

Approved for tabling.
SAA
25/11/24

Rt. Hon. Speaker

The report is in order
You may approve for
tabling.

[Signature]
22/11/24



THE NATIONAL ASSEMBLY


**THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE**

PARLIAMENT
OF KENYA
LIBRARY

REPORT ON-

**CONSIDERATION OF PUBLIC PETITION NO. 82 OF 2023 REGARDING THE DELAY IN
THE COMPLETION OF JOMVU KUU-JITONI -RABAI ROAD IN JOMVU SUB COUNTY BY
HON BADY TWALIB BADY, M.P.**

NOVEMBER 2024

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 NOV 2024	
DAY: Wednesday	
TABLED BY:	Hon. Nimrod M'Gai (Chairperson)
CLERK-AT THE-TABLE:	honda

Directorate of Legislative & Procedural Services
Clerk's Chambers
Main Parliament Buildings
NAIROBI

TABLE OF CONTENTS

CHAIRPERSON'S FOREWORD.....	2
PART ONE	3
1 PREFACE	3
1.1 Establishment and Mandate of the Committee.....	3
1.2 Committee Membership	4
1.3 Committee Secretariat.....	5
PART TWO.....	6
2 BACKGROUND TO THE PETITION	6
2.1 Introduction	6
2.2 Prayers	6
3 PART THREE	7
3.1 STAKEHOLDERS' SUBMISSIONS ON THE PETITION	7
3.1.1 Petitioners.....	7
3.1.2 Prayers.....	7
3.1.3 Kenya Urban Roads Authority.....	8
3.1.4 Site Visit	10
4 PART FOUR	13
4.1 COMMITTEE OBSERVATIONS	13
5 PART FIVE.....	14
5.1 COMMITTEE RECOMMENDATION	14
6 ANNEXURES.....	15

CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present this House the Report of the Public Petitions Committee regarding Public Petition No. 82 of 2023 regarding the delay in the completion of Jomvu Kuu-Jitoni-Rabai road in Jomvu subcounty. The Petition was presented to the House pursuant to Standing Order No. 225 (2) (a) by the Hon. Bady Twalib Bady, M.P. on behalf the residents of Jomvu Constituency.

The Petitioner prayed that the Committee compels the Kenya National Highway Authority to complete the construction of the road as per the contractual agreement within the next six months. In consideration of the Petition, the Committee collected the views from the Petitioner, the residents of the area during a site visit inquiry and Kenya Urban Roads Authority (KURA).

The Committee observed that the tarmacking of Jomvu Kuu Jitoni-Rabai Road was yet to be completed as the contractor suspended works due to delayed payment to the contractor. The Committee recommends that the National Treasury disburses the remaining funds to KURA to enable completion of the road.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support offered during the consideration of the Petition. The Chairperson expresses gratitude to the Members of the Committee and the Secretariat for their devotion and commitment to duty during the consideration of the Petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to table the report before the House.



HON. NIMROD MBITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date:
20/11/2020

PART ONE

PREFACE

1.1 Establishment and Mandate of the Committee

The Public Petitions Committee was established under the provisions of Standing Order 208A with the following terms of reference:

- (a) considering all public petitions tabled in the House;
- (b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- (c) recommending whether the findings arising from consideration of a petition should be debated; and
- (d) advising the House and reporting on all public petitions committed to it.

1.2 Committee Membership

The Public Petitions Committee was constituted in October 2022 and comprises the following Members:

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.
Kitui East Constituency

United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency

United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency

Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency

United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency

United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.
Awendo Constituency

Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere South Constituency
Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South
Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.
Machakos Town Constituency
Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency
Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency
United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

1.3 Committee Secretariat

The Public Petitions Committee was facilitated members of the secretariat:

**Lead Clerk
Mr. Ahmed Kadhi
Principal Clerk Assistant II**

**Ms. Anne Shibuko
First Clerk Assistant**

**Mr. Willis Obiero
Clerk Assistant III**

**Ms. Patricia Gichane
Legal Counsel II**

**Ms. Roselyne Njuki
Senior Serjeant-at-Arms**

**Mr. Calvin Karungo
Media Relations Officer III**

**Ms. Miriam Modo
First Clerk Assistant**

**Mr. Isaac Nabiswa
Legal Counsel II**

**Mr. Martin Sigei
Research Officer III**

**Mr. Paul Shana
Serjeant-at-Arms**

**Mr. Peter Mutethia
Audio Officer**

PART TWO

BACKGROUND TO THE PETITION

2.1 Introduction

1. Public Petition No. 82 of 2023 regarding the delay in the completion of Jomvu Kuu-Jitoni-Rabai road in Jomvu Subcounty was presented to the house on 7th December 2023 by the member for Jomvu Constituency, Hon. Bady Twalib Bay, MP on behalf of the residents of Jomvu Constituency.
2. The petitioners stated that the Jomvu Kuu-Jitoni-Rabai road launched by the then Deputy President of the Government of Kenya on March 16, 2018 was meant to link the interior parts of Jomvu Constituency to Rabai constituency without having to drive to Mazaras.
3. The road was part of the old Mombasa-Nairobi Road and links the interior parts of Jomvu to areas like Mazaras and Rabai, thereby complementing the Mombasa-Nairobi highway.
4. Out of the 12 kilometres, the contractor made substantial progress and completed construction of the first 9 kilometres, after which the contractor abandoned the site without completing the remaining 3 kilometres.
5. The remaining section of the road is dilapidated exposing residents to extremely dusty conditions when its dry and impassable due to mud cumulated during rainy weather.
6. Transport costs incurred by residents have tremendously increased due to high maintenance costs on vehicles and motorcycles passed on to users by service providers.
7. Access to water had been curtailed due to the demolition of pipes during the road construction, which cannot be fixed until construction of the road is completed. As a result, residents have incurred exorbitant charges in obtaining this basic commodity through the purchase of water from bowsers.

