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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF A PETITION BY RESIDENTS OF IKOLOMANI CONSTITUENCY REGARDING DELAYED COMPENSATION OF LANDOWNERS FOR THE EXPANSION OF SIGALAGALA – MUSOLI – BUKURA BUTERE ROAD NO. D260

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 21 NOV 2019	DAY: THURSDAY
TABLED BY: Hon. Rachael Nyamai	Chair, Lands Committee
CLERK-AT-THE-TABLE: Lemuno Moses	

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

NOVEMBER 2019

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## **CHAIRPERSON'S FOREWORD**

The Petition by residents of Ikolomani Constituency regarding delayed compensation of landowners for the expansion of Sigalagala – Musoli – Bukura Butere Road No. D260 was presented to the House by the Hon Benard Shinali MP, on behalf of the petitioners, on 1<sup>st</sup> October 2019

In considering the Petition, the Committee held a meeting with the Hon Benard Shinali MP on behalf of the petitioners, the Director General Kenya Rural Road Authority and the Ag. Chief Executive Officer, National Land Commission on 7<sup>th</sup> November 2019.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee is also thankful to the Petitioners, the Hon Benard Shinali MP, the Ag. Director General, Kenya Rural Road Authority and the Ag. Chief Executive Officer, National Land Commission for the submissions they made to the Committee

On behalf of the Committee, and pursuant to Standing Order, 227 it is my pleasant duty to table the Report of the Departmental Committee on Lands on its consideration of the Petition by residents of Ikolomani Constituency regarding delayed compensation of landowners for the expansion of Sigalagala – Musoli – Bukura Butere Road No. D260.

**Hon. Dr. Rachael Kaki Nyamai, MP**  
**Chairperson, Departmental Committee on Lands**

## **EXECUTIVE SUMMARY**

The purpose of this report is to respond to prayers made by residents of Ikolomani Constituency regarding delayed compensation of landowners for the expansion of Sigalagala – Musoli – Bukura Butere Road No. D260. The Petitioners' prayers are that the National Assembly through the Departmental Committee on Lands:

- i. Investigates the matters raised in this petition with a view to ascertaining why the residents who were affected by the expansion of the Sigalagala – Musoli – Bukura - Butere Road No. D260 have not been compensated for their land and property; and
- ii. Intervenes through the relevant Government Ministry and agencies with a view to initiating the process of compensation to enable affected families to carry on with their livelihoods;

The Committee observed that although the National Government through the Kenya Rural Roads Authority embarked on the construction of the Sigalagala – Musoli – Bukura Butere Road in 2013, the affected residents have not been compensated for the loss of land and property to date, despite the road being 95% complete.

The Committee also noted that the delay in compensating the affected residents following the compulsory acquisition of land by the Kenya Rural Roads Authority was inordinate and not justifiable. This contravenes the provisions that provides for prompt and just compensation as contained in Article 40 of the Constitution as read with the Land Act, 2012.

The Committee further observed the Ag. Chief Executive Officer of the National Land Commission attributed the delay in the compensation of the affected residents to the inability for the commission secretariat to gazette the inquiry dates until the new Commissioners assume office given that only the Commission's Chairperson can authorize the same. However, the Committee noted with concern that the National Land Commission had not addressed the matter for six years during the tenure of the first Commission.

The Committee also observed that the Ag. Director General Kenya Rural Road Authority confirmed that the authority had adequate funds to facilitate the compensation due to project affected persons and he promised to expedite the remittance of compensation funds to National Land commission upon the conclusion of the inquiries as envisaged in the Land Act, 2012.

The Committee could not ascertain whether valuation of crops and trees affected by the project had been done since the Ag. Director General Kenya Rural Roads Authority (KeRRA) did not submit a report on the same.

In response to the prayers by the Petitioners, the Committee recommends that pursuant to the provisions of Article 40 of the Constitution and the Land Act, 2012, the Chairperson

National Land Commission does gazette the inquiry dates for the compulsory acquisition of land for the Sigalagala – Musoli – Bukura Butere Road project within ninety days of the tabling of this report.

The Committee also recommends that National Land Commission does conduct the valuation of parcels of land, crops and trees affected by the project within ninety days upon the gazette of the inquiry dates for the Sigalagala – Musoli – Bukura Butere Road.

Finally, the Committee recommends that upon the conclusion of the inquiries and remittance of compensation funds from Kenya Rural Road Authority (KeRRA), the Chairperson, National Land Commission does ensure the disbursement of compensation funds to the respective project affected persons within ninety days.

## **1.0 PREFACE**

### **1.1 Mandate of the Committee**

1. The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference: -
  - (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
  - (ii) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
  - (iii) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
  - (iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
  - (v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House.
  - (vi) study and review all legislation referred to it

