the constitutional threshold of fairness. He stated that the Senate had sufficient procedural latitude under **Standing Order 75(2)(b)** to adjourn without violating any constitutional timeline but the refusal was not dictated by lack of time but by a failure to exercise discretion fairly.

116. The Petitioners submitted that under **Article 26** on the right to life, the State must refrain from actions that undermine physical well-being or exacerbate medical vulnerability and that proceeding with impeachment during illness reduced the Deputy President to a procedural object rather than a rights-bearing participant. They stated that **Article 48** on the access to justice extends to all adjudicative processes, including parliamentary impeachment and that meaningful participation requires reasonable accommodation and denial of adjournment rendered access to justice illusory.

117. They also submitted that the test for bias is objective and whether a reasonable and informed observer would apprehend bias and that Senators acknowledged imperfections in the case but still voted to impeach which demonstrated bias. They urged the Court to assess the impeachment process as a whole, not in fragments noting that the

Petitioners have demonstrated cumulative defects including failure to apply the modification rule under **Article 150(2),** absence of impartiality and presence of bias, reliance on irrelevant and extraneous considerations, violation of fair hearing rights, misconstruction of the constitutional and procedural framework and breach of **Standing Orders 75, 78, and 80.**

118. They submitted that individually, each defect is serious and collectively, they reveal a process that is constitutionally unsound from inception to conclusion. That **Article 165(3)(d)(ii)** vests the High Court with jurisdiction to determine whether anything done under constitutional authority is inconsistent with or in contravention of the Constitution. They contended that this Court is not being invited to interfere with parliamentary politics but it is being invited to perform its core constitutional function as guardian of legality and fundamental rights and where Parliament acts within constitutional bounds, the Court defers but where it acts outside those bounds, the Court must intervene, not as an intruder, but as a constitutional necessity.

119. As such, the Petitioners urged the Court to find that impeachment was not a measure of last resort when ordinary legal mechanisms were available and bypassed, that the Senate failed to apply the mandatory modification rule under **Article 150(2),** rendering the process unconstitutional ab initio, that the refusal to adjourn during illness violated **Articles 50, 26, 28, and 48**, that the proceedings were infected with bias and irrelevant considerations and that the

cumulative defects render the impeachment null, void, and of no legal effect.

120. They prayed that their Petition be allowed in its entirety.

I. The 51st Petitioner's case:

121. *Caroline Wambui Mwangi*, the 51st Petitioner in the consolidated petitions filed the petition dated 26th September 2024 before the High Court of Kenya at Milimani as a public-spirited Kenyan citizen and defender of the Constitution. Ms Mwangi contended that the impeachment process was unconstitutional, unlawful and politically motivated. She relied on public statements allegedly made by *Hon. Didmus Barasa* and *Hon. Gladys Boss Shollei* in September 2024, indicating that the impeachment of H.E. Gachagua had already been predetermined, and further referred to a motion by *Hon. Danson Mungatana* expressing displeasure with the conduct of H.E. Gachagua.

122. Ms. Mwangi asserted that the allegations levelled against H.E. Gachagua were vague, unsupported by evidence, and lacking in specificity and particularity, contrary to the constitutional requirements of fair hearing and due process under **Articles 47 and 50** of the **Constitution**. She further alleged that the intended impeachment process amounted to a political witch-hunt designed to settle political scores rather than a lawful constitutional process and contended that the Respondents had violated the national values and principles under

Article 10, including the rule of law, transparency, accountability, equality and protection of human rights. She maintained that H.E. Gachagua had not been accorded adequate notice of the charges against him, sufficient particulars of the allegations, nor an opportunity to adduce and challenge evidence in violation of **Articles 25(c), 35, 47 and 50** of the **Constitution**.

123. As such, she sought the following orders:

a) A Declaration that within the purview of Articles 25 (C), 35, 47 and 50 of the Constitution of Kenya, a person facing impeachment proceedings under Article 150 is entitled to be informed substantially with particularity and specificity and supported with evidence the grounds of the impeachment before the commencement of the impeachment proceedings by the National Assembly and the Senate;

b) Conservatory Orders do issue against the Respondents restraining them from collection of signatures in support of a Motion to impeach H.E. Rigathi Gachagua, lodging any Motion and/or carrying on proceedings seeking to impeach the Deputy President of the Republic of Kenya, the Interested Party herein;

c) An Order for Compensation as enshrined and provided for under Article 23(e) of the Constitution of Kenya made up of the damages as shall be assessed and quantified by the Petitioner;

d) General damages;

e) Costs of the Petition; and

f) Any other relief that the Court may deem fit to grant.

124. The 51st Petitioner neither filed any written submissions nor attended the physical highlighting of submissions.

J. The 54th Petitioner's case:

125. *Emmanuel Elijah Otieno* was the 54th Petitioner in the consolidated petitions. He is an Advocate of the High Court of Kenya, who filed the petition dated 18th October 2024 together with a supporting affidavit also challenging the constitutionality and legality of the impeachment and removal from office of H.E. Gachagua as Deputy President. He stated that he instituted the proceedings in the public interest pursuant to **Articles 3 and 258** of the **Constitution** and contended that the impeachment process undertaken by the National Assembly and the Senate was procedurally unfair, politically motivated, unconstitutional, and inconsistent with the constitutional principles governing impeachment under **Articles 145 and 150** of the **Constitution.** He maintained that impeachment was a constitutional mechanism intended to promote accountability and good governance and not a tool for settling political disputes or managing political differences among leaders.

126. He challenged the legality of the public participation process, the fairness of the proceedings before the National Assembly and Senate, and the substantive threshold applied in removing H.E. Gachagua from office. He contended that the National Assembly failed to conduct meaningful and constitutionally compliant public participation as required under

Articles 10 and 118 of the **Constitution** and **section 5** of the **Fair Administrative Action Act**.

127. Mr. Otieno stated that the public participation exercise was hurried, inadequate both quantitatively and qualitatively, and incapable of reflecting the sovereign will of the electorate, given that only about 223,000 persons participated despite H.E. Gachagua having been elected together with H.E. President Ruto by over seven million voters. He further asserted that the public participation template prepared by the National Assembly was biased because it only contained the allegations against H.E. Gachagua and failed to include his responses, thereby portraying him to the public as guilty before he had been heard. Mr. Otieno additionally stated that the Speaker, Deputy Speaker and Members of the National Assembly demonstrated bias from the outset, failed to accord H.E. Gachagua a fair hearing, and debated the impeachment motion before proper public participation and before considering H.E. Gachagua's defence. He maintained that no impeachable offence meeting the constitutional threshold of "gross violation," "gross misconduct," or commission of crimes under national or international law had been substantiated either before the National Assembly or the Senate.

128. He further challenged the Senate proceedings, contending that the Senate violated H.E. Gachagua's right to a fair hearing by proceeding with the impeachment despite his illness and hospitalization and by failing to adjourn the proceedings to allow him an opportunity to

personally testify. He, therefore, alleged violations of **Articles 25(c), 47 and 50** of the **Constitution** relating to the rights to fair hearing and fair administrative action. He sought the following prayers:

i. *A declaration be and is hereby issued that the public participation organised and conducted by the 1st Respondent did not meet the requirements of Article 118 (1)(b) of the Constitution quantitatively and qualitatively;*
ii. *A declaration be and is hereby issued that the 1st Respondent violated 7th Respondent's right to a fair administrative action under Article 47 of the Constitution and Section 4 of the Fair Administrative Actions Act;*
iii. *A declaration be and is hereby issued that the 1st Respondent violated the right of the 7th Respondent under Article 50 (1) of the Constitution 2010;*
iv. *A declaration be and is hereby issued that the resolution of the 1st Respondent to impeach the 7th Respondent was invalid, null and void; and*
v. *Respondents shall bear the costs of the Petition.*

129. Likewise, the 54th Petitioner neither filed any written submissions nor attended the physical highlighting of submissions.

K. <u>The 55th and 56th Petitioners' case:</u>

130. *Stephen Mbugua Wanjiru* and *Gladys Nyambura Gatuha*, jointly filed the petition dated 20th October 2024 together with a supporting affidavit

sworn by Wambugu Wanjohi. They stated that they were public interest litigants and defenders of constitutionalism. They challenged the legality, constitutionality and procedural propriety of the impeachment proceedings undertaken against H.E. Gachagua as Deputy President of the Republic of Kenya, as well as the subsequent nomination and approval process relating to HE Kindiki, as Deputy President nominee.

131. The Petitioners contended that the impeachment process before both the National Assembly and the Senate was marred by procedural irregularities, bias, denial of fair hearing and unconstitutional conduct. That the Speaker and Deputy Speaker of the National Assembly had publicly pronounced themselves in favour of the impeachment before presiding over the proceedings, thereby violating the constitutional principles of impartiality, neutrality and natural justice. The Petitioners further challenged the adequacy and constitutionality of the public participation exercise conducted on 4th and 5th October 2024, asserting that the notice period was too short to permit meaningful participation, that the questionnaires used by the National Assembly only presented the accusations against H.E. Gachagua without his responses, and that Parliament failed to avail documentary and electronic evidence to the public to facilitate informed participation.

132. They additionally alleged that the public participation process was chaotic, disorderly, and marred by violence; characterised by low turnout in several constituencies; and undertaken on days when many Kenyans were engaged in religious worship, thereby undermining the

constitutional threshold for meaningful participation under **Articles 10 and 118** of the **Constitution**.

133. The Petitioners also challenged the conduct of the Senate proceedings. They contended that the Senate acted in violation of **Articles 25(c), 47 and 50** of the **Constitution** by refusing to adjourn the impeachment hearing despite H.E Gachagua's illness and hospitalization, thereby denying him an adequate opportunity to personally defend himself. Further, the Petitioners alleged bias and conflict of interest arising from the participation of Governor James Orengo, SC and Hon. Otiende Amollo, SC in the Senate proceedings, stating that their roles compromised the fairness and impartiality of the impeachment process. The Petitioners maintained that the impeachment proceedings before both Houses of Parliament were characterised by constitutional violations, procedural inconsistencies and disregard for due process.

134. The Petitioners also challenged the subsequent nomination and approval of HE Kindiki as Deputy President, contending that the nomination was tainted by the same constitutional and procedural violations that affected the impeachment process and was therefore null and void. As such, the Petitioners sought the following prayers:

i. A DECLARATION that the grounds of impeachment laid out in the special Notice of Motion dated 26th September, 2024 did not meet the constitutional and legal threshold for impeachment of a Deputy President;

ii. *A DECLARATION that the public participation exercise conducted on 4th and 5th October 2024 was flawed and incapable of meeting the constitutional standards required for such processes and the outcomes of this flawed participation do not reflect the will of the people and cannot be considered a legitimate basis for advancing the impeachment motion;*

iii. *A DECLARATION that the impeachment process against the Deputy President, initiated by the National Assembly and subsequently conducted by the Senate was tainted by substantive and procedural constitutional violations rendering it unconstitutional, illegal, null, and void;*

iv. *AN ORDER nullifying the impeachment of the Deputy President, as the process was marred by procedural irregularities, bias, conflict of interest, and a violation of the right to a fair hearing as guaranteed under Article 50 of the Constitution;*

v. *AN ORDER directing the immediate reinstatement of the Deputy President to his duly elected office, having been unconstitutionally and unlawfully removed through an impugned process;*

vi. *AN INJUNCTION restraining the President, the National Assembly, and any other state organs from proceeding with or effecting the appointment of any other person to the office of the Deputy President, pending the hearing and determination of this petition;*

vii. *AN ORDER revoking the nomination and subsequent approval of Prof. Kithure Kindiki as Deputy President by the National Assembly, as it stems from an unconstitutional process that is procedurally flawed and in violation of the Constitution;*

viii. *A MANDATORY INJUNCTION directing the National Assembly and the Senate to comply with Article 10 and 118 of the Constitution by ensuring meaningful and effective public participation in any future impeachment processes or similar proceedings of national importance;*

ix. *A DECLARATION that the participation of Governor James Orengo, SC, and Honourable Otiende Amollo, SC, in the impeachment process violated the principles of impartiality and fair hearing, and constituted a conflict of interest that compromised the integrity of the impeachment proceedings;*

x. *An order awarding the Petitioner the costs of this petition; and*

xi. *Any other or further orders or relief that this Honourable Court may deem just and fit to grant in the interests of justice, the rule of law, and constitutionalism.*

135. The 55th and 56th Petitioners did not file any written submissions and also did not turn up at the hearing.

L. <u>The 57th Petitioner's case:</u>

136. *Edwin Gekonge*, the 57th Petitioner in the consolidated petitions, filed the Amended Petition dated 23rd October 2024 before the High Court of Kenya at Mombasa together with a supporting affidavit of the same date. He stated that he is a law-abiding citizen, human rights defender and public-spirited litigant acting in his own interest and in the interest of the citizens of the Republic of Kenya. The Petition challenged the

constitutionality of the impeachment proceedings undertaken against H.E Gachagua as Deputy President, as well as the subsequent nomination and approval of HE Kindiki, as Deputy President.

137. He stated that the impeachment proceedings before the National Assembly and Senate violated **Articles 10, 32, 47, 48, 50, 145** and **150** of the **Constitution**. He stated that the public participation process conducted on 4th and 5th October 2024 fell below the constitutional threshold of effective, meaningful and inclusive public participation. The Petitioner asserted that the notice period for the public participation exercise was too short, that the exercise was limited to county offices instead of constituency level, and that the extension of the exercise to 5th October 2024 was ineffective because the notice was issued on the very day of participation and coincided with a Sabbath day of worship for Seventh Day Adventists, thereby excluding members of that faith from meaningful participation. He further alleged that the exercise was marred by confusion, violence, inadequate information, early closure of centres and generally low participation, thus violating **Articles 10 and 118** of the **Constitution**.

138. He also challenged the legality of the Senate proceedings on the ground that H.E. Gachagua was denied a fair hearing contrary to **Article 50** of the Constitution. He contended that although the 1st Petitioner had fallen ill and was unable to continue participating in the proceedings, the Senate declined to adjourn the hearing and proceeded to vote on the impeachment charges in his absence. Mr. Gekonge stated that **Article**

145 of the **Constitution** did not prescribe rigid timelines that could override the constitutional right to a fair hearing and that the Senate failed to apply the necessary constitutional modifications contemplated under **Article 150** in impeachment proceedings relating to a Deputy President. He further maintained that the evidence presented before the Senate did not attain the constitutional threshold required to establish gross violation of the Constitution, gross misconduct or serious reasons to believe that H.E. Gachagua had committed crimes under national law.

139. Mr. Gekonge also challenged the legality and constitutionality of the nomination and approval of Hon. Kindiki as Deputy President stating that the constitutional timelines under **Article 149** contemplated meaningful public participation and adequate vetting before approval of a Deputy President nominee. He contended that HE Kindiki remained a State officer serving as Cabinet Secretary at the time of nomination and had not formally resigned, thereby rendering him constitutionally disqualified under **Article 137** and **sections 23 and 24** of the **Elections Act**. The Petitioner further challenged the role of IEBC, contending that the Commission was not properly constituted and therefore incapable of lawfully confirming the qualifications of the nominee.

140. Mr. Gekonge sought the following orders:

i. A declaration that the modalities put in place by the 1st Respondent in respect of the public participation forums that were scheduled for 4th and 5th of October 2024 regarding the Special Motion fell below

the threshold of a proper, effective, and meaningful public participation as envisaged under Article 10 of the Constitution;

ii. *A declaration that the public participation process on the 5th of October 2024 was unconstitutional for failure to provide sufficient notice and in violation of the freedom of religion under Article 32;*

iii. *A declaration that the impeachment process against the 1st Interested Party undertaken by the 1st and 3rd Respondents was unconstitutional and did not meet the requirements set under Articles 145 and 150 of the Constitution of Kenya;*

iv. *A declaration that the impeachment process as against the 1st Interested Party undertaken by the 1st and 3rd Respondents was unconstitutional as it violated Article 50 of the Constitution of Kenya in terms of providing a fair hearing;*

v. *A declaration that the impeachment proceedings of the of the 1st Interested Party taken by the 1st and 3rd Respondent was unconstitutional void for failing to meet the evidential threshold for the impeachment of a Deputy President under Article 150 1(b);*

vi. *A declaration that the nomination of Abraham Kithure Kindiki by the President of Kenya is unconstitutional, null and void and in contravention of Article 137 (1) of the Constitution of Kenya;*

vii. *A declaration that the approval of the nomination of Abraham Kithure Kindiki by the National Assembly is unconstitutional for failure to comply with Articles 10 and 118 of the Constitution of Kenya;*

viii. *A declaration that the approval of the nomination of a Deputy President by the National Assembly under Article 149 of the*

Constitution must include public participation in every constituency;

ix. *A declaration that the approval of the nomination of Abraham Kithure Kindiki by the National Assembly is unconstitutional as Abraham Kithure Kindiki had not resigned as a state officer;*

x. *A declaration that the Independent Electoral and Boundaries Commission, at the time of nomination of Abraham Kithure Kindiki, was not properly constituted to approve or confirm the qualification of Abraham Kithure Kindiki under Article 137(1) of the Constitution;*

xi. *A declaration the Independent and Boundaries Commission has violated Article 149 of the Constitution of Kenya by confirming that Abraham Kithure Kindiki was qualified to stand as a Member of Parliament as per Article 137(1) of the Constitution of Kenya; and*

xii. *Any other order(s) as this Honorable Court shall deem just.*

141. Mr. Gekonge did not file any written submissions.

M. <u>The 50th, 52nd and 53rd Petitioners' case:</u>

142. *John Njomo, Clarence Eboso* and *Wanjiru Mwangi* were the 50th, 52nd and 53rd Petitioners in the consolidated petitions. Their Petitions were withdrawn from the consolidated proceedings on 7th November 2024 and 16th May 2025.

N. The 7th Interested Party's case and submissions:

143. *Kituo Cha Sheria*, appeared as the 7th Interested Party and filed a Replying Affidavit sworn on 15th April 2026 by *Dr. Wambua Kituku*, its Executive Director as well as written submissions of even date. It identified four issues for the Court's determination; being; *whether the National Assembly process met the constitutional threshold for meaningful public participation under* ***Articles 1, 10 and 118*** *of the* ***Constitution****, secondly, whether impeachment proceedings were quasi-judicial to the extent that they must meet constitutional and statutory procedural fairness standards, thirdly, whether the Court could review the procedural irregularity of impeachment proceedings consistently with the doctrine of separation of powers, and lastly whether the refusal to adjourn and the decision to proceed in absentia violated the 1st Petitioner's rights to fair administrative action and fair hearing under* ***Articles 10, 27, 28, 47 and 50*** *of the* ***Constitution****.*

144. Kituo cha Sheria averred that **Article 118** of the ***Constitution***, mandated Parliament to facilitate public participation and involvement in legislation and all other businesses of the Assembly and its Committees. They further averred that the removal of a Deputy President from office was one of the most significant constitutional functions assigned to the National Assembly and the Senate and directly affected the sovereign will of the people. It was their understanding that public participation in such a constitutional process had to be both quantitative, to mean that a sufficient number of citizens had to be reached and afforded an opportunity to participate, and qualitative to mean that the participation

had to be meaningful and capable of influencing the decision-making process.

145. They averred that the one-day public participation notice given by the Speaker of the National Assembly and the National Assembly itself was inadequate to reach a substantial portion of the Kenyan population, particularly ordinary citizens who relied on accessible and localised communication channels. They deposed that the said notice did not reasonably reach rural communities, citizens without access to national media, citizens relying on vernacular radio stations, and those who depended on local public forums for information.

146. It stated that the National Assembly reduced 290 potential local hearings to only 47 hubs for public engagement forums, including venues such as *Kiambu Social Hall* Gatundu, *Nakuru ASK* Showground, and *Tom Mboya Labour College*, thereby drastically limiting accessibility and diluting representation. Kituo cha Sheria averred that the National Assembly and the Senate did not take adequate steps to ensure that sufficient citizens were made aware of the intended impeachment process. In particular, that they failed to disseminate information through churches, mosques, temples, public *barazas*, community meetings, vernacular radio stations, and county-level public participation forums.

147. They further averred that the alleged public participation conducted by the National Assembly and the Senate lacked adequate structures for public engagement, including ICT-based platforms for the submission of

views, decentralised citizens' forums, structured mechanisms for receiving memoranda from citizens across counties, and organised town hall meetings. As a result, members of the public were largely reduced to observers of the proceedings rather than participants in the process. They deposed that in the impeachment proceedings conducted by the Speaker of the Senate and the Senate on 16th and 17th October 2024, H.E. Gachagua was denied an opportunity to appear and be heard, to be present when being tried, and to challenge evidence.

148. That during the proceedings on the material day, it was communicated to the Speaker of the Senate and the Senate that H.E. Gachagua was present but subsequently fell ill. He was then rushed to hospital for urgent medical attention, and his legal counsel duly communicated his admission in hospital to the Senate. Notwithstanding the request for adjournment on those grounds, the Senate declined the request and proceeded to hear the case in the absence of H.E. Gachagua and his counsel. The Senate subsequently decided to remove the H.E. Gachagua from office by impeachment for gross misconduct and on grounds of a gross violation of the **Constitution**.

149. Kituo cha Sheria stated that the proceedings of the removal from office of the Deputy President before the Senate involved the reception of evidence, evaluation of contested facts, and making of determinations that directly affected the fundamental rights of H.E Gachagua. Those proceedings therefore ought to have been procedurally fair and to have afforded him an opportunity to be present during the trial, to be cross-

examined, to be re-examined, and to fully clarify any allegations made. However, the Senate, in disregard of the quasi-judicial nature of the proceedings, reached its determination without affording H.E. Gachagua those rights. Kituo cha Sheria contended that declining an adjournment request when H.E. Gachagua suffered severe and involuntary pain constituting a medical emergency was inhumane and unreasonable.

150. It was averred that the Senate, as a state organ, was bound to follow the **Constitution** and to observe, respect, protect, promote, and fulfil H.E Gachagua's rights. That upholding the impeachment as conducted set a dangerous precedent by normalising procedural shortcuts in constitutional processes and weakened safeguards meant to protect constitutionalism and respect for the rule of law. The absence of cross-examination in the present case was, in his view, a novel and serious procedural omission that contravened national values and principles of governance including good governance, integrity, transparency, accountability, fairness, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, and protection.

151. They expressed their belief that the Court had a solemn duty, in interpreting the **Constitution**, to adopt a purposive and progressive approach that advanced good governance, constitutionalism, accountability, and the public interest. They further averred that the determination of the Petition would provide critical guidance on the constitutional standards applicable to future impeachments of holders of

the offices of the Deputy President and the President, and that it must therefore reinforce, rather than dilute, the public participation threshold and fair hearing protections.

152. Kituo cha Sheria submitted that the standard of public participation envisaged under **Article 118** was meaningful participation and not tokenism, and that it had to be assessed on reasonableness and meaningful opportunity, considering the nature and impact of the decision. It was submitted that the removal of a Deputy President from office was not an ordinary procedural matter but a constitutional event with profound democratic implications. That **Article 118** had to be read together with **Articles 1 and 10** of the **Constitution** and that sovereign power belonged to the people, and Parliament merely exercised that power in a delegated capacity. When Parliament embarked on a process that might remove from office a Deputy President who was directly elected by the people, it was obliged to ensure that the people themselves were accorded a meaningful opportunity to be heard. It was further submitted that in such a context, public participation became a constitutional condition precedent to a valid impeachment process.

153. The Organization submitted that public participation in a constitutional democracy had to satisfy both quantitative and qualitative standards, and that this dual requirement was particularly important where the process concerned the removal of a nationally elected office holder. In support, they relied on ***Mwangaza V Speaker of the Senate of Kenya, Council of Governors & 6 Others, (Petition E429 of 2024) [2025] KEHC***

3069 (KLR), in which the Court stated that public participation was a constitutional requirement under **Articles 10(2)(a) and 196(1)(b)** of the **Constitution**, mandating inclusive and meaningful citizen engagement in government decision-making, including legislative processes such as impeachment. It was further submitted, relying on ***Wambora (supra)*** that the **Constitution** did not intend a scenario where an otherwise popular Deputy President could be removed due to political rivalry, malice, vendetta, institutional turf wars, and partisan hostility within Parliament, and that public participation acted as a constitutional safeguard against the abuse of impeachment powers.

154. On the inadequacy of the notice period, the interested party submitted that the one-day Gazette Notice and a national radio announcement coupled with the two-day public engagement period were grossly inadequate to facilitate meaningful public participation, as such a short time could not reasonably reach most Kenyans, particularly ordinary citizens who relied on accessible and localised information channels.

155. On the over-centralisation of venues, they submitted that the Speaker of the National Assembly and The National Assembly failed to utilise several well-established participatory mechanisms ordinarily available to them, including ICT platforms for structured public inputs, county-based citizen engagement forums, public notice boards and accessible announcements, town hall meetings, engagements through representatives of the people, and decentralised participation platforms across counties. Instead, the National Assembly adopted a centralised

and restrictive model whereby all 290 constituencies were grouped into only 47 participation centres, one per county. This arrangement overloaded single venues, diluted constituency-level representation, and transformed public hearings into mass gatherings where individualised contributions were practically impossible. The structural barriers disproportionately undermined meaningful engagement, especially for marginalised communities, persons with disabilities, workers unable to leave employment on short notice, those without transportation, and citizens living far from county headquarters. It was submitted that a process of this gravity required decentralisation, not consolidation, of engagement forums.

156. On the rigid and non-deliberative format of engagement, they submitted that the National Assembly employed a highly structured and restrictive model of engagement in which parliamentary clerks read out the charges, provided a general explanation of the process, attendees were given limited time to offer their views, and those views were recorded in a predesigned format for compilation. That format did not allow robust deliberation, did not permit cross-examination of claims, and did not facilitate informed submissions on the constitutionality or factual basis of the impeachment. It was submitted that public participation had to be interactive and not merely a formalistic exercise.

157. On the inadequacy of online submission mechanisms, they submitted that the National Assembly's website provided template forms where citizens could tick boxes indicating support or opposition to the

impeachment, but those forms offered only binary choices, allowed no uploading of supporting documentation, and permitted no opportunity for dialogue or nuanced analysis. This reduced public participation to checkbox voting rather than substantive constitutional engagement.

158. They acknowledged in their submissions that the standard required was not perfection but reasonableness. However, reasonableness in a matter of this magnitude required the Speaker of the National Assembly and the National Assembly to have actively mobilised public awareness through known public convergence points such as churches, mosques, temples, public barazas, national radio stations, vernacular broadcasting stations, and other accessible civic forums. The failure to utilise those avenues significantly restricted the reach of the notice and consequently diminished participation. The process was submitted to have been conducted on extremely short notice, centralised into too few venues, structured in a rigid and non-deliberative manner, and procedurally shallow through form-based engagements, all of which demonstrated a failure to meet constitutional standards and called into question the validity of the impeachment of H.E. Gachagua.

159. It was further submitted that the removal of a Deputy President from office was not merely an internal matter of Parliament but a matter of national constitutional significance affecting the democratic will of the electorate, the integrity of the executive structure, the political stability of the Republic of Kenya, and the sovereignty of the people, and that

accordingly the electorate had to be accorded an opportunity to participate in a process that sought to overturn their democratic choice.

160. Kituo cha Sheria submitted that even where Parliament acted within its constitutional mandate, when it undertook a process that received and evaluated evidence and reached determinations adverse to rights, reputation, and tenure of office, it was obliged to meet the minimum content of procedural fairness. It was submitted that the Senate's proceedings bore all the hallmarks of a quasi-judicial trial from pleadings, evidence, contested facts, adverse findings to a grave sanction in the form of removal from office, and that **Articles 47 and 50** of the Constitution and the **Fair Administrative Actions Act, 2015,** therefore applied with full force. Impeachment of a national executive was not a mere political debate but a structured constitutional trial with legal standards, burdened with reputational, civil, and democratic consequences, which made the rights to be present, to cross-examine, and to be re-examined all the more imperative.

161. It was submitted that **Article 50 read** together with **Article 25(c)** of the **Constitution** underscored that fair trial rights were non-derogable in substance, relying on ***Spt. Stephen Odede V Court Martial at Kahawa Garrison & Another, (2016) KEHC 8190 KLR*****,** in which the Court confirmed that the right to a fair hearing and fair trial ought not to be unduly impeded and that a trial body had to be circumspect in purporting to limit or take away such a crucial right, since **Article 25(c)**

specifically provided that there was never to be any derogation from the right to a fair trial.

162. It was further submitted that while impeachment was *sui generis*, the logic of adversarial testing of allegations applied with equal, if not greater, force. H.E. Gachagua fell ill, was admitted for urgent medical care, and his counsel sought an adjournment, which was refused. The Senate proceeded in absentia, without counsel, received and assessed evidence, and removed him from office, thereby extinguishing his ability to be present, to be cross-examined, to be re-examined, and to participate meaningfully. It was submitted that a fair process entailed reasonable accommodation, including adjournment, where good cause was shown and no prejudice would be suffered that could not be compensated by costs or time.

163. Kituo cha Sheria relied on ***Githiga & 5 Others V Kiru Tea Factory Company Ltd, (Petition 13 of 2019) [2023] KESC 41 KLR***, in which the Supreme Court confirmed that the right to a fair hearing indicated that an individual shall not be penalised by a decision affecting his rights or legitimate expectations unless he had been given prior notice of the case against him, a fair opportunity to answer, and the opportunity to present his case. It was submitted that this was precisely what was not accorded to H.E. Gachagua. It was further submitted that if the Senate could adjourn an entire sitting over quorum issues as per ***Standing Order 40***, then refusing to adjourn to accommodate a hospitalised party where

fairness and due process rights under **Articles 47 and 50** were at stake was unreasonable, disproportionate, and constitutionally infirm.

164. They argued that the right to be heard required a real and effective opportunity to participate, not a mere formality, and included the right to attend and answer the case one faced as well as the right to correct or contradict the allegations made against one. Further, that an adjournment was a recognised incident of a fair hearing where unavoidable circumstances prevented attendance or effective participation, and accordingly the denial of a reasonable adjournment amounted to a denial of the right to be heard. The Senate could only have proceeded in H.E. Gachagua's absence if his conduct had made it impossible to continue the hearing, or if after due notice his absence was unjustified. In the present case, they submitted that absence was explained as a medical emergency and counsel had sought an adjournment. Proceeding to receive and evaluate adverse material in those circumstances H.E. Gachagua's ability to participate meaningfully.