2.2 Prayers

8. The petitioners prayed that the Committee—
 - (i) Compels the Kenya National Highway Authority to complete construction of the road as per the contractual agreement within the next six months; and
 - (ii) Make any other recommendation or action it deems fit in addressing the plight of the petitioners.

PART THREE

3.1 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1.1 Petitioners

On Wednesday 20th March 2024, the Member for Jomvu Constituency Hon. Bady Twalib Bady, MP appeared before the committee and submitted as follows—

9. The Jitoni-Rabai Road was launched on 16th March 2018 and was meant to link the interior parts of Jomvu Constituency to Rabai Constituency without having to drive to Mazeras.
10. The road was part of the old Mombasa-Nairobi Road and links the interior parts of Jomvu to areas like Mazeras and Rabai, thereby instrumental in complementing the main Mombasa-Nairobi Highway.
11. Out of the 12 kilometres, the contractor made substantial progress and completed construction of the first nine kilometres, after which he abandoned the site without completing the remaining three kilometres on Jomvu side, despite residents demolishing their houses and businesses to pave way for the construction of the said road.
12. The unconstructed section of the road is dilapidated exposing residents to extremely dusty conditions during dry seasons and impassable due to mud accumulated during rainy weather. Therefore, the transport costs incurred by residents have tremendously increased due to high maintenance costs of vehicles and motorcycles passed on to users by service providers.
13. Access to water has been curtailed through destruction of pipes during construction of the road, which cannot be fixed until conclusion of the road construction. This has forced residents to incur exorbitant charges in accessing this basic commodity through purchase of water from water bowsers.
14. Despite these challenges, the efforts to engage Kenya Urban Roads Authority (KURA) were futile.

3.1.2 Prayers

15. The Petitioner prayed that the Committee—
 - (i) Compels KURA to complete construction of the road as per the contractual agreement within the next six months; and,
 - (ii) Make any other recommendation or action it deems fit in addressing the plight of the petitioners.

3.1.3 Kenya Urban Roads Authority

Vide a letter dated 11th June 2024, Eng. Mike Y. Teliy on behalf of the Director General of Kenya Urban Roads Authority (KURA) made written submissions on the Petition as follows—

16. The works comprising the contract are situated in Mombasa and Kilifi Counties in the Coastal region. The project has been conceived under the Low Volume Sealed Roads program which is part of the Roads 10,000 km program that is geared towards increasing the paved road network in the Country thus stimulating economic growth and supporting the primary growth sector.
17. The main project works comprises construction to bitumen standards of Jomvu Kuu-Jitoni-Rabai road with the cross sections including, 7.0m Wide Carriageway, Lined Drains on both sides and 2.0m Wide Walkways on both sides.
18. The total length of the project road was approximately 11.7 km. The construction contract was awarded on 10th July, 2017 and the engineer issued the order to commence on 15th August, 2017 with 28 days mobilization period, making the commencement date to be the 13th September, 2017.
19. The contract period was extended by 645 days making 27th December 2023 the date of completion and the provisional extension of time was granted since then.
20. The project objectives included decongesting the Mombasa Nairobi highway by and providing an alternative route for smaller vehicles; reducing the travel times between the local market centres; opening more areas for development; improve access by the local community; improving drainage in the area; and improving the quality of local environment through reduction of dust and soil erosion.
21. The works to be executed under the contract comprise mainly of but not limited to facilitation of the supervision staff, relocation of utilities as necessary, site clearance, earthworks to formation levels, and regular maintenance of passage of traffic during construction including diversion works as necessary to meet regulatory requirements, construction of 2m walkways on both side of the carriageway with 25mm thick AC type I wearing course, installation of pipe culverts and other drainage works, protection works using stone pitching and gabions as necessary, provision and installation of road furniture including road marking and maintenance of the works during construction and 12 months Defect Liability Period.
22. The scope of works in the contract included but not limited to facilitation of the supervision of staff, relocation of utilities as necessary, site clearance, earthworks to formation levels, regular maintenance of passage of traffic during construction including diversion works as necessary to meet regulatory requirement.

23. Further, the contract entailed construction of the pavement structure along the existing alignment including construction of 300mm improved subgrade, construction of 200 mm grave subbase of minimum, provision of 150mm cement improved gravel base on carriageway, widening and walkways, and laying of 50mm Asphalt Concrete Type I wearing course on carriageway and widening.
24. Additionally, the contract for the scope of works included the construction of 2m walkways on both side of the carriageway with 25mm thick AC type 1 wearing course, and installation of pipe culverts and other drainage works.
25. The scope also included protection works using stone pitching and gabions as necessary, provision and installation of road furniture including road marking, maintenance of the works during construction and 12 months defect liability period.
26. Finally, the scope was to cover any other activity not listed but deemed to be necessary by the Engineer to be carried out subject to formal instructions and within the mode of payment stipulated either by day works or on measured basis.
27. The overall physical progress was about 85% (8 milestones). The Contractor is currently not on site after suspending works citing delayed payment (pending bills) and cash flow issues since June 2022.
28. The contract data as of 11th June 2024 was as follows—

Project Title	CONSTRUCTION TO BITUMEN STANDARDS OF JOMVU KUU - JITONI - RABAI ROAD; MOMBASA COUNTY
Contract No.	KURA/DEV/LVSUR/314/2016-2017
County	Mombasa/Kilifi
Financier	GoK Development Vote
Employer	Director General, Kenya Urban Roads Authority (KURA)
Engineer	Director (Policy, Strategy and Compliance) Kenya Urban Roads Authority (KURA)
Engineer's representative	Deputy Director (Coast Region) Kenya Urban Roads Authority (KURA)
Site supervision	Resident Engineer -Kenya Urban Roads Authority
Contractor	M/S Associated Construction Co. Ltd
Contract Sum	KES 1,023,765,470.40
Date of Contract award	10 TH July,2017
Order to Commence	15 th August,2017
Period of Commencement	28 Days
Date of commencement	13 th September,2017
Contract period	24 Months
Original date of completion	13 th September,2019
Extension of time No. 1	208 days

