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TWELFTH PARLIAMENT | SIXTH SESSION

16/6/2022

THE REPORT OF THE SENATE STANDING COMMITTEE ON LAND,
ENVIRONMENT AND NATURAL RESOURCES

ON

PETITION SUBMITTED BY THE RESIDENTS OF MKAMENYI VILLAGE
IN VOI SUB-COUNTY OF TAITA TAVETA COUNTY ON THE ALLEGED
ENCROACHMENT OF LAND BELONGING TO MKAMENYI RESIDENTS
BY VOI POINT LIMITED IN TAITA TAVETA COUNTY

CLERK AT THE TABLE
COMMITTEE
TABLED BY
DATE 16 th June, 2022
PAPERS LAID

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Recommended & Forwarded for Approval
14/06/22

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

JUNE, 2022

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LIST OF ABBREVIATIONS/ SYNONYMS

CS	- Cabinet Secretary
EACC	- Ethics and Anti-Corruption Commission
MOLPP	- Ministry of Land & Physical Planning
NLC	- National Land Commission
ODPP	- Office of the Director of Public Prosecution

PREFACE

Mr. Speaker sir,

The Standing Committee on Lands, Environment and Natural Resources is established pursuant to standing order 218(3) of the Standing Orders of the Senate. As set out in the Second Schedule, the Committee is mandated to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

Committee Membership

The Committee comprises of the following Members.

1. Sen. Paul Mwangi Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. George Khaniri, MGH, MP
4. Sen. Gideon Moi, CBS, MP
5. Sen. Njeru Ndwiga, EGH, MP
6. Sen. (Dr.) Lelegwe Ltumbesi, MP
7. Sen. Issa Juma Boy, MP
8. Sen. (Arch.) Sylvia Kasanga, MP
9. Sen. Johnes Mwaruma, MP

Chairperson

Vice-Chairperson

At the sitting of the Senate held on 30th September, 2020, Sen. Johnes Mwaruma, MP, reported to the Senate that a Petition had been submitted through the Clerk, by residents of Mkamenyi Village in Voi Sub-county of Taita Taveta County regarding the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County.

The salient issues raised in the said Petition are as follows-

1. THAT Mkamenyi Village borders Voi Sisal Estate, which is land that was initially given as a present by the colonial government to a retired British soldier by the name Major Lezen in 1920 for a period of 99 years;

2. THAT the British soldier surrendered the land to the Government in 1980 and was reallocated to Voi Sisal Estate Limited, which then transferred the lease to Voi Plantations Limited in 2012;
3. THAT Voi Plantation Limited transferred the lease to Voi Point Limited in 2019;
4. THAT between 1900 and 1930, the Sisal Estate management requested Mkamenyi elders to allow them to use part of their land located close to the river to-
 - a. carry out research on a variety of crops like coconuts, bananas, cashew nuts, sugarcane and sisal;
 - b. install a water pump; and,
 - c. grow food for their labourers.
5. THAT in the 1960s, the population of Mkamenyi residents had increased and so, they needed their land back and started agitating for the same;
6. THAT the Sisal Estate refused to give back the land but instead colluded with the police to forcefully extend its boundaries to the people's homesteads; evicting them and putting the land under sisal;
7. THAT those people who agitated for their rights of the Mkamenyi residents were arrested, charged with trespass and some were jailed;
8. THAT on 11th May, 2019, the Senate Committee on Lands, Environment and Natural Resources visited Taita-Taveta County to hear and recommend appropriate actions to solve the land problem in Mkamenyi;
9. THAT in July 2019, the Chief Administrative Secretary of the Ministry of Lands accompanied by land officers in the county, Ministry of Interior and Coordination of National Government officers, the Sisal Estate management and political leaders in the county met the residents of Mkamenyi and promised to give back the land being illegally occupied by the Sisal Estate to the residents;
10. THAT on 29th October, 2019, the management of Voi Point Limited invited three representatives of Mkamenyi residents to a meeting at Ngutuni Lodge, where they informed them that-
 - a. the management would give them 35 acres of land instead of the over 150 acres they were occupying and have been claiming; and,