165. It was submitted that in impeachment, the public interest was best served by accuracy and fairness, not speed for its own sake, and that where adverse oral evidence was received and weighed, cross-examination was the crucible for testing credibility, the denial of which hollowed out fairness and tainted the decision. It was submitted that expedition could not cannibalize fairness and that **Articles 10, 47, and 50** demanded reasonable accommodation, especially where a short adjournment would have cured the prejudice occasioned by a medical emergency.

166. Kituo cha Sheria submitted that courts had emphasised comity and institutional respect and that impeachment was principally a political and constitutional accountability process, but that Parliament had not been insulated from judicial scrutiny where constitutional requirements were breached. Relying on ***Mwangaza (supra),*** Kituo cha Sheria recalled the Court's pronouncement that impeachment was an invaluable safeguard against impunity and abuse of office that had to be jealously protected and must not be allowed to become an avenue for fighting political proxy wars or resurrecting ballot box contestations.

167. The Court further stated therein that watering down impeachment, lowering its bar too low, or allowing it to become a façade masking hidden political interests ran the risk of Kenyans losing confidence in the process, and that the intervention of courts came far down the impeachment path, making it the duty of the primary duty bearers to ensure that impeachment remained as constitutionally envisaged. Kituo cha Sheria submitted that constitutional review was therefore available to tame procedural impropriety in the exercise of public power, even in politically charged arenas.

168. Further relying on ***Wambora (supra),*** Kituo cha Sheria recalled the Court of Appeal's statement that the process of removal lay entirely with the County Assembly wherein it was initiated and the Senate wherein it was concluded, but that the Court might only come in where necessary to confirm that the process had been properly followed as laid down in the Constitution and statute. Accordingly, they submitted that the question

before this Court was not how the Senate should have voted, but whether it had obeyed the Constitution in getting there. It was submitted that **Article 10** of the **Constitution** bound all state organs whenever they applied or interpreted the Constitution, or enacted, applied, or interpreted any law, or made or implemented public policy decisions, and required good governance, integrity, transparency, accountability, human dignity, equity, social justice, inclusiveness, equality, human rights, and non-discrimination.

169. An impeachment that shut out the subject's presence, cross-examination, and re-examination, especially in a medical emergency, subverted human dignity, equality of arms, and accountability, and was thus constitutionally infirm. Kituo cha Sheria was not asking the Court to supervise the National Assembly and the Senate's debate or to substitute their judgment, but only to ensure that in reaching their determination the constitutional procedures were observed.

170. They sought a declaration that the impeachment proceedings conducted on 16th October 2024 by the Senate were procedurally unfair, unconstitutional, and *ultra vires*, a declaration that the Senate, acting quasi-judicially, violated **Articles 47 and 50** of the **Constitution** by denying cross-examination, re-examination, and a reasonable adjournment; in the alternative, if the Court was minded to preserve the proceedings, an order of remit directing a de novo hearing before the Senate in strict conformity with constitutional and statutory fair hearing requirements including presence, representation, cross-examination,

disclosure, and reasonable determination and such other orders as the Court may deem fit to vindicate the Constitution and the public interest in a lawful, rational, and fair impeachment process.

171. Kituo cha Sheria concluded its submissions by urging that the Constitution erected procedural safeguards precisely because impeachment was a constitutional earthquake. Where the Senate refused a short adjournment despite H.E. Gachagua's hospitalisation, proceeded in absentia, and delivered the ultimate sanction without the presence, cross-examination, or re-examination of the accused, the process failed the constitutional test. It was submitted that this Court ought to intervene not to rewrite politics, but to enforce procedure, and in so doing, preserve Kenya's commitment to the rule of law, constitutionality, accountability, and human dignity.

RESPONSES AND SUBMISSIONS TO THE CONSOLIDATED PETITIONS:

A. The 2nd & 7th Respondents' cases:

172. The National Assembly and the Clerk to the National Assembly were the 2nd and 7th Respondents in the consolidated petitions. They jointly responded to the petitions through replying affidavits sworn by its Clerk, *Samuel Njoroge*, on 9th October 2024 and 21st October 2024 and the Grounds of Opposition dated 4th October 2024. They asserted that

the impeachment process was entirely constitutional, lawful, and procedurally fair and that all actions taken complied with the **Articles 145, 150, and 118** of the **Constitution,** the National Assembly **Standing Orders**, and court directives.

173. They further posited that the impeachment of the Deputy President followed **Article 150(2),** which applies **Articles 144 and 145** for the President with necessary modifications and that **Standing Order 65(2)** of the National Assembly explicitly states that **Standing Order 64** applies to the Deputy President with necessary modifications as well. `They deposed that the Speaker validly confirmed that the motion met the required legal form and the signature threshold of at least 117 MPs, or one-third of all members. That, public participation was adequate, inclusive, and compliant with Court orders as the National Assembly placed advertisements in all three national Dailies on 2nd, 3rd, and 4th October 2024, public hearings were held on 4th October 2024 across the country, that the public could submit views by way of email, post, hand delivery, a dedicated template in English/Kiswahili, and through constituency offices.

174. The Respondents contended that upon being served with a Court order on 3rd October 2024, they extended public participation to the constituency level until 5th October 2024 and that a Public Participation Report was published. They asserted that the process was real and not illusory, that public participation is not part of the Deputy President's defense as it is meant to gather general public views to inform the

Assembly and hat holding it first preserved the integrity and independence of public input, preventing it from being influenced by the Deputy President's defense or parliamentary debate.

175. The Respondents maintained that the Deputy President still received his full right to be heard during the debate on 8th October 2024, where he appeared in person with his legal team. The Respondents further claimed that one of the Petitioners, *Hon. Jane Njeri Maina* closed her Kirinyaga County Women Representative's office during the public participation exercise, despite parliamentary officers being deployed there. Further, they reliably learnt that the closure was directed by the Woman Representative herself since she was vehemently opposed to the impeachment. The Respondents averred that she cannot then benefit from her own actions that obstructed the public participation exercise.

176. The Respondents deposed further that after debate on 8th October 2024, the motion was put to a vote and 282 members voted in support of impeachment and 44 voted against, which exceeded the required two-thirds majority under **Article 145(2)** of the **Constitution**. That, on 9th October 2024, the Speaker of the National Assembly formally notified the Speaker of the Senate of the resolution by transmittal. The Respondents denied any constitutional or otherwise wrongdoing and prayed that the consolidated petitions against the National Assembly and its Clerk be dismissed with costs**.**

The National Assembly and Clerk's submissions:

177. The National Assembly and its Clerk's onslaught on the consolidated petitions was led by Learned Counsel *Mr. Eric Gumbo, Mr. Paul Nyamodi* and *Hon. Gitonga Murugara*. They identified the following issues for the Court's determination:

i. *What is the extent of this Honourable Court's jurisdiction to hear and determine the consolidated petitions relating to the impeachment of H.E. Gachagua;*
ii. *Whether the sub judice rule under Standing Orders 89 and 103 of the National Assembly and Senate Standing Orders bars parliamentary proceedings on impeachment where judicial proceedings are pending;*
iii. *Whether the impeachment proceedings before the National Assembly were valid;*
iv. *Whether the Petitioners have demonstrated any valid grounds for challenging the impeachment proceedings conducted before the Senate;*
v. *Whether the impeachment unconstitutionally subverted the sovereign will of the electorate expressed in the 2022 General Election, contrary to Articles 1, 2, and 38 of the Constitution;*
vi. *Whether the nomination, approval, and appointment of Hon. Kindiki as the Deputy President was valid; and*
vii. *Whether the Petitioners are entitled to the reliefs sought.*

178. The National Assembly and Clerk submitted that the impeachment of H.E. Gachagua as Deputy President was constitutionally valid, procedurally proper, and politically necessary to uphold accountability and the rule of law. They also defended the subsequent nomination, approval, and appointment of HE Kindiki as Deputy President as fully compliant with the Constitution. Their position remained that an impeachment is a political process, not a judicial one and that the Constitution vests sovereign power in the people, exercised through their elected representatives under **Article 1.** That the Constitution mandates public participation, strict timelines, and bicameral supermajority requirements of two-thirds in both Houses, making the impeachment framework rigorous and transparent. They submitted that comparative analysis with the United States, Philippines, Brazil, South Korea, and Nigeria shows that Kenya's process aligns with global presidential systems, where impeachment is a constitutional safeguard against abuse of office.

179. On the High Court's jurisdiction under **Article 165,** over impeachment proceedings, they submitted that such power is only residual and supervisory, not appellate, that impeachment is a political process entrusted to Parliament and Courts should not interrogate the substantive merits of impeachment charges. They added that the Court's role is limited to ensuring procedural compliance and protection of individual constitutional rights and citing the cases in ***Wambora (supra)*** and ***Sonko (supra).*** They asserted that Courts must show deference to Parliament in matters where the Constitution grants

Parliament discretion. Learned Counsel also cited the decision of the Supreme Court of the Philippines in ***Re: Sara Duterte; G.R. No. 278353*****,** which similarly held that Courts will not encroach on co-equal branches on political questions.

180. It was their further submission that **Standing Orders 89** of the National Assembly and **103** of the Senate do not absolutely bar discussion of matters pending in Court and a matter is *sub judice* only if its discussion is likely to prejudice fair determination of active proceedings. They stated that the Petitioners did not raise any *sub judice* objection during the parliamentary proceedings and they cannot raise it now. The National Assembly and Clerk submitted that the **Constitution** itself imposes tight timelines under **Article 145**, that is, 2 days to notify Senate, 7 days to convene Senate and 10 days for committee investigation. They contended that impeachment is urgent as prolonged proceedings would cause political uncertainty and undermine governance. That Standing Orders are a legitimate exercise of Parliament's power under **Article 124** to regulate its internal affairs and that timelines are constitutionally anchored and not subject to judicial invalidation as was held in ***Mbaraka Issa Kombo V Independent Electoral and Boundaries Commission & 3 Others, [2017] KEHC 2654 (KLR)*****.**

181. It was their further submission that public participation was adequate as the National Assembly issued notices in the *Kenya Gazette*, national newspapers, website, and social media on 2nd 3rd, and 4th October 2024. Public hearings were held at county and constituency levels including

compliance with Justice Mwongo's order for constituency-level participation and 223,083 citizens submitted views, which they stated, was an unprecedented level of civic engagement. Further, that the public views template was provided in English and Kiswahili, submissions were received orally, in writing, and electronically. The also submitted that the constitutional standard is reasonableness, not perfection and that the Supreme Court in ***Cabinet Secretary for the National Treasury and Planning & 4 Others V Okoiti & 52 Others; Bhatia (Amicus Curiae), [2024] KESC 63 (KLR)*** held that timelines must be considered when assessing public participation adequacy. They submitted that H.E. Gachagua's response was not required to be circulated simultaneously as the public's role is to express views, not adjudicate and that allegations of violence, intimidation, and poor organization were unsubstantiated and that isolated incidents do not vitiate the entire process.

182. They also submitted that the Public Participation Report was tabled in Parliament and recorded in the Hansard which is a valid parliamentary record. It was noted that the impeachment motion was properly particularized and set out 11 detailed grounds with specific particulars and that these grounds met the ***Wambora (supra)*** threshold of being serious, substantial, weighty, with clear nexus and precise constitutional provisions. That, the motion was supported by 282 MPs which was well above the two-thirds requirement of 233 MPs and that the Deputy President was accorded a fair hearing as he received prior notice of the charges, he filed a written response and appeared in person with Counsel, and he was given two hours to address the National Assembly.

The National Assembly and the Clerk also submitted that H.E. Gachagua's defence was considered and debated before the vote and that the two-thirds gender principle does not invalidate Parliament as **Articles 97 and 98** on the composition of Parliament have been fully complied with.

183. On the two-thirds gender principle under **Article 81(b)**, it was submitted that this was an aspirational provision to be achieved progressively, not a condition precedent to Parliament's validity and that **Article 261** provides a mechanism for addressing legislative delays and that no advice from the Chief Justice or action by the President has occurred to dissolve Parliament. They contended that accepting the Petitioners' argument would void all legislation and actions since 2013 and will be an absurd and constitutionally impermissible outcome.

184. On the allegations of bias against the Deputy Speaker, they submitted that the allegations were unproven, and further that the Deputy Speaker only performed administrative and procedural functions and that she did not vote. Further, no recusal motion was raised during the proceedings. They stated that the test for bias is objective as stated by the Supreme Court in ***Rawal & 2 Others V Judicial Service Commission & 2 Oothers; Okoiti (Interested Party); International Commission of Jurists & 2 Others (Amicus Curiae), [2016] KESC 1 (KLR)*** and the threshold had not been met in this matter.

185. Counsel added their voice to the position that the Senate handled the impeachment hearing by hearing the charges in plenary since **Article 145(3)(a)** mandates the Senate to convene and hear such charges. That, **Article 145(3)(b)** uses the word *"may"* and therefore, the appointment of a special committee is discretionary, not mandatory and the semi-colon and "and" in **Article 145(3)** do not convert the discretionary power into a mandatory obligation. They reiterated that the Senate's motion to appoint a special committee on 9th October 2024 failed as it was not seconded and the Senate then properly proceeded in plenary. They relied on the Supreme Court ***Sonko (supra)*** case that confirmed that for governors, the Senate may proceed in plenary or by committee and that the same applies to the Deputy President.

186. It was also their submission that the 10-day timeline for plenary proceedings was constitutional as where the Constitution is silent, the Senate may regulate its own procedure under **Article 124(1)** and the 10-day timeline was a reasonable exercise of procedural autonomy to ensure expedition. Counsel submitted that impeachment must be concluded without undue delay and the timeline reinforced accountability and good governance. It was their further position that H.E Gachagua received a fair hearing in the Senate as he was represented by Counsel throughout, he cross-examined National Assembly witnesses and he filed witness affidavits on 12th and 13th October 2024. They contended that the Senate did not refuse an adjournment unreasonably as Senior Counsel Muite was given from 2:30 p.m. to 5:00 p.m. to contact H.E Gachagua. That no medical evidence of either a Doctor's report or prescription was

provided to the Senate and that the Senate offered to adjourn until Saturday, 19th October 2024, within the constitutional timeframe, but this motion failed on a vote.

187. The National Assembly and the Clerk submitted that the decision to proceed in absentia did not violate fair hearing as H.E Gachagua had already filed his evidence and opted out after cross-examining the National Assembly's witnesses. That no new evidence was introduced, all material before the Senate had already been before the National Assembly and forwarded by the Speaker and time allocation was not disproportionate as both parties were afforded equal time. The National Assembly submitted that it also could not call all its witnesses due to time constraints and that this was a consequence of expedition, not bias. They further submitted that the Senate had no independent duty to conduct public participation which under **Articles 10 and 118** applies primarily to legislative functions. That the Senate, when hearing impeachment matters, acts in a quasi-judicial capacity, not a legislative one and that public participation occurs at the National Assembly during the initiation stage, not at the Senate at the trial stage. Counsel submitted that comparative practice in the USA, Nigeria and Brazil confirms that the upper house's role is adjudicatory, not participatory and that this court in ***Mwangaza V Speaker of the Senate of Kenya; Council of Governors & 6 Others (Interested Parties), [2025] KEHC 3069 (KLR)*** held that public participation in gubernatorial impeachment occurs at the County Assembly level and the same principle applies here.

188. The Respondents contended that allegations of bias against the Senate Speaker remained unproven as the Speaker's role is presiding and procedural and he has no deliberative vote. That, mere coalition membership does not establish bias and that the Petitioners have not pointed to any specific act or omission showing a real possibility of bias. They restated that the test for bias is objective and the Petitioners failed to meet it, as well, in respect of the Senate Speaker.

189. It was the submission of the National Assembly and the Clerk that the participation of *Hon. Orengo* and *Hon. Amollo* as Counsel did not invalidate the proceedings in that **Article 77(1)** restricts gainful employment that is inherently incompatible with State office and that representing a party in proceedings is not such employment. That, any alleged illegality would affect the Advocates personally, not the validity of the impeachment process and that no actual bias or procedural unfairness has been shown.

190. They further submitted that the Senate applied the correct standard of proof for impeachment which is above a balance of probabilities but below beyond reasonable doubt as set out by the Supreme Court in ***Sonko (supra)*** and the Court of Appeal in ***Wambora (supra).*** The Senate found five charges substantiated, including gross constitutional violations, attacks on judicial independence, ethnic incitement, and gross misconduct and that the evidence was substantial and credible, including H.E. Gachagua's own public admissions. Learned Counsel submitted

and urged that the Court should not undertake a merit review of the Senate's findings.

191. Counsel reiterated that impeachment does not subvert the sovereign will of the people as it is not an affront to democracy but an affirmation of accountability. That, the ***Constitution*** provides for removal of elected officials for gross misconduct, constitutional violations, and crimes and that the "joint ticket" of the President and Deputy President does not create legal inseparability as they are separate constitutional offices with distinct accountability mechanisms. Counsel gave comparative examples of the US Vice President Agnew's resignation while President Nixon remained and Brazil's President Rousseff's impeachment while Vice President Temer assumed office which they submitted confirmed that removal of a deputy does not require removal of the principal. They contended that **Article 150** applies **Article 145** "with necessary modifications" and that this acknowledges distinct offices and not a merger.

192. On the validity of HE Kindiki's nomination, approval, and appointment, the National Assembly and the Clerk submitted that a lawful vacancy arose by operation of law under **Article 145(7)** as the impeachment was valid. They stated that IEBC clearance was not constitutionally required for a Deputy President nomination under **Article 149** and that the President merely sought information of the voter registration status and MP qualifications from IEBC as a matter of prudence. Counsel submitted that the IEBC Secretariat acted within its administrative

mandate by providing information which is not a commission-level constitutional function. Counsel referred this Court to the Supreme Court's Advisory Opinion in ***Independent Electoral and Boundaries Commission V Attorney General, [2025] KESC 57 (KLR)*** where it drew a distinction between commission-level functions such as boundary delimitation and secretariat administrative functions including the day-to-day operations. They submitted that providing information falls within the latter.

193. It was their submission that H.E Kindiki met the constitutional qualifications for appointment as he is a Kenyan citizen by birth, qualified to be an MP and nominated by a political party, UDA, thus satisfying **Article 137** as read with **Article 148** and that his party membership was properly documented with the Registrar of Political Parties. They contended that allegations of misconduct during H.E Kindiki's tenure as Cabinet Secretary are mere allegations and that no judicial or quasi-judicial finding of culpability exists and that this Court in ***International Centre for Policy and Conflict & 5 others v Attorney General & 5 Others, [2013] KEHC 5367 (KLR)*** held that unproven allegations cannot disqualify a candidate. That, holding a Cabinet Secretary position did not disqualify him under **Article 77** as this provision prohibits gainful employment that creates a conflict of interest but does not bar a State officer from seeking elective office.

194. Counsel submitted that disqualification for holding State office is governed by **Article 137(2)(b)** that requires resignation six months before

a general election but it is not applicable to a mid-term vacancy which process under **Article 149** is *sui generis*. The National Assembly submitted that the voting process complied with **Article 149(1)** which requires the National Assembly to "vote on" the nomination, which is an electoral determination by plenary, not an approval process requiring committee vetting. That the Speaker correctly distinguished between appointive offices, subject to committee approval and the elective process for Deputy President under **Article 149(1)**. It was argued that the Public Appointments (Parliamentary Approval) Act and **Standing Order 45(3)** do not apply to this *sui generis* constitutional process and that the Supreme Court in ***Trusted Society of Human Rights Alliance V Matemo & 3 Others, [2015] KESC 26 (KLR)*** held that where the ***Constitution*** provides a specific procedure, statute cannot add to or amend it.

195. It was also their position that no public participation was required for the nomination as **Article 149(1)** does not prescribe public participation and that the nomination and approval is an Executive-led elective process, not legislative business under **Article 118**. That it would be incongruous to require more process for a mid-term vacancy than for a general election, where the ticket is approved by popular vote without prior public hearings.

196. For the aforementioned reasons, the National Assembly and the Clerk urged the Court to dismiss all reliefs sought with Counsel submitting that no constitutional violations had been proved, the impeachment was

procedurally regular and substantively justified, damages are not automatic as no breach had been established, and awarding damages would punish Parliament for performing its constitutional duty. That, pension and retirement benefits are for honorable retirement, not for removal by impeachment, and that quashing the resolutions or nullifying H.E Kindiki's appointment would create a leadership vacuum and constitutional chaos. Counsel thus urged this Court to dismiss the consolidated petitions with costs to them, find that the impeachment of H.E. Gachagua was lawful, constitutional, and procedurally proper and that the nomination, approval, and appointment of H.E. Kindiki as Deputy President was valid and constitutional and that the Court should decline to grant any of the reliefs sought by the Petitioners.

B. <u>The 3rd and 4th Respondents' case:</u>

197. The Speaker of the Senate and the Senate, the 3rd and 4th Respondents respectively, challenged the consolidated petitions through the Affidavit of *Jeremiah Nyegenye*, the Clerk of the Senate and Secretary to the Parliamentary Service Commission, deposed on 21st October 2024. From the outset, it was their case that under **Articles 93(1), 96(4), 145, and 150** of the **Constitution**, the Senate is mandated with the role of considering the impeachment of a Deputy President. They asserted that process is guided by the National Assembly **Standing Orders *64 and 65***, which dictate the procedure for introducing and supporting an impeachment motion. To that end, he deposed that on 1st October 2024, Hon. Mutuse introduced a Motion in the National Assembly seeking the

removal of H.E Gachagua on the basis of eleven grounds, including gross violations of the Constitution, undermining devolution, attacking the independence of judges, committing economic crimes, and publicly subordinating the President.

198. It was their position that the National Assembly conducted extensive public participation from 2nd to 5th October 2024, and formally approved the motion on 8th October 2024. Following the approval, the Speaker of the National Assembly notified the Speaker of the Senate of the resolution in a letter received on 9th October 2024 which included the Motion, electronic evidence, relevant Hansard reports, public participation advertisements and reports, and court orders. He asserted that the Senate Speaker convened a sitting on 9th October 2024, through *Gazette Notice No. 13170*, during which a motion to establish a Special Committee to investigate the matter was defeated. As such, the proceedings had to be held in Plenary and it was deposed that the Speaker designated 16th and 17th October 2024, for the plenary hearings, formalized in *Gazette Notice No. 13178*.

199. Speaking to the fairness in the process, the Clerk deposed that on 9th October 2024, the Senate served an invitation to H.E Gachagua and the National Assembly to appear to submit witness details and evidence. It was their case that on 14th October 2024, H.E Gachagua indicated his representation by *M/s Swanya & Company Advocates* and filed his response to the allegations alongside supporting evidence. They stated that the Plenary hearings commenced on 16th and 17th October 2024, and

after the National Assembly concluded its case on 17th October 2024 at 1:15 p.m., the H.E Gachagua's Lead Counsel, *Mr. Paul Muite S.C.*, informed the Senate at 2:30 p.m. that his client was missing and had been taken ill. It was pointed out that after a suspension until 5:00 p.m., Counsel requested an adjournment to 22nd October 2024. He stated that a subsequent procedural motion to sit on Saturday, 19th October 2024, to meet constitutional deadlines was defeated, prompting H.E Gachagua's Counsel to exit the proceedings. They maintained that the Senate, a quasi-judicial body, exercised discretion in granting adjournments and H.E Gachagua's Counsel failed to provide cogent material evidence of his illness. As regards the constitutional timelines, it was their case that impeachment could not be paused without violating the Constitution. They refuted the claim that the trial occurred in *absentia* since H.E Gachagua had actively participated through his advocate's opening statement, cross-examination of the National Assembly's witnesses, and the filing of witness affidavits.

200. In challenging the claim that public participation was not conducted, the Senate and the Speaker stated that an order from the High Court in Kerugoya did not mandate the Senate to conduct public participation, as the Senate functions exclusively as a trial chamber akin to a Court. In conclusion, it was deposed that the Senate voted on the impeachment charges where five charges comprising, Ground 1 on gross violation of the Constitution, Ground 4 on undermining independence of Judges, Ground 5 on fidelity to the Oath of Office), Ground 6 on crimes under the ***National Cohesion and Integration Act*** and Ground 9 on gross misconduct concerning the NIS were substantiated by the required

majority. The Clerk deposed that the Senate resolved to impeach H.E Gachagua, a decision officially gazetted on 17th October 2024, through *Gazette Notice No. 13400*.

201. On the foregoing, this Court was urged to find that impeachment power is inherently political and vests solely in Parliament, which triggered the political question doctrine, thereby inviting this court to exercise judicial restraint. Ultimately, the Speaker of the Senate and the Senate prayed that the petitions be dismissed with costs.

The 3rd and 4th Respondents' submissions:

202. The Speaker of the Senate and the Senate supplemented their case further through written submissions dated 24th April 2026 that were highlighted by their legal team led by *Prof. Tom Ojienda, SC, Mr. Edwin Mukele, Ms. Mercy Thanji, Ms. Opola* and *Hon. Hillary Sigei*. They maintained that the entire impeachment process meticulously complied with all constitutional timelines, internal standing orders, and the principles of natural justice. On the question whether H.E Gachagua was accorded a fair and reasonable opportunity to be heard, they submitted that the hearing aligned with due process and the *audi alteram partem* rule. To define the threshold of a fair trial, they relied on **Black's Law Dictionary,** 7th Ed. at page 725 and **Halsbury's Laws of England,** 5th Edition 2010, Vol. 61 at para. 639. The dictionary defines the right to be heard as follows:

> ***"The rule that no person is to be condemned unless that person has been given prior notice of the allegations against him and a fair opportunity to be heard (the audi alteram partem rule) is a fundamental principle of justice. This rule has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court."***

203. To bolster their case, the Senate and Speaker referred to the precedent in ***Evans Odhiambo Kidero & 4 Others V Ferdinand Ndung'u Waititu & 4 Others, [2014] KESC 11 (KLR)***, which approved the Supreme Court of India's decision in ***Indru Ramchand Bharvani & Others V Union of India & Others, 1988 SCR Supl. (1) 544, 555*****,** confirming that a fair hearing possesses two elements, namely; the opportunity must be given, and it must be reasonable. Counsel drew further support from the Uganda Supreme Court in ***Obiga V Electoral Commission & Anor, Election Petition Appeal No. 4 of 2011 [2012] UGCA 29*** and ***Saulo Kandie V James Kwambai Cheruiyot, [2019] KECA 257 (KLR),*** to illustrate that the right to be heard is fulfilled when a party is supplied with the opposing evidence and given a full venue to present their case, comment, and call witnesses.

204. As regards the sufficiency of written evidence and constructive waiver, they stated that H.E. Gachagua fully participated in the initial phases of the trial by filing comprehensive responses, witness statements, and documentary/video exhibits, which legally constituted his evidence-in-chief under **Rule 6** of the **Second Schedule** to the Senate **Standing Orders**. They submitted that an oral hearing is not an absolute prerequisite for natural justice and they fortified their position through the decision in ***Economic Freedom Fighters & 3 Others V The Speaker of the National Assembly & Another, (2017) ZACC 47***, **Halsbury's Laws of England,** 4th Ed. Vol. 1**,** and ***Kenya Revenue Authority V Menginya Salim Murgani, [2010] KECA 164 (KLR)***, which cited ***Local Government Board V Arlidge, [1915] A.C. 120, Selvarajan V Race Relations Board, [1975] 1 WLR 1686, and R V Immigration Appeal Tribunal ex-parte Jones, [1988] 1 WLR 477***. They also referred to the case of ***Jacob Oriando Ochanda V Kenya Hospital Association Ltd T/A Nairobi Hospital, [2019] KECA 889 (KLR)*** to demonstrate that a hearing can be fairly conducted through written representations.

205. The Speaker and the Senate faulted H.E. Gachagua stating that because he chose to walk out of the proceedings after the Senate voted down an adjournment, it was deliberate boycott. They implored the Court to find that voluntary absence constituted a constructive waiver of the right to be heard orally. Support to that end was drawn from various authorities among them, ***Regina V Jones (Appellant),*** **[2002] UKHL 5**, relying on ***R V Governor of Brixton Prison, Exp Caborn-Waterfield, [1960] 2 QB 498)*** and the Ghanaian Supreme Court case in ***The Republic V High Court***

Accra (Criminal Law Division 5) Ex Parte Benjamin Akuffo Darko, (J5182024) [2024] GHASC 2*.** They affirmed that the Senate acted within its lawful discretion when it denied H.E. Gachagua's request to adjourn the proceedings due to his sudden hospitalization. In reference to the decision of the Supreme Court in ***Sonko (supra) and ***Mate (supra)*** the Senate and the Speaker emphasized that courts must be slow to interfere with the internal affairs and procedural discretion of Parliament. Further support was drawn from the decision in the Supreme Court case: ***Famous Cycle Agencies Ltd & 4 Others V Masukhalal Ramji Karia, [1995] IV KALR***, where it was observed that an adjournment requires sufficient cause based on proper materials. They argued that without formal medical proof of total incapacitation, the Senate was not required to stop the proceedings.

206. To further credence to the foregoing position, they found support from the decision in ***Serem V Republic, [2023] KECA 30 (KLR)*** and ***Okaka & Another V Odundo, [2022] KEHC 9807 (KLR)*** and it was their case that the strict approach was dictated by the mandatory 14-day timeline to dispose of Special Motions under Senate ***Standing Order 74(2)(a).*** On the question whether investigation of Charges met the requisite standard of proof, the Senate asserted that it thoroughly investigated and voted on each individual charge according to the established intermediate standard of proof, which is above a balance of probabilities but below all reasonable doubt. It was their case that the standard was set by the Supreme Court in ***Sonko (supra)*** which declared that proving even a single charge is legally sufficient to sustain an impeachment.