### **1.2 Committee subjects**

2. The Committee is mandated to consider the following subjects:
  - a) Lands
  - b) Settlement

### **1.3 Oversight**

3. The Committee oversees the Ministry of Lands and Physical Planning; and the National Land Commission

## 1.4 Committee Membership

4. The Committee membership comprises: -

Hon. Dr. Rachael Nyamai, MP – **Chairperson**

**MP for Kitui South Constituency**

**Jubilee Party**

Hon. Khatib Mwashetani, MP – **V/Chairperson**

**MP for Lunga Lunga Constituency**

**Jubilee Party**

Hon. Jayne Wanjiru Kihara, MP

Member for Naivasha  
Constituency

**Jubilee Party**

Hon Joshua Kutuny Serem, MP

Member for Cherangany  
Constituency

**Jubilee Party**

Hon. Kimani Ngunjiri, MP

Member for Bahati Constituency

**Jubilee Party**

Hon. Mishi Mboko, MP

Member for Likoni Constituency

**Orange Democratic Movement  
(ODM)**

Hon. Omar Mwinyi, MP

Member for Changamwe  
Constituency

**Orange Democratic Movement  
(ODM)**

Hon. Ali Mbogo, MP

Member for Kisauni  
Constituency

**Wiper Democratic Movement  
(WDM)**

Hon. Babu Owino, MP

Member for Embakasi East  
Constituency

**Orange Democratic Movement  
(ODM)**

Hon. Caleb Kipkemei Kositany,  
MP

Member for Soy Constituency

**Jubilee Party**

Hon. Catherine Waruguru, MP

Member for Laikipia County

**Jubilee Party**

Hon George Aladwa, MP

Member for Makadara  
Constituency

**Orange Democratic Movement  
(ODM)**

Hon George Risa Sunkuyia, MP

Member for Kajiado West  
Constituency

**Jubilee Party**

Hon. Jane Wanjuki Njiru, MP

Member for Embu County

**Jubilee Party**

Hon. Josphat Gichunge  
Kabeabea, MP

Member for Tigania East  
Constituency

**Party of National Unity (PNU)**

Hon. Owen Yaa Baya, MP

Member for Kilifi North  
Constituency

**Orange Democratic Movement  
(ODM)**

Hon. Samuel Kinuthia Gachobe,  
MP

Member for Subukia  
Constituency

**Jubilee Party**

Hon. Simon Nganga Kingara, MP

Member for Ruiru Constituency

**Jubilee Party**

Hon. Teddy Mwambire, MP

Member for Ganze Constituency

**Orange Democratic Movement  
(ODM)**



## 1.5 Committee Secretariat

5. The Committee secretariat comprises:

**Lead Clerk**

Mr. Leonard Machira

**Clerk Assistant I**

Mr. Ahmad Guliye  
**Clerk Assistant III**

Mr. Adan Abdi  
**Fiscal Analyst III**

Mr. Joseph Tiyan  
**Researcher III**

Ms. Winnie Kizia  
**Media Relations Officer III**

Ms. Jemimah Waigwa  
**Legal Counsel I**

Mr. Nimrod Ochieng  
**Audio Officer**

Mr. Brian Wechabe  
**Legal Assistant**

Ms. Peris Kaburi  
**Serjeant-At-Arms**

## 2.0 INTRODUCTION

2. The Petition by residents of Ikolomani Constituency regarding delayed compensation of landowners for the expansion of Sigalagala – Musoli – Bukura Butere Road No. D260 was presented to the House by the Hon Benard Shinali MP, on behalf of the petitioners, on 1<sup>st</sup> October 2019
3. Petitioners wished to draw the attention of the House to the following, that:
  - i. In 2013 the National Government through the Kenya Rural Roads Authority embarked on the construction of the Sigalagala – Musoli – Bukura Butere Road. The road is currently 95% complete;
  - ii. The construction of the road involved expansion and therefore it encroached into private property leaving many residents residing along the said road displaced and their property destroyed;
  - iii. Even though the expansion and upgrading of the road to bitumen standards has opened business opportunities, trade and growth of the region 's economy thus improving the livelihood of the people. The residents are concerned that their right to enjoy their property was violated without adequate compensation;
  - iv. The affected residents and families aver that, whenever infrastructure projects such as the Standard Gauge Railway and roads encroach on part or the whole of any private land, owners are entitled to commensurate compensation for their land;
  - v. Since 2013 the affected families who gave up their land for the expansion of the road have not been compensated for their land and property with no clear explanation for the cause of the delay;
  - vi. Efforts to address the matter with the Cabinet Secretary and National Land Commission to explain why there has been a delay in compensating the displaced people has not been successful;
  - vii. The matters raised in the petition are not pending before a Court of Law, Constitutional or Legal body;
4. The Petitioners pray the National Assembly through the Departmental Committee on Lands:

- i. Investigates the matters raised in this petition with a view to ascertaining why the residents who were affected by the expansion of the Sigalagala – Musoli – Bukura - Butere Road No. D260 have not been compensated for their land and property; and
- ii. Intervenes through the relevant Government Ministry and agencies with a view to initiating the process of compensation to enable affected families to carry on with their livelihoods;

### **3.0 SUBMISSIONS**

#### **3.1 Submissions by the Petitioners**

5. The Committee held a meeting with the Hon. Bernard Shinali, MP, on behalf of the Petitioners, on 7<sup>th</sup> November 2019. During the meeting he informed the meeting that:
6. The Sigalagala – Musoli – Bukura Butere Road project is mainly located within Ikolomani Constituency in Kakamega County and it is approximately 35 km long. The expansion and upgrading of the road to bitumen standards commenced in 2013.
7. At the commence of the project the Kenya Rural Roads Authority (KeRRA) required land to facilitate the expansion of the road. The resident engineer entered into an agreement with the private landowners that allowed the Authority to carry out the works before compensating them for their land and property with a promise that the compensation would be effected in the course of the implementation of the project. The Authority documented records of the affected land and property for purposes of compensation. A valuation of crops and trees was also done by Agriculture and Forest officers on development of crops and trees and a report submitted to KeRRA.
8. The National Commission took over the matter from the defunct Commissioner of Lands and an intention to acquire the land was gazetted vide gazette no. 6472 dated 7<sup>th</sup> July, 2017.
9. However, the affected residents have not been compensated to date despite the project being 95 percent complete. He added that the delay was inordinate and not justifiable.

#### **3.2 Submissions by the Ag. Chief Executive Officer National Land Commission**

10. The Committee held a meeting with the Ag. Chief Executive Officer National Land Commission on 7<sup>th</sup> November 2019. During the meeting the Ag. Chief Executive Officer informed the Committee that the process of acquisition of land for the expansion of the road was initiated by the Kenya Rural Roads Authority on 7<sup>th</sup> March 2012 through a request to the then Commissioner of Lands. The Ministry appointed a team to undertake the acquisition, but it did not complete the exercise before the mandate of the Compulsory Land Acquisition was transferred to the National Land Commission.
11. The Commission took up the matter in September 2016 and conducted official searches at the Kakamega and Vihiga land offices to facilitate the gazettment of the intention to acquire

the land identified for the project. The intention to acquire was eventually gazetted on 7<sup>th</sup> July 2017 vide gazette Notice No. 6472.

12. The Commission undertook inspection of the affected land and property in between March and May 2018. The Commission then requested KeRRA to submit amended acquisition plans and parcel lists to facilitate gazettelement of inquiries and a report on the valuation of crops and trees damaged during the construction of the road.
13. The Commission had not requested for the compensation money from KeRRA, since the inquiries are yet to be published. The gazettelement of the inquiry dates was pending awaiting new commissioners to assume office as only the Chairperson can authorize the same. Upon conclusion of the inquiries and remittance of compensation funds from KeRRA, the Commission shall expeditiously disburse funds to the respective project affected persons.

