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## KISII COUNTY GOVERNMENT

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Kisii, Kenya.

### COUNTY ASSEMBLY THIRD ASSEMBLY-(THIRD SESSION) ORDER PAPER

WEDNESDAY 21<sup>ST</sup> FEBRUARY, 2024 AT 9:00 AM

#### PRAYERS

1. Administration of Oath
2. Communication from the chair
3. Messages
4. Petitions
5. Papers
6. Notices of motions
7. Statements
8. \*MOTION REMOVAL FROM OFFICE BY WAY OF IMPEACHMENT OF THE DEPUTY GOVERNOR OF KISII COUNTY GOVERNMENT.

(Hon. Wycliff Siocha Gesongori, MCA)

COGNIZANT of the provisions of Article 181 (1) (a) & (c) of the Constitution of Kenya, 2010 that lays down the grounds upon which a County Deputy Governor may be removed from office of the deputy governor by way of impeachment as read together with the procedure laid down under Section 33 of the County Government

Act, as further read together with **Standing Order no. 60 and 61** of the Kisii County Assembly Standing Orders.

**AND WHEREAS** that **Article 10** as read together with **Article 73, 74, 75 and 232** of the **Constitution of Kenya, 2010** provides for accountability for state officer to the public, for decisions and actions as a key guiding principle of leadership and integrity, further aware that **Section 8, 9, 10, 11, 24, 32 and 34 of the Leadership and Integrity Act**, provides for the general leadership and integrity code to wit:- breach of public trust, failing to carry out the duties of his office in a professional, transparent and accountable manner, using his office to unlawfully enrich himself, failing to conduct the duties of his office with impartiality and objectivity in accordance with Articles 10, 27, 73(2)(b) and 232, and practicing favouritism and engaging in corrupt or unethical practices, and engaging in actions that bully a person. And further aware that **Section 11(1), (2)(a)(i), (c) of the Public Officers and Ethics Act**, that provides that a public officer shall not use his office to improperly enrich himself or others and shall not accept favours from a person who has an interest that may be affected by the carrying out of the public officer's duties and shall not for the personal benefit of himself or another, use or allow the use of information that is acquired in connection with the public officer's duties. And further further aware that **Section 6(1)(a), (c), (2) (3) of the Bribery Act**, that provides a person commits the offence of receiving a bribe if the person requests, agrees to receive or receives a financial or other advantage intending that a relevant function or activity be performed improperly by that person receiving the bribe and in anticipation of or as a consequence of a person requesting for, or agreeing to receive or accepting a financial or other advantage an activity is performed improperly by that person or another person

**FURTHER AWARE THAT**, the Deputy Governor, H.E. Dr. Robert Onsare Monda, has duly failed to uphold the oath office and instead he has grossly violated the constitution of Kenya, has abused the office and his conduct is wanting;

The County assembly **NOW** resolves to remove **Hon. Dr. Robert Onsare Monda**, (herein referred to as the **County Deputy Governor**) from the office of the county deputy governor of Kisii, by way of impeachment pursuant to **Article 181 (1) (a) & (c) of the Constitution of Kenya 2010, Section 33 of the County Governments Act, 2012** and the **County Assembly Standing Order. No 61 as read with 60** on the following grounds that: -

**1. Gross violation of the constitution or any other law;**

**WHEREAS Article 179 (4)** vests deputy chief executive power on the deputy governor **And Whereas** in consideration of the provisions of **Article 10 and 73(1)(a)(iii) &(iv) of the constitution of Kenya 2010**, in so far as it connotes to the manner in which a state officer is expected to exercise assigned authority, **Article 75(1) of the constitution as read with sections 8, 9, 10, 11, 24, 32 and 34 of the leadership and integrity act ,2012** and sections **9 and 11(1), (2)(a)(i), (c) of the public officer ethics act** obligates a state officer to behave in all senses in a manner that is devoid of comprising public or official interest in favour of personal interest. The Deputy Governor actions of requesting for a bribe, receiving a bribe is meant to compromise the integrity of the recruitment institution of GWASCO and the same is driven by nepotism, favoritism, improper and ulterior motives and for corrupt purposes in complete disregard of the provisions of **Article 73(2) (b)** and **Article 73(2) (c)**.