Consequently, they submitted that the court must decline to re-evaluate the evidence or substitute its own findings for the political question decided by the Senate under **Articles 96(4) and 145(3)(a).**

207. On the question challenging H.E Gachagua's claim that the Senate acted unprocedurally by failing to form an 11-member special committee under **Article 145(3)(b)**, the Speaker and the Senate submitted that the word "may" in the **Constitution** and **Rule 2** of **Part 1** of the **Second Schedule** to the Senate **Standing Orders** grant the Senate absolute discretion to choose between a committee or a full plenary hearing. They submitted that such interpretation is anchored in the Supreme Court case: ***In the Matter of the Speaker of the Senate (supra)*** *referencing* ***Re the Matter of the Interim Independent Electoral Commission (supra)*** and the Court of Appeal decision in ***Co-operative Bank of Kenya Ltd V Banking Insurance & Finance Union, [2016] KECA 97 (KLR)***. They contrasted **Article 135(3)(b)** with **Article 152(7)** of the **Constitution**, which uses the mandatory phrase "shall appoint" when dealing with the dismissal of a Cabinet Secretary. It was their case that since a motion to form a special committee was moved but failed to be seconded under **Standing Order 70**, the Senate properly proceeded in plenary, meticulously satisfying the oversight parameters affirmed in the by the Supreme Court decision in the ***Sonko Case (supra).***

208. As regards the contentious issue of public participation, they contended that there was no legal basis for the Senate to conduct a secondary round of public participation because the National Assembly had already

completed a rigorous nationwide public participation drive between 2nd and 5th October 2024, through extensive media notices and public feedback templates. They submitted that to demand a repetitive exercise from the Senate would be an imprudent waste of state resources. Separately, the Speaker and the Senate submitted that during an impeachment trial under **Article 145(3)(a),** the Senate acts exclusively as a quasi-judicial body evaluating specific charges rather than performing a standard legislative function, exempting it from the public participation requirements of **Articles 10 and 118**. They dismissed the argument that Parliament was illegally constituted due to a historical failure to implement the two-thirds gender rule.

209. They submitted that although former Chief Justice David Maraga issued a dissolution advisory to the 4th President, the 12th Parliament dissolved by operation of law, and the 13th Parliament was lawfully established following the General Election on 9th August 2022. Seeking to rely on **Article 261(5)-(7),** the Senate and Speaker submitted that the gender rule mechanism is intended to compel future compliance, not to retroactively invalidate state operations. They warned that declaring Parliament unlawful would cause an absurd constitutional crisis, invalidating national budgets, legislation, and public appointments, which violates the governance promotion mandate of **Article 259**.They urged the Court to practice judicial restraint as the gender dispute is actively pending before a five-judge bench in ***Konchellah & Others V Chief Justice & President of Supreme Court of Kenya & Others, (Consolidated Petition No. E291 of 2020)*****.**

210. The Speaker and the Senate rejected the allegation that the Senate was mandated to conduct an approval hearing for filling the subsequent vacancy in the office of the Deputy President. They pointed out that **Article 149(1)** of the **Constitution** explicitly grants the exclusive mandate to vote on and approve a nominated Deputy President to the National Assembly, entirely omitting the Senate. It was their case that by applying the statutory construction principle established in the case of ***Federation of Women Lawyers Kenya (FIDA) V Attorney General; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae) [2018] KEHC 7130 (KLR)***, statutes could be interpreted to override the explicit text of the ***Constitution***, meaning the general term "the relevant House of Parliament" found in the Public Appointments (Parliamentary Approval) Act could not be used to invent a role for the Senate.

211. On the strength of the foregoing submissions, the Speaker and the Senate urged this Court to dismiss all consolidated petitions with costs.

C. The 5th Respondent's case:

212. The Attorney General, who is the 5th Respondent, challenged the Petitions through Grounds of Opposition dated 7th November 2024. She argued that the Court should not evaluate Parliament's factual assessments, since its role is strictly to ensure that reasonable inferences were drawn from the available evidence. It was her case that the removal proceedings against H.E Gachagua were purely legislative, neither entirely administrative nor judicial, and therefore, were not subject to

standard administrative or judicial review as suggested under **Article 47(3)(a)** of the **Constitution**. Further, the Attorney-General asserted that the court could not substitute the legislature's discretionary decision with its own, as doing so would constitute a usurpation of the constitutional functions of an independent branch of government. She maintained that the proceedings before the legislature were lawful, efficient, expeditious, and procedurally fair since the adopted procedure successfully balanced the need to protect H.E Gachagua's constitutional rights, safeguarded the process from abuse, and prevented unnecessary disruptions to public administration.

213. Regarding public participation, the Attorney General clarified that the Constitution did not permit members of the public to vote on an impeachment motion, as that discretion was expressly reserved for legislators, who constitutionally represent the sovereignty and will of the people. It explained that the National Assembly's role in the impeachment process was strictly preliminary and did not bind the Senate, which acted as a distinct state organ responsible for substantive proceedings and the ultimate decision. It described the consolidated petitions as disguised appeals regarding the merits of Parliament's decision. It argued that the Judiciary lacked an appellate mandate over the impeachment of a Deputy President since it is ill-equipped and constitutionally not designed to review or re-evaluate the social, economic, and political utilitarian calculations made by elected officials.

214. Finally, the Attorney-General defended the subsequent nomination and voting into office of H.E Kindiki and it was her case that the replacement process under **Article 149(1)** of the **Constitution** was *sui generis*, qualifying neither as an election nor an appointment which meant that the provisions of **Article 137** did not apply. The Attorney-General concluded that there were no procedural infractions that affected the outcome, that the transition process was conducted within constitutional timelines by the proper constitutional repositories, and that the consolidated petitions lacked merit.

The 5th Respondent's submissions:

215. The Attorney General filed written submissions dated 4th March 2026 which were orally highlighted by a team led by herself and *Prof. Githu Muigai SC*, alongside the Solicitor General *Mr. Shadrack Mose, Mr. Emmanuel Bitta [now a Judge of the High Court]* and *Mr. Charles Mutinda*. The Attorney General submitted that accountable governance was a core part of the ***Constitution*** which established removal from office through impeachment as one of the tools of governance among the many avenues of exercising oversight and facilitating accountability. He relied on the Supreme Court decision in ***Sonko (supra),*** where the apex Court stated that its purpose was to ensure integrity in leadership and to prevent abuse of public office.

216. It was the Attorney General's submission that the removal proceedings for a Deputy President were textually committed by the Constitution to

the National Assembly and the Senate, and that both institutions were vested with the exclusive power to remove the Deputy President subject only to procedural requirements set out in the Constitution and the respective Standing Orders. That both Houses were free to determine the procedures for receiving and considering evidence necessary to discharge their duty to conduct an impeachment hearing. The Attorney General relied further on ***Sonko (supra)*** to advance the proposition that, in accordance with the principle of separation of powers, Courts were required to achieve a balance between their role as guardians of the Constitution and the obligation to respect what Parliament was constitutionally required to fulfil. She submitted that where the Constitution required Parliament to determine a matter as part of its constitutional mandate, Parliament had the discretion and power to regulate its own affairs and courts would be slow to interfere. He drew additional support from ***Justus Kariuki Mate (supra)***, where the Supreme Court had signalled that it would be reluctant to question parliamentary procedures as long as they did not breach the Constitution.

217. With regard to the constitutional basis for impeachment, the Attorney General cited **Articles 150, 144 and 145** of the Constitution, which she submitted established a sequential, two-stage process. In the first stage, a Member of the National Assembly initiated the process by filing a notice of motion supported by at least a third of all members, which motion, if passed by at least two-thirds of all members, was then transmitted to the Senate for the substantive hearing. She submitted that it was common ground that the procedure as required by the Constitution was duly

observed in the proceedings against the former Deputy President. Relying on ***Sonko (supra)*****,** the Attorney General further submitted that the Supreme Court had clarified that the Senate could hear charges against a Deputy President in plenary or in a forum of a special committee, and that in either case the Deputy President was entitled to attend and be represented by counsel during the investigations. On the substance of the charges, the Attorney General submitted that the charges against H.E Gachagua were substantiated to the prescribed standard to warrant his impeachment. She identified the specific charges upon which H.E Gachagua was found culpable, namely; persistently making inflammatory, reckless and inciteful public utterances threatening to discriminate against and exclude sections of Kenyans from public service appointments and allocation of public resources, which amounted to gross violation of **Articles 10(2)(a), (b) and (c); 27(4); 73(1)(a) and (2)(b); 75(1)(c); 129(2); 147(1)** and **131(2)(c) and (d)** of the Constitution; publicly undermining the institutional and decisional independence of a Judge of the High Court by falsely threatening to file a petition for her removal, contrary to **Article 160(1)**; and publicly attacking and undermining the work of the NIS and its officers, which amounted to gross misconduct.

218. On the standard of proof applicable to impeachment proceedings, the Attorney-General relied on ***Sonko (supra)*** and the Court of Appeal decision in ***Wambora (supra),*** which had held that the standard was above a balance of probability but below reasonable doubt, and that the allegations must be serious, substantial and weighty, and must disclose

with a degree of precision the constitutional provisions alleged to have been grossly violated. The Attorney General submitted that this Court should not sit on appeal over Parliament's evaluation of facts and could not substitute the discretionary decision of members of the Legislature with its own, as that would constitute a usurpation of the constitutional function of a distinct and independent branch of government. She drew support from the Court of Appeal in ***Matemu V Trusted Society of Human Rights Alliance & 5 Others, [2013] KECA 445 (KLR)*** and the Supreme Court's decision ***Trusted Society of Human Rights Alliance (supra),*** where the courts had emphasised the doctrine of separation of powers and the need for judicial restraint.

219. The Attorney General further relied on Advisory Opinions of the Supreme Court ***In the Matter of the Speaker of the Senate & Another, [2013] KESC 7 (KLR)*** and ***In the Matter of the Interim Independent Electoral Commission (Applicant), [2011] KESC 1 (KLR)*** for the proposition that governmental powers were distributed among different organs, each exercising distinct functions under the Constitution, and that courts were required to respect the institutional mandate of Parliament. He invoked the doctrine of presumption of regularity, encapsulated in the maxim *omnia praesumuntur rite esse acta*, submitting that government action enjoyed a presumption of legality and that the burden lay on the challengers to demonstrate unlawfulness. She further relied on the Supreme Court's decision in ***Odinga & Another V Independent Electoral and Boundaries Commission & 2 Others; Aukot &***

Another (Interested Parties); Attorney General & Another (Amicus Curiae), [2017] KESC 42 (KLR), in support of this proposition.

220. The Attorney General submitted that the proceedings before the legislature were lawful, efficient, expeditious and procedurally fair and that the removal proceedings under **Articles 150, 144 and 145** envisaged a composite function upon the legislature that was neither entirely administrative nor entirely judicial, and that it would therefore be amiss to subject the process to review on the basis of standards applicable to either administrative or judicial proceedings. He further submitted that the National Assembly's role in the process was a preliminary one, subject to further substantive proceedings by the Senate, and that the National Assembly's preliminary decision was not binding on the Senate as to affect the Senate's ultimate decision.

221. On the comparative method, the Attorney General submitted that both the USA and the Philippines recognize the political nature of impeachment proceedings and that the power is vested in the legislature, thereby warranting judicial deference to the merits of legislative decisions. She relied on ***Nixon V United States, 506 U.S. 224 (1993),*** where the US Supreme Court held that challenges to Senate impeachment procedures were nonjusticiable under the political question doctrine, and on ***Sara Z. Duterte (supra),*** where the Philippine Supreme Court affirmed judicial review of impeachment only for grave abuse of discretion while declining to determine who, when, or whether an impeachable officer should be removed.

222. On the part of the petitions relating to the nomination and approval of H.E Kindiki, the Attorney General submitted that the provisions of **Article 149** of the **Constitution** envisaged a *sui generis* procedure for the nomination and assumption into office of a Deputy President. It was her submission that the process under **Article 149(1)** was neither an election in the traditional sense nor an appointment, as the text of the Constitution employed neither of those terms and did not provide for procedure akin to either. She submitted further that the provisions of **Article 137** were not applicable to the process under **Article 149(1)**, as that provision contemplated neither nomination by a political party nor nomination by not fewer than two thousand voters from each of a majority of counties.

223. In support of the *sui generis* nature of the process, the Attorney General drew on comparative constitutional provisions from the USA, Ghana and Nigeria, each of which provided for a distinct mechanism of filling a vacancy in the office of Vice-President through presidential nomination and legislative confirmation, rather than through an election or conventional appointment. She submitted that, as H.E Kindiki was nominated by the President within fourteen days after the vacancy arose and the National Assembly voted on the nomination within sixty days, there had been no infringement of either the text or the spirit of **Article 149(1)** of the **Constitution**. As such, the Attorney General concluded by submitting that the consolidated petitions were without merit and ought to be dismissed.

The 9th Respondent's case:

224. Hon. Mutuse responded to the consolidated petitions through a Replying Affidavit sworn on 22nd October 2024. He deposed that on 1st October 2024, pursuant to **Article 150(1)(b)** as read with **Article 145** of the **Constitution** and **Standing Orders *64 and 65*** of the National Assembly **Standing Orders**, he gave notice of a Special Motion for the removal from office by impeachment of H.E. Gachagua. He was aware that the Special Motion was a time-bound exercise pursuant to **Standing Orders 64(2) and 65**, which required that the motion be disposed of within seven days of notice being given, failing which it would be deemed withdrawn. Hon. Mutuse averred that while **Articles 145 and 150** of the **Constitution** and **Standing Orders *64 and 65*** did not expressly require public participation in a Special Motion, **Article 118(1)(b)** of the **Constitution** imposed on the Speaker of Parliament the obligation to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. **Article 10** further made public participation a national value and principle of governance.

225. He deposed that it was in that spirit that the National Assembly, vide a notice dated 2nd October 2024, with a view to facilitate public participation, invited members of the public to submit their views, and public hearings were thereafter conducted across all 290 constituencies on 4th October 2024. The Clerk of the National Assembly further issued a notice dated 2nd October 2024 extending the period of public participation to 5th October 2024. Hon. Mutuse confirmed that on 8th

October 2024, Hon. Millie Odhiambo, M.P., tabled the Public Participation Report before the National Assembly. Hon. Mutuse further deposed that on 3rd October 2024, the High Court sitting in Kerugoya in **Petition No. E014 of 2024** issued orders directing the National Assembly to organise, facilitate, and conduct further public participation at the constituency level, and that the National Assembly complied with those orders by extending the exercise to 5th October 2024.

226. He stated that following the tabling of the Public Participation Report, the members of the National Assembly debated the Special Motion and that H.E Gachagua appeared in person for the hearing. After debating and hearing both parties, the members of the National Assembly met the threshold set under **Article 145(2)** by passing and approving all eleven grounds of the Special Motion.

227. On 8th October 2024, in line with Senate **Standing Orders *73 and 74*** as read together with **Article 145(2)(a),** the Speaker of the National Assembly informed the Speaker of the Senate of the resolution to remove from office H.E. Gachagua by impeachment. Through *Gazette Notice Vol. CXXVI No. 157* dated 9th October 2024, the National Assembly acting under **Article 145(3)(a),** convened a sitting of the Senate on 9th October 2024, which resolved to investigate, hear, and determine the Special Motion in plenary rather than through an eleven-member Special Committee. On 9th October 2024, the Speaker of the Senate, through an invitation, directed H.E Gachagua to file his response to the eleven grounds of the Special Motion by Monday, 14th October 2024 at 5:00

p.m., and to appear before the Senate's Plenary during its investigative hearings on Wednesday, 16th October 2024 at 10:00 a.m.

228. In accordance with **Article 145(3)** as read with Senate **Standing Orders *73 and 74***, the Senate undertook hearing sessions in plenary on the 16th and 17th days of October 2024. The National Assembly produced three witnesses who testified in support of the Special Motion. Hon. Mutuse deposed that he personally appeared before the Senate on 16th October 2024 as a witness to the Special Motion. He was examined in chief by counsel for the National Assembly and cross-examined by the counsel for H.E. Gachagua and responded to questions from Senators. That on 17th October 2024, in compliance with **Article 145(5)** of the Constitution, H.E. Gachagua was given an opportunity to tender oral evidence before the Senate in further defence of himself against the allegations in the Special Motion. Hon. Mutuse deposed that having complied with **Article 145(7)**, the Senate, on the two-thirds rule, passed a resolution for the impeachment of H.E. Gachagua. The Senate's resolution was published vide *Gazette Notice No. 13400* and Hon. Mutuse confirmed that on 18th October 2024, the National Assembly convened a sitting to consider and vote on Deputy President nominee H.E. Kindiki, who had been nominated by H.E President Ruto pursuant to **Article 149(1)** of the **Constitution**.

229. Hon. Mutuse affirmed that the entire impeachment process, from the tabling of the Special Motion dated 26th September 2024 at the National Assembly to the Senate's resolution, had fully complied with all legal

procedure provided in the Constitution and relevant laws. Hon. Mutuse emphasized that this Court had a judicial and not a political mandate and that its function was to certify whether all procedural provisions of law had complied with Constitutional principles, which was a judicial function. He averred that the issues raised in the Petitions raised the political question doctrine, a principle of law that referred to cases that courts would not resolve because they involved questions about the judgment of actors in the executive or legislative branches and not the authority of those actors.

230. Drawing from the US Supreme Court in ***Marbury V Madison, 5 U.S. 137 (1803)***, he averred that federal courts should not decide issues better suited for other political branches. He further relied on ***Baker V Carr, 369 U.S. 186 (1962),*** also from the US Supreme Court, which proposed a six-part test for determining the existence of a political question. Applying the first condition from ***Baker (supra),*** the Hon. Mutuse averred that **Article 150** of the **Constitution** expressly outlined the circumstances for removal of H.E. Gachagua from office and reaffirmed **Articles 144 and 145**, delegating the power to conduct impeachment proceedings to the National Assembly and the Senate. He submitted that **Article 145(7)** envisaged the finality of the Senate's decision, thus demonstrating the lack of judicially discoverable and manageable standards for resolving impeachment questions, satisfying the second condition. Hon. Mutuse drew support from the ***Nixon (supra)*** case, in which the US Supreme Court noted that opening the door of judicial review to the procedures used by the Senate in trying impeachments would expose the political

life of the country to months, or perhaps years, of chaos. He further cited the South African cases of ***National Treasury V Opposition to Urban Tolling Alliance (Outa), (2012) (6) SA 223 (CC)*** and ***Doctors for Life International V Speaker of the National Assembly and Others, (CCT12/05) [2006] ZACC 11*** to the effect that Courts were not well-suited to make decisions constitutionally committed to coordinate political branches.

231. Hon. Mutuse also cited the position taken by Courts in Paraguay, India, Lithuania and the Philippines ***In Re: Sara Duterte (supra)*** to demonstrate that jurisdictions practicing a presidential system of government had been appreciative of the political question doctrine in impeachment matters. He tabulated comparative examples of impeachment proceedings in the USA of Presidents Andrew Johnson, Bill Clinton, and Donald Trump, Peru's President Pedro Castillo, Brazil's President Dilma Rousseff, and Chile's President Sebastián Piñera to show that in those jurisdictions the fate of impeachment was left to political devices, as opposed to judicial determination. Hon. Mutuse further deposed that under **Article 94(2)** of the **Constitution**, the National Assembly and the Senate manifested the diversity of the Nation and represented the will of the People and exercised their sovereignty. He stated that by voting to uphold the impeachment motion on 17th October 2024, the members of the Senate exercised the sovereign right of the people reaffirmed by **Article 1(2)** of the **Constitution**, and that it was therefore extremely necessary to adhere to the Senate's resolution as it was representative of the will of the People of Kenya. In support, Hon. Mutuse cited the Supreme Court's caution in ***Odinga & 16 Others V Ruto & 10 Others,***

[2022] KESC 56 (KLR) against upsetting a democratic exercise carried out without hindrance by the people.

232. In conclusion, Hon. Mutuse urged the Court to appreciate the prudential standing principle of self-restraint as a jurisdictional limitation on its power and prayed that the Petitions be dismissed.

The 9th Respondent's submissions:

233. Hon. Mutuse filed written submissions dated 15th February 2025 that were supplemented on 5th May 2026. The submissions were anchored on two issues, first, whether H.E Gachagua was validly impeached, and second, whether the impeachment process was procedural. Hon. Mutuse submitted that the H.E. Gachagua was impeached on grounds of gross violation of various Articles of the Constitution, violation of national laws, and gross misconduct arising from his conduct. It was Hon. Mutuse's submission that the question for the Court was not the political wisdom of the impeachment, but whether the grounds for removal, as found by the Senate, met the constitutional threshold under **Article 145(1).** Relying on the Court of Appeal in ***Mumo Matemu (supra),*** Hon. Mutuse submitted that courts ought not to constitute themselves as vetting bodies or substitute the legislature's decisions for their own, as doing so would undermine the principle of separation of powers. It was his position that the conduct of H.E. Gachagua, as the second-highest office holder in the Republic, engaged the core constitutional values of national unity, judicial independence, and national security, and that his actions grossly violated the Constitution, thereby meeting the necessary

standard and threshold under **Article 145**. He submitted that the Petitioners' claim of insufficient public participation was a mirage.

234. He reiterated his position that public participation was not expressly required under **Articles 145 and 150** or **Standing Orders *64 and 65*** but was nevertheless undertaken pursuant to **Articles 10 and 118** of the **Constitution**. Relying on ***British American Tobacco Kenya PLC V Cabinet Secretary for the Ministry of Health & 2 Others, [2019] KESC 15 (KLR),*** Hon. Mutuse submitted that allegations of lack of public participation did not automatically vitiate a process, and that the mode, degree, scope, and extent of public participation was to be determined on a case-by-case basis. Further relying on ***Robert N Gakuru & Another V County Government of Kiambu & Another, [2015] KEHC 7158 (KLR),*** Hon. Mutuse submitted that public participation must be reasonable and effective, not necessarily perfect. He submitted that the public participation undertaken by the National Assembly met the constitutional standard of reasonableness and effectiveness, a position affirmed by the Supreme Court in the ***Sonko (supra)*** case.

235. He further submitted that the Petitioners' demand for public participation in the Senate was legally untenable, as the Senate acted as a quasi-judicial forum during impeachment processes. He submitted that the duty of the Senate was to ensure a fair hearing for the accused, not to solicit public opinion on the charges. Hon. Mutuse submitted that the Senate's refusal to grant a three-day adjournment was justified. He asserted that H.E. Gachagua had failed to provide any medical report,

doctor's note, or hospital admission record before the Court, which was fatal to his claim. Relying on ***Anarita Karimi Njeru V Republic, [1979] KEHC 30 (KLR),*** Hon. Mutuse submitted that a party alleging a violation of the right to a fair hearing must prove the facts constituting the violation. He characterised the timing of the adjournment request made at the very end of the proceedings, and the lack of evidentiary support as strongly suggestive of a dilatory tactic.

236. Hon. Mutuse further relied on the mandatory constitutional timelines governing impeachment proceedings, relying on the Supreme Court's decision in ***Mate (supra)*** which held that constitutionally prescribed timelines were of mandatory character and binding on governance processes. He submitted that for the Senate Speaker to have granted the adjournment would have been to violate the Constitution, and that a court of law could not be asked to sanction a violation of the Constitution. He further submitted that a party could not benefit from a self-created crisis, noting that H.E. Gachagua's own conduct had created the time constraints he then complained of.

237. In the Supplementary Submissions, he expounded on the six-part ***Baker (supra)*** test to Kenya's constitutional framework. On the first formulation, on textual commitment to a coordinate political department, he submitted that **Article 150** expressly delegated impeachment to the National Assembly and Senate, satisfying the first condition. He relied on the Supreme Court's statement in ***Sonko (supra)*** that where the Constitution required Parliament to determine a matter in

the first place, courts would be slow to interfere. On the second formulation, on the lack of judicially discoverable and manageable standards, he submitted that **Article 145(7)** envisaged the finality of the Senate's determination, with no provision for judicial appeal or standard of review. That the standard of proof, as established in ***Wambora (supra)***, above a balance of probabilities but below reasonable doubt, was uniquely parliamentary in character and not judicially manageable.

238. On the third formulation, on the impossibility of deciding without an initial policy determination, he submitted that assessments of "gross misconduct incompatible with the high calling and dignified status of the office" and "serious reasons to believe" crimes had been committed were inherently political and policy-laden, beyond the competence of courts. He relied on ***Cabinet Secretary for the National Treasury and Planning & 4 Others V Okoiti & 52 Others, [2024] KESC 63 (KLR)*** for the proposition that the role of courts was limited to reviewing whether parliamentary measures were reasonable and in conformity with the Constitution.

239. On the fourth formulation, on the impossibility of independent resolution without expressing lack of respect for coordinate branches, Hon. Mutuse submitted that a merit review of the Senate's determination would substitute the Court's judgment for that of elected representatives, constituting a profound expression of disrespect for a coordinate branch. He relied on ***Mate (supra)*** in which the Supreme Court expressed reluctance to question parliamentary procedures as long as they did not breach the Constitution, and stated that the courts' mandate was

restricted to matters of individual rights and fundamental freedoms, not to enquiring into how the Senate performed duties in which it alone had discretion.

240. On the fifth formulation, the unusual need for adherence to a political decision already made, Hon. Mutuse submitted that the vacancy created by the Senate's resolution had already been filled through the nomination, approval, and swearing-in of H.E. Kindiki as Deputy President. He submitted that to reopen the impeachment question at that stage would create constitutional chaos, cast doubt on the legitimacy of the current office holder, undermine executive stability, and expose the political life of the country to prolonged chaos, as cautioned in ***Nixon (supra).***

241. On the sixth formulation, on the potentiality of embarrassment from multifarious pronouncements, Hon. Mutuse submitted that if the Court entertained a merit review and reached a different conclusion from the Senate, conflicting pronouncements from different arms of government would undermine public confidence in all institutions and weaken the constitutional order.

242. Hon. Mutuse urged the Court to appreciate the prudential principle of judicial self-restraint as a jurisdictional limitation on its power to hear and determine the consolidated petitions, on the basis that they raised a purely political question whose determination would be tantamount to

subverting the will of the Kenyan people. Hon. Mutuse accordingly prayed that the consolidated petitions be dismissed with costs.

D. <u>The 10th Respondent's case:</u>

243. The United Democratic Alliance (UDA), the 10th Respondent, challenged the Petitions through Grounds of Opposition dated 6th October 2025. It was its case that the Petition failed to set out with precision the constitutional provisions allegedly violated as the impeachment of H.E Gachagua and the subsequent nomination and approval of H.E Kindiki were undertaken solely by the National Assembly, Senate, and the President of the Republic of Kenya pursuant to their respective constitutional mandates under **Articles 145, 148, and 149** of the **Constitution**.

244. UDA claimed that the Petition is untenable since it irregularly and craftily sought to convert political grievances into constitutional disputes contrary to the Supreme Court position in ***Sonko (supra).*** It was its case that the Petitioners case was an invitation to this court to interfere with constitutional parliamentary functions/proceedings, in the nature of impeachment and approval processes of State officers, a preserve for the legislative arm under **Articles 145, 148, and 149** of the **Constitution**. With respect to the reliefs, UDA complained that they were repugnant to the doctrine of separation of powers, hence incapable of being granted. It was their case that allowing them would gravely undermine the

autonomy of constitutional arms and upset the power balance on separate arms and independent organs of government.

245. Pursuant to the Supreme Court's Advisory Opinion in ***Speaker of the Senate & Another V Attorney-General & Another (supra)***, UDA urged this Court to exercise restraint and avoid interfering with the proceedings of Parliament except in the clearest of cases of constitutional violations. In conclusion, UDA maintained that the Petitions were brought in bad faith and designed to achieve collateral political purposes. It urged that they be dismissed with costs.

The 10th Respondent's submissions:

246. UDA filed written submissions dated 24th April 2026 which were highlighted by Counsel, *Dr. Adrian Kamotho*. On the procedure for impeachment, UDA submitted that **Article 150(1)** provided for the grounds of impeachment of a Deputy President, being gross violation of a provision of the Constitution or any other law, serious reasons to believe that the Deputy President had committed a crime under national or international law, or gross misconduct. It submitted that **Article 150(2)** applied the provisions of **Articles 144 and 145** with necessary modifications to the removal of the Deputy President, and that the process was to be conducted in two sequential stages, the first at the National Assembly and thereafter at the Senate.

247. That at the National Assembly stage, UDA submitted that a Member of Parliament had to file a motion supported by at least a third of all members, which motion if passed by at least two-thirds of all members, would be communicated by the Speaker of the National Assembly to the Speaker of the Senate. UDA broke down the specific steps taken in the matter at hand; the motion was presented on 27th September 2024, H.E Gachagua was invited to appear before the National Assembly on 8th October 2024 to make his representations, public views on the motion were received between 2nd and 5th October 2024 through public hearings, email, post office and hand delivery, and following consideration of public views and H.E Gachagua's representations, at least two-thirds of the members of the National Assembly voted in favour of the motion on 8th October 2024, with the resolution communicated to the Speaker of the Senate on 9th October 2024.

248. At the Senate stage, UDA submitted that the impeachment proceedings were conducted on 16th and 17th October 2024. It acknowledged that on 17th October 2024 at 2.30 pm, when the former Deputy President was to present his case, the Senate was informed he had been taken ill. It submitted that in line with the Senate's Standing Orders, a motion was put to members to allow adjournment and gazette 19th October 2024 as a sitting date, but when the motion was put to a vote, a decision was made to proceed and close the impeachment proceedings on the basis of the material evidence on record. Counsel for H.E Gachagua walked out of the Senate without making their final submissions and the motion for impeachment was put to a vote.

249. It was UDA's submission that having been accorded the right to be heard and to be represented in the proceedings before the Senate, H.E Gachagua was found culpable of publicly attacking and undermining the work of the NIS and its officials, undermining the institutional, functional and decisional independence of judges, and persistently making inflammatory, reckless and inciteful public utterances threatening to discriminate against and exclude sections of the people of Kenya from public service appointments and allocation of public resources, amounting to gross violation of **Articles 10, 27, 73, 75, 129, 131, 147, 149 and 160** of the **Constitution**. It was submitted that the charges were proven to the requisite standard and that the procedure of impeachment under **Article 145(1) and (2)** of the **Constitution** and the applicable **Standing Orders** was followed to the required standards.