### **3.3 Submissions by the Ag. Director General Kenya Rural Roads Authority**

14. The Committee held a meeting with the Ag. Director General Kenya Rural Roads Authority on 7<sup>th</sup> November 2019. During the meeting the Director General informed the Committee that:
15. **Background:** The project was started on 28<sup>th</sup> March 2011 and the contract involved the upgrading of the road to bitumen standard. The contract was awarded to Associated Construction Company. The road covers approximately 35 Kms. It starts at Sigalagala Centre and runs to Malinya, Isulu, Musoli Akatsa, Bukura and crosses road C33 at Sabatia Market and ends at Butere along road E390.
16. The process of compulsory acquisition of land for the expansion of the road commenced in March 2012 when KeRRA presented a request to the then Commissioner of Lands. However, the enactment of the Land Act 2012 transferred the mandate of compulsory acquisition of land to the National Land Commission. The Commission was constituted in February 2013. KeRRA then understood that all pending land acquisition cases were supposed to be concluded by the NLC as the successor of the Commissioner of Lands regarding the said acquisition. In 2015 the Authority was informed of the need to resubmit land acquisition drawings. The drawings were submitted to the Commission vide a letter Ref. No. MPTI/A/A35.45/BVOL dated 21<sup>st</sup> January 2015.
17. At the start of the project, the Authority realized that the process of land acquisition and compensation was lengthy and the Resident Engineer entered into an agreement with the landowners to allow intrusion of their land and property for the purpose of the construction of the road. It was further agreed that before the removal of any development, proper records

be documented for purposes of compensation. The said documentation was done jointly by the affected landowners, KeRRA surveyor, the Agricultural Officer and Forest Officers.

18. The Authority had adequate funds in a common pool to facilitate the compensation due to project affected persons and he promised to expedite the remittance of compensation funds to National Land Commission the upon the conclusion of the inquiries.
19. **Status of Land Acquisition: The status of land acquisition was as follows:**
  - i. The intention to acquire the land was published vide Gazette Notice No. 6472 of July 2017;
  - ii. Physical inspection and identification of Project Affected Persons was undertaken Jointly by KeRRA and the National Land Commission in March 2018.
  - iii. KeRRA requested the Agricultural and Forest Officers in Kakamega County to carry out valuations of crops and trees damaged during the construction of the road. The valuation report will be presented to the Commission once it is received by KeRRA.
  - iv. The gazettelement of the inquiry dates was pending awaiting new National Land Commission Commissioners to assume office. KeRRA , shall expeditiously disburse funds to the commission upon conclusion of the inquiries.

#### **4.0 OBSERVATIONS**

1. The Committee observed that although the National Government through the Kenya Rural Roads Authority embarked on the construction of the Sigalagala – Musoli – Bukura Butere Road in 2013, the affected residents have not been compensated for the loss of land and property to date, despite the road being 95% complete.
2. The delay in compensating the affected residents following the compulsory acquisition of land by the Kenya Rural Roads Authority was inordinate and not justifiable. This contravenes the provisions that provides for prompt and just compensation as contained in Article 40 of the Constitution as read with the Land Act, 2012.
3. The Committee further observed the Ag. Chief Executive Officer of the National Land Commission attributed the delay in the compensation of the affected residents to the inability for the commission secretariat to gazette the inquiry dates until the new Commissioners assume office given that only the Commission's Chairperson can authorize the same. However, the Committee noted with concern that the National Land Commission had not addressed the matter for six years during the tenure of the first Commission.
4. The Ag. Director General Kenya Rural Road Authority confirmed that the authority had adequate funds to facilitate the compensation due to project affected persons and he promised to expedite the remittance of compensation funds to National Land commission upon the conclusion of the inquiries as envisaged in the Land Act, 2012.
5. The Committee could not ascertain whether valuation of crops and trees affected by the project had been done since the Ag. Director General Kenya Rural Roads Authority (KeRRA) did not submit a report on the same.

## 5.0 COMMITTEE RECOMMENDATIONS

In response to the prayers by the Petitioners, the Committee recommends that

1. Pursuant to the provisions of Article 40 of the Constitution and the Land Act, 2012, the Chairperson, National Land Commission does gazette the inquiry dates for the compulsory acquisition of land for the Sigalagala – Musoli – Bukura Butere Road project within ninety days of tabling of this report.
2. The National Land Commission does conduct the valuation of parcels of land, crops and trees affected by the project within ninety days upon the gazette of the inquiry dates for the Sigalagala – Musoli – Bukura Butere Road.
3. Upon the conclusion of the inquiries and remittance of compensation funds from Kenya Rural Road Authority (KeRRA), the Chairperson, National Land Commission does ensure the disbursement of compensation funds to the respective project affected persons within ninety days.

Signed.....

Date.....

19-11-2019

**Hon. Dr. Rachael Kaki Nyamai, MP**  
**Chairperson, Departmental Committee on Lands**



**MINUTES OF THE 86<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON FRIDAY, 15<sup>TH</sup> NOVEMBER, 2019 AT ENGLISHPOINT – MARINA, MOMBASA AT 9.30 AM**

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**PRESENT**

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Omar Mwinyi Shimbwa, M.P
4. Hon. Mishi Mboko, M.P
5. Hon. Kimani Ngunjiri, M.P
6. Hon. Ali Mbogo, M.P
7. Hon. Caleb Kositany, M.P
8. Hon. Owen Baya, M.P
9. Hon. Samuel Kinuthia Gachobe, M.P
10. Hon. Teddy Mwambire, M.P

**APOLOGIES**

1. Hon. Khatib Mwashetani, MP - **Vice Chairperson**
2. Hon. Joshua Kutuny, M.P
3. Hon. Babu Owino, M.P
4. Hon. Catherine Waruguru, M.P
5. Hon. George Aladwa, M.P
6. Hon. George Risa Sunkuyia, M.P
7. Hon. Josphat Gichunge Kabeabea, M.P
8. Hon. Jane Wanjuki Njiru, M.P
9. Hon. Simon Nganga Kingara, M.P

**IN ATTENDANCE**

**THE NATIONAL ASSEMBLY SECRETARIAT**

1. Ms. Florence Abonyo - Director, Committee Services
2. Mr. Leonard Machira - Clerk Assistant I
3. Mr. Ahmad Guliye - Clerk Assistant III
4. Mr. Ronald Walala - Legal Counsel
5. Mr. Joseph Tiyen - Research Officer
6. Mr. Nimrod Ochieng - Audio Recording Officer
7. Ms. Peris Kaburi - Serjeant At Arms

**MIN. NO. NA/DCS/LANDS/2019/328: PRELIMINARIES**

The meeting was called to order at twenty – eight minutes past nine o'clock and prayers were said.