By virtue of the deputy governor requesting and receiving a bribe of **Eight Hundred Thousand Shillings Kshs. 800, 000/=** he is in breach of the provisions of **Article 232**, which obligates public officers to observe the values and principles of public service that include high standards of professional ethics, fair competition and merits

as the basis of appointments and promotions and **Article 73(2(d))** of the **constitution** requires all state officers to be accountable to the public for their decisions and actions.

The Deputy Governor Dr. Robert Onsare Monda violated **Articles 10, 73, 75 and 232 of the Constitution** which bind state officers while discharging their duties in offices inter alia;

The Gusii Water and Sanitation Company GWASCO advertised for various job vacancies in April 2023, and the said deputy governor alerted Dennis Mokayas' father that he could secure his son a job upon paying a bribe of Eight Hundred Thousand Shilling only upon his shortlisting and being interviewed for the post.

The Deputy Governor used his office to improperly confer a benefit to himself when he solicited a sum of Kshs. 800,000/= from one Dennis Mokaya and his family in the pretext to secure him a job for the said post of a commercial Manager of GWASCO, an entity of Kisii County Government;

The Deputy Governor received a sum of Kshs. 799, 000/= through Mpesa platform as follows: the first tranche was on 28<sup>th</sup> May 2023- KES 249,000/=; (sent in Three (3) tranches of Kshs. 150, 000/=, 49, 000/= and 50, 000/= by Dennis Mokaya Mosati on 0725487300 to the deputy governors' safaricom line being 0711860700) the second one was KES 250,000/= to the deputy governors' safaricom line being 0711860700 and the last was tranche in the sum of kenya shillings KES 300,000/=which was delivered to his offices in Gusii stadium in cash.

The Deputy Governor in an attempt to influence the award of a contract of employment to Dennis Mokaya, the deputy governor sent via mpesa a sum of Kenya shillings kes 100,000 to the Managing Director GWASCO in order to influence her to

employ the said Dennis Mokaya which request was not acceded to by the Managing Director GWASCO and the money returned via mpesa to the Deputy Governor.

While realizing that the deputy chief executive authority vests in the deputy governor, was there need for the Deputy Governor to grease the palms of the Managing Director of GWASCO to give Dennis Mokaya the said post?

Mr. Dennis Mokaya complained to the County Assembly to intervene in its oversight capacity.

Mr. Dennis Mokaya thereafter registered a complaint and recorded a statement with EACC and submitted among other documents; the advertisement from GWASCO on the vacant post to be filled, his letter of application for the job, the invitation letter from GWASCO to attend the interview and his Mpesa statement for the month of May 2023 detailing the transfer of the KES 249 000/= to the Deputy Governor.

Despite this huge payment made Mr. Dennis Mokaya and his family never secured the job.

On informing the deputy Governor that he will be forced to make a formal complaint to Anti -Corruption Commission on the matter, the latter threatened his life and of his family, consequently it forced the former to go into hiding.

## **2. Abuse of office**

The actions of the Deputy Governor, H.E. Robert Monda of using his office to solicit for Kshs. 800, 000/= Eight Hundred Thousand Shillings only, thereby conferring a financial benefit on himself and subsequently sending Kshs. 100, 000/= to GWASCO managing director so as to influence the award of a contract of employment to a

preferred interviewee, he has abused the office of the deputy governor and is in breach of Article 73, 75 of the constitution of Kenya, Section 8, 9, 10, 11, 13, 24, 32 and 34 of the Leadership & Integrity Act by breach of public trust, failing to carry out the duties of his office in a professional, transparent and accountable manner, using his office to unlawfully enrich himself, failing to conduct the duties of his office with impartiality and objectivity in accordance with Articles 10, 27, 73(2)(b) and 232, and practicing favouritism and engaging in corrupt or unethical practices, and engaging in actions that bully a person.