250. On the standard of proof, UDA relied on the Court of Appeal decision in ***Wambora (supra)*** which had held that the standard of proof required for removal was above a balance of probability but below reasonable doubt, and that the allegations must be serious, substantial and weighty, must establish a nexus between H.E Gachagua and the alleged violations, and must state with a degree of precision the constitutional provisions alleged to have been grossly violated. UDA submitted that the charges against H.E Gachagua were outlined with precision, were not only serious and weighty but also substantial, and that documentary evidence was produced directly linking him to the allegations. It was submitted that the elements of constitutional violation were established, and the charges were proven to the requisite standard.

251. On the nomination and approval of H.E. Kindiki, UDA submitted that **Article 149(1)** of the **Constitution** required the President to nominate a person within fourteen days of a vacancy arising and the National Assembly to vote on the nomination within sixty days of receiving it. It was submitted that the **Article** did not contemplate an appointment, approval of an appointment, nomination by a political party, or the holding of an election as erroneously alleged by the Petitioners. UDA submitted that H.E. Kindiki was nominated within the fourteen-day period, the National Assembly voted in support of the nomination on 18th October 2024, which was within the sixty-day period, and the Speaker of the National Assembly published the resolution via *Gazette Notice No. 13401*. It was submitted that the nomination, approval and swearing in of H.E. Kindiki were all done in accordance with the law and without any violation of **Article 149** of the **Constitution**.

252. On the question of whether the Court could interfere with the process of impeachment, UDA averred that the procedure and decision to remove a Deputy President by impeachment was a discretionary act vested exclusively in Parliament by the Constitution, and that a challenge to impeachment proceedings was nonjusticiable under the political question doctrine. It submitted that a court of law could only intervene where there existed an explicit violation of the law or the Constitution. It relied on the ***Sonko (supra)*** decision where the Supreme Court held that courts were required to achieve a balance between their role as guardians of the Constitution and the obligation to respect what Parliament was constitutionally required to fulfil, and that where the Constitution

required Parliament to determine a matter in the first place, Parliament would have the discretion and power to regulate its own affairs and courts would be slow to interfere. It further relied on the ***Mate supra)*** decision for the proposition that the mandate of courts was restricted by the doctrine of separation of powers to deciding on matters of individual rights and fundamental freedoms, and not to enquire into how Parliament performed duties in which it alone had discretion.

253. UDA further averred that the powers of the Court were limited to satisfying itself that the evaluation of evidence and conclusions made by Parliament were made within the law, and that the Court could not review or hear an appeal against Parliament's decision in impeachment proceedings, as that would amount to an impermissible encroachment on Parliament's constitutional functions as held by the Court of Appeal in ***Matemu (supra).*** It submitted further that the decisions and actions of Parliament enjoyed the presumption of legality and regularity under the maxim *omnia praesumuntur rite esse acta* and that, pursuant to **sections 107, 108 and 109** of the **Evidence Act**, the burden lay on the person aggrieved to demonstrate that the decision or process was either unlawful or unconstitutional.

254. UDA concluded by submitting that the people of Kenya, through their duly elected representatives in the National Assembly and the Senate, had impeached H.E Gachagua in order to safeguard integrity in leadership, in accordance with the Constitution, the National Assembly and Senate Standing Orders and all applicable laws. It was submitted

that the decision to impeach H.E Gachagua reflected the will of the people of Kenya, which the Court should uphold, and that the consolidated petitions were without merit and ought to be dismissed.

E. The 16th Respondent's case:

255. IEBC responded to the consolidated petitions through the replying affidavit of *Marjan Hussein Marjan*, the then Chief and Commission Secretary deposed to on 25th October 2024. Its case primarily addressed two distinct legal issues raised by the petitioners, namely, the constitutional validity and capacity of the IEBC as currently constituted, and the purported role of the IEBC in clearing or approving a Deputy President appointed under **Article 149** of the **Constitution**.

256. IEBC refuted the petitioners' claims that it was legally incapacitated due to the vacancies of commissioners and that it is an independent commission with perpetual existence, established under **Articles 88(1) and 253** of the **Constitution** as read with **section 13** of the **Independent Electoral and Boundaries Commission Act (Chapter 7C of the Laws of Kenya)** ("the **IEBC Act**"). Specifically, it relied on **section 7(3)** of the **IEBC Act**, which explicitly states that IEBC shall be properly constituted notwithstanding any vacancy in its membership. It was its deposition that, **sections 11A and 11(2**) of the **IEBC Act** structurally divide IEBC into the Commissioners, who are responsible for policy and strategy, and a fully staffed Secretariat, which is responsible for day-to-day administration and implementation.

257. To solidify the legal standing of the Secretariat's ability to function independently of fully appointed Commissioners, IEBC relied on the Supreme Court in ***Odinga & 16 others V Ruto & 10 others (supra)*** where it was observed that, pursuant to **section 11A(b)** of the **IEBC Act**, the IEBC features a full-fledged secretariat headed by the CEO that is constitutionally envisaged and legally responsible for performing day-to-day administrative functions and implementing IEBC's policies. In responding to IEBC's claim of lack of jurisdiction in mid-term deputy presidential appointments, he deposed that IEBC had absolutely no constitutional or statutory role in the removal or replacement of a Deputy President by way of impeachment. He asserted that that under **Articles 145 and 150** of the **Constitution**, the impeachment of the President and Deputy President, form a complete and self-executing code of law.

258. It was its deposition that **Articles 145** and **150** dictate the actors, timelines, and procedures involved, which exclusively empower the legislature and exclude the IEBC. Similarly, it was its position that **Article 149(1)** of the **Constitution** mandates the President to nominate a replacement Deputy President within 14 days of a vacancy for parliamentary approval. Flowing from the foregoing, IEBC deposed that omission of the IEBC signified that the framers of the **Constitution** did not intend for an electoral body to validate executive, mid-term appointments.

259. Finally, IEBC addressed the petitioners' flawed reliance on **Articles 99 and 137** of the **Constitution**. It clarified that the Articles relate strictly and unequivocally to the qualifications of individuals seeking election as a Member of Parliament or President, respectively. He claimed that because a mid-term vacancy under **Articles 145 and 150** triggers a nomination rather than a by-election, the clearance protocols under **Articles 99 and 137** are not activated. He stated that while the IEBC maintains the voter register under **Article 88(4)(a)** of the **Constitution** and the **IEBC Act**, and provides public information as required by **Article 35** of the **Constitution** and the **Access to Information Act**, it is not mandated to vet a nominee's educational, moral, or criminal background, as those duties belong to other state agencies like the EACC and the DCI. As such, IEBC urged the Court to dismiss the consolidated petitions.

The 16th Respondent's submissions:

260. In its submissions dated 27th October 2024, the IEBC reiterated the deposition of Majan Hussein Marjan. It was its case that is has no constitutional or statutory role in filling a vacancy in the Office of the Deputy President under **Article 149** of the **Constitution**. It maintained the position that **Article 149** is a self-executing mechanism requiring only a Presidential nomination and Parliamentary approval, with no mandate for elections, referenda, or IEBC intervention. To that end, it relied on the Supreme Court's decision in ***Attorney General & 2 Others V Ndii & 79 Others; Dixon & 7 Others (Amicus Curiae) (Petition 12, 11 & 13***

of 2021 (Consolidated)), [2022] KESC 8 (KLR) which established that constitutional and statutory bodies must operate strictly within the four corners of their mandate and cannot extend their powers through implication or interpretive craft.

261. It submitted that compelling it to participate in the Deputy Presidential appointment process would violate the doctrine of separation of powers by encroaching on the explicit functions of the President and the National Assembly. It called to its aid the Supreme Court's holding ***In the Matter of Interim Independent Electoral Commission (supra)***, which underscored the mutually-countervailing roles of different government organs. It also cited the South African Constitutional Court case of ***Affordable Medicines Trust and Others V Minister of Health and Others, (2005) ZACC 3; 2006 (3) SA 247 (CC)*** to emphasize the doctrine of legality. It was its case that public power must strictly comply with the Constitution.

262. Lastly, the IEBC reiterated that it enjoys perpetual succession and corporate legal personality under **Article 253** of the **Constitution** and **section 13(1)** of the **IEBC Act** and it was its submission that despite temporary vacancies in its membership, it remained properly constituted. It invited the Court to dismiss the petitions against it as unmerited.

F. H.E. Kindiki's case:

263. H.E Kindiki was the 2nd Interested Party in the consolidated petitions. He challenged the Petition through his Replying Affidavit and Further Affidavit deposed on 20th February 2025 and 8th May 2026 respectively. At the outset, he defended the swift timeline of his nomination and approval and he clarified that the Constitution mandates the filling of the Deputy President vacancy within a maximum of seventy-four days, not a minimum, thereby making the expedited process entirely legal. Regarding public participation, it was his case that the National Assembly conducted extensive and adequate public engagement that met legal thresholds. To that end, he deposed that there were newspaper advertisements, public hearings, and comprehensive reports.

264. It was his position that the Senate acted as a trial forum rather than a legislative body during impeachment hearings, meaning it was not constitutionally required to conduct public participation. In addressing the allegations regarding his eligibility, he maintained that the IEBC Secretariat had the administrative capacity to confirm his voter registration status without requiring a fully constituted commission. He also dismissed claims that he was ineligible for failing to hold a three-month political party membership, explaining that this requirement applied strictly to general elections, not to the filling of an unforeseen vacancy. Further to the foregoing, it was his case that he provided gazette notices proving he had resigned from his position as Cabinet

Secretary prior to his appointment. He clarified that the law permitted Cabinet Secretaries to hold ordinary political party membership.

265. As regards the Senate's refusal to grant H.E Gachagua an adjournment after he allegedly fell ill during the trial, H.E Kindiki observed that H.E Gachagua was granted an opportunity to appear in person and to be represented by advocates of his choice, before both Houses of Parliament. He deposed that he made both oral and written representations at both houses of parliament, challenged inculpatory evidence before both Houses of Parliament and through cross examination of all adverse witnesses in the trial held at the Senate. Further, he deposed that H.E Gachagua appeared healthy during his initial testimony and found it highly suspicious that he failed to present any formal medical diagnosis or report to the Senate to substantiate the sudden illness. He argued that granting the requested three-day adjournment would have violated strict constitutional timelines under **Article 145(4)** of the **Constitution** that required the Senate to conclude impeachment proceedings within ten days failure which would have potentially plunged the country into a constitutional crisis.

266. In the supplementary affidavit, H.E Kindiki, opposed the late introduction of medical records by Dr. Daniel Kibuka Gikonyo. He faulted it for having been sworn to a year and a half after the impeachment events and was introduced only after the primary petitioner had already closed their case. He highlighted material inconsistencies regarding the timing, preparation, and late disclosure of

the medical records. Specifically, he highlighted that they were never presented to the Senate, the primary constitutional forum.

H.E. Kindiki's submissions:

267. H.E Kindiki urged his case further through written submissions dated 1st October 2025 that were highlighted by Learned Counsel *Dr. Muthomi Thionkolu SC* and *Mr. Kenson Muthethia*. They structured it to systematically address both the substantive and procedural validity of the impeachment process in the National Assembly and the Senate, as well as the constitutional legality of his nomination and election.

268. Regarding the substantive validity of the impeachment, Dr. Thionkolu SC submitted that that H.E Kindiki was lawfully removed on five distinct counts, which included making persistent inflammatory public statements, undermining the decisional independence of the judiciary, and publicly attacking the NIS. To support the argument that the Judiciary should not substitute its own judgment for that of Parliament, it was his case that in the Supreme Court case of ***Sonko (supra)*** and the High Court decision in ***Wambora (supra),*** it was held that the Courts exercised only supervisory jurisdiction over impeachment disputes and could not act as a super-legislature to review the sufficiency of the evidence presented to Parliament.

269. In defence of the procedural mechanisms employed, regarding public participation, H.E Kindiki argued that the National Assembly fulfilled

its mandate by adequately informing the public and facilitating participation based on a flexible, context-specific standard. It was his case that such was the position of the Supreme Court in various cases including the ***BAT Case (supra)*** which forbade rigid approaches to public involvement. In further reference to the Supreme Court decision in ***Sonko (supra),*** H.E Kindiki implored the Court to find that public participation in impeachments was deemed sufficient if the majority of Kenyans were aware of the motion and supported it.

270. He further implored the Court to find that the strict 12-day impeachment timeline was a rigid constitutional framework and to fortify its position, he referred to the Supreme Court's decision in ***Mate (supra)*** where it was observed that timelines were not subject to alteration. In challenging the claim of denial of the right to fair hearing, the H.E Kindiki asserted that the Senate's refusal to grant a three-day adjournment was an unfounded attempt to sabotage the proceedings and trigger a constitutional crisis. It was its position that H.E Gachagua failed to produce medical evidence to substantiate his sudden illness. He reiterated that that granting the adjournment would have blatantly violated the strict, non-modifiable constitutional timelines.

271. Turning to the validity of H.E Kindiki's assumption of office, Dr. Thionkolu SC submitted that his speedy nomination, electoral clearance, and political party membership was justified. He drew support from this Court's decision on 31st October 2024 which established that the critical

functions of the Deputy President's office abhorred a vacuum and demanded expeditious action.

272. Finally, H.E Kindiki contended that the statutory laws governing appointive state offices, such as the Public Appointments (Parliamentary Approval) Act, did not apply to the elective office of the Deputy President.

ISSUES FOR DETERMINATION

273. Upon careful consideration of the petitions, the responses thereto, and the written and oral submissions of all parties, we have distilled the following issues for determination. For clarity and ease of reference, the principal issues and their attendant sub-issues are set out below.

Issue 1: Jurisdiction:

1. *The justiciability of the Petitions filed in light of the doctrine of separation of powers and the political question doctrine.*

Issue 2: Predetermination and Bias:

1. *Whether there was predetermination and bias by the mover of the motion, the Speaker of the National Assembly and Senate during the proceedings; and*
2. *Whether the 1st – 11th Respondents conspired or schemed to remove Hon. Gachagua from office in violation of* ***Articles 1, 27 and 38*** *of the* ***Constitution****;*

Issue 3: Public Participation:

1. *Whether there was adequate public participation at the National Assembly;*
2. *Whether the Senate was obligated to conduct public participation and if so, to what extent; and*
3. *Whether public participation was required at the point of nomination and appointment of H.E Kindiki.*

Issue 4: Constitutionality and Legality of the Standing Orders:

1. *Whether **Standing Order Nos. 64(2) & 65** of the National Assembly are unconstitutional; and*
2. *Whether **Standing Order Nos. 75, 78, 79 & 80** of the Senate are unconstitutional.*

Issue 5: Composition of the National Assembly, and the IEBC and the Nomination of the Deputy President:

1. *Whether the National Assembly was properly constituted to consider the impeachment motion (in light of the 2/3 gender rule);*
2. *Whether the nomination of a Deputy President can be legally finalized or approved in the absence of fully constituted commissioners of the IEBC under **Articles 82 and 88** of the **Constitution**; and*
3. *Whether the nomination of HE Kindiki while serving as a Cabinet Secretary is constitutionally infirm for violating the eligibility criteria under **Article 148** as read with **Article 137**.*

Issue 6: Constitutional Processes:

1. *Whether the Senate was obligated under **Article 150(2)** to apply **Articles 144 & 145** with necessary modifications to the Deputy President and whether its failure to do so rendered the process invalid and unconstitutional ab initio;*
2. *Whether Parliament was obligated to consider and exhaust alternative accountability mechanisms;*
3. *Whether the lack of legislation to operationalize **Article 150** of the **Constitution** vitiates the impeachment;*
4. *Whether the Senate ought to have established a special committee under **Article 145(3)** of the **Constitution**; and*
5. *Whether the speed of the gazettement of the Senate Resolution, the nomination of H.E Kindiki by H.E President Ruto, and the voting by the National Assembly on H.E Kindiki as the DP nominee contravened the constitution and the law.*

Issue 7: Fair Trial:

1. *Whether the trial conducted by the Senate in respect of H.E. Gachagua was lawful, fair, and in conformity with the constitutional guarantees of fair administrative action and fair hearing under Articles 47 and 50 of the Constitution respectively.*

274. We shall now turn to the analysis of each issue and its attendant sub-issues in the order set out above.

ANALYSIS AND DETERMINATION

JURISDICTION

275. The position in ***Owners of the Motor Vessel "Lilian S" V Caltex Oil (Kenya) Ltd, [1989] KLR 1*** remains as instructive today as it was when it was first pronounced: jurisdiction is everything, and a court that proceeds without it does so in vain. It is therefore necessary, before turning to the substantive grievances raised in these petitions, to resolve the threshold jurisdictional question that permeated the pleadings and submissions of almost all parties, on whether the impeachment of a Deputy President is amenable to judicial scrutiny, or whether it falls exclusively within the political domain of Parliament and is therefore beyond the reach of the courts.

276. The Respondents urged this Court to exercise restraint, contending that impeachment is a political accountability mechanism constitutionally entrusted to Parliament, and that courts ought not to transform themselves into appellate chambers reviewing parliamentary decisions. The Petitioners maintained that while impeachment is undoubtedly political in context and consequence, it remains a constitutionally regulated process subject to constitutional supremacy, the Bill of Rights, and judicial oversight. The resolution of these competing positions requires an examination of the constitutional architecture established under the Constitution of Kenya, 2010.

277. The starting point is the supremacy and delegated authority provisions found in the Constitution. **Article 1** vests all sovereign power in the people of Kenya, to be exercised either directly or through democratically elected representatives. Parliament, the Executive, and the Judiciary are therefore not sovereign institutions in themselves. They are repositories of delegated sovereign authority, deriving their legitimacy from and remaining accountable to the people. **Article 2** declares the Constitution to be the supreme law of the Republic, binding all persons and all State organs at both levels of government. The inevitable consequence is that no State organ, including Parliament, enjoys immunity from constitutional scrutiny. The Constitution of Kenya does not recognize parliamentary supremacy. It entrenches constitutional supremacy, and that supremacy is absolute and admitting of no exception.

278. The Supreme Court gave authoritative expression to this principle in ***Justus Kariuki Mate & Another V Martin Nyaga Wambora & Another, [2017] KESC 1 (KLR)***, where it emphasized that no arm of government is above the law, that this being a constitutional democracy the Constitution is the guiding light for the operations of all State organs. It further determined that the court's mandate, where it applies, is for the purpose of averting any real danger of constitutional violation. It follows, as a matter of necessary constitutional logic, that whenever Parliament exercises authority under **Articles 145 and 150** of the **Constitution**, it does so not as a sovereign body wielding unreviewable

discretion, but as a constitutional organ exercising delegated authority within and subject to the limitations that the Constitution prescribes.

279. The jurisdiction of this Court to entertain these petitions is firmly grounded in **Articles 22, 23, and 165** of the **Constitution**. **Article 165(3)(d)** expressly empowers the High Court to determine questions of constitutional interpretation including whether anything done under the authority of the Constitution or any law is inconsistent with or in contravention thereof and it is precisely that question that lies at the heart of these proceedings. **Article 23** vests in this Court jurisdiction to enforce the Bill of Rights and to grant appropriate relief where constitutional rights and freedoms have been violated, are threatened, or are likely to be infringed. The breadth of that jurisdiction is a deliberate constitutional design choice that reflects the transformative aspirations of the Constitution of Kenya, 2010 and the indispensable role assigned to the Judiciary as the ultimate guardian of constitutional supremacy and the protector of the rights of every person within the Republic.

280. This Court does not approach the jurisdictional question as one of first impression. In its Ruling delivered on 31st October 2024, this Bench considered and conclusively determined the selfsame jurisdictional challenge that the Respondents now seek to resurrect. The Court held that the broad jurisdiction vested in the High Court under **Articles 22, 23, and 165** extends to determining whether the powers exercised by the National Assembly and the Senate in impeachment proceedings conformed to constitutional requirements. Had the framers of the

Constitution intended to exclude the High Court's jurisdiction in matters arising under **Article 145**, they would have done so in express terms, as they demonstrably did in relation to certain proceedings under **Article 144**.

281. The argument that impeachment proceedings are beyond judicial scrutiny therefore sits uneasily with the constitutional text. The Constitution contains no provision excluding impeachment from judicial review, and no clause creating islands of authority immune from constitutional control. Where allegations are made that constitutional procedures were violated, rights infringed, or constitutional standards disregarded, as in the present case, this Court would itself violate the Constitution were it to decline jurisdiction merely because the dispute arises in a politically sensitive context. As Chief Justice Marshall observed in ***Cohens V Virginia, 19 U.S. (6 Wheat.) 264 (1821)***:

> ***"It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should... We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution."***

282. That observation resonates fully within Kenya's constitutional order. The presence of political implications does not extinguish this Court's constitutional duty to interpret, protect, and enforce the Constitution.

283. Even within the argument on separation of powers, this Court accepts that impeachment is principally a parliamentary function under **Articles 145 and 150**. However, separation of powers does not mean separation from the Constitution. As the Supreme Court held in ***In the Matter of the Speaker of the Senate & Another, [2013] KESC 7 (KLR)***, none of the arms of government can claim an exclusive preserve free from constitutional scrutiny, and it is the responsibility of the courts to ensure that the exercise of power by State organs remains within constitutional bounds. The Court of Appeal affirmed in ***Mumo Matemu V Trusted Society of Human Rights Alliance & 5 Others, [2013] KECA 445 (KLR)*** that the Constitution establishes not a rigid wall of separation but a system of separation of powers tempered by checks and balances, within which no arm of government is superior to another. The doctrine therefore requires mutual respect among constitutional institutions, not mutual exclusion and Parliament cannot invoke it as a shield against constitutional accountability.

284. Within the realm of impeachment proceedings specifically, the Supreme Court in ***Justus Kariuki Mate & Another V Martin Nyaga Wambora & Another, [2017] KESC 1 (KLR)*** signaled that it would be reluctant to question parliamentary procedures as long as they did not breach the Constitution, and that the mandate of the courts is restricted by the doctrine of separation of powers to deciding on matters of individual rights and fundamental freedoms and not to enquire into how the County Assembly and Senate perform duties in which they alone have discretion, nor to review the merits of the decision to impeach.

285. We are therefore satisfied that this Court is being correctly called upon to scrutinize and pronounce itself on the constitutional regularity of the impeachment process. To do so neither impinges upon nor offends the doctrine of separation of powers. As the Constitutional Court of South Africa observed in ***Doctors for Life International V Speaker of the National Assembly and Others, (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC)***:

> ***"… while the doctrine of separation of powers is an important one in our constitutional democracy, it cannot be used to avoid the obligation of a court to prevent the violation of the Constitution. The right and the duty of this Court to protect the Constitution are derived from the Constitution, and this Court cannot shirk from that duty…."***

286. That proposition applies with equal, if not greater, force within Kenya's constitutional order. To decline the obligation of constitutional adjudication in deference to the political character of impeachment proceedings would not be an act of judicial restraint but an act of judicial abdication.

287. On the political question doctrine, the Respondents placed reliance on ***Nixon V United States, 506 U.S. 224 (1993)***, where Walter Nixon, a federal district court judge removed from office by the Senate, challenged the procedure by which his impeachment trial had been conducted. The United States Supreme Court held that the manner in which the Senate

conducts impeachment trials is a non-justiciable political question, the conduct of such trials having been textually committed by the Constitution exclusively to the Senate. While ***Nixon*** offers useful guidance on the need for judicial restraint in matters constitutionally committed to other branches, a clear distinction must be drawn when transplanting that decision into the Kenyan constitutional context.

288. The Constitution of Kenya contains an expansive Bill of Rights enforceable under **Article 23,** broad and explicit judicial review powers under **Article 165(3)(d),** and a constitutional supremacy clause under **Article 2** that expressly subjects every exercise of public power without exception to constitutional scrutiny and accountability. Unlike the United States Constitution, the Constitution of Kenya does not textually commit impeachment proceedings to Parliament in terms exclusive of judicial oversight.

289. The place of the political question doctrine within Kenya's constitutional order has also been authoritatively addressed by the domestic courts at the highest levels. The Supreme Court elaborated upon this position with specific reference to impeachment proceedings in ***Mike Mbuvi Sonko V County Assembly of Nairobi City & 11 Others, [2022] KESC 76 (KLR)***. The Court held that courts are permitted to intervene where matters of constitutional violations arise in impeachment processes, reasoning that although impeachment is a political process sanctioned by the Constitution, neither the County Assembly nor the Senate can act outside the confines of the Constitution and the law, for to do so would

invariably invite the court's intervention. The Supreme Court clarified that the mandate of the courts was to determine whether an individual's rights, dignity, and fundamental freedoms had been preserved and protected in the process, without usurping the powers and functions of the legislative branch of government.

290. Those principles were further articulated in a five-Judge Bench decision of this Court in ***Ramogi & 3 Others V Attorney General, [2020] KEHC 10266 (KLR)***, where the Court held that the critical constitutional inquiry is not whether a dispute is political in character but whether it raises constitutional or legal questions capable of judicial determination. Where constitutional standards exist against which the impugned conduct may be measured, a court is not at liberty to decline jurisdiction on grounds of political contentiousness alone. The Court observed that were courts to decline jurisdiction whenever a dispute bore political implications, constitutional violations committed within political processes would be left entirely without remedy, an outcome fundamentally irreconcilable with **Articles 2 and 3** of the **Constitution**.

291. Taken together, these authorities establish that the political question doctrine in Kenya is not a doctrine of abdication but one of restraint. It requires courts to distinguish between political choices entrusted to the political branches of government and questions of constitutional compliance entrusted to the Judiciary. The former ordinarily lie beyond judicial competence; the latter fall squarely within the judicial function.

292. In light of the foregoing, we reiterate that the Court is not a political arbiter but a constitutional one. We agree, in principle, with the submission that it is not the function of this Court to determine whether the charges against H.E. Gachagua were of sufficient gravity to warrant his removal from office. Those are quintessentially parliamentary judgments, constitutionally entrusted to the National Assembly and the Senate. We decline any invitation to venture into the merits of the charges upon which the impeachment was founded. The Court's obligation is to ensure that the impeachment process, however political its character and however significant its consequences, was conducted in accordance with the Constitution, the rule of law, and the procedural and substantive safeguards the Constitution prescribes. Where that standard was met, we will say so. Where it was not, we are equally bound to say so, for it is in the faithful discharge of that obligation, and not in deference to political outcomes, that the legitimacy of this Court's intervention ultimately rests.

293. Accordingly, we do find that the impeachment proceedings challenged in these petitions are justiciable, and that this Court possesses jurisdiction under **Articles 22, 23, and 165** of the **Constitution** to determine whether the National Assembly and the Senate acted within constitutional bounds, complied with constitutional procedures, respected constitutional rights, and remained faithful to the constitutional safeguards governing the impeachment of a Deputy President.

PRE-DETERMINATION AND BIAS

294. The Petitioners contended that the impeachment proceedings against H.E. Rigathi Gachagua were tainted by actual bias, apparent bias, conflict of interest, and predetermination on the part of the Speakers of the National Assembly and the Senate, Members of Parliament, Senators, and other constitutional actors involved in the impeachment process. It was their case that various public statements, political conduct, and procedural decisions demonstrated that the outcome of the impeachment had effectively been predetermined before the proceedings commenced, and that the constitutional actors involved had failed to approach the process with the impartiality and openness required by the Constitution.

295. The constitutional foundation of the Petitioners' claim lies principally in Articles **27, 47, and 50** of the Constitution. **Article 27** guarantees equality before the law and the equal protection and equal benefit of the law. **Article 47** guarantees every person the right to administrative action that is lawful, reasonable, and procedurally fair. **Article 50(1)** guarantees every person the right to have any dispute that can be resolved by the application of law determined in a fair and public hearing before a court or, where appropriate, an independent and impartial tribunal or body.

296. The constitutional requirement of impartiality is not confined to courts of law. Whenever a constitutional body exercises adjudicative, disciplinary, investigative, or quasi-judicial authority affecting rights,

interests, status, or public office, the process must comply with constitutional standards of fairness, impartiality, and procedural propriety. This principle was affirmed by the Court of Appeal in ***Shollei V Judicial Service Commission & 3 Others, [2013] KEHC 6008 (KLR)*** and ***Judicial Service Commission V Mbalu Mutava & Another, (Civil Appeal 52 of 2014) KECA 153 (KLR),*** where the Court emphasized that constitutional and administrative decision-making processes are subject to the requirements of procedural fairness and natural justice.

297. In ***Mbalu Mutava (supra)***, the Court of Appeal observed that **Article 47** transformed the common law principles of natural justice into constitutional imperatives, such that whenever public power is exercised in a manner affecting legal rights, status, or legitimate expectations, constitutional standards of fairness become directly applicable. In ***Shollei (supra),*** the Court of Appeal reaffirmed that public bodies exercising disciplinary or quasi-judicial authority must act fairly and impartially, and that public confidence in constitutional institutions depends not only on actual fairness but equally upon its appearance.

298. The rule against bias is one of the oldest and most fundamental principles of natural justice, embodied in the maxim *nemo judex in causa sua* — that no person shall be a judge in their own cause. Historically directed at preventing decision-makers from participating in matters in which they held a personal, financial, or proprietary interest, the doctrine has over time expanded to encompass circumstances giving rise to a reasonable apprehension that a decision-maker may not approach a

matter with the requisite impartiality even in the absence of any direct personal interest.

299. The modern test for apparent bias was authoritatively stated by the Supreme Court in ***Rai & 3 Others V Rai & 4 Others, [2013] KESC 20 (KLR),*** where the Court adopted the objective test and held that the inquiry must be conducted from the perspective of a fair-minded and informed observer. The Court emphasized that allegations of bias cannot be founded upon speculation, conjecture, suspicion, or dissatisfaction with the outcome of proceedings. There must exist objective circumstances capable of giving rise to a reasonable apprehension that the decision-maker may not bring an impartial mind to bear on the matter.

300. The Supreme Court reaffirmed and elaborated upon these principles in ***Kalpana H. Rawal & 2 Others V Judicial Service Commission & 6 Others, [2016] KESC 20 (KLR),*** observing that the question is not whether a party genuinely believes that a tribunal is biased, but whether a reasonable and informed observer, having considered all relevant facts, would conclude that there exists a real possibility of bias. The Court further recognized that constitutional institutions must be protected from unsubstantiated allegations capable of paralyzing their functioning, and accordingly insisted upon an objective evidentiary foundation before a finding of bias can be made.