Revised date of completion No. 1	8 th April, 2020
Extension of time No. 2	189 Days
Revised date of completion No.2	16 th October,2020
Extension of time No. 3	190 days
Revised date of completion No. 3	25 th April, 2021
Extension of time No. 4	190 Days
Revised date of completion No. 4	25 th April, 2021
Extension of time No. 5	21 st March 2022
Progress to date	85%
Extension of time No. 6	645 Days
Revised date of completion No. 6	27 th December 2023
Time elapsed	80 months (333% of contract period)
Defect liability period	12 months
Performance based contract period	36 months
Performance based contract Amount	KES 31,132,080
Amount certified to date	KES 842,424,582.26
Amount paid to date	KES 699,483,065.14
Amount owed to the contractor (pending bill)	KES 148,571,018
Amount certified this month	NIL
Date of this report	11 th June 2024

29. The overall physical progress of the project was about 85 per cent (8 milestones). The contractor was not at site after suspending works citing delayed payment (pending bills) and cash flow issues since June 2022.

30. The Authority was awaiting the release of the Exchequer funds to pay the contractor, in order to resume works on site. Meanwhile, KURA would also explore ways of making the remaining section of the road passable, and mitigate the environmental concerns, including dust as raised by the Petitioner.

31. The challenges encountered during the project implementation included delayed payments, encroachment on road corridor, and presence of power lines and water pipes.

3.1.4 Site Visit

On 27th April 2024, the Committee conducted a site visit inquiry at the Jomvu Kuu Jitoni-Rabai Road in Mombasa County and made the following observations—

32. The tarmacking of the road was yet to be completed and there was no contractor on site.
33. The untarmacked section of the road was narrow, with a poor drainage system and had exposed residents to dust conditions.
34. The road passed through a neighbourhood hosting several residential buildings, small businesses and agricultural lands in the area hence affecting economic stability of the area.



Figure 1. Hob. Bady Twalib briefing the Committee during the site visit inquiry

35. The residents affected by the status of the road included *boda boda* transporters and small businesses due to the high cost of maintenance on vehicles and motorcycles used in service provision.

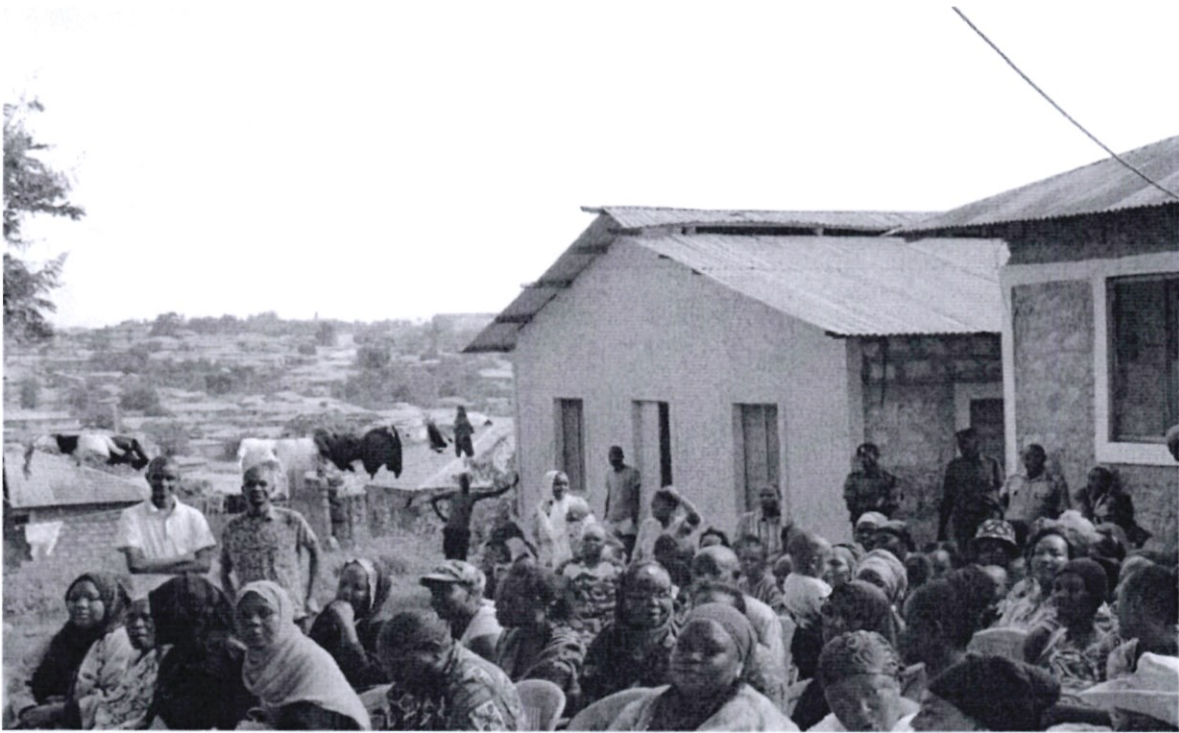


Figure 2. *Community members engaging the Committee during the site visit*



Figure 3. *A section where the tarmacking of the road stalled*

PART FOUR

4.1 COMMITTEE OBSERVATIONS

Upon hearing from the Petitioner and other stakeholders, the Committee observed that—