The Deputy governor is in violation of Section 11(1), (2)(a)(i), (c). of the Public Officers & Ethics Act, that provides that a public officer shall not use his office to improperly enrich himself or others and shall not accept favours from a person who has an interest that may be affected by the carrying out of the public officer's duties and shall not for the personal benefit of himself or another, use or allow the use of information that is acquired in connection with the public officer's duties, as well as Section 6(1)(a), (c), (2) (3) of the **Bribery Act**, that provides a person commits the offence of receiving a bribe if the person requests, agrees to receive or receives a financial or other advantage intending that a relevant function or activity be performed improperly by that person receiving the bribe and in anticipation of or as a consequence of a person requesting for, or agreeing to receive or accepting a financial or other advantage an activity is performed improperly by that person or another person.

He unilaterally used the office to intimidate and cow his family into hiding fearing for their lives in contravention of Section 34 of the integrity Act, 2012.

In furtherance of abuse of his office, the Deputy Governor has continuously diverted County enforcement officers from their course of duty to work in his farm, a portion of land allocated to him by his father. Since he came into office, there has been at

least Five (5) officers working in the farm a clear demonstration that the Deputy Executive in chief is misusing the staff of the county.

On the 20<sup>th</sup> December 2023, The Deputy Executive in chief, deployed a contingency of about Twenty (20) County Officers under the supervision of the Sub-county administrator to arrest his brother one Reuben Monda Orang'i Matundura for cutting down trees that his brother Reuben Monda Orang'i had planted. In exercise of his executive power, the Deputy Executive in chief, ensured his handcuffed brother was bungled in the police vehicle and was incarcerated in Keuinbu Police Station for Three (3) hours without an Occurrence Book (OB) booking. At 1830hrs the OCS denied the sickly Reuben Monda Orang'i (who suffers from high blood pressure and diabetes) and he was immediately transferred to Kisii Central Police Station.

At Kisii Police Station, the helpless Reuben Monda Orang'i was further detained without a booking on the OB and without the option of bail or bond pending presentation to Court. At one point the sickly Monda Orang'i had to be rushed to Kisii Teaching and Referral Hospital for an urgent medical intervention, however, on reaching the hospital, Reuben Monda Orang'i was never attended to by any doctors as the OCS Kisii Central Police Station received instructions to immediately take him back to the police station. With his condition now deteriorating, Reuben Monda Orang'i was sped back to the police station until 0020hrs where he was issued with a cash bail of Kshs. 30, 000/=. The medical condition of the old man deteriorated to the extent that he was hospitalized in Coptic Hospital for about Three (3) weeks and since then, he has been on injected insulin a condition that was not there before.

### **3. Gross misconduct**

The Deputy Governor interfered with the appointment of the vacant position of the Commercial Manager of Gwasco by attempting to bribe the Managing Director Ms. Lucy Wahito Wachira, a sum of KES 100,000/=. this was in the month of May 2023.

This act contravened Article 75 of the constitution. The Deputy Governor's engagement, connivance and or complicit behavior boils down to gross misconduct and gross abuse of office.

#### **4. Crimes under National law**

The actions of the Deputy Governor, H.E. Robert Monda of using his office to solicit for Kshs. 800, 000/= Eight Hundred Thousand Shillings only, thereby conferring a financial benefit on himself and subsequently sending Kshs. 100, 000/= to GWASCO managing director so as to influence the award of a contract of employment to a preferred interviewee, he is in violation of **Section 6(1)(a), (c), (2) (3) of the Bribery Act**, that provides a person commits the offence of receiving a bribe if the person requests, agrees to receive or receives a financial or other advantage intending that a relevant function or activity be performed improperly by that person receiving the bribe and in anticipation of or as a consequence of a person requesting for, or agreeing to receive or accepting a financial or other advantage an activity is performed improperly by that person or another person.

**\*DENOTES ORDERS OF THE DAY\***