301. Similarly, in ***Tunoi & Another V Judicial Service Commission & Another, (Civil Appeal 6 of 2016) [2016] KECA 530 (KLR),*** the Court of Appeal reaffirmed the enduring principle first articulated in ***R V Sussex Justices, Ex Parte McCarthy [1924] 1 KB 256*** that justice must not only be done but must manifestly and undoubtedly be seen to be done and underscored that public confidence in constitutional institutions depends significantly upon the appearance of impartiality, and not merely its substance.

302. From these authorities, several important principles emerge. First, the test for apparent bias is objective, not subjective. Second, the inquiry must be conducted from the standpoint of a fair-minded and informed observer. Third, mere suspicion, political disagreement, dissatisfaction with a decision, or an adverse outcome does not, without more, establish bias. Fourth, and critically, there must exist objective circumstances capable of giving rise to a reasonable apprehension that the decision-maker did not or could not approach the matter impartially.

303. Jurisprudence further establishes that bias and predetermination, though related in concept, are legally distinct. Bias concerns the existence of actual or apparent partiality on the part of the decision-maker. Predetermination concerns a state of mind in which the decision-maker has effectively closed their mind to the evidence and argument and reached a final conclusion before the process has run its course. The distinction was illuminated by the English Court of Appeal in ***Lewis V Redcar and Cleveland Borough Council, [2008] EWCA Civ 746,*** where the Court drew a clear line between predisposition and predetermination.

Decision-makers may legitimately hold predispositions, inclinations, or preliminary views on matters before them. That is the inevitable consequence of experience and engagement with public affairs. What the law prohibits is predetermination, which is a state of mind so closed to persuasion that no amount of evidence or argument is capable of altering the ultimate outcome.

304. In light of the authorities that we have cited, we hold the view that the mere fact that Members of Parliament or Senators publicly supported or opposed the impeachment of H.E. Gachagua cannot, standing alone, establish constitutional bias. To hold otherwise would render impeachment proceedings practically unworkable and would be inconsistent with the inherently political character that the Constitution itself recognizes in such proceedings. Legislators are not expected to approach impeachment as blank slates devoid of political opinion or prior knowledge. What the Constitution requires is that they remain genuinely open to considering the evidence, listening to argument, and discharging their constitutional responsibilities in good faith and within constitutional limits.

305. We are accordingly not persuaded by the proposition that bias may automatically be inferred from the fact that legislators belong to particular political parties, support particular political positions, or publicly express their views on political matters that may not necessarily be the views of the accuser. Such circumstances may demonstrate predisposition, but predisposition, as the authorities make clear, is not

synonymous with predetermination. It is predetermination, and not mere predisposition, that constitutes a constitutional infirmity.

306. The position of the Speakers stands on an altogether different footing. The Speakers do not determine the merits of impeachment charges. Under **Articles 145 and 150** of the **Constitution**, the power to impeach a Deputy President is vested in the National Assembly and the Senate acting through constitutionally prescribed voting thresholds. The Speakers neither debate nor vote on impeachment charges. Their function is essentially procedural and facilitative. They preside over proceedings, regulate debate, determine procedural applications, interpret Standing Orders, and maintain order within their respective Houses. They are not, and were never intended to be, the substantive constitutional decision-makers on the question of whether an impeachment should succeed or fail.

307. We are accordingly not satisfied with the broad proposition advanced by some of the Petitioners that the Speakers' mere participation in the proceedings or involvement in political agreements is sufficient to establish constitutional bias or conflict of interest. The constitutional decision-makers under **Articles 145 and 150** are Members of the National Assembly and Senators collectively, acting through the respective Houses of Parliament.

308. We therefore find that the allegations of bias, predetermination, and conflict of interest advanced by the Petitioners against the Speakers,

Members of Parliament and Senators are, on the material before this Court, no more than bare and unsubstantiated assertions grounded in political inference and suspicion rather than in objective evidence capable of satisfying the test authoritatively prescribed in the ***Rai, Rawal,*** **and** ***Tunoi*** decisions.

PUBLIC PARTICIPATION

309. In dealing with this topic, we address ourselves to three distinct but interrelated questions. First, whether the public participation exercise conducted by the National Assembly met the constitutional threshold required under **Articles 10 and 118** of the **Constitution**. Second, whether the Senate, upon receipt of the impeachment motion, was itself obligated to carry out a public participation exercise before voting on the impeachment. Third, whether public participation was required at the point of nomination and appointment of H.E. Kindiki as Deputy President. The Petitioners collectively contended that public participation in the impeachment process was constitutionally deficient, inadequate, and in certain stages wholly absent, rendering the entire process null and void. Their challenge was mounted on three distinct levels.

310. At a broad level, the Petitioners advanced three strands of argument. They attacked the National Assembly's public participation exercise as constitutionally deficient both in substance and procedure. They argued that the public was given less than 48 hours to digest complex

impeachment charges; that the template used reduced participation to a binary "support" or "not support" choice; that H.E. Gachagua's own response was withheld, depriving citizens of balanced information; and that many venues were inaccessible, changed without notice, or restricted to party members. They further pointed to defiance of conservatory orders requiring constituency-level hearings, the vagueness of the same-day notice of 5th October 2024, anomalies in the participation report such as a support rate exceeding 100%, and the tabling of that report moments before debate. They concluded that the scale of participation, about 200,000 citizens out of a population of 52 million, was negligible and incapable of meeting constitutional standards.

311. They also contended that the Senate conducted no public participation at all. No notices were issued, no hearings convened, and no submissions received. They emphasized that the Senate's role under **Article 145(7)** was determinative and quasi-judicial, and therefore attracted an independent obligation under **Article 118** to facilitate public participation. This obligation, they argued, could not be discharged vicariously by the National Assembly. By proceeding without its own engagement, the Senate compounded the defects of the Assembly's process and arrogated sovereign power that the Constitution requires to be exercised with the people.

312. Finally, they challenged the approval of H.E. Kindiki as Deputy President. They argued that no public participation preceded the

National Assembly's vote, yet such approval constitutes "other business" under **Article 118(1)(b),** which requires public involvement. They highlighted the compressed timeline on the Senate's impeachment vote on 17th October 2024, nomination of H.E. Kindiki that same night, and approval by the National Assembly the following morning, as evidence that the process was concluded overnight without public input. They distinguished this mid-term vacancy scenario from a general election, noting that in elections the people exercise sovereignty directly through the ballot, whereas in mid-term appointments public participation is the only available mechanism for engaging the people's will. On that basis, they prayed for declarations that the nomination, approval, and appointment of H.E. Kindiki were unconstitutional, null, and void.

313. The Respondents, in summary, maintained that the National Assembly's public participation exercise was adequate, reasonable, and fully compliant with constitutional requirements. They argued that notices were widely disseminated through the Gazette, newspapers, Parliament's website, and social media, and that multiple channels for participation were available, including hearings, email, post, hand delivery, and templates. They defended the two-to-three-day notice period as reasonable given the strict timelines under **Article 145**, and insisted that the Assembly complied with court orders by extending participation to all constituency and women representative offices.

314. They further justified the tick-box template as a deliberate design to structure responses and prevent manipulation, noting that citizens could

still submit memoranda or oral views. Participation by over 223,000 citizens was characterized as unprecedented civic engagement, and they dismissed isolated disruptions as immaterial. They also argued there was no obligation to share H.E. Gachagua's response with the public, since the public's role was to express views, not adjudicate, and pointed out that no MP objected to the adequacy of participation during debate.

315. On the Senate stage, the Respondents contended that public participation was not required, as the Senate acts in a quasi-judicial capacity during impeachment, not as a legislature. They argued that **Article 118** applied only to legislative business, and that impeachment was a single continuous process with participation required only at the initiation stage in the National Assembly. Comparative examples from the United States, Nigeria, and Brazil were cited to support this adjudicatory role.

316. Finally, regarding the nomination and approval of H.E. Kindiki, the Respondents submitted that public participation was not constitutionally required. They argued **Article 149(1)** established a unique, self-executing process where the National Assembly voted as an electoral college, exercising delegated sovereignty, rather than conducting legislative business. They emphasized that the Constitution's silence on participation in this context was deliberate, and that elected MPs themselves embody public representation. The debate was open, televised, and recorded, and they concluded that the nomination,

approval, and appointment of H.E. Kindiki were fully compliant with the Constitution.

317. We have considered the cases advanced by both parties and we take the following position on this issue.

318. It is common ground among the parties, and this Court affirms, that public participation is not merely a procedural formality but a foundational constitutional value, one deeply woven into the democratic fabric of this nation. It is an expression of the sovereign will of the people who, by virtue of **Article 1(1)** of the **Constitution**, are the ultimate repository of all sovereign power. That sovereignty, though delegated to state organs under **Article 1(3),** is not thereby surrendered. It is retained by the people and continuously exercised through, among other mechanisms, active and meaningful participation in the processes of governance. Public participation is therefore not a gift of the state to the citizen but a constitutional right that the state is obligated to facilitate, protect, and give full effect to.

319. Under **Article 10(2)(a)** of the **Constitution**, public participation is expressly enumerated as one of the national values and principles of governance. **Article 10(1)** makes clear that the national values and principles of governance bind all persons, state organs, state officers, and public officers whenever they make or implement public policy decisions, apply or interpret the Constitution or any law. The imperative

of public participation finds further and specific expression in the context of Parliament in **Article 118** of the Constitution which reads as follows:

> ***"Public access and participation***
>
> ***(1) Parliament shall-***
>
> ***(a) conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and***
>
> ***(b) Facilitate public participation and involvement in the legislative and other business of Parliament and its committees."***

320. At its core, public participation refers to an active process of interaction and engagement among various stakeholders who have an interest in, or are affected by, a particular decision or course of action. The word "active" is of constitutional significance. It signals that the Constitution does not contemplate a passive, cosmetic, or performative exercise in which the public is merely notified of a decision already made. It demands, instead, a genuine and substantive process in which the people are afforded a real and meaningful opportunity to shape the decisions that affect their lives. In essence, public participation is the mechanism through which the governed speak to those who govern, and through which the exercise of public power is continuously tethered to the will, values, and interests of the sovereign people. The robust jurisprudence on this subject in Kenya supports this position.

321. The Supreme Court, in ***In the Matter of the National Land Commission (Advisory Opinion Application 2 of 2014) [2015] KESC 3 (KLR)*** placed the principle of public participation at the very core of the concept of checks and balances in governance, recognizing it as integral to the manner in which the various arms of government discharge their constitutional functions.

322. Subsequently, in ***British American Tobacco Kenya PLC V Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tabacco Kenya Limited (Affected Party), [2019] KESC 15 (KLR)*** **(the** ***BAT case),*** the Supreme Court delimited the following binding framework for public participation:

> ***"(i) As a constitutional principle under Article 10(2) of the Constitution, public participation applies to all aspects of governance.***
>
> ***(ii) The public officer and or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation.***
>
> ***(iii) The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means.***
>
> ***(iv) Public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of***

course just to 'fulfill' a constitutional requirement. There is need for both quantitative and qualitative components in public participation.

(v) Public participation is not an abstract notion; it must be purposive and meaningful.

(vi) Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case to case basis.

(vii) Public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that someone was not heard is not enough to annul the process.

(viii) Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case to case basis.

(ix) Components of meaningful public participation include the following:

(a) clarity of the subject matter for the public to understand;

(b) structures and processes (medium of engagement) of participation that are clear and simple;

(c) opportunity for balanced influence from the public in general;

(d) commitment to the process;

(e) inclusive and effective representation;

(f) integrity and transparency of the process;

(g) capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter."

323. Additionally, in ***Cabinet Secretary for the National Treasury and Planning & 4 Others V Okiya Omtatah Okoiti & 52 Others, (SC Petition Nos. E031, E032 & E033 of 2024)***, the Supreme Court held that the constitutional threshold for public participation is one of reasonableness, that the process must afford the public a genuine and meaningful opportunity to be heard, and that Parliament must take reasonable measures to consider the proposals, views, and suggestions received. The Court spoke thus:

> ***"In the BAT Case, this court established the standard that duty bearers must meet, and the threshold courts should use to determine whether duty bearers have fulfilled their obligation with respect to public participation. This threshold is set at a reasonableness standard. In its guiding principles on public participation, this court defined this threshold as follows:***
>
> > ***Public participation must be accompanied by reasonable notice and reasonable opportunity.***

Reasonableness will be determined on a case-to-case basis."

324. This and the broader corpus of jurisprudence firmly establish that what the Constitution demands is not necessarily the most intensive form of participation in every case, but always a form that is meaningful, purposive, and proportionate to the nature and gravity of the decision being made. This principle finds its clearest expression in the decision of the Constitutional Court of South Africa in ***Doctors for Life International V Speaker of the National Assembly & Others [2006] ZACC 11***, where the Court held that the degree and nature of participation required must be calibrated to the subject matter and the potential impact of the decision on affected persons.

325. The proposition has been consistently adopted and applied by our courts. In ***Mui Coal Basin Local Community & 15 Others V Permanent Secretary Ministry of Energy & 17 Others, [2015] eKLR***, the Court of Appeal affirmed that decisions of greater consequence demand more robust and substantive engagement, and that public participation must be meaningful rather than a tick-box exercise. The High Court reinforced this position in both ***Robert N. Gakuru & Others V Governor Kiambu County & 3 Others, [2014] eKLR*** and in ***Institute for Social Accountability & Another V National Assembly & 4 Others, [2015] eKLR***, where it held that the standard of participation required is directly informed by the gravity and reach of the decision in question.

326. We believe that it is within this rich conceptual context that the courts must approach questions about the adequacy of public participation in any given case, whether arising from the legislative process or from any other exercise of public power in which the Constitution demands the people's involvement. The focus ought to be on whether the participation that occurred was real, substantive, and meaningful. As we now turn to apply these principles to the specific facts of this matter, we do so bearing in mind that the constitutional standard is not one of perfection, but equally, it is not one of mere tokenism. The standard is meaningful participation and that standard must be assessed with rigour, sensitivity to context, and fidelity to the constitutional vision of a government that is truly of, by, and for the people.

327. Certainly, the impeachment of a Deputy President is not an ordinary legislative act. It is among the most consequential, solemn, and irreversible decisions that any Parliament can make. It involves the removal from office of a person who holds the second highest constitutional office in the Republic and an office to which the holder was elected by the sovereign will of the people through a general election. The gravity of that decision cannot be overstated. It affects not only the individual whose tenure is at stake, but the constitutional architecture of the executive, the stability of government, and the democratic expectations of millions of citizens who cast their votes in the 2022 general election. It is precisely because of this gravity that the public participation required in connection with an impeachment process

must be held to a standard that is both qualitatively and quantitatively meaningful.

328. It is equally against this exacting standard that we assess the public participation conducted by the National Assembly in connection with the impeachment of H.E. Gachagua. On the question of notice, the National Assembly adduced evidence that notices of the public participation exercise were published in multiple newspapers of wide national circulation, including the *Daily Nation*, *The Standard*, *The Star*, and *Taifa Leo*, on 2nd, 3rd, 4th and 5th October 2024. We recognize that the publication of the notices in both English and Kiswahili was a deliberate effort to reach citizens across the linguistic divide and to ensure that the exercise was not confined to the English-speaking, urban, and formally educated segment of the population. Notice was additionally published on Parliament's official website and on social media platforms, therefore extending the reach of the process to citizens who access information through digital means.

329. On the question of accessibility and channels of engagement, a public views template was provided in both English and Kiswahili, further reinforcing the inclusive character of the exercise. Constituency offices and county women representative offices, altogether totaling 337 access points spread across every corner of the country, were directed to remain open on 5th October 2024 to receive public submissions. Citizens were further afforded the option of submitting their views by email, post, or hand delivery, and online submissions could be made through

Parliament's website which further meant that participation was not contingent on physical presence or geographic proximity to a hearing venue.

330. On the question of numbers, the evidence shows that just over 223,000 members of the public participated in the exercise. We are mindful that the significance of a participation number cannot be assessed in a vacuum. It must be considered in the context of the time available, the channels provided, the nature of the decision being made, and the standards previously endorsed by the courts. The Supreme Court in the ***BAT*** **case** ***(supra)*** affirmed that both quantitative and qualitative components are relevant to such an assessment. In the ***Robert N. Gakuru case (supra),*** the Court of Appeal also affirmed the principle that the quantitative component of public participation is a relevant but not determinative consideration, and that the adequacy of participation must be assessed in light of all the circumstances. Viewed against those standards, a participation figure of 223,000 citizens achieved within the constrained timeline represents a considerable level of civic engagement in a single parliamentary process.

331. We say so further considering the relationship between the state's obligation to facilitate public participation and the public's exercise of the right to participate. These are two distinct constitutional responsibilities, and the law does not conflate them. The constitutional obligation that falls upon Parliament and upon all state organs charged with facilitating public participation is an obligation of facilitation, not an obligation of

outcome. Parliament is constitutionally required to provide adequate notice, accessible channels, sufficient information, and a genuine opportunity for the public to engage.

332. That obligation, once discharged, exhausts the constitutional duty of the facilitating organ. At least that is our understanding of the Supreme Court's pronouncement in ***Cabinet Secretary for the National Treasury and Planning (supra)*** that:

> ***"… based on the textual markers therein, Parliament's duty is to "facilitate public participation and involvement in the legislative and other business of Parliament and its committees. As is plain from its wording, this provision only imposes a duty to facilitate public participation and involvement in the legislative process".***

333. We hold the view that what the public chooses to do with that opportunity is a matter of individual and collective civic agency and that agency belongs to the people, not to Parliament. To hold Parliament responsible for the volume of public participation and to judge the constitutional adequacy of a public participation exercise by the number of citizens who chose to avail themselves of it would be to conflate the duty to provide an opportunity with the duty to compel its uptake. We take the position that a process that was accessible to all but availed by few is not, by reason of low turnout alone, constitutionally deficient provided that the low turnout was not the product of inadequate notice,

inaccessible venues, suppression of participation, or any other failure on the part of the facilitating organ.

334. This principle finds support in comparative jurisprudence. The Constitutional Court of South Africa, in the ***Doctors for Life International case*** was emphatic that Parliament bears a constitutional duty to facilitate public participation, and that the standard against which that duty is measured is one of reasonable facilitation. It therefore follows that the adequacy of a public participation exercise ought not be measured by the number of members of the public who ultimately chose to engage or by whether any particular outcome was achieved. The true measure is whether the state discharged its obligation to create conditions in which meaningful participation was genuinely possible.

335. We therefore are persuaded that the appropriate legal standard against which compliance by the National Assembly must be measured is not one of perfection, but one of reasonable sufficiency in the circumstances. The Constitution does not demand flawless execution of public participation. It demands a genuine, accessible, and meaningful opportunity for the public to be heard. Even accepting, as we do, that logistical and operational challenges may have arisen in certain isolated areas, which is a not uncommon occurrence in any large-scale, nationally coordinated exercise conducted under time pressure, such localized deficiencies would not invalidate the entire process as guided by the Supreme Court in the ***BAT decision (supra).*** The evidence before

this Court shows that the door was opened widely, accessibly, and in good faith.

336. Additionally, the fact that H.E. Gachagua's response to the charges was not availed to the public during the public participation window does not, without more, render the exercise constitutionally deficient. The purpose of public participation in impeachment proceedings is substantively and functionally distinct from the adversarial hearing to which the respondent is entitled. The public was called upon to express its views on whether the allegations, assessed on their face, were of sufficient gravity to warrant the removal of a constitutional officeholder. It was not, and was never intended to be, a mini-trial of the charges. The Constitution vests the final decision-making authority in the National Assembly and the Senate, both of which are representative bodies exercising a delegated mandate from the people. These institutions heard, considered, and weighed both the allegations and H.E. Gachagua's full response before proceeding to a vote.

337. On the question of compliance with this Court's orders of 3rd October 2024, which directed the National Assembly to organize public participation *"at least at constituency level",* we find, upon careful evaluation of the evidence placed before us, that the National Assembly took demonstrable and timely steps to give effect to those directions. A Memo from the Clerk of the National Assembly contained at page 996 of the National Assembly's documents provided as follows:

"COLLECTION OF PUBLIC VIEWS ON THE SPECIAL MOTION FOR REMOVAL FROM OFFICE, BY IMPEACHMENT OF THE DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA

As you are aware, the National Assembly is currently considering a Special Motion for the proposed removal from office, by impeachment, of H.E. Rigathi Gachagua, the Deputy President of the Republic of Kenya.

To facilitate this process, public hearings were scheduled to be held in all 290 constituencies on Friday, October 4, 202-4, from 8:00 a.m. to 5:00 p.m. and members of the Public were notified to submit their views to the Constituency/ County Offices of all Members of Parliament of the National Assembly. By a Court Order issued on 3rd October, 2024, the High Court in Kenya sitting in Kerugoya directed that the National Assembly organize similar public hearings closer to the citizens at least at constituency level on each constituency in Kenya to enable the Constituents of Members of Parliament responsible for the impeachment process nationally to engage with and participate on hearings and/or any other suitable modes by which citizens at that level can participate and offer their representations. In this regard, you are required to continue facilitating and coordinating the public participation exercise on the Special Motion within your Constituency/County Office.

Please ensure that you implement the following-

1. *Availability of Forms: Ensure that copies of the Public Views Template are physically available in your offices. In addition to the physical forms availed earlier, additional forms can be downloaded from the Parliament's website:*
2. *Collection of Views: collate all views including Memoranda, completed Public Views Templates and any other submissions relating to the exercise. Note to transcribe oral submissions, into written form using the designated template.*
3. *Submission of Collected Views: You are required to submit the collated views arranged per constituency to the collection centre which has been set up in Parliament Building, Nairobi (At the entrance of Bunge Tower). Alternatively, you may hand over the forms to the respective officers designated for your counties/constituencies. as per the attached list. All submissions must be received by Sunday, 6th October, 2024, by 5:00 p.m.*

Please ensure that your respective Offices remain open on Saturday, 5th October, 2024, as from 8.00am to 5.00pm to facilitate the exercise. Please utilize the operation facilities and resources available in your offices to print or photocopy the forms and to support any other aspects of this exercise. For seamless coordination, we have shared the contacts of Parliamentary officers responsible for each county/constituency."

338. The Petitioners alleged that no actual hearings were held at the constituency level, contending in effect that the exercise was a procedural facade. The allegation was effectively countered by substantial evidence presented by the National Assembly. This included the *Report of Public Participation on the Proposed Removal from Office, by Impeachment, of His Excellency Rigathi Gachagua, EGH, the Deputy President of the Republic of Kenya*. The report contained a detailed analysis of the aggregated constituency tallies (see Table 4, page 180 of the report), supported by photographic documentation of the exercise conducted across multiple constituencies, as well as an official account comprehensively outlining the scope and substance of the proceedings. It is a well-settled evidentiary principle that a bare denial or unsubstantiated allegation cannot displace positive and particularized evidence to the contrary. The Petitioners bore the burden of proving, on a balance of probabilities, that the public participation was illusory or ineffective; that burden was not discharged.

339. It was also common ground that the public participation report was tabled before the National Assembly on 8th October 2024. Members of Parliament had the opportunity to consider it before and during the debate. One of the Petitioners mounted a specific and pointed challenge to the integrity of the report's data, contending that the figures recorded for Keiyo South were statistically impossible, in that they purportedly reflected a support rate of 162.78%, a figure that, if accurate, would self-evidently exceed the mathematical ceiling of 100% and thus portray either gross error or deliberate manipulation.

340. We have subjected the report to careful scrutiny. Our analysis shows that in Keiyo South, of the 820 responses recorded, 807 supported the impeachment, 12 opposed it, and 1 selected "other." This translates to 98.41% in favor, 1.46% against, and 0.12% categorized as "other." These figures are mathematically sound and fall within the permissible range of 0% to 100%, and disclose no statistical anomaly of the kind alleged. The Petitioner's contention, presented as a statement of fact, is simply not borne out by the document itself. We further find that even if isolated errors in data entry, tabulation, or transcription were demonstrated to exist within a report of this scale, such minimal errors would not, without more, vitiate the entirety of the otherwise lawful and substantially compliant public participation exercise.

341. Therefore, having carefully examined the totality of the evidence adduced before us, and having applied the constitutional and jurisprudential standards authoritatively laid down on the nature and

quality of public participation required, we are satisfied, and hereby find, that the public participation conducted by the National Assembly in connection with the impeachment of H.E. Gachagua as Deputy President met the requisite constitutional threshold in all material respects.

342. With regards to the Senate not conducting its own public participation, the Petitioners contended that the Senate acted in violation of **Article 118** of the **Constitution** by failing to conduct its own independent public participation exercise prior to deliberating on the impeachment of H.E. Gachagua as Deputy President. This argument, while not without surface appeal, cannot be sustained upon a careful and purposive reading of the constitutional architecture governing impeachment proceedings, and we reject it for the following reasons.

343. The starting point is the principle of constitutional specificity. Where the Constitution makes express and particular provision for a specific process, that specific provision governs, and general provisions must yield to it to the extent of any inconsistency or tension. **Article 145** of the **Constitution** prescribes, with particularity, the role and function of each House of Parliament in the impeachment process. Under that provision the Senate's designated function is to hear the charges preferred against the Deputy President, to receive and evaluate evidence in respect of those charges, and to decide on whether the Deputy President should cease to hold office. This is, by its very nature, an adjudicative function and one that is quasi-judicial in character, akin to

the conduct of a tribunal. It is not a legislative or policy-making function. The Senate, at this stage of the process, sits not as a law-making body but as a constitutional adjudicator, and the procedural obligations that attend that role are correspondingly different.

344. **Article 118**, by contrast, imposes obligations on Parliament in the conduct of its legislative and other business. It provides, in material part, that Parliament shall conduct its business in an open manner, that its sittings and those of its committees shall be open to the public, and that Parliament shall facilitate public participation and involvement in its legislative and other business. The operative phrase is *"legislative and other business"* and the interpretive question is whether the Senate's adjudicative role in impeachment proceedings falls within the scope of that phrase. We find that it does not. The phrase *"other business"* must, on a proper application of the *ejusdem generis* canon of construction, be read as business of a similar nature to legislative business, that is, business involving the formulation, review, or consideration of policy or law.

345. We respectfully associate ourselves with, and adopt as correct, the position taken by this Court in ***Mwangaza V County Assembly of Meru, [2024] KEHC 10991 (KLR)*** that:

> ***"… public participation in impeachment proceedings primarily occurs at the County Assembly level rather than at the Senate level, since the County Assembly is the initiating body that formulates and debates the***

impeachment motion before transmitting it to the Senate for final determination."

At the Senate stage, the function being discharged is adjudicative rather than consultative. We find that the constitutional principle underlying that holding is not confined to the impeachment of governors. It is a principle of general application that derives its force from the structural logic of the impeachment framework embedded in the Constitution, and it applies with equal force and validity to the impeachment of the Deputy President under **Article 145**. A second invocation of the same procedure in respect of the same charges, the same allegations, and the same subject matter at the Senate serves no additional constitutional purpose. We therefore find that the Senate did not violate **Articles 10 or 118** by failing to conduct its own independent public participation.

346. Finally, the question of whether public participation was constitutionally required for the nomination and approval of H.E. Kindiki as Deputy President calls for a holistic interpretation of **Article 149(1)** of the **Constitution**, read in its proper textual, structural, and purposive context. **Article 149(1)** provides, in express and unambiguous terms, that within fourteen days after a vacancy in the office of Deputy President arises, the President shall nominate a person to fill that vacancy, and that the National Assembly shall vote on the nomination within sixty days of receiving it.

347. The correct approach to that interpretive exercise is well settled. The Supreme Court affirmed in ***In the Matter of the Principle of Gender Representation in the National Assembly and the Senate, [2012] KESC 5 (KLR)*** that constitutional interpretation must be holistic and that no provision of the Constitution may be read in isolation, divorced from the broader architecture of the document of which it forms part. The Court elaborated on the content of that holistic approach in ***In the Matter of Kenya National Commission on Human Rights, [2014] KESC 33 (KLR)***, holding that holistic interpretation requires contextual analysis, which is, reading a constitutional provision alongside and against related provisions so as to arrive at a rational and principled understanding of what the Constitution must be taken to mean, having regard to its history, the issues in dispute, and prevailing circumstances. It is this disciplined, context-sensitive methodology that we apply to the question at hand.

348. A holistic reading of **Article 149(1)** in its constitutional context reveals, compellingly, that this provision is self-executing. It prescribes a complete and self-contained procedure of nomination by the President within fourteen days, followed by a vote by the National Assembly within sixty days. It makes no cross-reference to any other Article for supplementary procedure. Critically, it makes no mention of public participation, nor of committee vetting, nor of any other consultative mechanism. The framers of the Constitution were not silent on public participation by inadvertence. When they intended to require it, they said so in express terms. **Article 118(1)(b)** expressly mandates

Parliament to facilitate public participation in its *legislative and other business*. The deliberate omission of any equivalent requirement from **Article 149(1)** is itself a constitutional signal that must be given interpretive effect. To read a public participation requirement into **Article 149(1)** where none appears in the text would be to engage in precisely the kind of unbridled extrapolation that the Supreme Court cautioned against in ***Kenya National Commission on Human Rights (supra).***

349. The constitutional text of **Article 149(1)** is further instructive in its precise choice of language. The provision directs that the National Assembly shall *"vote on"* the nomination. This is a deliberate linguistic choice by the constitutional drafters, and it is not open to a court to substitute its own preferred terminology for that which the Constitution has expressly employed. As the Speaker of the National Assembly correctly ruled, the phrase *"vote on"* connotes an electoral determination so that the National Assembly was, in constitutional substance, *electing* the Deputy President from among the nominee presented by the President, not approving an executive appointee in the manner of a parliamentary vetting process. That interpretation is faithful to the constitutional text and is consistent with the structural design of the provision.

350. This understanding is further reinforced by **Articles 1(2)** and **1(3)** of the **Constitution**, which vest sovereign power in the people and provide for its delegation to, among other organs, Parliament. When the National

Assembly votes on a nominee for Deputy President under **Article 149(1),** it is not acting as a conduit for public opinion but exercising delegated sovereign authority on behalf of the people. The Constitution makes a deliberate structural choice not to provide for a by-election to fill a mid-term vacancy in the office of Deputy President, electing instead to vest that determination in the National Assembly as the people's primary representative institution.