36. The Jomvu Kuu-Jitoni-Rabai Road is classified as an urban road and pursuant to the provisions of section 10 of the Kenya Roads Act, the road falls under the responsibility of the Kenya Urban Roads Authority.
37. The contract for construction of the road to bitumen standards was awarded to M/S Associated Construction Limited and the contract period was 24 months.
38. The tarmacking of Jomvu Kuu Jitoni-Rabai Road in Mombasa County was yet to be completed as the contractor suspended works due to delayed payment to the contractor.
39. The untarmacked section of the road was in a dilapidated state, with poor drainage systems and dusty condition affecting the wellbeing of the residents in the area including businesses.
40. According to Report of the Auditor-General on Kenya Urban Roads Authority for the year ended 30th June, 2022—
 - (i) An audit inspection exercise carried out in February, 2023 revealed that the project implementation was behind schedule going by the project extended completion date of 21st March, 2022. The works had stalled, and the contractor was not on site.
 - (ii) Some completed sections of the road had been worn out and required to be redone. In the circumstances, the project completion was behind schedule as approximately 11 months had elapsed from the revised project completion date of 21st March, 2022.
41. The project was extended six times for a period totalling 80 months as of 11th June 2024. This would adversely impact on realization of value for money by the citizens.

PART FIVE

5.1 COMMITTEE RECOMMENDATIONS

42. Pursuant to the provisions of Standing Order 227, the Committee makes the following recommendations—

- (i) The National Treasury disburses the remaining funds to KURA in the Financial Year 2024/2025 or through a Supplementary budget, if any, to enable completion of the road; and
- (ii) KURA to undertake measures with a view to making the remaining section of the road passable, and mitigate the environmental concerns, including dust.

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 NOV 2024	
DAY: Wednesday	
TABLED BY:	Hon. Nimrod Mbaï (Chairperson)
CLERK-AT THE-TABLE:	Lornale

Signed:  Date: 20/11/2024

THE HON. NIMROD MITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE



ANNEXURES

- Annex 1: The Adoption List
- Annex 2: Public Petition No. 82 of 2023 regarding the Delay in the Completion Jomvu Kuu -Jitoni- Rabai Road in Jomvu subcounty
- Annex 3: Minutes of the 11th sitting of the Public Petition Committee held on Wednesday, March 20,2024
- Annex 4: Minutes of the 41st sitting of the Public Petition Committee held on Thursday, June 13,2024
- Annex 5: Letter Ref: KURA/SP/6 VOL.3(2) forwarding written submissions on the response to the Petition.
- Annex 6: Minutes of the 58th Sitting held on 8th November, 2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE

ADOPTION SCHEDULE
OF THE REPORT ON CONSIDERATION OF PUBLIC PETITION NO. 82 OF 2023
REGARDING THE DELAY IN THE COMPLETION OF JOMVU KUU-JITONI -RABAI ROAD IN
JOMVU SUB COUNTY

DATE... 8TH NOVEMBER 2024

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the consideration of **Public Petition No. 82 of 2023 regarding the Delay in the Completion of Jomvu Kuu-Jitoni -Rabai Road in Jomvu Sub County** to confirm our approval and confirm its accuracy, validity and authenticity:

NO.	NAME	DESIGNATION	SIGNATURE
1.	Hon. Nimrod Mbithuka Mbai, M.P.	Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, M.P.	Vice Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	Member	
4.	Hon. Joshua Chepyegon Kandie, M.P.	Member	
5.	Hon. John Walter Owino, M.P.	Member	
6.	Hon. Ernest Ogesi Kivai, M.P.	Member	
7.	Hon. Maisori Marwa Kitayama, M.P.	Member	
8.	Hon. Edith Vethi Nyenze, M.P.	Member	
9.	Hon. Bidu Mohamed Tubi, M.P.	Member	
10.	Hon. Caleb Mutiso Mule, M.P.	Member	
11.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	Member	
12.	Hon. Peter Mbogho Shake, M.P.	Member	
13.	Hon. Suzanne Ndunge Kiamba, M.P.	Member	
14.	Hon. John Bwire Okano, M.P.	Member	
15.	Hon. Sloya Clement Logova, M.P.	Member	



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)

PUBLIC PETITION

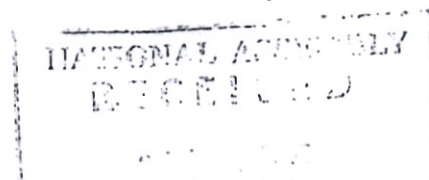
(No. 82 of 2023)

REGARDING THE DELAY IN THE COMPLETION OF JOMVU KUU-
JITONI-RABAI ROAD IN JOMVU SUB COUNTY.

I, the **UNDERSIGNED**, on behalf of the residents of Jomvu Constituency;

DRAW the attention of the House to the following:

- 1. THAT**, the Jomvu Kuu - Jitoni - Rabai road launched by the then Deputy President of the Government of Kenya on March 16, 2018, and was meant to link the interior parts of Jomvu Constituency to Rabai Constituency without having to drive to Mazeras;
- 2. THAT**, the road was part of the old Mombasa-Nairobi road and links the interior parts of Jomvu to areas like Mazeras and Rabai, thereby complementing the main Mombasa - Nairobi highway;
- 3. THAT**, out of the 12 kilometres, the contractor made substantial progress and completed construction of the first 9 kilometres, after which the contractor abandoned the site without completing the remaining 3 kilometres;
- 4. THAT**, the remaining section of the road is dilapidated exposing residents to extremely dusty conditions when it is dry and impassable due to mud cumulated during rainy weather;
- 5. THAT**, transport costs incurred by residents have tremendously increased due to high maintenance costs on vehicles and motorcycles passed on to users by service providers;



Hon. Speaker,
You may approve
appropriate
6/12/23

Approved
SNA
6/12/23

**REGARDING THE DELAY IN THE COMPLETION OF JOMVU KUU-
JITONI-RABAI ROAD**

- 6. THAT,** access to water has been curtailed through demolition of pipes during construction of the road, which cannot be fixed until conclusion of the road construction. This has forced residents to incur exorbitant charges in accessing this basic commodity through purchase of water from water bowsers.
- 7. THAT,** efforts by the Petitioners to have the matter addressed by the Kenya National Highway Authority have been futile; and
- 8. THAT,** the matter presented in this petition is not pending before any tribunal, court of law or Independent body.