- b. the 35 acres which were being offered would be used to settle 28 families occupying the disputed land.
11. THAT the 33 members refused to accept that the offer of 35 acres, claiming that it was not adequate and that they needed more than 150 acres that the residents of Mkamenyi were initially occupying;
12. THAT the management of Voi Point Limited proceeded to do survey and beaconing of the 35 acres of land they promised to offer without involving the residents or the county government and processed a group title deed for the same;
13. THAT on 25th August, 2020, the management of Voi Point Limited invited the residents for the issuance of the 35-acre title deed, but the residents rejected it due to the following reasons-
 - a. the residents needed more than 150 acres and not 35 acres that they were being offered;
 - b. the group title deed had names of persons who did not live in Mkamenyi listed as owners of the land; and,
 - c. the names listed in the title deed as the owners of the land were only six families, living out 22 families;
14. THAT efforts to resolve the matters raised in this Petition with the relevant authorities have proved futile;
15. THAT there is no case pending in court or any constitutional body on the matters raised in the Petition;

The petitioners prayed that the Senate;

- 1) deals with the Petition immediately in view of the urgency and seriousness of the matters raised herein;
- 2) investigates the circumstances that led to-
 - a. the decision to offer 35 acres and not the more than 150 acres of land which is adequate to settle the Mkamenyi residents;
 - b. the carrying out of survey and beaconing of the land without involving the county government or the residents; and

- c. the listing of names of persons not living in Mkamenyi as owners of the land being offered title deeds;
- 3) makes a declaration that the process followed in the offer of the 35 acre of land and its title deed to the residents of Mkamenyi was unprocedural and unlawful and, therefore, null and void;
 - 4) recommends that the Ministry of Lands initiates an all-inclusive, open and transparent process of giving the residents of Mkamenyi adequate land that can settle them once and for all; and
 - 5) takes any other appropriate action it deems fit to resolve the matters raised.

Pursuant to standing order 232(1) and the Second Schedule to the Standing Orders of the Senate, the Petition was committed to the Standing Committee Land, Environment and Natural Resources.

Pursuant to Articles 37 and 119(1) of the Constitution, section 5(2) the Petition to Parliament (Procedure) Act and standing order 232 of the Senate Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioner within the prescribed period.

To enable a judicious disposal of the Petition, the Committee resolved to conduct an inquiry on the issues raised in the Petition. In this regard the Committee invited the Petitioner to a meeting of the Committee for the Petitioner to elaborate further on the issues raised in the Petition and to supply supporting evidence on the same.

The Committee proceeded to invite the Cabinet Secretary, Ministry of Lands and Physical Planning, the National Land Commission and the Taita Taveta County Government to address respective issues raised in the Petition. The Committee thereafter made various observations and recommendations based on the stakeholder consultations carried out.

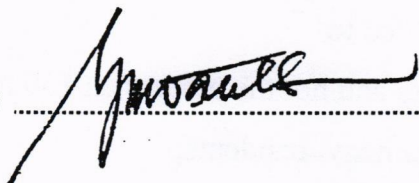
ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Petitioners, the Ministry of Lands and Physical Planning, the Ministry of Interior and Coordination of National Government, the National Land Commission, the Directorate of Criminal Investigations and the County Government of Taita Taveta for their submissions and contribution to the resolution of this matter.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Standing Committee on Land, Environment and Natural Resources on the Petition by residents of Mkamenyi Village in Voi Sub - County of Taita Taveta County regarding the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County.