351. That choice reflects a conscious constitutional calibration of the respective roles of participatory and representative democracy, a calibration that this Court is bound to respect. To accept the Petitioners' contention that public participation is a constitutional prerequisite for every decision of constitutional importance would be to obliterate the distinction between participatory and representative democracy, and to impose an obligation on the National Assembly to conduct public participation before every significant vote including the election of the Speaker, the Deputy Speaker, and the appointment of committee chairs.

352. That is plainly not what the Constitution requires, as this Court confirmed in ***Okoiti & 6 Others V Cabinet Secretary for the National Treasury and Planning & 3 Others (supra),*** where it was held that representative democracy, as a complement to participatory democracy, is independently and fully constitutionally recognized. The Supreme Court stated thus:

> ***"Article 1(1) declares that the sovereign power belongs to the people of Kenya; and that that power can be exercised***

only in accordance with the Constitution. Article 1(2) further proclaims that the people may exercise their sovereign power either directly or indirectly through their democratically elected representatives. In its direct democracy aspect, the Constitution provides for citizens to participate in referenda on certain constitutional amendments as outlined in article 255. Additionally, it promotes a participatory approach to governance, with article 10(2)(a) identifying 'democracy and participation of people' as national values and principles of governance. This is reinforced by specific constitutional obligations, such as the duty imposed on Parliament under article 118(1)(b) to facilitate public participation and involvement in its legislative and other business.

Conversely, the Constitution also provides for indirect democracy. In that regard, article 1(3) states that sovereign power is delegated to specified State organs, including Parliament and the legislative assemblies of County Government. Moreover, article 94(1) of the Constitution provides that '[t]he legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament'. This speaks to the representative aspect of democracy, which grants elected representatives the discretion to make legislative decisions on behalf of the people they represent,

with the legislative discretion being balanced by the Constitution's commitment to participatory governance."

353. Whilst it is unquestionably correct that **Articles 1, 10, and 118** of the **Constitution** apply to all State organs and to all public business, it does not follow that every discrete act of Parliament is attended by a mandatory public participation obligation. The vote contemplated by **Article 149(1)** is a discrete, constitutionally prescribed electoral act. It is not the making of a law. It is not the formulation of a policy. It is not the implementation of a public programme. It is a binary determination of acceptance or rejection of a single presidential nominee in which there is no middle ground, no policy choice to be made, no legislative text to be drafted, and no programme to be designed. Public participation, the purpose of which is to inform deliberative and policy-oriented decision-making, would add nothing of constitutional value to a binary vote of this character.

354. Furthermore, even were one to extend the concept of public participation to encompass public observation and accountability, we find that the proceedings of the National Assembly on the nomination of H.E. Kindiki were conducted in a fully open and transparent manner. The debate was televised, the proceedings were recorded in *Hansard*, the press was free to report, and Members of Parliament were directly accountable to their constituents for the manner in which they exercised their votes. We are satisfied that this openness and transparency which is

the constitutional core of **Article 118(1)(a)**'s requirement that Parliament conduct its business in an open manner was amply satisfied.

355. For all the foregoing reasons, we hold that public participation was not constitutionally required for the nomination and approval of H.E. Kindiki as Deputy President under **Article 149(1).**

CONSTITUTIONALITY AND LEGALITY OF THE STANDING ORDERS:

356. The Petitioners asked this Court to consider and pronounce itself on the National Assembly's Standing **Orders 64(2) and 65** as well as Senate's **Standing Orders 75,78,79 and 80.**

357. Beginning with the National Assembly, some of the Petitioners assailed the constitutionality of **Standing Order 64(2)**, contending that the provision imposed an impermissibly truncated seven-day timeline for the disposal of impeachment proceedings. They argued that such compressed timelines undermined meaningful public participation and curtailed the rights to a fair hearing guaranteed under the Constitution. They thus prayed for a declaration that **Standing Order 64(2)** is unconstitutional, null, and void to the extent that it prescribes a timeline incompatible with constitutional requirements for public participation, fair hearing, and compliance with court orders and an order of certiorari to quash ***Standing Order No. 64 and 65*** of the National

Assembly ***Standing Orders*** to the extent that they apply to the Deputy President.

358. The Respondents, in answer, defended the constitutional validity of **Standing Orders 64(2) and 65**, contending that they are necessary for the expeditious conduct of impeachment proceedings. They pointed to the Constitution itself as the source of the condensed timelines including **Article 145(2)(a)** requiring the Speaker to notify the Senate within two days, **Article 145(3)** requiring the Senate to convene within seven days, and **Article 145(4)** requiring a special committee to report within ten days, and submitted that it would be illogical to impugn a Standing Order prescribing a 7–12-day timeframe when the Constitution itself operates within a similarly compressed timeframe. The Respondents further submitted that **Article 124(1)** expressly empowers each House of Parliament to make Standing Orders for the orderly conduct of its proceedings, and that **Standing Order 64(2)** is a legitimate and necessary operationalization of that constitutional framework. They urged the Court to exercise restraint in accordance with the separation of powers on the issue.

359. Having carefully considered the rival contentions of all parties, we now pronounce ourselves as follows.

360. It is trite that Standing Orders are subordinate legislation, deriving their authority not from Parliament itself, but from the Constitution. **Article 124(1)** of the **Constitution** expressly empowers each House of

Parliament to make Standing Orders for the orderly conduct of its proceedings, including those of its committees. **Article 124(2)** further entrenches the role of parliamentary committees within this framework. Being creatures of the Constitution, we agree with the submission that Standing Orders must at all times conform to the spirit of the Constitution, its values, and animating principles. They cannot rise above the instrument that gave them life.

361. **Standing Order 64** prescribes the procedure for the removal of the President under **Article 145(1)** of the **Constitution**. **Standing Order 65(2)** extends this procedure, with necessary modifications, to the impeachment of a Deputy President under **Article 150(1)(b)** of the **Constitution**. **Standing Order 64(1)** requires that a member seeking to initiate such a motion must submit it in writing to the Clerk, clearly stating the grounds of removal, supported by at least one-third of all Members. The motion must particularize the alleged gross violation of the Constitution or other written law, cite the precise provisions alleged to have been violated, and be accompanied by evidence sufficient to substantiate the allegations.

362. The specifically impugned provision, **Standing Order 64(2),** stipulates that such a motion shall be disposed of by the Speaker within three days in accordance with **Standing Order 47**, and thereafter by the Assembly within seven days of notice. Should the Assembly fail to act within that period, the motion is deemed withdrawn and may not be revived in the same session save with the leave of the Speaker. The combined effect is

that once an impeachment motion is properly filed, it is subjected to strict and unforgiving timelines; three days for the Speaker's action, and seven days for the Assembly's disposal, failing which the motion lapses entirely. It is these rigid timelines that the Petitioners impugned as unconstitutional.

363. The constitutional provisions engaged by this challenge are uncontested. **Article 2(4)** of the **Constitution** provides, in terms that admit of no ambiguity, that any law including subordinate legislation that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid. **Article 50** which guarantees the right to a fair hearing and **Articles 10 and 118** further enshrine public participation as a constitutional obligation binding on all state organs, including Parliament, in the exercise of their functions. We have examined at length the constitutional requirements and parameters that govern public participation in impeachment proceedings, and we have set out the applicable principles in detail in the preceding sections of this judgment.

364. In determining whether the timelines in the impugned Standing Orders contravene these constitutional imperatives, it is not lost on us that Parliament is not a resource-constrained institution. It possesses the institutional capacity, the administrative infrastructure, and the constitutional mandate to reach every part of the Republic through its structures at both the county and national levels. If Parliament genuinely considered seven days to be a sufficient window for public participation,

it bore a corresponding constitutional obligation to deploy its resources adequately to ensure that the process was not merely open in form but accessible in fact, and that it met the participation threshold authoritatively settled in the ***BAT*** decision. A compressed timeline, standing alone, is therefore not necessarily a constitutional infirmity. A compressed timeline accompanied by an under-resourced and inadequately facilitated process is an altogether different matter.

365. Still, the question that this Court is required to provide an answer to, is whether seven days, encompassing the logistical demands of public notification, the organization of participatory forums across a diverse and geographically expansive Republic, the receipt and meaningful consideration of public input, and the Assembly's own deliberation on a matter of this constitutional gravity, is structurally adequate to meet that threshold.

366. We draw from the Supreme Court of Canada's holding in ***Haida Nation V British Columbia, (Minister of Forests) [2004] 3 SCR 511***, that the adequacy of any participatory process must be measured against the gravity of the decision being made and that the more consequential the decision, the more robust the participation process must correspondingly be. At the same time, we are mindful of the importance of according appropriate deference to Parliament in the regulation of its internal proceedings as required under **Article 124(1),** of the **Constitution**. We are guided in this regard by the words of caution from the Supreme Court in ***Speaker of the National Assembly V Attorney General & 3 Others***

[2013] eKLR, where it was stated that the Court would be averse to questioning parliamentary procedures formulated to regulate internal workings as long as the same do not breach the Constitution.

367. Having regard to all the foregoing, we do not consider it warranted to declare **Standing Order 64(2)** unconstitutional. A declaration of unconstitutionality is a remedy of last resort and a judicial act of the gravest constitutional consequence, not to be visited upon a legislative provision where the provision is capable of a constitutional interpretation or application. We are further guided by the principle of constitutional avoidance that where a provision of subordinate legislation can be read and applied in conformity with the Constitution, the Court ought not to strike it down when a less drastic remedy is available. This principle was affirmed by this Court in ***Independent Electoral and Boundaries Commission V Maina Kiai & 5 Others, [2017] eKLR***, where it was held that interpretive generosity must extend, where reason permits, to the provisions whose constitutionality is challenged.

368. We are not persuaded that the mere existence of a seven-day timeline, taken in isolation and on its face, renders **Standing Order 64(2)** void. A provision is not unconstitutional simply because it is capable of being applied unconstitutionally. The vice lies not in the number of days prescribed but in what Parliament does or fails to do within those days. The timeline, considered as an abstract legislative proposition, is therefore not in itself the source of any constitutional infirmity. The infirmity, where it arises, lies in the manner of implementation and in

whether Parliament, operating within that compressed window, deploys adequate resources, establishes genuinely accessible structures, and puts in place meaningful mechanisms sufficient to discharge its constitutional obligations of public participation under **Articles 10, 50 and 118** in substance and not merely in form.

369. The distinction we draw is between a provision that is unconstitutional on its face and void in all its applications, regardless of how it is applied, and one that is conditionally constitutional as in valid in law, but only where its application is accompanied by the institutional effort and constitutional seriousness that the gravity of impeachment proceedings demands. **Standing Order 64(2)** falls, in our judgment, into the latter category.

370. In declining to strike down **Standing Order 64(2),** we instead note that the timeline prescribed in that Standing Order is not constitutionally mandated. Unlike certain procedural requirements that derive their specific content from express constitutional text, the seven-day window is a creature of parliamentary regulation alone. Parliament was free to prescribe a longer period, and remains free to do so. The experience of the first impeachment of a Deputy President to come before the National Assembly under the Constitution of Kenya 2010 might have been a sobering constitutional experience. It may have exposed, in real time, the structural tensions that compressed timelines have the potential to create when applied to proceedings of national consequence.

371. We commend to Parliament, for its serious consideration in the exercise of its sovereign authority to regulate its own proceedings, the question of whether the timelines prescribed in **Standing Order 64(2)** remain adequate in light of this experience and whether a timeline that builds in more time for public participation and for the Assembly to deliberate with the gravity that removal from constitutional office demands, would not be more befitting the constitutional moment that an impeachment invariably represents. As it stands however, we find nothing unconstitutional about **Standing Order 64(2).**

372. With respect to the Senate Standing Orders, the Petitioners assailed the constitutionality of **Standing Orders 75, 78, 79, and 80** to the extent they apply to the Deputy President, advancing their challenge on three principal grounds. First, that **Standing Order 79**, was a mechanical importation of the presidential impeachment framework to the Deputy President's distinct constitutional position without any effort to identify the required modifications as required by **Article 150(2)**. Second, that the appointment of a Special Committee was mandatory under **Article 145(3)(b),** and that **Standing Order 79** did not mirror this requirement. Third, that the fourteen-day timeline under **Standing Order 75** was structurally incompatible with **Articles 47, 50, and 145(5)** and was grossly inadequate for proceedings involving eleven complex constitutional allegations.

373. The Respondents maintained that **Article 145(3)(b)** uses the word "may," which confers a discretion and not a mandatory obligation. They

submitted that the fact that **Standing Order 80** expressly provided for a plenary alternative while **Standing Order 79** did not was not constitutionally significant, as the discretion was conferred by the Constitution itself. They further submitted that **Article 150(2)** did not require a formal or recorded exercise of identifying modifications, and that the modifications were implicit in the different constitutional status of the Deputy President. They relied on ***Speaker of the Senate & Another v Attorney General & Another,*** **[2013] KESC 7 (KLR)** for the proposition that courts should not read into the Constitution obligations that its framers deliberately chose not to include. It was their case that the fourteen-day timeline under **Standing Order 75** was more generous than the constitutional ten-day timeline for a Special Committee and that expedition was a constitutional imperative.

374. They relied on ***Speaker of the National Assembly V Karume, [1992] KLR 21 and Mate & Another V Wambora & Another, (supra)*** for the proposition that courts should be slow to interfere with Parliament's internal procedures.

375. We have considered these submissions put forward by the parties. For the avoidance of doubt, **Standing Orders 75,78,79 & 80 of** the Senate provide as follows:

> ***"75. This Part applies to appointments to public office that require nomination or approval by the Senate.***

78. Procedure for removal of President by impeachment:

a) Upon receipt of a resolution of the National Assembly pursuant to Article 145(2) of the Constitution, the Speaker shall within seven days convene a meeting of the Senate to hear the charges against the President, and the Senate, by resolution, may appoint a Special Committee comprising eleven of its members to investigate the matter.

b) The Special Committee appointed under Article 145(3)(b) of the Constitution shall—

i. investigate the matter; and

ii. report to the Senate within ten days whether it finds the particulars of the allegations against the President to have been substantiated.

c) Members of the Special Committee shall take an Oath or Affirmation, as may be prescribed by the Speaker, submitting that they will perform their duties honestly and with due diligence.

d) The President shall have the right to appear and be represented before the Special Committee during its investigations.

e) The Special Committee may hear representation from the member who moved the motion in the

National Assembly and other members of the National Assembly.

f) If the Special Committee reports that the particulars of any allegation against the President—

i) have not been substantiated, further proceedings shall not be taken under Article 145 of the Constitution in respect of that allegation; or

ii) have been substantiated, the Senate shall, after according the President an opportunity to be heard, vote on the impeachment charges.

g) The Senate shall vote on each impeachment charge of the Motion.

h) If at least two-thirds of all the Senators vote to uphold any impeachment charge, the President shall cease to hold office.

i) The Senate or a Special Committee of the Senate shall conduct the investigation into the matter in accordance with the rules of procedure prescribed under the Second Schedule to these Standing Orders.

79. Procedure for removal of Deputy President by impeachment.

Upon receipt of a resolution of the National Assembly on removal of the Deputy President in terms of Article 150 (1) (b) of the Constitution, Standing Order 78 (Procedure for removal of President by impeachment) shall, with necessary modifications, apply.

80. Procedure for removal of a Governor

Within seven days after receiving notice of a resolution from the speaker of a County Assembly supporting the removal of a governor of the county pursuant to Article 181 of the Constitution—

i) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor; and

ii) the Senate may-

h) by resolution, appoint a Special Committee comprising eleven of its members to investigate the matter; or

(ii) investigate the matter in plenary.

(2) The Senate sitting in plenary or the Special Committee appointed under subsection (1) shall within ten (10) days –

i. investigate the matter; and

ii. in the case of the Special Committee, report to the Senate on whether it finds the particulars of the

allegations against the Governor to have been substantiated.

3) The governor shall have the right to appear and be represented before the Senate or a Special Committee during the investigations.

(4) If the special committee reports that the particulars of any allegation against the governor—

iii. have not been substantiated, no further action shall be taken under this section in respect of that allegation; or

iv. have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the charges.

(5) The provisions of paragraph (4) shall apply with necessary modifications to the findings of the Senate, while investigating the matter in plenary

(6) If a majority of all the county delegations of the Senate vote to uphold any impeachment charge, the governor shall cease to hold office.

(7) If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate shall notify the Speaker of the concerned County Assembly accordingly and the motion by the assembly for the removal of the governor on the same charges may only be re-introduced to the Senate after the expiry of three months from the date of such vote.

(8) The rules of procedure to be followed by the Senate or a Special Committee of the Senate are set out in the Third Schedule of these standing orders.

(9) The procedure set out in paragraphs (1) to (8) shall apply with the necessary modifications to impeachment of a Deputy Governor."

376. The principle that Standing Orders must conform to the Constitution applies with equal force to the Senate as it does to the National Assembly, for the reasons we have already set out in the preceding section of this judgment. Our jurisdiction to examine that conformity is equally settled and we rely on the case of ***Orange Democratic Movement Party & 4 Others V Speaker of National Assembly (supra)*** and ***Ombongi & 9 Others V County Assembly of Nyamira & Another; Independent Electoral and Boundaries Commission (Interested Party), [2025] KEHC 18355 (KLR)***.

377. We note that **Standing Order 78** largely mirrors the impeachment procedure provided for under **Article 145**. As such, the question of whether the Special Committee contemplated under the Standing Orders is mandatory or discretionary and the constitutionality of those Standing Orders in the context of **Article 145(3)(b),** is addressed separately in the next ground.

378. On the specific challenge to the absence of a formal recorded modification process under **Article 150(2),** Some Petitioners argued that the phrase *"with the necessary modifications"* in **Article 150(2)** of the

Constitution is a mandatory constitutional directive requiring Parliament to enact a substantive legislative framework tailored to the distinct office of the Deputy President. They emphasized that, unlike the President, the Deputy President enjoys no civil or criminal immunity under **Article 143,** and therefore impeachment must be treated as a mechanism of last resort. In their view, a mere transposition of the presidential framework through Standing Orders is structurally inadequate and constitutionally insufficient.

379. The Respondents countered that *"with the necessary modifications"* is nothing more than a drafting device, requiring only the mechanical substitution of "President" with "Deputy President." They maintained that the obligation was discharged through National Assembly **Standing Order 65(2)** and Senate **Standing Order 79**, and that Parliament's procedural autonomy under **Article 124(1)** shields its internal arrangements from judicial scrutiny.

380. We are unable to accept the Respondents' construction. Taken to its logical conclusion, it renders the phrase superfluous. If the Constitution intended mere title substitution, it would not have qualified the incorporation of **Article 145** at all. The deliberate insertion of those words signals that the drafters anticipated substantive adaptation, as opposed to a mechanical reproduction or a drafting convenience. This conclusion is reinforced by the structural asymmetry between the two offices partly under **Article 143**. We do agree with the submission that a

framework that ignores this distinction has not applied **Article 145** *with necessary modifications* — it has applied it without modification at all.

381. The Standing Orders relied upon by the Respondents do not cure this deficiency. National Assembly **Standing Order 65(2)** and Senate **Standing Order 79** merely echo the constitutional command without discharging it. They reproduce the obligation verbatim but provide no substantive modification at all.

382. The county experience is instructive. In ***Sonko V County Assembly of Nairobi City & 11 Others, [2022] KESC 76 (KLR),*** the Supreme Court was compelled to resolve fundamental procedural questions that a comprehensive statutory framework ought to have addressed in advance. The subsequent County Governments (State Officers' Removal from Office) Procedure Bill, 2024, was Parliament's legislative acknowledgment of that inadequacy. That Bill codifies due process protections, imposes timelines, mandates public participation, establishes a hierarchy between statute and Standing Orders, and resolves ambiguities such as the role of the Senate in voting on charges regardless of committee findings.

383. By contrast, the national framework for removal of the Deputy President contains none of these safeguards. The very issues agitated in these petitions, including the adequacy of public participation, the role of the special committee, procedural rights of the Deputy President, timelines, and neutrality of presiding officers are precisely the questions a dedicated

legislative framework would have foreclosed. Equally, the question on judicial intervention before an impeached President/Deputy President is replaced, would also be addressed in the legislation. Their resolution through litigation, rather than legislation, and the challenges that the impeachment proceedings have brought forth is itself evidence of the lacuna.

384. Courts do not legislate. But it is within the proper constitutional role of the courts to identify legislative gaps and invite Parliament to address them, particularly where those gaps carry the potential for constitutional crisis. We therefore find that the existing framework under **Article 150** is structurally inadequate. The absence of a comprehensive statutory framework does not preserve parliamentary autonomy; it transfers the resolution of fundamental procedural questions to the courts, at considerable cost to institutional certainty and public confidence.

385. We therefore hold that Parliament ought urgently to enact a dedicated statutory framework for the removal of the Deputy President under **Article 150**. We observe, however, that the absence of specific legislation does not invalidate the impeachment process already undertaken. This is because the Constitution itself, at **Articles 144 and 145,** sets out the minimum threshold for conducting such proceedings. It is upon this constitutional framework that Parliament relied, ensuring that the process was carried out in a manner designed to safeguard the Deputy President's fundamental protections.

386. On timelines, we note that **Standing Order 78(2)** imposes a ten-day timeline in respect of a Special Committee investigation. Neither the Standing Orders nor the Constitution prescribes a timeline for plenary proceedings. The Senate's adoption of a ten-day deadline for its plenary hearing was therefore a self-imposed procedural choice and not a requirement of the Standing Orders or the Constitution. The Senate was not obligated by any applicable rule to impose that timeline when it elected to proceed by way of plenary, and the Petitioners have not demonstrated that the choice to do so was, in itself, a constitutional violation.

THE COMPOSITION OF THE NATIONAL ASSEMBLY AND THE IEBC

387. Three main issues were raised under this heading including whether the National Assembly was properly constituted to consider the impeachment motion, whether the nomination of H.E Kindiki could take place in the absence of a fully constituted IEBC and whether his nomination as Deputy President was infirm. We shall address these in turn.

388. The 3rd Petitioner, Hon. Jane Njeri Maina, invited this Court to declare that the National Assembly, as presently constituted, was not legally constituted for failure to comply with the constitutional two-thirds gender principle under **Articles 27, 81(b), 100 and 261** of the Constitution. She submitted that, as a consequence, the National

Assembly is incapable of entertaining or deliberating on the impeachment motion against the Deputy President. She, therefore, sought declarations impugning both the legality of the National Assembly and the validity of proceedings arising from its resolutions.

389. The Respondents opposed that contention. The National Assembly and its Clerk maintained that the constitutional requirements concerning the composition of Parliament under **Articles 97 and 98** had been satisfied. They submitted that the two-thirds gender principle did not render Parliament unlawfully constituted or incapable of functioning and that **Article 261** itself establishes the constitutional mechanism for securing compliance where legislation or implementation has lagged. They warned that acceptance of the Petitioners' proposition would invalidate all parliamentary business undertaken since 2013, an outcome they described as constitutionally untenable and absurd.

390. The Speaker of the Senate and the Senate associated themselves with that position and further urged judicial restraint, submitting that the dispute concerning implementation of the two-thirds gender principle remains actively pending before a duly constituted five-judge bench in ***Konchellah & Others V Chief Justice & President of the Supreme Court of Kenya & Others, (Consolidated Petition No. E291 of 2020)*.**

391. There can be no controversy that the two-thirds gender principle is a constitutional imperative. **Article 81(b)** decrees that not more than two-thirds of the members of elective public bodies shall be of the same

gender. **Articles 27** and **100** reinforce the constitutional commitment to equality, inclusiveness and equitable representation. The Courts of this country have consistently affirmed that the gender principle is not ornamental constitutional rhetoric but a binding constitutional stance that demands implementation.

392. Equally, however, constitutional adjudication must be undertaken within the framework of the Constitution and the dispute-resolution mechanisms it establishes. The question before us is not whether the two-thirds gender principle is obligatory, it undoubtedly is. Rather, the narrower and more immediate question is whether the alleged non-compliance with that constitutional principle rendered the National Assembly illegally constituted as to deprive it of authority to entertain and determine an impeachment motion under Articles 145 and 150 of the Constitution.

393. **Article 261** speaks to the timelines within which legislation ought to be passed by Parliament. It also provides for the consequences of failure to pass legislation. On such a failure, a petition may be filed in the High Court and the Court may grant a declaratory order directing Parliament and the Attorney-General to take steps to ensure that the required legislation is enacted, within the period specified in the order, and to report the progress to the Chief Justice. In the event Parliament fails to enact the legislation in accordance with the Court order, the Chief Justice shall advise the President to dissolve Parliament and the President shall so dissolve Parliament. The new Parliament shall then

enact the legislation within the timelines contained in the Court order lest it faces similar consequences.

394. The issue of failure by Parliament to enact the legislation on the gender rule has been litigated in Courts for relatively long. Further to an Advisory Opinion filed in the Supreme Court, other petitions under **Article 261** have been filed in the High Court and declarations made. The Hon. Chief Justice even advised the President to dissolve Parliament. It was that advise that elicited the institution of ***Konchellah & others v Chief Justice case [supra].*** This matter was recently determined by an expanded bench of the High Court vide a judgment delivered on 5th June 2026 where the advice to dissolve Parliament by the Hon. Chief Justice to the President was declared unconstitutional and subsequently quashed for failure to comply with some fundamental procedural steps.

395. The Court, however, clarified that the parties were still at liberty to comply with the requisite procedural steps, a result of which the law will then follow its course. Therefore, as long as the redress in **Article 261** is yet to be fully realized, it will be premature for this Court to declare that the National Assembly was not properly constituted to consider the impeachment motion. To that end, the contention fails.

396. The challenge to the IEBC was advanced on two related grounds. First, that the IEBC was constitutionally incapacitated by the absence of commissioners at the material time, such that any verification of H.E. Kindiki's qualifications, being a substantive commission-level function

under **Article 250(1)**, could not lawfully be performed by the Secretariat alone. Second, that the clearance process was consequently a nullity that fatally infected the nomination. The Respondents however maintained that the mid-term replacement mechanism under **Article 149(1)** was a *sui generis* self-executing constitutional process that did not engage the IEBC's electoral mandate under **Article 88(4),** and that the strict eligibility and clearance protocols under **Articles 99 and 137** applied exclusively to general elections and not to a mid-term nomination vetted directly by the National Assembly.

397. Our reading of **Article 149(1)** confirms that it is unambiguous, express and self-contained. It establishes a strictly executive-legislative process whereby the President nominates and the National Assembly votes on the Deputy President nominee. It makes no reference to the IEBC. That omission is not an oversight. It is a deliberate constitutional choice, which this Court must give full effect. Were it the intention of the drafters to impose a more stringent requirement, nothing would have been easier than to say so expressly, as they did in **Articles 99** and **137** in respect of candidates for elective office at a general election. The absence of any equivalent requirement in **Article 149(1)** is therefore a considered constitutional choice to be respected.

398. For ease of reference, **Article 149(1)** provides as follows:

> ***"Vacancy in the office of Deputy President.***
> ***Within fourteen days after a vacancy in the office of Deputy President arises, the President shall nominate a***

person to fill the vacancy, and the National Assembly shall vote on the nomination within sixty days after receiving it."

399. From a plain reading of the above, we are convinced that no clearance was required of the Deputy President and that the vote by the National Assembly was an exercise of representative authority by the sovereign's elected representatives, precisely the constitutional mechanism that **Article 149(1)** contemplates. We emphasize again that under **Article 1** of the Constitution, sovereign power belongs to the people of Kenya and may be exercised either directly or through their democratically elected representatives. When the National Assembly voted on H.E. Kindiki's nomination, it did so as the constitutional repository of delegated sovereign authority, acting on behalf of the people in accordance with the specific mechanism the Constitution provides for filling a mid-term vacancy in the office of Deputy President.

400. We equally accept the Respondents' submission on the deliberate use of the word "vote" in **Article 149(1)** as opposed to the words "approve" or "vet" that the Constitution employs in other contexts. That distinction is constitutionally significant. Across the Constitution, we note that the word "approve" is used where Parliament exercises a confirmatory function in relation to executive appointments as in the approval under **Article 132(2)** of Cabinet Secretaries, the Attorney-General, the Secretary to the Cabinet, Principal Secretaries, high commissioners, ambassadors and diplomatic and consular representatives as well as any

other State or public officer whom the Constitution requires or empowers the President to appoint or dismiss. The same applies in the approval of candidates for constitutional offices such as the Chief Justice under **Article 166**.

401. In those contexts, approval connotes a deliberate and structured vetting exercise in which Parliament assesses the suitability of the nominee against a prescribed criterion, and in which the IEBC or other constitutional bodies may have a role to play in verifying qualifications. The word "vet" carries similar connotations of structured scrutiny against defined standards.

402. The word "vote", by contrast, denotes a direct and immediate exercise of collective democratic will. It is the language of elections and of sovereign determination. Its use in **Article 149(1)** signals that the National Assembly's function in the mid-term replacement process is not to sit in judgment of the nominee's suitability but to exercise, on behalf of the people, a direct democratic determination on whether the President's nominee should fill the vacancy. That determination is political and representative in character, and it is expressed through the ballot of elected Members of Parliament, each of whom is accountable to their constituents for the vote they cast.

403. It consequently follows that no input or intervention by the IEBC was constitutionally required in the mid-term replacement process under **Article 149(1).** The absence of any IEBC involvement would not have

rendered the nomination or the filling of the vacancy unconstitutional. The informational input that the IEBC Secretariat did provide was, in those circumstances, entirely voluntary in character. It was not a condition precedent to the validity of the process, and its presence or absence was constitutionally irrelevant to the outcome. That being so, the fact that the input was provided by the Secretariat in the absence of commissioners is equally irrelevant, if the input was not required at all, the question of who within the IEBC provided it simply does not arise.

404. For completeness, however, and to the extent that any residual question remains about the lawfulness of the Secretariat's involvement, we are satisfied that the informational verification performed by the Secretariat could not have constituted a *clearance* in the electoral sense, but rather a routine administrative task and as such, not constitutional or policy driven. The same was legally permissible, and procedurally valid and fell squarely within the Secretariat's lawful administrative mandate. We draw from the ***Advisory Opinion Reference No. E004 of 2024, The IEBC and The Honourable Attorney General*** where the Supreme Court gave guidance on the dichotomy that exists between the role of the commissioners and that of the Secretariat in the following words:

> ***"... the Secretariat under the leadership of the Commission Secretary and CEO, is empowered to undertake routine administrative and operational tasks essential for the day-to-day functioning of the Commission. In the same vein, it is necessary to clarify that the absence of Commissioners does not, of itself,***

vitiate or invalidate administrative actions taken by the Secretariat within the scope of its lawful mandate, including the execution of contracts, management of personnel, procurement, and other functions necessary for institutional continuity. Such acts remain valid and binding, provided they fall within the bounds of statutory delegation and do not purport to usurp the constitutional functions of the Commission as a corporate body."