**MIN. NO. NA/DCS/LANDS/2019/329: ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted as outlined in the notice of agenda after it was proposed and seconded by Hon. Caleb Kositnay, MP and Hon. Teddy Mwambire, MP

**MIN. NO. NA/DCS/LANDS/2019330-: CONSIDERATION OF THE DRAFT REPORT ON THE PETITION BY RESIDENTS OF IKOLOMANI REGARDING DELAYED COMPENSATION OF LANDOWNERS FOR EXPANSION OF SIGALA -MUSOLI – BUKURA – BUTERE ROAD NO. D260**

The Committee considered the draft report on the Petition by residents of Ikolomani regarding delayed compensation of Land owners for expansion of Sigala -Musoli – Bukura – Butere Road No. D260 and adopted it with the following observations and recommendations after it was proposed and seconded by Hon. Owen Baya, MP and Hon. Caleb Kositany, MP respectively;

**a. Observations**

- i. The Committee observed that although the National Government through the Kenya Rural Roads Authority embarked on the construction of the Sigalagala – Musoli – Bukura Butere Road in 2013, the affected residents have not been compensated for the loss of land and property to date, despite the road being 95% complete.
- ii. The delay in compensating the affected residents following the compulsory acquisition of land by the Kenya Rural Roads Authority was inordinate and not justifiable. This contravenes the provisions that provides for prompt and just compensation as contained in Article 40 of the Constitution as read with the Land Act, 2012.
- iii. The Committee further observed the Ag. Chief Executive Officer of the National Land Commission attributed the delay in the compensation of the affected residents to the inability for the commission secretariat to gazette the inquiry dates until the new Commissioners assume office given that only the Commission's Chairperson can authorize the same. However, the Committee noted with concern that the National Land Commission had not addressed the matter for six years during the tenure of the first Commission.
- iv. The Ag. Director General Kenya Rural Road Authority confirmed that the authority had adequate funds to facilitate the compensation due to project affected persons and

he promised to expedite the remittance of compensation funds to National Land Commission upon the conclusion of the inquiries as envisaged in the Land Act, 2012.

- v. The Committee could not ascertain whether valuation of crops and trees affected by the project had been done since the Ag. Director General Kenya Rural Roads Authority (KeRRA) did not submit a report on the same.

**b. Recommendations**

- i. Pursuant to the provisions of Article 40 of the Constitution and the Land Act, 2012, the Chairperson, National Land Commission does gazette the inquiry dates for the compulsory acquisition of land for the Sigalagala – Musoli – Bukura Butere Road project within ninety days of the tabling of this report.
- ii. The National Land Commission does conduct the valuation of parcels of land, crops and trees affected by the project within ninety days upon the gazetting of the inquiry dates for the Sigalagala – Musoli – Bukura Butere Road.
- iii. Upon the conclusion of the inquiries and remittance of compensation funds from Kenya Rural Road Authority (KeRRA), the Chairperson, National Land Commission does ensure the disbursement of compensation funds to the respective project affected persons within ninety days.

**MIN. NO. NA/DCS/LANDS/2019/331: CONSIDERATION OF THE DRAFT REPORT ON THE PETITION REGARDING IRREGULAR RENEWAL OF LEASES OF LAND LEASED BY DELMONTE KENYA LIMITED**

The Committee considered the draft report on the Petition regarding irregular renewal of leases of land leased by Delmonte Kenya Limited and adopted it with the following observations and recommendations after it was proposed and seconded by Hon. Ali Mbogo, MP and Hon. Mishi Mboko, MP respectively;

**a. Observations**

- i. The Committee observed the National Land Commission had received a historical injustice claim from Kandara Residents Association against Del Monte Kenya Limited and determined the matter on 7<sup>th</sup> February 2019 and the same was gazetted vide Gazette Notice No. 1995 dated 1<sup>st</sup> March 2019.
- ii. The Committee observed that the Commission recommended, among other things, that the land held by Del Monte Kenya Limited should be resurveyed to establish if the company was in possession of land that it is not registered to hold.

- iii. The Committee however observed that there are several cases regarding the renewal of leases and the recommendations of the Commission.
- iv. The Committee noted that the petition limited its focus to renewal of leases for land owned by Del Monte Kenya Limited by Muranga County. However, the Committee observed that the role of the County government was limited to making recommendations on the renewal of the leases and could not undertake the actual renewal as this is the mandate of the National Land Commission.
- v. The Committee observed that on the question regarding the implementation of a recommendation made by the National Land Commission regarding resurveying of the land owned by Del Monte to establish if the company held land that it is not registered to hold, the Ministry indicated that it would require three weeks to complete the exercise.
- vi. The Committee further observed that the Managing Director, Del Monte Kenya Limited was not opposed to the recommendation made by the National Land Commission for resurvey of the land as demonstrated by the letters to the Director of Survey in the Ministry of Lands and Physical Planning seeking the fast tracking of the exercise.
- vii. The Committee observed that the National Land Commission in its submission averred that three court cases had been filed in the High Court in Nairobi and Muranga touching on matters contained in the Petition. The cases included the following:
  - a) ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.;
  - b) High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General; and
  - c) ELC Judicial Review No. 1 of 2019 at Muranga: Kandara Residents Association and Others Vs National Land Commission, Director of Survey and the Attorney General.
- viii. The Committee observed that the Managing Director, Del Monte Kenya Limited in his submissions averred that three court cases in which Kandara Residents Association is a party had been filed in court touching on matters contained in the Petition. The cases included the following:
  - a) ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.
  - b) High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General.
  - c) ELC Judicial Review No. 1 of 2019 at Muranga: Kandara Residents Association and Others Vs National Land Commission, Director of Survey and the Attorney General.

- ix. The Committee observed that the submissions made by the Ministry of Lands & Physical Planning indicated that LR. No. 12158 measuring 2900 acres in Muranga County that is registered in the name of Del Monte Kenya Limited is an amalgamation of LR. Nos 10862,10741,11312 and 11146. However, the Hon. Jude Njomo, MP informed the Committee that the said parcels of land were surrendered to the government by two companies namely Sassa Coffee and Rappit B Limited and were later acquired by Del Monte Kenya Limited.
- x. In view of the foregoing, the Committee observed that although there may be matters pending in court, Standing Order 89(5) allows a Committee to refer to matters that may be active in court. The Committee further observed that the reference to the matters are also not likely to prejudice the fair determination of the cases in particular because both the Petitioners and the Del Monte Company Limited are not opposed to the issue of resurveying of the land in question.

**b. Recommendations**

- i. The Director of Survey, Ministry of Lands and Physical Planning does resurvey the land held by Del Monte Kenya Limited in Muranga and Kiambu Counties within ninety days of tabling of this report.
- ii. The National Land Commission does investigate the circumstances under which LR. Nos 10862,10741,11312 and 11146 that were said to have been surrendered to the government by two companies namely Sassa Coffee and Rappit B Limited were later acquired by Del Monte Kenya Limited within ninety days of tabling of this report.

**MIN. NO. NA/DCS/LANDS/2019/332: ADJOURNMENT**

The meeting was adjourned at forty – eight minutes past twelve noon.

Signature .....