Signed:



Date:

09/06/2022

SEN. MWANGI PAUL GITHIOMI, M.P.
CHAIRPERSON, SENATE STANDING COMMITTEE ON LAND,
ENVIRONMENT AND NATURAL RESOURCES

CHAPTER I

INTRODUCTION

1. At the sitting of the Senate held on 30th September, 2020, the Senator, Taita Taveta County, Sen. Johnes Mwaruma, reported to the Senate that a Petition has been submitted through the Clerk, by residents of Msambweni Village in Voi Sub-county of Taita Taveta County regarding the alleged impending evictions of Msambweni residents by a private company.
2. The Prayers in the said Petition are as follows-
 - 1) Deals with this petition immediately in view of the urgency and seriousness of the matters raised herein.
 - 2) Investigates the circumstances that led to-
 - (a) the decision to offer 35 acres and not the more than 150 acres of land which is adequate to settle the Mkamenyi residents;
 - (b) the carrying out of survey and beaconing of the land without involving the county government or the residents;
 - (c) the listing of names of persons not living in Mkamenyi as owners of the land being offered title deeds.
 - 3) Makes a declaration that the process followed in the offer of the 35 acre of land and its title deed to the residents of Mkamenyi was un-procedural and unlawful and, therefore, null and void.
 - 4) Recommends that the Ministry of Lands initiates an all-inclusive open and transparent process of giving the residents of Mkamenyi adequate land that can settle them once and for all.

- 5) Takes any other appropriate action it deems fit to resolve the matters raised herein, and your Petitioners will ever pray.

Pursuant to standing order 232(1) of the Standing Orders of the Senate, the Petition was committed to the Land, Environment and Natural Resources Committee.

LEGAL BASIS FOR PETITIONS

3. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the Senate Standing Orders.
4. Article 37 of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while Article 119(1) of the Constitution provides that *“every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”*
5. Section 5(2) of the Petition to Parliament (Procedure) Act, provides that *a petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House.* In this regard, standing order 232 of the Senate Standing Orders provides as follows-

232. Committal of Petitions

(1) Every Petition presented or reported pursuant to this Part, shall stand committed to the relevant Standing Committee.

(2) Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes.

6. Standing order 233 requires the Clerk to, within fifteen days of tabling of the report on petition under Standing Order 232 (Committal of Petitions), submit a copy of the report to the petitioner or petitioners.

CHAPTER 2

CONSIDERATION OF THE PETITION

Approach taken by the Committee

7. In considering the Petition, the Committee observed that it would be important to verify the issues in the Petition. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.
8. In this regard, the Committee received the Petition from the Petitioner through the House and further met with the Petitioners on several occasions as it met with stakeholders and further during its county visit to Taita Taveta County.
9. Thereafter the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning, the Chairperson of the National Land Commission, the Governor, County Government of Taita Taveta who virtually appeared before the Committee.
10. The Committee further undertook a site visit on 27th March, 2021.

Petitioners Submissions

1. Vide a letter, REF: SEN/DCS/LENR/2/2020/(68) dated 27th October, 2020, the Committee invited the Petitioners to virtually appear before the Committee on Wednesday, 4th November, 2020 who thereafter appeared and defended their Petition.
2. The Petitioners submitted that the Committee should ensure:
 - 1) The disregard and nullification of the plan by the Director, Voi Point Limited allocating the said 35 acres of land to the 28 families of Mkamenyi squatters;
 - 2) The recognition of the original 54 families which were legitimate residents of Mkamenyi and not the 28 families imposed to them by the former manager Mr. Zaheed Din;

- 3) Mkamenyi residents participate in the demarcation and be shown the entire area they possessed before the coming of Voi Sisal Estate;
- 4) That a committee is formed from Mkamenyi community and empowered to carry out all activities in allocation and demarcation of the land in question to the right families involved.
- 5) Considering the time the Voi Sisal Management has wasted on their development activities (compensation should be looked into for the delayed infrastructure and land developments).
- 6) Proper land procedures should be followed as per the land laws to avoid future disputes amongst the community and the sisal farm management.