405. To guard against institutional overreach, the Supreme Court carefully delineated where IEBC's administrative mandate ends, as follows:

"Having concluded as above, a clear distinction must be drawn between administrative continuity by the Secretariat and the exercise of constitutional authority vested in the Commission as a collegial entity. It is our considered view that the exercise of constitutional functions expressly reserved for the Commission, such as those enumerated under Article 88(4) of the Constitution, cannot be lawfully discharged in the absence of a properly constituted Commission with the requisite quorum as contemplated under Article 250(1) and (2) of the Constitution."

406. This differentiation of responsibilities is further contained in **section 11A** of the **Independent Electoral and Boundaries Commission Act** and espoused by the Supreme Court in ***Muruli V Oparanya & 3 Others, [2016]***

KESC 14 (KLR). For all these reasons it is our finding that the Secretariat did not travel beyond its mandate. It simply functioned as an information repository.

407. Having so found, we move to the last sub issue concerning the constitutional validity of H.E. Kindiki's nomination. The Petitioners anchored this ground on **Article 148(1),** read with **Article 137**, contending that because H.E. Kindiki was serving as Cabinet Secretary for Interior and National Administration, a State office under **Article 260**, at the time of his nomination and parliamentary approval on 18th October 2024, he was disqualified from nomination by **Article 137(2)(b)**, rendering the entire process null and void *ab initio*.

408. In contrast, the Respondents who responded to this ground argued that the appointment process was completely legal and procedurally sound. They maintained that the filling of a mid-term vacancy under **Article 149(1)** was an independent, *sui generis* executive-led process that was distinct from a traditional election or appointment. Further, it was their case that the restrictive disqualifications in **Article 137**, such as the requirement to resign six months prior or to secure multi-county voter endorsements, were tailored exclusively for general elections not sudden mid-term vacancies that demanded swift action to prevent a leadership vacuum. They contended that the initial formation of a presidential joint ticket under **Article 148** could not apply to mid-term emergency transitions.

409. In addition, H.E. Kindiki and the IEBC specifically disputed the factual basis of the petitions arguing that H.E. Kindiki had in fact provided official gazette notices proving he had formally resigned from his Cabinet position prior to his appointment as Deputy President.

410. In considering the arguments of both parties, we turn to the relevant constitutional provisions to wit **Articles 137, 148, and 149**. **Article 137(2)(b)** bars any person who is a public officer or is acting in any State or other public office from nomination as a presidential candidate. **Article 137(3)** carves out exemptions for the sitting President, the Deputy President, and Members of Parliament. Cabinet Secretaries are not included in that exemption. **Article 148(1)** also locks the qualifications of a Deputy President candidate to those of a presidential candidate under **Article 137**, and **Article 148(2)** provides that there shall be no separate nomination process for the Deputy President at a general election.

411. **Article 149(1),** however, creates an entirely distinct pathway for filling a mid-term vacancy as we have already observed, through a direct presidential nomination followed by a National Assembly vote. It makes no cross-reference to the electoral machinery or disqualification timelines that apply under **Articles 137 and 148** in the general election context.

412. A strict textual reading of **Articles 148(1) and 137(2)(b)** together would, if applied without contextual qualification, bar an active Cabinet

Secretary from nomination unless a timely resignation had occurred. However, we are satisfied that **Article 149(1)** creates a *sui generis* process that cannot be evaluated by mechanical application of the general election framework. **Article 149(1)** omits the standard electoral requirements including the signature collection requirement under **Article 137(1)(d)** which signals the framers' intention that this provision operates independently of the general election machinery. To apply the strict disqualification timelines of the electoral context to a sudden or unforeseen mid-term vacancy would risk creating an executive leadership vacuum of precisely the kind that **Article 149(1)** was designed to prevent.

413. In any event, we are satisfied that the factual premise of the Petitioners' challenge is not established on the evidence. The primary constitutional mischief targeted by **Article 137(2)(b)** is the prevention of active public servants from deploying state resources or conflicting institutional mandates to influence an election or appointment. The evidence before this Court establishes that despite the unique circumstance of his nomination, H.E. Kindiki formally resigned from the Cabinet and gazetted his exit prior to taking his oath of office as Deputy President. By severing his ties to the Cabinet before assuming the Deputy Presidential office, the potential conflict of interest that **Article 137(2)(b)** is designed to address was lawfully cured. The core integrity parameters of Chapter Six and **Article 137** of the Constitution were accordingly satisfied. This ground of challenge therefore fails.

414. Before concluding on this issue, we must address whether the speed with which the Senate resolution was gazetted, the President nominated Prof. Kithure Kindiki, and the National Assembly approved the nominee contravened the Constitution and the law. The Petitioners argued that the extraordinary haste following the Senate's resolution of 17th October 2024 revealed a predetermined impeachment process. In their view, the immediate gazettement, swift presidential nomination, and expedited parliamentary approval were evidence of a pre-arranged outcome. They contended that such speed undermined constitutional values of transparency, accountability, public participation, fairness, and constitutionalism.

415. The Respondents, including H.E. Kindiki, took the opposite position. They maintained that the Constitution itself anticipates expedition in matters concerning high constitutional office. Once a vacancy arose in the office of the Deputy President, they argued, the President was constitutionally bound to act under **Article 149**. Prompt compliance with such a duty, they insisted, cannot by itself amount to constitutional impropriety.

416. This provision leaves no doubt that the framers of our Constitution deliberately contemplated speed in filling a vacancy in the Deputy President's office. The rationale is evident and it is to safeguard continuity and stability in the national executive by requiring prompt action. Judicial precedent reinforces this principle. In ***Ali Hassan Joho & Another V Suleiman Said Shahbal & 2 Others, (Supreme Court Petition No.***

10 of 2013; [2014] eKLR), the Court held that constitutional timelines are substantive requirements, not procedural conveniences, and cannot be extended by legislation or judicial discretion. Similarly, in ***Lemanken Aramat V Harun Meitamei Lempaka & 2 Others, (Supreme Court Petition No. 5 of 2014; [2014] eKLR),*** the Court emphasized that constitutional timelines are binding commands, cautioning against reliance on Article 159 to circumvent them. The same principle was affirmed in ***Moses Masika Wetang'ula V Musikari Nazi Kombo & 2 Others, (Supreme Court Petition No. 12 of 2014; [2015] eKLR)*** and in ***Harun Meitamei Lempaka V Lemanken Aramat & 2 Others, [2013] eKLR,*** where the Court of Appeal underscored the constitutional significance of timelines. Collectively, these authorities highlight that timelines serve vital public interests, including certainty, legitimacy, and orderly governance.

417. The Supreme Court's decision in ***Raila Odinga & 5 Others V Independent Electoral and Boundaries Commission & 3 Others, (Presidential Petition No. 5 of 2013; [2013] eKLR)*** is also instructive. Addressing timelines under Article 140, the Court observed:

> ***"According to Article 140 of the Constitution, it is clear that expedition in the resolution of presidential election disputes is of the essence."***

418. The Court warned that prolonged uncertainty regarding the presidency undermines public interest. This reasoning reflects a broader constitutional philosophy that uncertainty in the occupancy of high office is detrimental, and the Constitution deliberately establishes

mechanisms to ensure continuity. Applying these principles, we are not persuaded that the prompt gazettement of the Senate resolution was unconstitutional. Once the Senate concluded its process, the Deputy President ceased to hold office, and nothing in the Constitution required a waiting period before gazettement. Likewise, the President cannot be faulted for acting swiftly under **Article 149**. He was constitutionally obligated to nominate a replacement within fourteen days. Compliance with this duty cannot be construed as wrongdoing. To hold otherwise would penalize constitutional actors for fulfilling their obligations.

419. The same reasoning applies to the National Assembly. **Article 149** allows up to sixty days to vote on a nomination, but it does not require Parliament to exhaust that period. Acting sooner than the deadline is not evidence of illegality. Speed alone does not establish predetermination. The law requires objective proof that a decision-maker had closed their mind before exercising power; mere expedition does not meet that threshold. We therefore find that the gazettement of the Senate resolution, the President's nomination of Prof. Kindiki, and the National Assembly's approval did not contravene the Constitution simply because they were undertaken expeditiously.

CONSTITUTIONAL PROCESSES

420. Under this heading, the Court is called upon to interpret **Articles 144 and 145** of the Constitution to determine whether the Senate was obligated to establish a special committee to investigate the charges

against the Deputy President, or whether the formation of such a committee was discretionary. The Court is equally invited to examine the procedures applied in the impeachment process, with particular focus on **Article 150(2)** and the extent to which, if at all, the Senate ran afoul of the Constitution in that respect.

421. Starting with the first issue, the dispute before us brings into sharp focus the jurisprudential tension embedded in **Article 145** of the **Constitution**, and more particularly **Article 145(3)(b).** Article 145(2) and (3) detail the process of removal in the following terms:

> ***"(2) If a motion under clause (1) is supported by at least two-thirds of all the members of the National Assembly—***
>
> ***i. the Speaker shall inform the Speaker of the Senate of that resolution within two days; and***
>
> ***ii. the President shall continue to perform the functions of the office pending the outcome of the proceedings required by this Article.***
>
> ***b. Within seven days after receiving notice of a resolution from the Speaker of the National Assembly—***
>
> ***i. the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the President; and***
>
> ***ii. the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.***

c. A special committee appointed under clause (3) (b) shall— (a) investigate the matter; and

(b) report to the Senate within ten days whether it finds the particulars of the allegations against the President to have been substantiated.

(5) The President shall have the right to appear and be represented before the special committee during its investigations.

(6) If the special committee reports that the particulars of any allegation against the President—

i. have not been substantiated, further proceedings shall not be taken under this Article in respect of that allegation; or

ii. have been substantiated, the Senate shall, after according the President an opportunity to be heard, vote on the impeachment charges.

(7) If at least two-thirds of all the members of the Senate vote to Constitution of Kenya, 2010 uphold any impeachment charge, the President shall cease to hold office."

422. The true import of **Clause 3(b)** cannot be discerned in isolation. It demands a historiographical examination and a forensic appreciation of the historical continuum of Kenya's constitutional reform. Constitutional interpretation, particularly in matters touching on the architecture of governance, must be informed by history, for history

illuminates the intent of the framers, contextualizes the text, and guards against distortions that arise from reading provisions in a vacuum. As the Courts have consistently held, the Constitution is not merely a legal instrument but a living charter whose meaning is enriched by the struggles, compromises, and aspirations that birthed it. Accordingly, this inquiry necessitates tracing the evolution of the impeachment clause through the Bomas Draft, the Wako Draft, and the Harmonized Draft to appreciate the context in which **Article 145(3)(b)** was ultimately incorporated into the Constitution.

423. **Article 164** of the Bomas Draft outlined the procedure for impeachment, vesting the Senate with ultimate authority. It provided that upon receipt of a resolution from the National Assembly, the Speaker of the Senate would convene the Senate, and if the motion was passed, a special committee of thirteen members would be appointed to investigate the matter. The language of the Bomas Draft was rigid and prescriptive. The investigatory phase was mandatory, and the committee route was the inescapable mechanism for digesting evidentiary complexities prior to a final vote. If the committee found the allegations unsubstantiated, no further proceedings would ensue. For the avoidance of doubt, it provided as follows:

> ***"The Speaker of the Senate shall –***
> ***if the Senate is then sitting or has been summoned to meet, bring the motion to the notice of the Senate for its consideration within seven days; or***

if the Senate is not then sitting, summon it to meet within twenty-one days of the notice to consider the motion.

(4) If a motion is passed under clause (3), the Senate <u>shall</u> appoint thirteen of its members as a special committee in accordance with the Standing Orders of the Senate to investigate the matter.

(5) The Special Committee shall investigate the matter and shall, within ten days, report to the Senate whether it finds the particulars of the allegations against the president to have been substantiated."

424. Similarly, **Article 155** of the Wako Draft mandated the formation of a special committee of thirteen Members of Parliament to investigate allegations once an impeachment motion was initiated. The provision was explicit and inflexible, leaving Parliament with no discretion. The committee route was compulsory, and the President retained the right to appear and be represented before the committee. For clarity, the **Article 155** provided as follows:

"Impeachment and removal of President

(1) A member of Parliament may, at any time, submit to the Speaker a notice in writing, signed by the member stating that the member intends to propose a motion for the impeachment of the President on the grounds of –

a. serious violation of the Constitution or the law; or

b. serious misconduct prejudicial to the interests of the Republic or which has brought the Office of President into disrepute, and setting out the particulars of the grounds.

c. The Speaker shall, if Parliament –

is sitting or has been summoned to meet, bring the motion to the notice of Parliament for its consideration within seven days of the notice;

is not sitting, summon it to meet within twenty-one days of the notice to consider the motion.

(2) …

(3) If a motion under clause (2) is passed by more than fifty per cent of all the members of Parliament, Parliament shall, in accordance with its Standing Orders, appoint a special committee comprising thirteen of its members to investigate the matter.

(4) The special committee shall investigate the matter and shall, within ten days of its appointment, report to Parliament whether it finds the particulars of the allegations against the President to have been substantiated.

(5) The President shall have the right to appear and be represented before the special committee during its investigations."

425. The Harmonized Draft of 2009, and its subsequent revision in 2010, represents the constitutional settlement now embodied in **Article 145**, which is the subject of contestation before us. To our mind, there appears to have been a deliberate harmony in the manner previous drafts treated the committee stage of impeachment proceedings. We are convinced that the framers intended to preserve this consistency across the drafts, rather than to depart from it. This conclusion is fortified by a wholesome reading of the Constitution which we explain in detail.

426. Interpreting the text before us requires a careful and nuanced exercise in constitutional interpretation. Fortunately, the Constitution itself provides guidance on how it should be read. **Articles 20(4) and 259(1)** establish the interpretive framework. **Article 20(4)** directs courts, when interpreting the Bill of Rights, to promote the values of an open and democratic society founded on human dignity, equality, equity, and freedom, while giving effect to the spirit and objects of the Bill of Rights. **Article 259(1)** further commands courts to interpret the Constitution in a manner that advances its purposes, values, and principles, strengthens the rule of law, protects human rights and fundamental freedoms, permits the development of the law, and contributes to good governance.

427. Over time, our courts have consistently emphasized that the 2010 Constitution demands a transformative approach to interpretation. Recognizing its highly progressive nature, courts have articulated several interpretive canons. In ***David Ndii & Others V Attorney General & Others, [2021] eKLR (the "BBI case"),*** the High Court identified four guiding principles: that the Constitution must be interpreted holistically, that it should not be approached with rigid formalism or treated as a mere statute, that its own theory of interpretation must be applied to safeguard its values, objects, and purposes and that non-legal considerations are essential to uncover its true meaning and values. The Supreme Court, in ***In the Matter of the Kenya National Commission on Human Rights [2014] eKLR,*** clarified that a holistic interpretation requires contextual analysis, which means reading provisions alongside and against each other, informed by history, disputes, and prevailing circumstances. Similarly, in ***Tinyefuza V Attorney General, [1997] UGCC 3,*** the Ugandan Court stressed that a constitution must be read as an integrated whole, with each provision sustaining rather than undermining the others.

428. The principle that the Constitution must not be interpreted through rigid formalism was also emphasized by the Supreme Court in ***Re Interim Independent Election Commission, [2011] eKLR*** and in ***Communications Commission of Kenya & Others V Royal Media Services Limited & Others, [2015] eKLR*.** The Court observed that constitutional interpretation requires more than positivistic approaches. The Court noted that **Articles 20(4) and 259(1)** incorporate non-legal considerations such as historical, social, cultural, and political realities that must inform judicial

reasoning. The Court highlighted that Kenya's modern Bill of Rights envisions a human-rights-based and social-justice-oriented society, and judicial authority, derived from the people under **Article 159(1),** must reflect these values in court decisions.

429. Former Chief Justice Mutunga, in his concurring opinion in ***Re the Speaker of the Senate & Another V Attorney General & 4 Others, [2013] eKLR*****,** also underscored that constitution-making was an ongoing process and acknowledged that compromises in drafting often create vagueness, and it is the Court's responsibility to resolve contradictions and clarify gaps. In his words, *"constitution making does not end with its promulgation; it continues with its interpretation."* Finally, the Court of Appeal in ***Centre for Rights Education and Awareness & Another v John Harun Mwau & Others, [2012] eKLR*** linked constitutional interpretation with statutory interpretation principles. It reiterated that courts must avoid absurd, impracticable, illogical, or artificial results, and must always strive to serve the public interest. Fidelity to both the letter and spirit of the Constitution requires interpretations that advance justice, rationality, and the common good.

430. Guided by the interpretive principles already outlined, we now turn to examine the purpose and intent of **Article 145(3)** of the **Constitution**. We do so with full appreciation of the demands of judicial humility and the doctrine of *stare decisis*, which binds inferior courts to the pronouncements of superior ones and is the bedrock of a coherent and predictable legal order. Our analysis is therefore offered within that

framework, not as a departure from it. We are aware that the Supreme Court has determined the question of interpretation of **Article 145(3)** in the ***Sonko decision (supra).*** We are mindful that the suggestion we advance here can, only at most, build upon existing jurisprudence or contribute to the broader legal discourse on this question. It is in that spirit, and with the deference owed to the Supreme Court, that we nonetheless set out the following reasoning and suggestion.

431. Having already traced the historical development of this provision, a comparison of the earlier drafts with the current text reveals a consistent approach to the introduction of a removal motion from the National Assembly. In every instance, the motion was to be formally tabled for consideration. The drafts made clear that once introduced, the motion would be debated and, if passed, a special committee constituted. This framework is now embedded in **Article 145(3)(a)** of the 2010 Constitution, which expressly obligates the Senate to convene and *"hear the charges"* against the President. These charges are the charges as contained in the removal motion transmitted from the National Assembly pursuant to **Article 145(2).** It is only after the Senate has heard the charges that **Article 145(3)(b)** comes into play.

432. It is important to note that the motion was never intended to be passed or dismissed as a mere formality. The House was called upon to consider, debate and resolve whether the motion should proceed or fail. If the motion failed, that marks the end of the matter, and no further proceedings would follow. Conversely, if Parliament determined that the

matter warranted investigation, it passed a resolution allowing the impeachment motion to proceed, and a special committee is then formed.

433. Returning to **Article 145(3)(a),** upon receipt of the removal motion, the Senate is required to hear the charges. While this hearing may not necessarily connote a formal trial, it provides an opportunity for the House to be apprised of the charges, the supporting evidence, and any accompanying documentation. At this stage, the Senate must decide, by resolution, whether the charges merit investigation. It is also at this point that the House considers whether other preliminary requirements, such as the constitutional threshold were properly satisfied by the National Assembly in the first place.

434. We have examined the Hansard record of the Senate sitting on Wednesday, 9th October 2024, convened pursuant to Kenya Gazette Notice No. 13170 Vol. CXXVI – No. 157. The record shows that the Hon. Speaker of the Senate duly appointed the session for the purpose of hearing the charges against the then Deputy President. During the sitting, the Speaker read out all eleven charges and formally laid before the Senate the documents conveying the resolution of the National Assembly. These materials included the Notice of Special Motion, the Affidavit of Hon. Eckoman Mwengi Mutuse, MP, electronic evidence relating to the motion, Order Papers, communications from the Chair, certified Hansard records, votes and proceedings, public participation

notices, correspondences from advocates, press statements, court orders, and other supporting documentation.

435. The Hon. Speaker proceeded to draw the attention of the House to the special and unique nature of the business before it. He reminded Senators that impeachment is a fundamental tool of legislative oversight and a critical component of the constitutional framework of checks and balances, noting further that the matter had attracted immense public interest. The Speaker then outlined the way forward, informing the House that, by its resolution, it had two options for handling the motion: either through a special committee or in plenary.

436. Significantly, the procedure adopted by the Speaker reveals that once the charges and supporting evidence were laid before the House, there was no opportunity for Senators to deliberate on whether further investigations were necessary. In particular, the House was not afforded the chance to engage in a substantive inquiry into the propriety of the process undertaken by the National Assembly or the validity of the charges themselves. The question that now arises is whether it was necessary for the Senate, in the first instance, to address itself to the need for investigations before proceeding to the actual hearing of the motion.

437. It must be emphasized that the Senate is not a mere conveyor belt for matters originating from the National Assembly or any other entity. Rather, it is a revered House, vested with autonomy and empowered to make decisions by way of resolutions. The Senate therefore retains

discretion to determine whether to accept any motion, petition, or request for further consideration, save in circumstances where the Constitution or statute expressly removes such discretion. This explains why the earlier drafts of the Constitution stipulated that a motion had to be passed before a special committee could be formed. The design was deliberate: the House was first required to decide whether the motion should pass or fail, and only upon passage would the question of constituting a special committee arise.

438. A useful illustration of this principle is found in the legislative process. Not all legislation automatically passes to the Senate. **Article 114**, for example, requires the Senate to consider whether a Bill transmitted from the National Assembly falls within its jurisdiction and warrants deliberation in the House. **Article 145(3)(b)** is therefore not unique in this regard. It was intended to give the Senate an opportunity to hear the charges, examine the evidence, and satisfy itself that at least the bare minimum constitutional and statutory requirements had been met on a *prima facie* basis. In doing so, the Senate would address fundamental preliminary issues such as whether the grounds of the special motion fall within those provided for in the Constitution or law; whether its jurisdiction has been properly invoked; whether the President has previously been tried on the same charges; whether prima facie evidence supports the charges; and whether the requisite threshold was attained in the National Assembly.

439. It is only after the Senate has addressed these preliminary issues that it proceeds to take a vote, by way of resolution, on whether to admit the motion for a full hearing or to defeat it. This explains the deliberate use of the word ***"may"*** in **Article 145(3)(b)**. The term ***"may"*** signifies discretion on the part of the Senate to determine whether the motion, as presented, satisfies the minimum constitutional and statutory requirements and therefore warrants further consideration. Once such a resolution is made, and the Senate decides to proceed, the House then turns to the procedure governing the hearing. Conversely, if the Senate is not satisfied that the motion merits further interrogation, the matter ends there.

440. There is, therefore, no ambiguity in the use of the word ***"may"*** in **Article 145(3)(b)**. It clearly connotes discretion and cannot be equated with the mandatory term ***"shall".*** The true meaning and intent of **Article 145(3)(b)** can only be appreciated in light of that historical context. To interpret the provision in isolation would risk stripping the Senate of its discretion to determine what matters it can lawfully consider.

441. This position finds support in the commentary of legal scholars **Luis G. Franceschi** and **PLO Lumumba in** ***The Constitution of Kenya: A Commentary*** (2nd Edition, 2019, Strathmore University Press, p. 485), where they observe:

> ***"In order to avoid the abuse of Parliament's power to impeach a President, the Constitution appropriately provides for a two-thirds majority threshold of the total***

members in both Houses of Parliament. Furthermore, the Senate is called to constitute a special committee to investigate the charges against the President and present a report as opposed to just voting as the National Assembly. In order to ensure fairness of the Senate's committee proceedings, the President has the right to appear and be represented before the special committee during its investigations."

442. Upon careful perusal of the Senate Hansard, however, we did not find any debate, proceedings, or resolution indicating that the House interrogated the motion as presented from the National Assembly or resolved on the way forward. The record shows that once the motion was laid before the House, the charges were read out and supporting evidence tendered. That was all. No resolution admitting the motion to a full hearing was made. The Senate instead proceeded directly to address the manner in which the charges were to be heard. In our view, this was a serious constitutional lapse that denied the Senate the discretion expressly provided under **Article 145(3)(b).**

443. Having so established, we take the position that once the Senate resolves to admit and proceed with the hearing of the motion, its discretion is spent, and the only course available is to appoint a special committee to investigate the matter. This conclusion flows naturally from the foregoing discussion and from the deliberate manner in which sub-articles **145(4), (5), and (7)** are structured. These provisions build

upon the process once the special committee is constituted, setting out the subsequent stages of investigation, the right of the (Deputy) President to appear and be represented before the committee, the tabling of the committee's report before the plenary, a second opportunity for the (Deputy) President to be heard, and finally, the Senate vote.

444. We ask ourselves, if the intention had been to follow a direct plenary route, why would the drafters not have said so? Why would they have crafted such detailed provisions for the committee process, only to mention the Senate at the tail end of that process? The deliberate sequencing of sub-articles **145(4)–(7)** leaves no doubt in our minds that the committee mechanism was intended to be the exclusive path once the Senate resolved to proceed. The plenary option was never envisaged as a substitute for the committee process, but rather as the forum for receiving and debating the committee's report. To hold otherwise would create an absurdity in which the Senate, as a House, would investigate and then present to itself the investigation report for voting.

445. At the risk of repetition, but for emphasis, we observe that the removal of the President by way of impeachment was not provided for in the retired 1963 Constitution, save for the superficial vote of no confidence. Kenyans were therefore deliberate in crafting a detailed procedure for the hearing of an impeachment motion under the 2010 Constitution. This procedure is well captured in the sub-articles to **Article 145**, which specify the number of members to be appointed to the special committee,

the committee's role in investigating the charges, and the strict timeline of ten days within which the committee must act.

446. Sub-article **145(5)** further commands the observance of two distinct rights of the President: first, the right to appear before the committee personally, and second, the right to be represented. These rights are not synonymous. The right to appear is exercised by the President as an individual, whereas the right to be represented allows the President to appear alongside counsel or to have counsel appear on his behalf. These two rights must be juxtaposed with the right provided in sub-article **145(6)(b),** which grants the President an opportunity to be heard at the plenary once the committee finds any of the charges substantiated. This right is again distinct, as an "opportunity to be heard" is not limited to a physical or oral hearing but encompasses the broader ability to present a defense in whatever form the Senate deems appropriate. This interpretation ensures a generous reading of the rights of the President, who is afforded representation and the opportunity to be heard both at the committee stage and again before the plenary. Such a generous interpretation is precisely what the Constitution commands.

447. For all the foregoing reasons, we would have suggested that there was a constitutional non-compliance in the Senate's failure to resolve on whether or not to admit the impeachment motion for purposes of conducting investigations before the hearing by the whole House. Additionally, we would have found that the failure to appoint a special committee to conduct further investigations was constitutionally infirm.

That said, we again defer, unreservedly and with the deepest respect, to the binding authority of the Supreme Court as settled in ***Sonko V County Assembly of Nairobi (supra)*** where the Court pronounced as follows:

> ***"In the previous ground (ii) above, we categorized the process of removing a Governor into two stages. This is the second stage. From subsection (3) of section 33 of the County Governments Act, the process moves to the Senate from the County Assembly. Within seven days after receiving notice of a resolution from the speaker of the County Assembly confirming the passage of the impeachment Motion, the Speaker of the Senate must convene a meeting of the Senate to hear charges against the Governor. The charges can be heard in the Senate plenary or in a forum of a special committee of the Senate that reports to the full Senate. In either case, the Governor is entitled to attend and to be represented by counsel during the investigations. It is only when sufficient evidence is presented to substantiate the claims that the Senate will, after according the Governor an opportunity to be heard, vote on each of the charges. If a majority of all the members of the Senate vote to uphold any of the charges, the Governor shall cease to hold office. We reiterate that proof of even a single charge will suffice for purposes of article 181 of the Constitution. But should the vote for removal fail, that will bring the proceedings to an end."***

448. That pronouncement represents the settled and binding position of law. We are constitutionally obliged to follow it, and we do so without reservation, notwithstanding the views we expressed above. We observe, in passing, that although the Supreme Court's pronouncement in ***Sonko*** was rendered in the context of interpreting the County Governments Act, the provisions of that Act mirror, in virtually identical terms, the language of **Article 145** of the **Constitution**. That correspondence reinforces its application to the present matter

FAIR TRIAL

449. The gist of this issue turns on whether H.E. Gachagua was subjected to a lawful and fair trial process within the meaning of **Articles 47 and 50** of the **Constitution**.

450. The Petitioners contended that the Senate's conduct of the impeachment trial was fundamentally and irreparably flawed, falling far short of the constitutional standards of fairness, legality, and procedural propriety guaranteed to H.E. Gachagua under the stated provisions. Their challenge on this ground was advanced on several distinct and cumulative bases.

451. They argued that H.E. Gachagua was denied his right to a fair trial when, having fallen ill and been hospitalized on 17th October 2024, the Senate refused adjournment requests and proceeded in his absence, ultimately voting on five of the impeachment charges. That the Senate

was constitutionally bound under **Articles 145(3)(b) and 145(4)–(6)** to appoint a Special Committee of eleven members to investigate the charges. By defeating the motion to establish such a committee and proceeding by plenary, the Senate deprived him of his right under **Article 145(5)** to appear and be represented before an independent investigative body insulated from political pressure and that the time afforded to H.E. Gachagua was grossly inadequate: only a few days to respond to eleven complex allegations and just two hours to present his defence, compared to the extensive time given to the National Assembly.

452. The Respondents, in defense, maintained that the Senate had accorded H.E. Gachagua a lawful and fair trial consistent with **Articles 47 and 50** of the **Constitution**, that the Senate acted reasonably by granting a short adjournment and offering a further extension to 19th October 2024 and when the formal motion was defeated, they submitted that discretion had been properly exercised, especially since no medical evidence was produced. They maintained that the Constitution conferred discretion to proceed by way of a special committee or plenary under **Article 145(3)(b)** and denied that new evidence or witnesses were introduced at the Senate stage.