**HON. DR. RACHAEL KAKI NYAMAI, M.P.**

**(Chairperson)**

Date..... 19-11-2019 .....



REPUBLIC OF KENYA  
TWELFTH PARLIAMENT (THIRD SESSION)  
THE NATIONAL ASSEMBLY

**PUBLIC PETITION**

*(No. 68 of 2019)*

Approved,  
BWA  
SNA  
1/10/19

**REGARDING DELAYED COMPENSATION OF LAND OWNERS FOR  
EXPANSION OF SIGALAGALA-MUSOLI-BUKURA-BUTERE ROAD NO. D260**

I, the **UNDERSIGNED**, on behalf of the concerned residents of Ikolomani Constituency, Kakamega County affected by expansion of Sigalagala-Musoli-Bukura-Butere Road No. D260;

**DRAW** the attention of the House to the following:

1. **THAT**, in 2013 the National Government through the Kenya Rural Roads Authority embarked on constructing the Sigalagala-Musoli-Bukura-Butere Road, which is now 95% complete;
2. **THAT**, the construction of the road involved expansions that encroached onto private property leaving many residents residing along the said road displaced and their properties destroyed;
3. **THAT**, even though the expansion of the road and upgrading it to bitumen standards has opened up businesses, trade and growth of the region's economy thus improving the livelihood of our people, residents are concerned that their right to enjoy their property was violated without adequate compensation;
4. **THAT**, the affected residents and families aver that whenever infrastructure projects such as the Standard Gauge Railway and roads encroach on part or the whole of any private land, owners are entitled to commensurate compensation for the land;
5. **THAT**, since 2013 the affected families who gave up their land for expansion of the road have not been compensated for their land and property with no clear explanation for the cause of the delay;

**PUBLIC PETITION**

**REGARDING DELAYED COMPENSATION OF LAND OWNERS FOR  
EXPANSION OF SIGALAGALA-MUSOLI-BUKURA-BUTERE ROAD NO. D260**

6. **THAT**, efforts to address the matter with the Cabinet Secretary and National Land Commission to explain why there has been a delay in compensating the displaced people has not been successful;

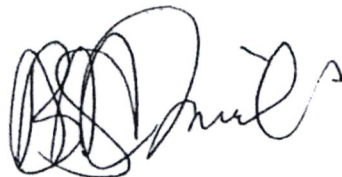
7. **THAT**, the matters in respect of which this Petition is raised are not pending before a Court of Law, Constitutional or Legal body;

**THEREFORE**, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Lands;

(i) investigates the matters raised in this Petition with a view to ascertaining why residents who were affected by the expansion of Sigalagala-Musoli-Bukura-Butere Road D260 have not been compensated for their land and property; and

(ii) intervenes through the relevant Government Ministry and agencies with a view to initiating the process of compensation to enable affected families to carry on with their livelihoods.

And your **PETITIONERS** shall ever pray.



**HON. BENARD M. SHINALI, MP**  
**MEMBER FOR IKOLOMANI CONSTITUENCY**

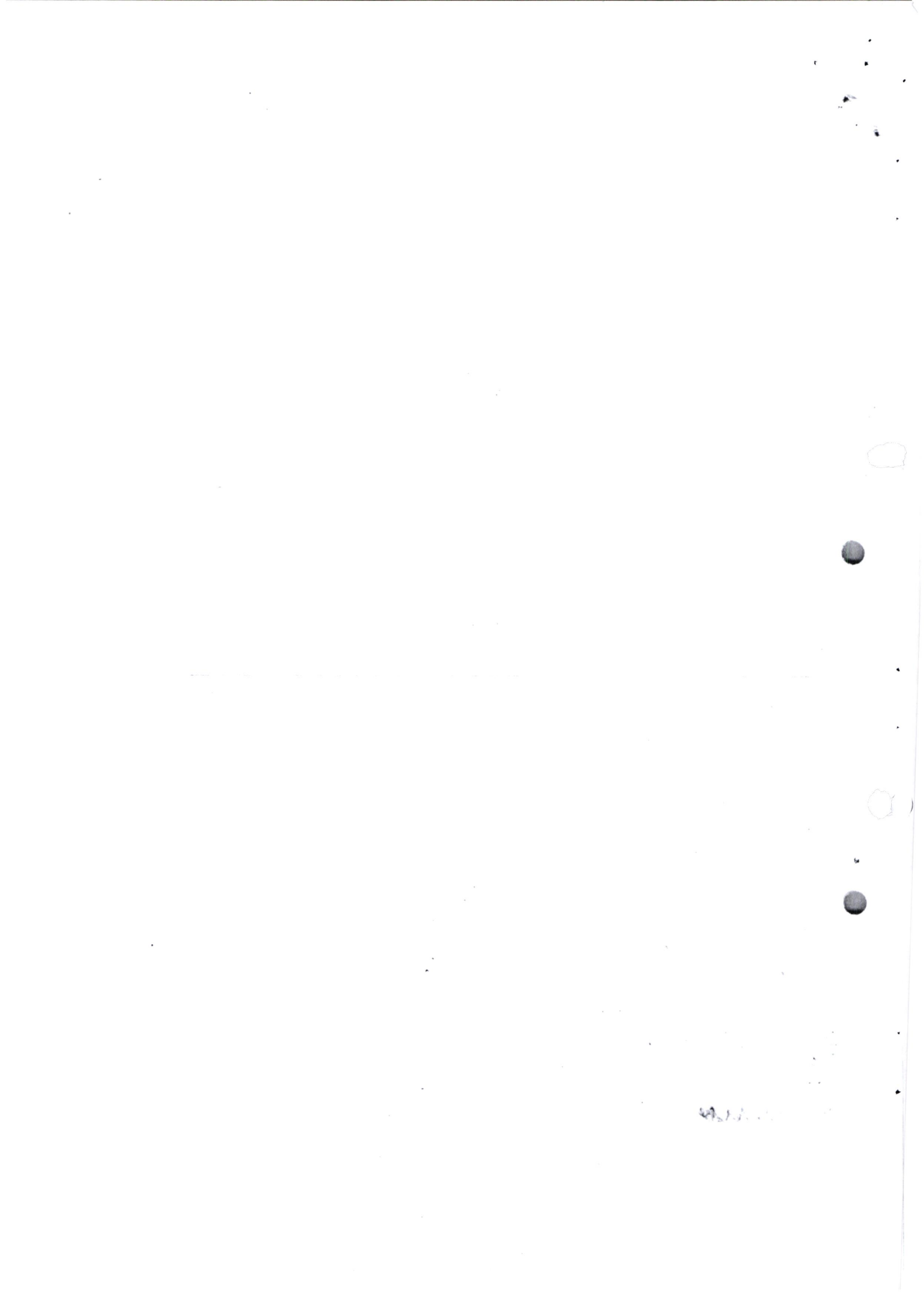
Date...26/09/2019.....