Responses by the Cabinet Secretary, Ministry of Lands and Physical Planning

13. Vide a letter, Ref: SEN/DCS/LÉN/2/2021/(23), dated 15th April, 2021, the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning to respond to the Petition in its entirety. Based on the concerns raised below the Ministry provided the responses indicated:
 14. According to records, the land in question measures approximately 1953 hectares and is situated within Voi town in Taita Taveta County. A chronology of ownership of the parcel is as follows-
 - i. The subject land was originally LR No. 4637 registered as Grant No. C.R. 8814. It was granted to the British East Africa Corporation Limited in 1923 for a term of 99 years from January 1, 1923 to January 1, 2022. The grant was initially issued for agricultural purpose only but the user was later extended to include a petroleum service station.
 - ii. The Grant was transferred to Voi Sisal Estates Limited on August 6, 1947 and on March 25, 2011 it was surrendered to the Government to pave way for its extension of the term. (A copy of the surrendered Grant C.R. 8814 is annexed herewith

marked **Annexure 7**).

- iii. The Grant was extended for a further term of 99 years commencing January 1, 1993 at an annual rent of Kshs.353.795 (revisable). The parcel was registered as Grant No. C.R. 51725, LR No. 28683 measuring approximately 1953 Hectares. The land was granted to be utilized for agricultural purposes and residence for the grantee. (A copy of the Grant No. C.R. 51725 is annexed marked **Annexure 8**).
- iv. On February 23, 2012 the land was transferred to Voi Plantations Limited for USD.1,855,670 and charged to Diamond Trust Bank of Kenya Limited for Kshs.300,000,000 and USD.5,000,000. On December 29, 2017 a further charge to Diamond Trust Bank of Kenya Limited for Kshs.150,000,000 was registered.
- v. On December 29, 2017 a second further charge for Kshs.1,079,737,000 and a third further charge for Kshs.1,189,511,500 was registered in favour of Diamond Trust Bank of Kenya Limited. A fourth further charge for Kshs.4,218,875,000 was registered on December 29, 2017.
- vi. On October 1, 2014 the National Land Commission awarded Voi Plantations Limited Kshs.359,531,100 in respect of the land acquired for the development of the Mombasa-Nairobi Standard Gauge Railway. The area of land acquired measured approximately 14.9621 Hectares. (A copy of the Award is marked **Annexure 9**).
- vii. On February 13, 2019, all the charges were discharged and the land transferred to Voi Point Limited for Kshs.4,000,000,000. A charge to Diamond Trust Bank of Kenya Limited for Kshs.4,000,000,000 and a further charge to the same bank for Kshs.800,000,000 were registered on the same date. A copy of the official search is marked **Annexure 10**.
- viii. On February 6, 2020, the County Government of Taita Taveta approved the subdivision of the land into 28 portions of various sizes for agricultural use. A copy of the notification of approval (**Annexure 11**) and certificate of subdivision (**Annexure 12**) are annexed herewith. The subdivision was approved on the

condition that the company was to surrender Plot No. 25 (L.R. No. 28683/27) measuring approximately 13.68 Hectares for Mkamenyi Squatter Settlement as per the copy of the provisional approval marked **Annexure 13**. Voi Point Limited accepted the conditions of the provisional approval as shown in the copy of the acceptance letter marked **Annexure 14**.

- ix. On February 27, 2020 new Certificates of Title were issued for L.R. Nos. 28683/4 to 28683/31 the resultant subdivisions of L.R. No. 28683.
 - x. The Charge in favour of Diamond Trust Bank of Kenya Limited was registered against all the resultant subplots of L.R. No. 28683 apart from L.R. No. 28683/27 that the bank issued a discharge.
 - xi. On June 25, 2020, the County Government of Taita Taveta approved the subdivision and change of user of L.R. No. 28683/9 into 52 subplots (A copy of the notification of approval (**Annexure 15**)). The subdivision was conditional upon surrender of 10% of the total acreage for public utility and use. The subdivision was also approved by the Voi Land Control Board as shown in **Annexure 16**.
15. L.R. No. 28683/27 measuring approximately 35 acres is the portion that Voi Point Limited reserved for the settlement of the squatters. According to records the plot is still registered under Voi Point Limited. Given that this land is private land, MoLPP advised that the squatters engage Voi Point Limited on their grievances.