THEREFORE, your humble Petitioners pray that the National Assembly through the Public Petitions Committee -

- i. Compels the Kenya National Highway Authority to complete construction of the road as per the contractual agreement within the next six months; and,
- ii. Makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.

And your **PETITIONERS** will ever pray.

PRESENTED BY:

Badytwalib

HON. Bady TWALIB Bady, MP

MEMBER FOR JOMVU CONSTITUENCY

DATE:5/12/2023.....



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 11TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, MARCH 20, 2024, IN COMMITTEE ROOM 24, BUNGE TOWERS, PARLIAMENT BUILDINGS AT 12.00 NOON

PRESENT

- | | | |
|---|---|----------|
| 1. Hon. Ernest Ogesi Kivai, M.P. | - | Chairing |
| 2. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 3. Hon. Maisori Marwa Kitayama, MP | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Edith Vethi Nyenze, M.P. | | |
| 6. Hon. Bidu Mohamed Tubi, M.P. | | |
| 7. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 8. Hon. Peter Mbogho Shake, M.P. | | |
| 9. Hon. Suzanne Ndunge Kiamba, M.P. | | |

APOLOGIES

- | | | |
|--|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Patrick Makau King'ola, M.P. | | |
| 4. Hon. Caleb Mutiso Mule, M.P. | | |
| 5. Hon. John Bwire Okano, M.P. | | |
| 6. Hon. Sloya Clement Logova, M.P. | | |

IN ATTENDANCEMINISTRY OF LABOUR AND SOCIAL PROTECTION

- | | | |
|------------------------|---|--------------------------|
| 1. Hon. Florence Bore | - | Cabinet Secretary |
| 2. Ms. Hellen Apiyo | - | Commissioner for Labour |
| 3. Mr. Douglas Katho | - | Director, Liaison |
| 4. Ms. Mercy Kandie | - | Communications Assistant |
| 5. Mr. Kenneth Kasyoki | - | Labour Officer |
| 6. Mr. Peter Mutema | - | Senior Labour Officer |
| 7. Mr. Daniel Kigen | - | Communications Officer |

PETITIONER

- | | | |
|--------------------------------|---|--|
| 1. Hon. Bady Twalib Bady, M.P. | - | Member of Parliament, Jomvu Constituency |
| 2. Ms. Aziza Juma Daudi | - | Petitioner and residence of Jomvu |

SECRETARIAT

1. Mr. Ahmed Kadhi	-	Senior Clerk Assistant
2. Ms. Miriam Modo	-	Clerk Assistant I
3. Ms. Patricia Gichane	-	Legal Counsel II
4. Mr. Willis Obiero	-	Clerk Assistant III
5. Mr. Martin Sigei	-	Research Officer III
6. Mr. Calvin Karungo	-	Media Relations Officer III
7. Mr. Paul Shana	-	Serjeant-at-Arms
8. Mr. Peter Mutethia	-	Audio Officer

MIN./PPETC/2024/ 076: PRELIMINARIES

The Chairperson called the meeting to order at 12:00 noon and proceedings began with prayers by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/077: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 6 of 2024 regarding Delays in posting medical interns, absorption of universal health coverage contract staff, conclusion of Collective Bargaining Agreements (CBAs) and Recognition Agreements in the health sector in the country.
 - Meeting with Council of Governors (CoG)
 - Meeting with CS, Ministry of Labor & Social Protection
6. Consideration of Public Petition No. 33 of 2023 regarding Compensation of persons affected by Mombasa-Mariakani Road Dualling Project
7. Consideration of Public Petition No. 82 of 2023 regarding Delay in completion of Jitoni-Rabai Road in Jomvu Sub-County
8. Any Other Business
9. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Peter Shake, M.P. and seconded by Hon. Joshua Chepyegon Kandie, M.P

MIN./PPETC/2024/078: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIR./PPETC/2024/079:

CONSIDERATION OF THE DRAFT REPORT OF PUBLIC PETITION NO. 6 OF 2024 REGARDING DELAYS IN POSTING MEDICAL INTERNS, ABSORPTION OF UNIVERSAL HEALTH COVERAGE CONTRACT STAFF, CONCLUSION OF COLLECTIVE BARGAINING AGREEMENTS (CBAS) AND RECOGNITION AGREEMENTS IN THE HEALTH SECTOR IN THE COUNTRY

Meeting with Cabinet Secretary, Ministry of Labor & Social Protection

The Cabinet Secretary, Hon. Florence Bore appeared before the Committee and submitted as follows that—

- a) Owing to the fact that the issues raised in the petitions were ongoing national issues, the Ministry would provide a further detailed response to the petition.
- b) The Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPPDU) issued a strike notice on 28th November 2022 and in response, the Cabinet Secretary appointed a Conciliator who attempted to reconcile the parties.
- c) Given the complex nature of the dispute there was a need to have a broad-based intervention by various government agencies, from whom key information and opinion is required. The process was prolonged and not concluded amicably. The Conciliator's report of the negotiation process was released on 6th March 2024.
- d) The KMPPDU recently issued a notice of strike on 6th March 2024 expressing intention to proceed on industrial action within seven days of the notice. There were several issues raised by the Union including non-implementation of the parties CBAs, negotiation of the new CBAs, and failure to implement court decisions and directives.
- e) In response, the Cabinet Secretary appointed a Conciliation Committee on 11th March 2024. In the meantime, the employer proceeded to Court and under Case Number ELRCPET/E032/2024 and obtained the following orders—
 - i. restraining orders against KMPPDU proceeding on industrial action;
 - ii. the Conciliation Committee appointed by the Cabinet Secretary to expeditiously proceed for the union and the concerned public service employers to conclude a Tripartite Memorandum of Understanding on the Minimum Safety services the members of the Union shall provide in the event of a strike;
 - iii. to institute a whole-nation approach towards resolving the instant outstanding dispute and to achieving a sustainable solution of the ongoing negotiation and conciliation to incorporate—