# PUBLIC PETITION

TO REQUEST FOR COMPENSATION DURING THE CONSTRUCTION OF THE ROAD D260

NO	NAME OF PETITIONER	FULL ADDRESS	NATIONALITY ID/ PASSPORT NO	SIGNATURE/ THUMB EXPRESSION.
1	Julias Lumumba	—	1523183	
2	Julias Shariati Namuyya	256 KK	03251555	
3	Andrew Lukalu Chiavuli	—	1872313	
4	Bukhala Chiavuli	151 KK	0631141	
5	Dennis K. Lidigu	151 Kakomuye	2344628	
6	Thomas Kashimuli Ashionu	—	5873497	
7	Ruth Khumuye	—	1386410	
8	Andriano Bukhala	Box 256 KK	1945044	
9	Stephan Khalumba	—	7659172	
10	Natumbache Matundu	Box 43 Kheyege	5804013	
11	Charles Induli Mulanyi	Box 256 Kakomuye	2491720	
12	Peter Mukabi	—	9705001	
13	Ingosi Njaye	—	8398779	
14	Andriano Mutachi Sio Ayu	—	10071662	
15	Luhombo Kwagya	—	05154184	
16	Philimona Bukhala	—	1510760	
17	Hezron Anduku	—	01541873	
18	Gerald Igami	Box 256 Kakomuye	102599	
19	Lawrence Bukhala	151 Kakomuye	9972927	
20	<del>Wakwamena Kwagya Kwagya</del>	—	—	—
21	Zakaria Shimechero	—	—	
22	Zakaria Bukhala Shimechero	—	—	
23	Clement Mulele	43 Kheyege	1228887	
24	Peter Anyanda	Box 256 Kakomuye	314778	
25	Gerald Igami	P.O. Box 151 KK	5635869	
26	Philip Isenge Mwirisa	Box 256 KK	8040047	
27	Wycliffe Lunganyi Alwala	—	4857093	
28	Enock H. Isanya	—	3370142	
29	Kiyianga Atomba	Box 256 Kakomuye	270063	
30	<del>Wakwamena Kwagya Kwagya</del>	—	—	—
31	Mahalia Lendu	Box 43 Kheyege	8321328	





**ANNEXTURE I**

**SUBMISSIONS BY THE AG DIRECTOR GENERAL KENYA  
RURAL ROADS AUTHORITY**



## KENYA RURAL ROADS AUTHORITY

Telephone: 020-8013846/271045/64  
0724 735568  
Email: [dgkerra@kerra.go.ke](mailto:dgkerra@kerra.go.ke)/[kerra@kerra.go.ke](mailto:kerra@kerra.go.ke)  
Website: [www.kerra.go.ke](http://www.kerra.go.ke)

Barabara Plaza Block B,  
Airport South Road,  
P.O Box 48151 – 00100  
NAIROBI, Kenya

Ref: **KeRRA/09/2/VOL. I (050)**

5<sup>th</sup> November, 2019

The Clerk of the National Assembly  
Parliament Building  
P. O. Box 41842 – 00100  
**NAIROBI**

Dear Sir,

**RE: PETITION BY RESIDENTS OF IKOLOMANI CONSTITUENCY REGARDING  
DELAYED COMPENSATION OF LAND OWNERS FOR THE EXPANSION OF  
SIGALAGALA-MUSOLI-BUTERE ROAD NO. D260**

We make reference to your letter on the above subject Ref: NA/DC/LANDS/2019/ (117) dated 29<sup>th</sup> October, 2019.

Our response is as follows;

**BACKGROUND**

The Road Project commenced on 28<sup>th</sup> March, 2011 and is situated in Kakamega County. The project starts at Sigalaga Centre (Junction of A1) and runs North-Westerly direction to Malinya, Isulu, Musoli, Akatsa, Bukura, and crosses Road C33 at Sabatia Market. The project road then ends at Butere along road E390 with a total length of approximately 35Km.

The Contract involves the upgrading to bitumen standard of the project roads and was awarded to Associated Construction Company.

**1. LAND ACQUISITION STATUS**

At the time of project commencement, it was noted that there was a need for design review to reduce the cost of land acquisition. This was carried out and land acquisition drawings presented to then Commissioner of Lands vide letter Ref: **KeRRA/D&C/5856** dated 7<sup>th</sup> March, 2012.

The Land Act 2012, which was enacted in May 2012 had the effect of transferring responsibility for land acquisition to the National Land Commission (NLC). However, the Commission was not constituted until February 2013.

896 527

KeRRA was of the understanding that all pending cases, including compensation for persons affected by the Sigalagala-Musoli-Butere road project shall be concluded by the NLC as a successor to the Commissioner of Land. It was however until 2015 that the Authority was informed of the need to resubmit land acquisition drawings. This was nonetheless done vide the letter **MOTI/A/A35.45/B VOL.** dated 21<sup>st</sup> January, 2015.

Since construction of the road had started and due to the lengthy process of land acquisition and compensation, the Resident Engineer entered into an agreement with private land owners to allow intrusion of their property for the purpose of public road construction. It was further agreed that before the removal of any development, proper records be documented for purposes of compensation. This documentation was jointly done by the affected landowners, KeRRA surveyor, the Agricultural Officer and the Forestry Officers.

## **2. STATUS OF LAND ACQUISITION**

A chronology of the relevant events is as follows:

- a) Publishing of the intention to acquire land;  
This was done vide Kenya Gazette Notice No. 6472 of 7<sup>th</sup> July 2017.
- b) Inspection of affected property;  
The NLC, jointly with KeRRA, notified the public of the intention to acquire their land for road use and carried out physical inspection of the affected property followed by interviews for the Project Affected Persons(PAPs) in March 2018.
- c) KeRRA requested Government Agriculture and Forestry Offices in Kakamega County to carry out valuations of crops and trees damaged during the road construction respectively. The compensation for developments (crops and trees) will be processed by KeRRA once the valuation report is received from the relevant County offices.
- d) The compensation for land is awaiting gazettment of dates of inquiry by Chairman of National Land Commission. This has been adversely affected by the continued lack of Commissioners at NLC.

The Authority undertakes to continue carrying out our role as required by law expeditiously to ensure that all affected parties are duly compensated for the Sigalagala-Musoli-Sabatia road project.