Further Issues:

- i) **Explanation on the current status of the lease for Voi Point Limited, given the ongoing subdivision of the land into small parcels implying change of use for the land**
16. In the report submitted on February 24, 2021, the Ministry reported that the County Government of Taita Taveta approved the subdivision of the land L.R. No. 28683 into 28 portions of various sizes for agricultural use on February 6, 2020. The subdivision was approved on the condition that Voi Point Limited was to surrender Plot No. 25 (L.R.

No. 28683/27) measuring approximately 13.68 Hectares for Mkamenyi Squatter Settlement. Voi Point Limited accepted the conditions of the provisional approval. New Certificates of Title were issued for L.R. Nos. 28683/4 to 28683/31 the resultant subdivisions of L.R. No. 28683 On February 27, 2020.

17. It was also reported that on June 25, 2020, the County Government of Taita Taveta approved the subdivision of L.R. No. 28683/9 into 52 subplots. The subdivision was conditional upon surrender of 10% of the total acreage for public utility and use.
18. The County Government of Taita Taveta also approved the subdivision of L.R. No. 28683/12 (22 subplots) and L.R. No. 28683/20 (147 subplots) on June 25, 2020. The subdivisions were conditional upon surrender of 10% of the total acreage for public utility and use.
19. Copies of the PPA 2 forms, Land Control Board consents, approvals by the Ministry and other relevant correspondence for the subdivisions are marked as **annexure 20**.
20. Voi Point Limited is yet to present to the Ministry the deed plans for all the sub-plots to facilitate preparation of the title documents.

ii) Relevant documentation with attachments on the approval of the change of user from agricultural land to commercial land

21. The approvals obtained from the County Government were for the subdivisions only. The County Government has not given approval for change of user on any of the sub plots. MoLPP had erroneously reported that an approval for change of user had been granted for L.R No. 28683/9.

iii) Provide the transfer documents and correspondence between the Ministry of Lands and Physical Planning, the County Government of Taita Taveta and Voi Point Limited

22. As earlier indicated, Voi Point Limited is yet to present to the Ministry the deed plans for the sub plots to facilitate preparation of the title documents for the transfers, if any.
- iv) **Proposals on how to assist the Petitioners in obtaining more land noting that twenty-eight (28) families living within Voi Point Limited were allocated thirty-five (35) acres of land**
23. In the meeting with the Committee on February 24, 2021, the Ministry undertook to refer the matter to the Land Settlement Fund Board of Trustees for consideration of acquisition of additional alternative land for settlement of the squatters. MoLPP shall report on the progress once the Board convenes.
24. Further vide a letter Ref: SEN/DCS/LENR/2/2021/(39) dated 1st July, 2021 the Committee invited the Ministry and the Ministry supplied the Committee with documentation on the Petition. The Ministry was however unable to provide the Committee with documentation from the defunct Municipal Council of Voi approving the application of extension of the lease and requested for more time to provide a report on the same.

Responses by the National Land Commission

25. Vide a letter, Ref: SEN/DCS/LENR/2/2021/(23), dated 15th April, 2020, the Committee invited the Chairperson of the National Land Commission and received the following submissions at the Committee's meeting held on 12th May, 2021;
- a) Explanation on the circumstances that led the Commissioner for Lands to change the conditions of lease;
26. On the above subject matter, National Land Commission is unable to explain the circumstances that led to variation of the lease conditions because the records are held by the Ministry of Lands and Physical Planning who are in a better position to explain the same.
- b) Submit relevant documentation and evidence of correspondence that led to the change of the lease conditions
27. Based on the response to (a) above, the commission has no documentary evidence in support of the variation to the lease conditions
- c) Proposals on the best way of assisting the people of Msambweni to get back their land.
28. The people of Msambweni can negotiate with the land owner perhaps using a government Arbitrator such as National Land Commission to chart a better way that will yield a win win situation for both parties.