1. Head of Public Service
2. Cabinet Secretary, Ministry of Finance
3. Cabinet Secretary for Ministry of Public Service

4. Cabinet Secretary for Labour and Social Protection
5. Salaries & Remuneration Commission (SRC)
6. Public Service Commission (PSC)
7. Council of Governors (COG) and each of the 47 County Governors
8. The Federation of Kenya Employers
9. Central Organization of Trade Unions (COTU)
10. All National Referral Hospitals and the parties to the suit

f) The role of Ministry was to bring the parties on the table for them to have an agreement and negotiations. The Conciliation Committee was ongoing with meetings to have an agreement between the parties.

Committee concerns

- a) Regarding the detailed written response to the petition from the Ministry, the CS indicated that the Ministry would present a detailed response within one week to enable the Committee proceed to prosecute the petition including the concerns raised by Members. The Members requested the CS to submit proposals for a long-term solution to sought the perennial issues in the health sector which were not going to go away.
- b) The Committee inquired whether the issue of posting of interns was not within the purview of the Ministry and how it would be addressed. In response, the CS indicated that the issue had not been submitted to the Ministry as well as other matter that were being dealt with by the Ministry of Health including the doctors, nurses and clinical officers.
- c) Regarding whether prosecuting the matters raised in the Petition would be *sub judice*, the Committee informed the CS that the Petitioners had earlier indicated that the issue before court was about the strike and not the matters in the petition and asked the CS to confirm the correct position. The CS indicated that the Ministry of Health had filed a court case seeking restraining orders and the courts would handle the matter.
- d) The Committee sought the opinion of the CS on whether KMPDU was justified to go on strike and how the Ministry would address their concerns. The CS stated that the unions had the right to strike. However, health services were essential and the matters need discussions for a way forward. For instance, the interns were awarded through the CBA to be paid Kshs. 206,000 because of the speciality of the medical field yet a common intern in Kenya was paid Kshs. 25,000. Therefore, there was need to relook by not necessarily bring the Kshs. 206,000 down to Kshs.25,000 but at least a reasonable and affordable figure could be negotiated not to burden the exchequer.

That despite the strike notice that was issued in 2022 but the process on conciliation required investigation which progressed slowly and took time as the dispute was a complex matter with a host of many issues. The Conciliator required information from different government agencies including Ministry of

Health, COG and the 47 governors, PSC, Ministry of National Treasury among others.

- e) The Committee asked about the preparedness of the Ministry to act swiftly to address the issues when they arise instead of waiting for strike notices to be issued. The Ministry indicated that the on the operative CBA of 2017-2021 whose term lapsed, the Ministry of Labour and Social Protection was a neutral party assisting the parties to reconcile negotiation. The Ministry was not in a position to confirm that the CBA had not been implemented since it was just ceased of the matter and reconciliation process included negotiations of parties and was dependent on the facts which were established by way of investigations which the Ministry was involved in.
- f) Regarding the non-implementation of CBAs, the Ministry indicated that the issue of could only be ascertained once the progress of investigations and conciliation was concluded by way of a report or determined in court. As it were, the parties involved were of different opinions and were still making their presentation before the Conciliation Committee.
- g) Regarding whether the CS was aware of the Kericho Declaration Agreement and what the Ministry was doing about it, the CS indicated that the several stakeholders were engaging to find solutions to the several issues despite the budgetary concerns.
- h) The CS also clarified that the Petition covered concerns raised by the other unions and they had filed disputes to the Ministry and the detailed response would include their issues apart from the doctors'. The Committee clarified to the CS that there were other organised unions and association that the Petitioners had alleged that the Ministry had reportedly failed to recognise despite their registration.

Committee Decision

The Committee resolved that the CS, Ministry of Labour and Social Protection provides a detailed written response to the petition and issues raised by Members within one week including—

- i. Recognition of the registered health care workers' unions and associations;
- ii. Progress report on the work undertaken by Conciliation Committee;
- iii. Proposals on the long-term solutions to avert the labour-related issues that occasions perennial strike by health care workers;

MIN./PPETC/2024/080: CONSIDERATION OF PUBLIC PETITION NO. 33 OF 2023 REGARDING COMPENSATION OF PERSONS AFFECTED BY MOMBASA-MARIAKANI ROAD DUALLING PROJECT

Meeting with the Petitioner

The Member for Jomvu Constituency, Hon. Bady Twalib Bady, MP appeared before the Committee and submitted as follows:

- a) He was presenting the Petition on behalf of the people affected by the Mombasa West Community Project of Jomvu Constituency; that is, starting from Jomvu Narcol all the way to Bahati area
- b) THAT, the Kenya National Highways Authority (KeNHA) undertook rehabilitation and expansion of a 41.3 km regional Mombasa Port access road running from Mombasa to Mariakani as part of a 2,000 km-long corridor directly connecting the Port of Mombasa to several neighbouring countries but whose construction has stopped in Jomvu Madafuni where the said road is in a pathetic state despite being the gateway to Mombasa;
- c) THAT, whereas the construction part of the project was financed by the African Development Bank, German KfW, European Investment Bank and the European-Africa Infrastructure Trust Fund, the Government of Kenya was to oversee compensation of all affected persons on the project corridor;
- d) THAT, pursuant to this arrangement, in 2014, KeNHA prepared a faulty resettlement action plan that excluded use of geographic information system on asset inventory tabulation, but later claimed that the project was on public land;
- e) THAT, on its part, the National Land Commission conducted an unclear valuation that led to grave injustice being meted out on the persons affected by the project;
- f) THAT, contrary to expectations and agreement, KeNHA proceeded to brutally evict residents of Jomvu Constituency from their houses without notice in May 2017, whilst the National Land Commission omitted many residents and property-owners from the final compensation list;
- g) THAT, efforts by the affected persons to secure the collaboration and cooperation of KeNHA and the National Land Commission have been futile; and;
- h) THAT, the issues in respect of which this Petition is raised are not pending before any court of law or any constitutional or legal body.
- i) THAT, the Committee:
 - a. urgently intervenes to compel the National Land Commission to compensate the affected persons fairly and in accordance with the actual value of their assets and to disclose the contents of the valuation report, which they have declined to do up to now;
 - b. directs KeNHA to implement the corrective action plan agreed upon with the affected persons and to additionally embrace the use of geographic information system in asset inventory; and,
 - c. makes any other recommendation or action it deems fit in addressing the plight of the petitioners.

Allotment letters- the Committee enquired whether allotment letters had been issued. The petitioner responded that various residents have been given allotment letters that have never been honoured.

Compensation of stakeholders- the Committee was concerned on whether some of the affected persons had been compensated. The petitioner responded that some of the persons have been compensated at meagre amounts which are a far cry from the market value of the land. An example was given of a petitioner who was compensated a sum of Kshs. 600,000, despite officials from Ministry of Lands having valued the land at Kshs. 2.160m. In addition, some of these residents have since died without being compensated.

List of Project Affected Persons- the Committee enquired whether the petitioner had a list of persons that are to be compensated. The Petitioner responded that he had a list of business owners and people around Owino Uhuru, Bangladesh, Birikani Bahati and other areas who had not been compensated.

Proper representation of the Project Affected Persons- the Committee enquired on whether the affected parties constituted a committee to address their matter and whether there was any legal representation by the residents affected by the road in the process of negotiations with the relevant authorities. The petitioner responded that there was no such structure in place.

Relevant documentation- the Committee enquired on whether there was a valuation report from KENHA, how many people had been compensated and at what rate based on the size of land that had been acquired by the project. The petitioner responded that he was not in possession of the required documents.

KIN./PPETC/2024/081: CONSIDERATION OF PUBLIC PETITION NO. 82 OF 2023 REGARDING DELAY IN COMPLETION OF JITONI-RABAI ROAD IN JOMVU SUB-COUNTY

Meeting with the Petitioner

The Member for Jomvu Constituency, Hon. Bady Twalib Bady, MP appeared before the Committee and submitted as follows:

- a) THAT, the Jitoni-Rabai Road was launched by the then Deputy President, who is now our current President, His Excellency William Samoei Ruto, on 16th March 2018 and was meant to link the interior parts of Jomvu Constituency to Rabai Constituency without having to drive to Mazeras;
- b) THAT, the road was part of the old Mombasa-Nairobi Road and links the interior parts of Jomvu to areas like Mazeras and Rabai, thereby complementing the main Mombasa-Nairobi Highway;

- c) THAT, out of the 12 kilometres, the contractor made substantial progress and completed construction of the first nine kilometres, after which he abandoned the site without completing the remaining three kilometres on Jomvu side, despite residents demolishing their houses and businesses to pave way for the construction of the said road;
- d) THAT, the remaining section of the road is dilapidated exposing residents to extremely dusty conditions when it is dry and impassable due to mud accumulated during rainy weather;
- e) THAT, transport costs incurred by residents have tremendously increased due to high maintenance costs of vehicles and motorcycles passed on to users by service providers;
- f) THAT, access to water has been curtailed through destruction of pipes during construction of the road, which cannot be fixed until conclusion of the road construction. This has forced residents to incur exorbitant charges in accessing this basic commodity through purchase of water from water bowsers;
- g) THAT, efforts by the petitioners to have the matter addressed by the Kenya Urban Roads Authority (KURA) under Director-General, Eng. Kinoti, have been futile; and
- h) THAT, the matter presented in this Petition is not pending before any tribunal, court of law or independent body.
- i) Therefore, your humble Petitioners pray that the National Assembly, through the Public Petitions Committee:
 - (i) Compels KURA to complete construction of the road as per the contractual agreement within the next six months; and,
 - (ii) Makes any other recommendation or action it deems fit in addressing the plight of the petitioners.

MIN./PPETC/2024/082:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 02:30 p.m. The next meeting will be held on Thursday 21st March, 2024 at 09.00 a.m.

fol Sign: 

(CHAIRPERSON)

Date: 29/04/2024

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 41ST SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, JUNE 13, 2024, IN COMMITTEE ROOM 12, NEW WING, MAIN PARLIAMENT BUILDINGS AT 12.00. P.M

PRESENT

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. Maisori Marwa Kitayama, MP
5. Hon. Edith Vethi Nyenze, M.P.
6. Hon. Bidu Mohamed Tubi, M.P.
7. Hon. Suzanne Ndunge Kiamba, M.P.

APOLOGIES

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. Ernest Ogesi Kivai, M.P.
4. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
5. Hon. Peter Mbogho Shake, M.P.
6. Hon. Sloya Clement Logova, M.P.
7. Hon. Caleb Mutiso Mule, M.P.
8. Hon. John Bwire Okano, M.P.