ENG. LUKA K. KIMELI  
**Ag. DIRECTOR GENERAL**

Copy to: The Principal Secretary  
State Department for Infrastructure  
Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works  
Works Building  
**NAIROBI**

**ANNEXTURE II**

**SUBMISSIONS BY THE AG CHIEF EXECUTIVE CHIEF  
OFFICER NATIONAL LAND COMMISSION**

# NATIONAL LAND COMMISSION



## STATEMENT ON THE DELAYED COMPENSATION OF PERSONS AFFECTED BY THE CONSTRUCTION OF SIGALAGALA-MUSOLI- SABATIA-BUTERE (D260/E390) ROAD PROJECT

---

**PRESENTED BY: KABALE TACHE ARERO**

**Ag.SECRETARY/ CHIEF EXECUTIVE OFFICER**

**7<sup>TH</sup> NOVEMBER 2019**

Hon Chair,

We received an invitation from the Clerk of The National Assembly to appear before this committee to respond to the following two petitions:

1. Petition by Hon. Benard Washiali on delayed compensation of land owners for expansion of Sigalagala – Musoli- Butere Road No.D26.
2. Petition by residents of Keiyo North Constituency on compulsory acquisition of land for construction of Tambach Teachers College.

**PETITION BY HON. BENARD WASHIALI ON DELAYED COMPENSATION OF LAND OWNERS FOR EXPANSION OF SIGALAGALA – MUSOLI- BUTERE ROAD NO.D26.**

**HIGHLIGHTS OF THE PROJECT:**

<b>PROJECT NAME</b>	SIGALAGALA- MUSOLI –SABATIA- BUTERE ROAD PROJECT
<b>ACQUIRING BODY</b>	Kenya Rural Roads Authority (KeRRA).
<b>DATE OF INSTRUCTION</b>	Letter from Director General KeRRA addressed to the then Commissioner of Land Ref.KeRRA/D&C/5856 dated 7 <sup>th</sup> March, 2012.
<b>GAZETTMENT OF INTENTION</b>	Gazette Notice No.6472 of 7 <sup>th</sup> July, 2017.
<b>GAZETTMENT OF INQUIRY</b>	Awaiting gazettment of inquiries vide our reminder letters addressed to the Director General KeRRA Ref.NLC/VAL.1431 dated 26 <sup>th</sup> February, 2019 and 25 <sup>th</sup> April, 2019 respectively.The Commission is yet to receive any response.

**PROJECT STATUS**

- KeRRA vide letter Ref.KeRRA/D&C/5856 dated 7<sup>th</sup> March, 2012 addressed to the then Commissioner of Lands requested for compulsory land acquisition to facilitate upgrading of the road.
- The Ministry of Lands appointed a team to undertake the exercise however the team did not proceed due to transitional changes whereby the mandate of Compulsory Land Acquisition was to be carried out by the Commission.
- The Commission took up the matter and in September 2016 appointed a team to undertake official searches at Kakamega and Vihiga Land offices to facilitate gazettment of intention to acquire.
- The Commission prepared the parcel list for gazettment and requested for a proforma invoice from Government printer. The invoice was forwarded to the Director General vide Commission letter Ref.NLC/VAL.1431 dated 15<sup>th</sup> February, 2017 for settlement.
- The Director General KeRRA vide letter Ref:KeRRA/04/RWC1/Vol.1/3362 dated 14<sup>th</sup> June,2017 forwarded a cheque to the Commission for onward transmission to the Government Printers for gazettment fees.



- The Commission forwarded the cheque to Government printers who published under the gazette notice for intention to acquire number 6472 dated 7<sup>th</sup> July,2017.
- The Commission appointed a team to undertake the inspections for valuations and actual inspections were done in the month of March 2018. Upon conclusion of inspections in May, 2018 a brief was forwarded to KeRRA and subsequent letters Ref: NLC/VAL/1431 dated 26<sup>th</sup> February, 2019 and 25th April, 2019 requesting for amended acquisition plans and parcel list to facilitate gazettment for inquiries.

**Encl.**

***RESPONSE TO STATEMENT BY HON.BENARD SHINALI, MP IKOLOMANI CONSTITUENCY ON DELAYED COMPENSATION OF LANDOWNERS FOR EXPANSION OF SIGALAGALA-MUSOLI-BUTERE ROAD PROJECT***

The Commission has not requested for Compensation amount from KeRRA since inquiries are yet to be published.

Inquiries shall be held as per the gazette notice to be published indicating the venue and documents required from every Project Affected Person. *As per Land Act of 2012 section 113(1) kindly note upon conclusion of the inquiry, the Commission shall prepare a written award, in which the Commission shall make a separate award of compensation for every person whom the Commission has determined to have an interest in the land.*

113(2) (a) *An award shall be final and conclusive evidence of:-*

- I. The size of the land to be acquired;*
- II. The value, in the opinion of the Commission of the land;*
- III. The amount of the compensation payable whether the persons interested in the land have or have not appeared at the inquiry.*

The acquiring body, Kenya Rural Roads Authority is in a better position to shed light on the gazettment of inquiries and budgetary allocations within the current financial year and in future for purposes of compensation.

All project affected persons will be compensated for deprivation of their property in line with the provisions of the Constitution, the Land Act and the Land Value Index Act 2019. Upon conclusion of inquiries and remittance of the compensation funds from KeRRA, the Commission shall expeditiously disburse funds to the respective project affected persons.

## **PETITION NO 2.**

### **PETITION BY RESIDENTS OF KEIYO NORTH CONSTITUENCY ON COMPULSORY ACQUISITION OF LAND FOR CONSTRUCTION OF TAMBACH TEACHERS COLLEGE.**

**Hon Chair,**

The acquisition was undertaken simultaneously with that for Kaptarakwa Rural health centre and are both in the land acquisition file No. 834

Acquisition of land for the subject project was done through gazette notice number 4260 and 4261 being notices of intention to acquire land and inquiry respectively both dated October 1985.

It is evident from the file that the process was undertaken by the office of the Commissioner of Lands (CoL) (now defunct).

The processes of inspection, awarding and requisition of compensation funds was successfully undertaken.

A total of 58 Project affected Persons (PAPs) had been identified.

There seems to have been a delay in release of funds initially assessed with back and forth correspondences on the same between the CoL and the Ministry of Education.

A head of state pronouncement seems to have directed **a land for land compensation** other than cash compensation.

The affected were to be allocated alternative land at SERGOIT GROUNDS, an arrangement that they seem to have been agreeable to in anticipation that each would get about 5 acres.

The alternative land was surveyed and subdivided into about 160 parcels of various sizes for allocation.

The PAPs were allocated alternative land as evidenced by a sample of the letter of allotment by the District Commissioners office for Mr. FRANCIS CHEPLAIT of ID NO. 0243711/63 (attached).