Responses by the County Government of Taita Taveta

29. Vide a letter Ref: SEN/DCS/LENR/2/2021/(23) dated 15th April, 2020, the Committee invited the County Government of Taita Taveta and received the following submissions at the Committee's meeting held on 12th May, 2021-

Background

30. The basis of Mkamenyi community's petition is that they are victims of historical injustice. Evidence of community's residence on the land are ancient graves, dwellings and artefacts that point to human habitation on the said land for over 100 years (the community has resided on the land since 1890). Currently, the entire Mkamenyi land has been encapsulated by what is known as Land Registration No. 28683 measuring approximately 4800 Acres. The owner being Voi Plantations Ltd (Voi Point Ltd).
31. When Voi Plantations Ltd. lease expired in 1993, (original number being L/R No. 4637) it was expected that the land would revert back to the community. Having failed to obtain approval for lease renewal from the then Municipal Council of Voi, the Plantation obtained extension for the lease in a manner that is believed to be irregular. Nevertheless, the community has continued to reside on their land as squatters. Recently Voi Point Ltd (current owners of the land) offered to allocate the community 35 Acres of land, which they later on, owing to pressure from the community and the government, increased to 150 Acres, which, again is not what the community is asking for.
32. The community's prayer is that Voi Point Ltd. allocates them at least 2000 Acres. It is also the community's prayer that the entire 4800 Acres will ultimately be returned to them as the rightful owners of the land.

County Government's position

1. There is need for thorough investigations into the circumstances leading to renewal of lease on L/R No. 4637 (original number) and the recent subdivision and sale of Land Registration No. 28683 (new number).

2. Voi Point Ltd should allocate the people of Mkamenyi at least 2000 Acres pending the outcome of investigations on matters under caption (i) above.

Responses by the Directorate of Criminal Investigations (DCI)

33. Vide a letter Ref: SEN/DCS/LENR/2/2021/(27) dated 19th May, 2021, the Committee invited the Directorate of Criminal Investigations and received the following submissions at the Committee's meeting held on 29th July, 2021:
34. On the 22nd May 2019, the County Government of Taita Taveta reported to the Directorate of Criminal Investigations Office in Voi in regard to alleged irregularities that occurred during the process of renewal of the land registration Number 4637 (original number) and the subsequent sub-division and sale of land registration number 28683 (current number). As the investigations were commencing, the Taita Taveta County Legal Officer vide a letter, Ref.GOV/TT/LND.II/VOLLNR/21, dated 17th June, 2019 informed the DCI Voi that they had commenced internal investigations and that they will take necessary administrative action against any officer found capable. Therefore, the DCI investigations were stopped at that point.
35. Following the Senate letter, Ref. SEN/155/LENR/2/2021/(27), dated 20th May, 2021, DCI Voi re-opened the inquiry into the matter. The investigations are well ongoing and a number of witnesses have recorded statements. A number of documentary evidence have so far been recovered in support of the inquiry. The final report will be submitted to the authorities once investigations are completed in due course.

Further responses by the Directorate of Criminal Investigations (DCI)

36. Vide a dated 12th July, 2021, the Committee invited the Voi Point Limited and received the following submissions at the Committee's meeting held on 14th July, 2021:
37. The issues have been substantively addressed by the Honourable Cabinet Secretary (CS), Ministry of Lands and Physical Planning and as the Government's representative; The Honourable CS has given a true and accurate record of the chronology of dealings relating to the land in question to wit Land Reference Number 28683, Voi. The Senate Hansard Report on this matter speaks for itself.
38. From the chronology of dealings encapsulated in the report tabled by the Ministry of Lands and Physical Planning, our client has neither seen any suggestion or comment leaning towards illegal acquisition of the land in question or encroachment on community/public land nor has there been any recommendation for investigation into how our client obtained title to the property or possible encroachment onto public or community land.
39. The recommendation made by the Ministry of Lands affirmed our client's sanctity of title by confirming that the land in question is private land. Having investigated the title to the property, the Ministry gave the recommendation that the Petitioners ought to engage our client with a view to settling their grievances. By making that finding, the Ministry confirmed that the land in question was neither community land nor public land thus the allegations of encroachment had no basis.
40. Lastly, there is the averment at paragraph 14 of the Petition that there is no case pending in court or any constitutional body on the matters raised in the Petition. That is an incorrect statement. Indeed, the Petitioners – through Mkamenyi Farmers Cooperative Society Limited – instituted a suit to wit *Mombasa ELC Case No. 181 of 2019*

Mkamenyi Farmers Cooperative Society Limited -vs- The Ministry of Lands and Physical Planning and 8 Others on October 11, 2019.