453. We have carefully considered the forcefully and ably argued positions advanced by both sides. The constitutional standard against which the fairness of the Senate's conduct falls to be measured is clearly and comprehensively set out in **Article 50** of the **Constitution**. Of particular relevance to the present inquiry are the following guarantees, which

Article 50 confers on every accused person as components of the right to a fair trial:

> ***"(c) to have adequate time and facilities to prepare a defence;***
>
> ***(f) to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed;***
>
> ***(k) to adduce and challenge evidence."***

454. These guarantees do not stand alone. They are reinforced and complemented, in the specific context of impeachment proceedings, by the procedural rights expressly conferred by **Article 145(5)** and Article **145(6)(b)** of the **Constitution**, which provide as follows:

> ***"(5) The President shall have the right to appear and be represented before the special committee during its investigations.***
>
> ***(6) … the Senate shall, after according the President an opportunity to be heard, vote on the impeachment charges."***

455. To the foregoing must be added **Article 47** of the **Constitution**, which guarantees every person the right to fair administrative action that is lawful, reasonable, and procedurally fair. That right is not confined to purely judicial proceedings. It attaches to any exercise of public power that affects a person's rights, interests, or legitimate expectations, and it applies with full force to the impeachment process before a decision to

remove is taken. The Supreme Court in ***Sonko (supra)*** reaffirmed this position, holding that during the process of removal, both the right to fair administrative action under **Article 47** and the right to a fair hearing under **Article 50** accrue to the officeholder whose removal is sought. This Court reads that holding as applying with equal force to H.E. Gachagua in the present proceedings.

456. The Supreme Court further held that while impeachment is a political process, it is equally subject to constitutional discipline and the principles of natural justice, and that courts will not interfere with the merits of Parliament's decision unless a violation of fair hearing rights or procedural impropriety is established. Those two propositions together define both the standard the Senate was required to meet and the scope of this Court's supervisory jurisdiction in assessing whether it did so.

457. Against that framework, we turn to the specific circumstances of the present case. It is clear that during the proceedings, the National Assembly, as the prosecuting party in the Senate proceedings, presented its case through witnesses who were examined in chief and subjected to cross-examination in the full and formal sense of adversarial proceedings. There is no controversy about this fact.

458. The Petitioners contended that the Senate's refusal of the adjournment application denied H.E. Gachagua equality of arms and equal protection of the law by preventing him from participating in the oral proceedings at the precise stage when his own evidence was to be led. The

constitutional right to equality of arms has been expressly affirmed by the Court of Appeal in ***Oloo V Kisumu County Assembly Service Board & Another, [2025] KECA 333 (KLR)***, which cited with approval the following passage from ***Pinnacle Project Ltd V Presbyterian Church of East Africa, Ngong Parish & Another, [2018] eKLR***:

> ***"Fair trial in civil cases includes the right of access to a court, the right to be heard by a competent independent and impartial tribunal, the right to equality of arms, the right to adduce and challenge evidence, the right to legal representation, the right to be informed of the claim in advance before the suit is led, the right to a public hearing, and the right to be heard within a reasonable time."***

459. The question in the present case is not whether H.E. Gachagua was given any opportunity to be heard. He was. The precise and constitutionally significant question is whether, having been partially heard, the remainder of his participation was unlawfully curtailed at the point when the opposing party had already completed a full adversarial presentation. The National Assembly had presented its case in its entirety, its witnesses had testified, been examined, and cross-examined. H.E. Gachagua had not completed his. It was at that precise point of procedural imbalance with the scales of participation tilted irrevocably in favour of one party that the Senate refused the adjournment and proceeded to vote.

460. That is not a case of a party who was heard and then outvoted. It is a case of a party who was prevented from completing his hearing after his opponent had completed his. What we heard the Petitioners to be saying is that H.E. Gachagua, critically, was not merely a respondent who had filed documentary evidence. He was, on the uncontroverted evidence before this Court, his own sole witness. He was the only person who could speak to the facts from his own personal knowledge, give a first-hand account of the allegations against him, and submit himself to cross-examination in a manner that would have allowed the Senate to assess his credibility directly.

461. The Respondents relied on the Court of Appeal's decision in ***Kenya Revenue Authority V Murgani, [2010] KECA 508 (KLR)*** for the proposition that fairness does not always require an oral hearing, and that provided a body achieves the degree of fairness appropriate to its task, the manner in which it proceeds was a matter for its own institutional judgment. Drawing on ***Local Government Board V Arlidge [1915] AC 120, Selvarajan V Race Relations Board, [1975] 1 WLR 1686,*** and ***R V Immigration Appeal Tribunal, Ex Parte Jones, [1988] 1 WLR 477***, the Court of Appeal in ***Murgani*** concluded that a hearing conducted by way of written exchange may, in appropriate circumstances, constitute a fair hearing.

462. We do accept that general principle as binding on us. However, ***Murgani*** is plainly distinguishable on facts and context that are both material and decisive. That case concerned an administrative determination in which

no oral proceedings had been conducted at all. Both parties were in a position of formal procedural equality, the written process was the established mechanism, and the question was simply whether the absence of an oral hearing was fatal to fairness.

463. The present case is fundamentally different. The Senate did not choose, at the outset, to proceed by way of written submissions alone. It had agreed to a fully adversarial oral hearing with witnesses, examination in chief, and cross-examination. Having adopted that mode of proceeding, the Senate could not, at the moment H.E. Gachagua was to take the stand as his own sole witness, abandon the adversarial framework it had established for itself without satisfactory reason. To do so was to apply different procedural standards to the two parties. That disparity is the antithesis of equality of arms and is irreconcilable with the constitutional guarantees of **Articles 47 and 50**.

464. The Hansard record of the Senate proceedings of 17th October 2024 confirms that following the confirmation by Paul Muite, SC to the House that H.E. Gachagua had been taken ill, several Senators who rose to comment explicitly acknowledged, on the floor of the Senate that H.E. Gachagua was unwell. Not one of those Senators disputed his illness. They acknowledged it and then proceeded, notwithstanding that acknowledgment, to oppose the adjournment application. The circumstances must also be taken within the directions issued by the Speaker of Senate at that time. The Hon Speaker stated in part as follows:

"As this process is time-bound by the Constitution, to be concluded in not more than 10 days pursuant to Article 145 as read together with Article 150 of the Constitution and noting that the period provided for ends on Saturday, 19th October, 2024, <u>the only window open to the Senate, if it so obliged the request for adjournment sought by Counsel for the Deputy President, would be to Gazette Saturday the 19th October, 2024, as a further and final day for hearing of this matter.</u>

Hon. Senators, ladies and gentlemen, such a request is not made to the Speaker, but to the Senate and is accordingly a matter for the Senate to determine. To facilitate this decision, I direct the Clerk of the Senate to circulate a Supplementary Order Paper incorporating a Notice of Motion and a Motion for adjournment sought. This being a procedural matter, the Motion, if carried will result in the Speaker gazetting Saturday, 19th October, 2024, as a sitting day to conclude the hearing and determination of this matter. This being the last day allowed by the Constitution of Kenya for these proceedings to conclude."

465. The Speaker's communication meant that it was in fact open to the Senate to adjourn the sitting up to Saturday. The Senate, despite having the option to adjourn, and having expressly acknowledged the incapacity of the party before it, nonetheless proceeded to determine his fate in his absence. The significance of that course of conduct cannot be overstated.

That was not a proper exercise of constitutional discretion. It was its negation. We are convinced that had the Senate exercised its discretion genuinely, open-mindedly, and with conscientious regard for the constitutional rights of H.E. Gachagua, and had it directed its mind to the miscarriage of justice that its refusal was plainly going to occasion, this was a case in which the circumstances unambiguously called for an adjournment to be granted at least to the next day.

466. That conclusion is firmly supported by the Court of Appeal's pronouncement in ***Kariuki V Attorney General, [2014] KECA 713 (KLR)***, where the Court held as follows:

> ***"While bearing in mind that whether to grant an adjournment or not is discretionary and appellate courts are loath to readily question the exercise of discretion by the trial court, nevertheless it must never be forgotten that the right to an adjournment to enable a party to adequately prepare his or her case in a criminal trial is underpinned by no less an instrument than the Constitution. The authorities cited above relate to exercise of discretion to grant or refuse an adjournment in a civil dispute. We are of the opinion that although the same principles are relevant in respect of applications for adjournments of criminal trials, nevertheless because of the constitutional basis of that right and the potential impact on a citizen's liberty, the court is obliged to be more circumspect in rejecting an application***

> ***for adjournment and to specifically consider whether denial of such a right guaranteed by <u>the Constitution</u> would result in miscarriage of justice. …***
> ***In denying the appellant's application for adjournment, the court martial also did not address its mind to the critical question whether denial of the adjournment would occasion a miscarriage of justice. In*** *Job Obanda v Stage Coach International Services Ltd & Another, CA No. 6 of 2001****, this Court was emphatic that where, among others, a judge fails to apply his mind to the question whether a miscarriage of justice might be occasioned to a party who is refused an adjournment, that would constitute sufficient basis upon which an appellate court would be entitled to interfere with the exercise of the discretion."***

467. We say so with full appreciation of the non-derogable character of the right to a fair trial. It is not a right that yields to constitutional timelines or political exigency. It is an absolute constitutional guarantee and its violation cannot be justified by reference to any competing constitutional interest, however weighty or pressing that interest may be. This finding becomes even more compelling when one considers the Senate's misdirection in its interpretation of **Article 145(4)(b)**. Senate appeared to imagine that it had ten days within which to dispense with the impeachment hearing itself. Yet, the text and structure of that provision make clear that the ten-day period was intended to apply exclusively to the special committee once constituted. That, standing alone and

without need for further justification, is sufficient for us to conclude that this prayer must succeed.

468. Finally, we wish to make brief observations on the affidavit of Dr. Daniel Kibuka Gikonyo, sworn on 28th April 2026, which was admitted into evidence by leave of this Court, and tested by cross-examination when Dr. Gikonyo attended to give oral testimony. There is no doubt that the affidavit was not before the Senate on 17th October 2024 when the request for adjournment was made, and on that ground, we do agree with the Senate's submission that it could not have informed the House's determination at the time. The affidavit was additionally filed almost two years after the petitions were instituted, and no explanation was offered to us, including by Dr. Gikonyo himself for that delay. For those reasons, we do not attribute significant probative value to it. The circumstances as we have analyzed, were, independently and collectively, sufficient to warrant a reasonable adjournment. Dr. Gikonyo's evidence neither adds to nor detracts from that conclusion.

CONCLUSION

469. Upon careful consideration of the consolidated petitions, the responses filed, the submissions of counsel, and following our deliberations and analysis, we now pronounce ourselves on the issues presented.

Jurisdiction

470. We hold that the impeachment proceedings challenged herein are justiciable. This Court possesses jurisdiction under Articles 22, 23, and 165 of the Constitution to determine whether the National Assembly and the Senate acted within constitutional bounds, complied with constitutional procedures, respected constitutional rights, and remained faithful to the constitutional safeguards governing the impeachment of a Deputy President.

Allegations of Bias

471. The allegations of bias, predetermination, and conflict of interest advanced against the Speakers, Members of Parliament, and Senators are unsubstantiated. They rest on political inference and suspicion rather than objective evidence capable of satisfying the required threshold.

Public Participation

472. We are satisfied that the public participation conducted by the National Assembly in connection with the impeachment of H.E. Gachagua met the constitutional threshold. The Senate did not violate Articles 10 or 118 by failing to conduct its own independent public participation. We further hold that public participation was not constitutionally required for the nomination and approval of H.E. Kindiki as Deputy President under Article 149(1).

Constitutionality and Legality of Standing Orders

473. We find that the impugned Standing Orders of the Senate and the National Assembly are not unconstitutional.

Composition of the National Assembly, Role of IEBC, and Nomination of the Deputy President

474. We find that while the failure by Parliament to enact legislation on the gender rule remains a constitutional concern, this Court has recently clarified in the ***Konchellah & others*** decision that the remedy under **Article 261** is still available and must be pursued through the proper procedural channels. Consequently, it would be premature to hold that the National Assembly was improperly constituted for purposes of considering the impeachment motion.

We find that no input or intervention by the IEBC was constitutionally required in the mid-term replacement process under Article 149(1). The absence of IEBC involvement did therefore not render the nomination or filling of the vacancy unconstitutional. The gazettement of the Senate resolution, the President's nomination of H.E Kindiki, and the National Assembly's approval did not contravene the Constitution merely because they were undertaken expeditiously. We therefore affirm that the nomination and appointment of H.E. Kindiki as Deputy President was valid.

Constitutional Processes

475. We find that Parliament ought urgently to enact a dedicated statutory framework for the removal of the Deputy President under Article 150. The phrase *"with the necessary modifications"* is a substantive constitutional directive requiring Parliament to adapt the presidential removal framework to the distinct constitutional position of the Deputy President. However, the absence of such legislation does not vitiate the impeachment process already undertaken. We further hold that under Article 145, the Senate was at liberty to conduct the trial either by way of plenary or through a special committee.

The Right to a Fair Trial Under Article 47 and 50

476. We find that H.E. Gachagua's rights were infringed when the Senate declined to allow an adjournment. This violation constitutes both a vindication of his rights and a recognition of the constitutional infirmity in the process but does not undo the impeachment itself, given the finality of Article 145(7) and the constitutional absurdity that would arise from dual incumbency.

477. The Constitution is the grundnorm, and where that grundnorm deliberately and unequivocally withholds authority from the Court, such limitation must be respected.

REMEDIES

478. Before pronouncing our final orders, we deem it necessary to first address the nature of remedies sought and to explain their constitutional foundation.

479. This Court has been invited to grant various reliefs arising from the partial success of the consolidated petitions. Our jurisdiction to issue such reliefs is firmly anchored in **Article 23** of the **Constitution**, which empowers the Court to grant appropriate remedies for the enforcement of rights and fundamental freedoms. These remedies include declarations of rights, injunctions, conservatory orders, declarations of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under **Article 24**, orders for compensation, and orders of judicial review.

480. The Courts have, over time, provided guidance on the considerations applicable in granting constitutional relief. In affirming that a Court is not confined to the remedies expressly enumerated under **Article 23**, the Court of Appeal in ***Total Kenya Limited V Kenya Revenue Authority, (2013) eKLR*** held that even where specific reliefs are expressly provided, a Court is not precluded from issuing any other orders under its inherent jurisdiction, so long as such orders are necessary to ensure that justice is done between the parties.

481. In the same vein, the High Court in ***Simeon Kioko Kitheka & 18 Others V County Government of Machakos & 2 Others, (2018) eKLR*** held that

Article 23 of the **Constitution** does not expressly bar the Court from granting conservatory orders where the constitutionality of legislation is challenged. Similarly, in ***Republic ex parte Chudasama V The Chief Magistrate's Court, Nairobi & Another, Nairobi HCCC No. 473 of 2006; [2008] 2 EA 311*****,** Rawal J *(as she then was)* emphasized that the Court retains inherent jurisdiction to fashion appropriate remedies to secure the ends of justice in the following words:

> ***"While protecting fundamental rights, the Court has power to fashion new remedies as there is no limitation on what the Court can do. Any limitation of its powers can only derive from the Constitution itself. Not only can the court enlarge old remedies, it can invent new ones as well if that is what it takes or is necessary in an appropriate case to secure and vindicate the rights breached. Anything less would mean that the Court itself, instead of being the protector, defender, and guarantor of the constitutional rights would be guilty of the most serious betrayal. See*** *Gaily vs. Attorney-General [2001] 2 RC 671; Ramanoop vs. Attorney General [2004] Law Reports of Commonwealth (From High Court of Trinidad and Tobago); Wanjuguna vs. Republic [2004] KLR 520*. **…**
>
> ***The Court is always faced with variety of facts and circumstances and to place it into a straight-jacket of a procedure, especially in the field of very important, sensitive and special jurisdiction touching on liberties and rights of subjects shall be a blot on independence and***

many facetted jurisdiction and discretionary powers of the High Court."

See <u>The Judicial Review Handbook (3rd Edn)</u> by Michael Fordham at 361.

482. Speaking to the nature of appropriate reliefs, the Constitutional Court of South Africa in ***<u>Fose V Minister of Safety & Security [1977] ZACC 6</u>*** observed:

> ***"… Appropriate relief will in essence be relief that is required to protect and enforce the Constitution. Depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a mandamus or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all-important rights."***

483. Regarding declarations and damages for constitutional violations, the Court of Appeal in ***<u>Gitobu Imanyara & 2 Others V Attorney General, [2016] eKLR</u>*** emphasized that constitutional remedies are not confined to declarations alone but may extend to compensatory relief where rights have been infringed. The Court observed that damages serve not merely as recompense to the injured party but also as a means of vindicating the

Constitution itself, and ensuring that violations are met with effective and meaningful redress. The Court of Appeal spoke thus:

> ***"The relevant principles applicable to award of damages for constitutional violations under the Constitution was explained exhaustively by the Privy Council in the famous case of*** *Siewchand Ramanoop v The AG of T&T, PC Appeal No 13 of 2004****. It was held that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense."***

484. In referring to Lord Nicholls at Paragraphs 18 & 19 of that decision, the Court of Appeal affirmed the position that:

> ***"When exercising this constitutional jurisdiction, the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases, more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation.***
>
> ***But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.***

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong.

An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. (emphasis ours)

All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award." (emphasis ours)

485. The Court also cited, with approval, the decision of the Constitutional Court of South Africa in ***Dendy V University of Witwatersrand, Johannesburg & Others, [2006] 1 LRC 291*** where it was held that:

> ***"… The primary object of constitutional relief was not compensatory but to vindicate the fundamental rights infringement and to deter their future infringement. The test was not what would alleviate the hurt which plaintiff contended for but what was appropriate relief required to protect the rights that had been infringed. Public policy considerations also played a significant role. It was not only the plaintiff's interest, but the interests of society as a whole that ought as far as possible to be served when considering an appropriate remedy."***

486. The Petitioners sought an extensive range of remedies. In total, forty-nine declarations were prayed for, distributed across several thematic areas: nine declarations relating to public participation; fifteen declarations touching on the impeachment motion and process; three declarations on fair hearing and due process; three declarations concerning the Senate proceedings and committee process; two declarations on Standing Orders; one declaration on the National Assembly and gender composition; eight declarations on the appointment of H.E. Kindiki as Deputy President; five declarations on the vacancy in the Office of Deputy President and the nomination process; two declarations on the violation of voters' rights; and one declaration regarding members of the National Intelligence Service.

487. Beyond declaratory relief, the Petitioners also sought five orders in the nature of certiorari, two orders of mandamus, and two injunctive orders. They further prayed for reinstatement of H.E. Gachagua to the office of Deputy President, an order for apology, and costs. In addition, there was an elaborate prayer for damages and compensation.

488. In considering the reliefs sought, it is evident that two prayers have since become moot. The first is the injunction seeking to restrain the President, the National Assembly, and any other state organs from proceeding with or effecting the appointment of any person to the office of Deputy President pending the hearing and determination of the petitions. The second is the conservatory order restraining the Respondents from collecting signatures, lodging any motion, or conducting any proceedings seeking to impeach the Deputy President. For clarity, these two prayers are disallowed.

489. The primary relief sought in these petitions is the quashing of the impeachment of H.E. Gachagua. Although this may appear straightforward, it presents profound legal and practical challenges. The starting point is the Supreme Court's consistent position that courts cannot interfere with constitutional timelines. This principle has been affirmed in several decisions, including ***Odinga v Independent Electoral and Boundaries Commission & 3 others (supra); Independent Electoral and Boundaries Commission v Attorney General [2025] KESC 57 (KLR); Konchellah v Sunkuli & 2 others [2018] KESC 58 (KLR)*** and ***Mate V Wambora (supra)***).

490. The implication of these determinations is clear. Where the Constitution prescribes that a particular action must be undertaken within a defined timeframe, that period cannot be altered or extended. Once such a constitutional process concludes, it can only be set aside in the manner expressly provided for by the Constitution; a principle referred to as the *doctrine of constitutional finality.* It stands in contrast to processes established under ordinary legislation, where courts may intervene by extending timelines, staying proceedings, or even declaring provisions unconstitutional. For example, gubernatorial removal proceedings are governed by statute rather than the Constitution, and therefore fall under what may be termed *statutory finality.* By contrast, the removal of the President or Deputy President is a constitutional process that culminates in the Senate, and thus enjoys constitutional finality. It is therefore on account of these glaring differences that this Court cannot apply, *mutatis mutandis*, the jurisprudence on removal of County Governors to the removal of the President or Deputy President.

491. Consequently, once the Senate resolved to impeach H.E. Gachagua and the National Assembly confirmed H.E. Kindiki as Deputy President of the Republic of Kenya, the constitutional process was complete. The impeachment and subsequent filling of the vacancy became fait *accompli.* The constitutional text is categorical that the cessation of office is automatic and does not require any further act of implementation. **Article 145(7)** of the **Constitution** provides that:

492. ***"If at least two-thirds of all the members of the Senate vote to uphold an impeachment charge, the President shall cease to hold office."***

493. In this context, there are only two possible avenues out. The first would be if the **Constitution** itself had provided for additional processes beyond impeachment. However, no such provision exists. We emphasize that had the framers intended further procedures, they would have expressly included them. Such an example is **Article 163** which stipulates that the Supreme Court shall consist of seven judges, including the Chief Justice. Yet **Article 167** anticipates a scenario where the Chief Justice completes a ten-year term before attaining the retirement age of seventy, and chooses to continue serving as a judge of the Supreme Court. In such a case, the appointment of a new Chief Justice could temporarily increase the Court's composition to eight judges. This does not render the Court unconstitutional, because the Constitution is self-sustaining and expressly accommodates such eventualities.

494. The second avenue, which presents a serious constitutional challenge, is this Court's power to quash the Senate's resolution. If the Senate's resolution were quashed, the law would, by operation, restore the status quo ante. This would mean that H.E. Gachagua automatically resumes office as Deputy President, irrespective of his stated unwillingness to return. We cannot treat the submission made by his counsel, Mr. Paul Muite, SC, as a valid basis for vacating the Deputy President's office. **Article 148(6)** of the **Constitution** clearly prescribes the circumstances under which a Deputy President's term may end in the following terms;

The term of office of the Deputy President shall run from the date of the swearing in of the Deputy President, and shall end-

(a) when the person next elected President at an election under Article 136(2)(a) is sworn in;

(b) on the Deputy President assuming the office of President; or

(c) on resignation, death or removal from office of the Deputy President.

495. The manner in which a Deputy President may resign from office is equally provided for in **Article 148[7]** as follows: -

The Deputy President may resign from office at any time by notice, in writing, addressed to the President and the resignation shall take effect on the date and at the time specified in the notice, if any, or if a date is not specified, at noon on the day after the notice is delivered.

496. Since the Constitution expressly prescribes the manner in which a Deputy President may vacate office, that procedure must be followed to the letter. Any departure from it would be unconstitutional and incapable of effecting a lawful removal. Accordingly, once the Senate's resolution is quashed, H.E. Gachagua immediately resumes office as Deputy President, regardless of any contrary statements made by his legal team. This is not a matter of personal choice but a constitutional inevitability. It is then upon H.E. Gachagua either to vacate office in the manner provided under the Constitution or to continue serving in that capacity. We believe that this determination also deals with the relief

seeking the reinstatement of H.E. Gachagua as the Deputy President of the Republic of Kenya, which some Petitioners have pressed for.

497. Moving on, if the Senate resolution were quashed, the inevitable consequence would be the existence of two Deputy Presidents. In this regard, we note that H.E. Kindiki's ascension to office was through **Article 149(1),** a process this Court has already affirmed as constitutional. Accordingly, the only lawful means by which he may leave office is also through **Article 148(6)** of the Constitution. Yet, there is no certainty that he would do so.

498. We have no doubt that Kenyans never intended such a constitutional anomaly, and indeed the Constitution does not contemplate dual incumbency in the presidency. Even if H.E. Kindiki were to vacate office, a further constitutional dilemma arises: the validity of actions taken during his tenure. Decisions made, policies implemented, and official acts performed while he occupied the office cannot simply be disregarded. Their legitimacy would inevitably be called into question, thereby deepening an already complex constitutional puzzle.

499. We are further aware that any repeat impeachment may only be undertaken after the timelines prescribed by the Standing Orders have lapsed. In the intervening period, such a scenario would precipitate a constitutional crisis, as neither Deputy President could be deemed subordinate or superior to the other. The office itself would be rendered inoperative, with both incumbents holding equal legal authority, one by

judicial fiat, the other through a constitutional process. This raises profound questions: Who, in law, would be recognized as the Deputy President? Who would transact government business? Who would discharge the constitutional duties assigned to that office? The resulting uncertainty, confusion, and rivalry would destabilize governance. Inevitably, the matter would assume a political dimension, with the potential to plunge the nation into unrest and chaos.

500. We believe that a Court bears a solemn duty not to precipitate a constitutional crisis. This principle was clearly articulated in ***Nairobi High Court Petition No. E019 of 2021 Law Society of Kenya vs. Anne Kananu Mwenda and Others (2021) eKLR*** where the Court held: -

> ***"A Court of law must, as a primary duty and in public interest, uphold the Constitution. A Court must not in any manner whatsoever create a constitutional crisis. It remains the cardinal duty of a Court to foresee such a crisis and take steps to avoid it."***

501. That reasoning directly applies to the present matter. Having carefully weighed the competing considerations, the rights of H.E. Gachagua on the one hand, and the orderly governance of the Republic on the other, we are compelled to preserve constitutional stability and avoid creating a scenario that risks plunging the nation into disorder. To hold otherwise presents profound constitutional and practical difficulties.

502. Even as we so hold, another dilemma arises: Can this Court as an alternative declare that H.E. Gachagua, though impeached, is exempt from the constitutional limitations that follow impeachment? We are persuaded that it cannot. The restrictions and consequences attendant upon impeachment are expressly set out in the Constitution, and this Court has no authority to set them aside. To do so would amount to amending the Constitution through judicial order an act wholly outside the constitutional framework and impermissible in law.

503. Before leaving this subject, we must acknowledge the doctrine of constitutional dilemma, which emerges here from the tension between the constitutional finality of impeachment and the vindication of individual rights. This tension is not unique to our jurisdiction; comparative jurisprudence, particularly from the United States, illustrates how courts have adopted a principle of total avoidance, treating impeachment as non-justiciable. Yet, our constitutional framework demonstrates that avoidance alone cannot resolve the persistent questions that arise. In light of this recurring tension, it may be necessary to consider a constitutional amendment to clarify both the scope of impeachment finality and the proper role of judicial review.

504. We now turn to H.E. Gachagua's quest for pension and emoluments under the *Retirement Benefits (Deputy President and Designated State Officers) Act [hereinafter referred to as "the Act"]*. The Preamble of the Act makes clear that it is an Act of Parliament to provide for the granting of pension and other retirement benefits to persons who hold the office of the

Deputy President and persons who have served as Prime Minister, Vice-President, Speaker, Deputy Chief Justice or Chief Justice after 1st January 1993, and for connected purposes.

505. **Section 7** of the **Act** provides for pension and other benefits of a retired Deputy President or retired Vice-President. **Section 2** defines a "retired Deputy President" as a person who, having held the office of Deputy President, has ceased to hold office as such in the manner specified in the Constitution.

506. The interpretive question that arises is whether a Deputy President who ceases to hold office by reason of impeachment can be deemed a "retired Deputy President" within the meaning of the Act. Whether courts can legitimately interpret impeachment as "retirement" is a weighty and novel question. None of the parties addressed us on this issue. We are therefore of the considered position that it is not properly before us to pronounce ourselves on the same for that would be presumptuous and would amount to stepping beyond the pleadings and submissions of the parties. Accordingly, we decline to make any findings on this point. The parties are at liberty to pursue the matter further.

507. In light of the foregoing, it must be emphasized that H.E. Gachagua is not without constitutional remedies despite the impracticality of quashing the impeachment or even reinstatement. We are persuaded that, in the circumstances, the violations of his rights can be vindicated through declaratory relief and an award of damages. Guided by the

principles in ***Gitobu Imanyara (supra),*** we hold that the infringement of H.E. Gachagua's fair trial rights during the impeachment proceedings demands a remedy that transcends mere acknowledgment. Declaratory relief will serve to formally recognize the breach, while damages will provide tangible redress and underscore the gravity of the violation. It is important to clarify that such damages are not intended to compensate him for the loss of office. Rather, they serve a higher constitutional purpose, to vindicate the supremacy of the Constitution, restore his dignity, and deter similar infractions in future impeachment proceedings.

508. Additionally, an Order of Mandamus was sought to compel the National Assembly and Senate to promulgate a constitutionally compliant procedure for removal of the Deputy President by impeachment. We find this prayer to be merited. For clarity, the lack of such legislation per se does not, however, impugn the instant impeachment proceedings.

509. Lastly, we find that since most of the prayers sought in the consolidated petitions have failed, coupled with the public interest nature of the matter, parties herein ought to bear their respective costs. Given that the ***Gitobu*** case was resolved a decade ago, with Mr. Gitobu receiving damages of 15 million, the lapse of time justifies an upward adjustment of the award.

FINAL ORDERS

1) ***The prayer seeking to quash the resolution of the senate to impeach H.E. Gachagua is hereby declined.***
2) ***A declaratory order is hereby issued that H.E. Gachagua's fair trial rights were infringed when the Senate declined to allow an adjournment in the impeachment proceedings despite his absence.***
3) ***A declaratory order is hereby issued affirming the constitutional necessity for Parliament to enact a dedicated statutory framework governing the impeachment of the Deputy President under Article 150 of the Constitution.***
4) ***The Court makes no findings on pension and emoluments. The 1st Petitioner is at liberty to pursue the matter before an appropriate forum.***
5) ***The Court awards constitutional damages of Kshs. 50 million to H.E Gachagua payable by the Senate, to vindicate the Constitution, restore the dignity of the affected party, and deter future violations.***
6) ***Each party shall bear its own costs, given the public interest nature of these proceedings.***
7) ***For the avoidance of doubt, any prayer not expressly allowed herein is disallowed.***

Before we take leave of this matter, we wish to record our appreciation to all Counsel who appeared in these petitions for their industry, diligence, and the quality of their submissions. Their collective effort has contributed to the development of constitutional jurisprudence on this subject. We also extend our gratitude to the Judiciary staff who worked tirelessly to support the Bench in ensuring that this decision, the first of its kind under the 2010 Constitution, was rendered in time.

DATED, SIGNED AND DELIVERED IN NAIROBI
THIS *8TH* DAY OF *JUNE 2026.*

E.O. OGOLA	**A. MRIMA**	**F. MUGAMBI**
JUDGE	**JUDGE**	**JUDGE**