The PAPs were not satisfied with the various lands allocated to them and they complained of strangers being allocated "free land". (attached complaint letter).

We have written to the office of County Commissioner – Elgeyo Marakwet to furnish the Commission with the full list of persons allocated land at SERGOIT grounds and the respective acreage.

It is the Commission's view then that the land owners were compensated with alternative land.

It would be however prudent to review if an injustice was occasioned by the allocation complained of once the records are availed from the office of County Commissioner Iten.

Such review will confirm if the PAPs were allocated land of equivalent value which is the principle guiding land for land compensation.

If an injustice was occasioned, it should be escalated to the organ of the Commission handling historical injustices for processing once the Commission is properly constituted.

*KABALE TACHE ARERO*

**KABALE TACHE ARERO**  
**Ag. SECRETARY/CEO**



## KENYA RURAL ROADS AUTHORITY

Telephone: 020-8013846/271045/64  
0724 735568  
Email: [dgkerra@kerra.go.ke](mailto:dgkerra@kerra.go.ke)/[kerra@kerra.go.ke](mailto:kerra@kerra.go.ke)  
Website: [www.kerra.go.ke](http://www.kerra.go.ke)

Barabara Plaza Block B,  
Airport South Road,  
P.O Box 48151 – 00100  
NAIROBI, Kenya

Ref: **KeRRA/09/2/VOL. I (050)**

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P. O. Box 41842 – 00100  
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Dear Sir,

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Our response is as follows;

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The Authority undertakes to continue carrying out our role as required by law expeditiously to ensure that all affected parties are duly compensated for the Sigalagala-Musoli-Sabatia road project.

  
ENG. LUKA K. KIMELI  
**Ag. DIRECTOR GENERAL**

Copy to: The Principal Secretary  
State Department for Infrastructure  
Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works  
Works Building  
**NAIROBI**

# NATIONAL LAND COMMISSION



## STATEMENT ON THE DELAYED COMPENSATION OF PERSONS AFFECTED BY THE CONSTRUCTION OF SIGALAGALA-MUSOLI- SABATIA-BUTERE (D260/E390) ROAD PROJECT

---

**PRESENTED BY: KABALE TACHE ARERO**

**Ag.SECRETARY/ CHIEF EXECUTIVE OFFICER**

**7<sup>TH</sup> NOVEMBER 2019**

**Hon Chair,**

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**HIGHLIGHTS OF THE PROJECT:**

<b>PROJECT NAME</b>	SIGALAGALA- MUSOLI –SABATIA- BUTERE ROAD PROJECT
<b>ACQUIRING BODY</b>	Kenya Rural Roads Authority (KeRRA).
<b>DATE OF INSTRUCTION</b>	Letter from Director General KeRRA addressed to the then Commissioner of Lands Ref.KeRRA/D&C/5856 dated 7 <sup>th</sup> March, 2012.
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*KABALE*

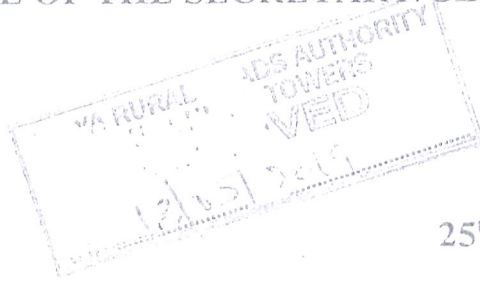
**KABALE TACHE ARERO**  
**Ag. SECRETARY/CEO**



## OFFICE OF THE SECRETARY/CEO

Website: [www.landcommission.go.ke](http://www.landcommission.go.ke)  
Telephone: Nairobi 2718050  
Email Address: [info@landcommission.go.ke](mailto:info@landcommission.go.ke)

When replying please quote



ARDHI HOUSE  
1<sup>ST</sup> NGONG AVENUE  
OFF NGONG ROAD  
P. O. BOX 44417  
NAIROBI

Ref.VAL.1431

25<sup>th</sup> April, 2019

**Director General**  
Kenya Rural Roads Authority  
P. O. Box 48151-00100  
**NAIROBI**

**LAND ACT 2012**  
**CONSTRUCTION OF SIGALAGALA-MUSOLI-SABATIA-BUTERE**  
**ROAD PROJECT**

---

Reference is made to the above matter and our letter Ref.NLC/VAL.1431 dated 26<sup>th</sup> February, 2019

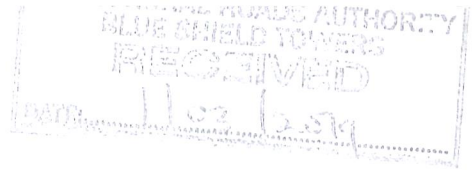
Attached please find a self-explanatory letter from the Project Affected Persons in regard to compensation.

Kindly expedite the preparation and submission to the Commission of the amended acquisition plans in readiness for publication in the Kenya Gazette the notice of inquiry.

This will help to move forward the land acquisition process and forestall such complaints.

A handwritten signature in black ink, appearing to read 'Kabale Tache Arero'.

**Kabale Tache Arero**  
**AG. SECRETARY/CEO**



## OFFICE OF THE SECRETARY/CEO

Telegrams: "MINILANDS", Nairobi  
Telephone: Nairobi 2718050  
When replying please quote

ARDHI HOUSE  
NGONG ROAD  
P.O. Box 44417  
**NAIROBI**

REF: NLC/VAL.1431

26<sup>th</sup> February 2019

**Director General**  
Kenya Rural Roads Authority  
P. O. Box 48151-00100  
**NAIROBI**

### **LAND ACT 2012 CONSTRUCTION OF SIGALAGALA-MUSOLI-SABATIA-BUTERE ROAD PROJECT**

Reference is made to the above subject matter.

Kindly note that Notice of intention to acquire was gazetted vide Gazette Notice No. 6472 of 7<sup>th</sup> July 2017 and the Commission undertook inspections for valuation in the month of March 2018.


A brief was forwarded to you highlighting some issues noted during inspections as below:-

1. The road construction began way back in 2012 – As at the time of inspection the road had been completed. However, it was noted that the affected land owners were claiming crops/trees and structures destroyed during construction and the inventory was with the Authority.
2. A lot of succession causes that require processing of limited grants for compensation purposes.

In this regard, we hereby request for the following:-

1. List of all affected parcels initially gazette and the noted addendums to facilitate gazette of inquiries.
2. An inventory of all affected trees, crops and structures in respect to the parcel numbers.

Your timely response will be appreciated.

  
**Kabale Tache Arero (Mrs.)**  
**AG. SECRETARY/CEO**