41. That is close to one (1) year before the lodging of this Petition before the Senate. Our client is the 8th Defendant in the suit and has been sued *inter alia* its predecessor in title, Voi Plantation Limited

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CHAPTER 5

COMMITTEE OBSERVATIONS

In accordance with the Prayers of the Petitioner the Committee observes as follows:

- (a) The Committee noted that the interest in the property subject to the Petition is registered under Voi Point Limited. The lease for the property expired and was extended for a further term of 99 years commencing January 1, 1993. The circumstances behind this renewal of the lease are contested. The Committee notes that the renewal of the lease was not regular noting that the Mkamenyi community had been in occupation of the land since time in memorial. During a visit to the land, the Committee noted that the Mkamenyi community had lived in the property for a long period and had even buried their dead on the land.

- (b) The Committee also noted that the Taita Taveta County Government approved the subdivision of the property and thereafter stated that it had not approved the subdivision. The County Executive also referred the matter to the DCI for investigation to establish the circumstances behind the approval of the subdivision but later seemed to have withdrawn that referral. The Committee however notes that in its submissions to the Committee, the Taita Taveta County Government stated that it had not withdrawn the referral of the matter to the DCI and still supported the investigation of the matter to establish the circumstances behind the approval of the subdivision.

- (c) That the Directorate of Criminal Investigations stated that the County Government of Taita Taveta referred to it the approval of the subdivision of the land for investigations but thereafter its Legal Officer wrote to the Directorate informing it that the County Government would undertake internal investigations on the matter, which ended investigations by the Directorate of Criminal Investigations.

- (d) That since it commenced its inquiry into the matter, the Directorate of Criminal Investigations has resumed investigations and has promised to report to the Committee once investigations are complete, and in any case submit a report to the Committee by October, 2021.
- (e) That the Taita Taveta County Government informed the Committee that it was against the subdivision of the property and does not approve such subdivision.
- (f) That the registered owner of the subject Land, Voi Point Limited, stated that the matter under consideration was actively in Court vide Mombasa ELC Case No. 181 of 2019 Mkamenyi Farmers Cooperative Society Limited -vs- The Ministry of Lands and Physical Planning and 8 Others.
- (g) That Voi Point Limited contends that it acquired the land legally and the same rightfully belongs to the Company and that the Mkamenyi are trespassers on its land.
- (h) That according to MoLPP, the property has since been subdivided.
- (i) At a meeting of the Committee held on 25th May, 2022, the Committee noted that Voi Point Limited represented by their advocate, Mr. Antony Mbugua, of G. M. Muchoki & Company Advocates was willing to allocate an additional fifteen (15) acres of land to the petitioners over and above the initially allotted thirty five (35) acres.

CHAPTER 6

COMMITTEE RECOMMENDATIONS

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders recommends as follows-

- 1) That the DCI and the EACC investigate the circumstances leading to the approval of subdivision of the property by the Taita Taveta County Government and report back to the Senate within six (6) weeks of the tabling of this report.
- 2) That the DCI and the EACC investigate the circumstances leading to the renewal of the lease over the property, noting that a ground inspection would have indicated that the land was occupied by the Mkamenyi community, and report back to the Senate within six (6) months of the tabling of this report
- 3) That the National Land Commission engages Voi Point Limited, the Mkamenyi community and the MoLPP with a view to ensuring that the Mkamenyi community get allotted adequate land, preferably the land that the community had occupied and buried its dead, and report back to the Senate within six (6) months of the tabling of this report.
- 4) That Voi Point Limited should commence the process of allocating the additional 15 acres to the Mkamenyi community as discussed during the meeting with the Committee held on 25th May, 2022.