SECRETARIAT

- | | |
|-------------------------|-----------------------------|
| 1. Ms. Anne Shibuko | Clerk Assistant I |
| 2. Mr. Willis Obiero | Clerk Assistant III |
| 3. Ms. Patricia Gichane | Legal Counsel II |
| 4. Mr. Martin Sigei | Research Officer III |
| 5. Ms. Nancy Akinyi | Research Officer III |
| 6. Mr. Peter Mutethia | Audio Officer |
| 7. Mr. Calvin Karungo | Media Relations Officer III |
| 8. Mr. Paul Shana | Sergeant-at-Arms |

IN ATTENDANCE

KENYA NATIONAL HIGHWAYS AUTHORITY (KENHA)

- | | |
|-----------------------|-------------------------|
| 1. Eng. Kungu Ndungu | Director General |
| 2. Mr. Eliud Munene | Deputy Director, Survey |
| 3. Eng. Anthony Omach | Senior Engineer |
| 4. Ms. Irene Oyugi | Senior Accountant |

MIN./PPETC/2024/259: PRELIMINARIES

The Chairperson called the meeting to order at 12:00 noon. and proceedings began with prayers by Hon. Walter Owino, M.P.

MIN./PPETC/2024/260: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 33 of 2023 on Compensation of person affected by Mombasa-Mariakani Road Dualling Project

-Meeting with KENHA

6. Consideration of Public Petition No. 82 of 2023 on Delay in the Completion of Jomvu Kuu-Jitoni-Rabai Road in Jomvu Sub County

-Meeting with Kenya Urban Roads Authority (KURA)

7. Any Other Business
8. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Mohamed Tubi, M.P. and seconded by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/261: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/262: CONSIDERATION OF PUBLIC PETITION NO. 33 OF 2023 REGARDING COMPENSATION OF PERSONS AFFECTED BY THE MOMBASA MARIAKANI ROAD DUALLING PROJECT

The Director General of Kenya National Highway Authority, Eng. Kung'u Ndungu, MBS appeared before the Committee and submitted as follows regarding the Petition—

Issue 1: The Kenya National Highways Authority (KeNHA) undertook rehabilitation and expansion of a 41.3 Regional Mombasa Port Access Road from Mombasa Town heading to Mariakani as part of a 2,000 Km long corridor directly connecting the Port of Mombasa to several neighbouring countries, but whose construction has stopped in Jomvu Madafuni where the said road is in a pathetic state despite being the gateway to Mombasa.

Response:

- i. The works at Kwa Jomvu have delayed due to ongoing court cases. The petitioners obtained court orders stopping KeNHA and its agents from accessing and executing any construction works in the area. The two major court cases hampering the completion of the Kwa Jomvu Interchange are:
 - a) *Kamlesh Pandya (SYNERGY GASEŞ LTD)* -Court Injunction stopping demolition of structures encroaching road reserve. Mombasa High Court Petition No. 13 of 2015; and
 - b) *Mistry Premji Investments Ltd*- Court Injunction stopping demolition of structures encroaching road reserve. Mombasa High Court Petition No. 106 of 2015
- ii. KeNHA has been engaging the two parties for an out of court settlement to allow progress of the works, but the efforts have not been successful. In the interim, the Authority has carried out the maintenance of the road to ensure proper motorability. The road is currently in good condition as the Authority waits for the conclusion of the court cases to enable execution of permanent works.

Issue 2: Whereas the construction part of the project was financed by the African Development Bank German KfW, European Investment Bank and the EU-Africa Infrastructure Trust Fund, the Government of Kenya through KeNHA and the National Land Commission was to oversee compensation of all Project Affected Persons on the project corridor.

Response

- iii. The loan agreement provided that the compensation of the Project Affected Persons (PAPs) is the responsibility of the Government through KeNHA as the project executing agency and the NLC.

Issue 3: That KeNHA prepared a faulty Resettlement Action Plan that excluded the use of Geographic Information System on asset Inventory tabulation but later claimed that the project was allegedly on public land.

Response

- iv. In October 2014, KeNHA contracted a consulting firm, M/s Aquaclean Services, to developed the Resettlement Action Plan (RAP) including compiling details of the people who would be affected by the project. The

RAP report detailed the Geographic Information System (GIS) location of the PAPs with clear location coordinates and inventory of assets together with the entitlement matrix for each.

- v. The RAP report was further reviewed in January 2017, by M/s Panafcon Development Limited also contracted by KeNHA. The RAP report also included the PAPs who were doing business while encroaching the Road Reserve.

Issue 4: That the NLC conducted unclear valuation that led to grave injustice being meted out on the PAPs.

Response

- vi. The land acquisition was carried out by the NLC as prescribed in law and due process was followed. This is illustrated in the following:
 - a) Cabinet Secretary for Roads and Transport writing to the Chairman of National Land Commission (NLC) on 25th September, 2015 as the law requires.
 - b) NLC as required issued the Gazette Notice on 18th December, 2015.
 - c) NLC then carried out the inspection, valuations, and later issued the awards to the PAPs.
 - d) NLC has further visited the site on several occasions to resolve any issues involving compensation and complaints from the PAPs.

Issue 5: That contrary to expectations and agreement, KeNHA proceeded to brutally evict residents of Jomvu Constituency from their houses without notice in May 2017, whilst the NLC omitted many residents and property-owners from the final compensation list.

Response

- vii. KeNHA has not forcefully evicted any of the Project Affected Persons (PAPs) even after due compensation. The PAPS are given thirty (30) days notice to relocate their property. All the pending compensation cases are mainly due to disagreements within the PAPS on the right to be compensated.
- viii. For the sections where the PAPs have not been compensated, works are yet to be executed and the PAPs are still on site. This is evidenced by the delay in works at Kwa Jomvu interchange.
- ix. The total awards for compensation in the project are Kshs. 5,324,943,181.58 out of which the National Land Commission has paid out Kshs.

4,445,270,894.95 to the PAPs. The unpaid amount is Kshs. 879,672,286.63. Of the unpaid amount, KeNHA has disbursed to the National Land Commission Kshs. 570,311,816.87 which is yet to be paid out to the PAPs mainly due to disputes and court cases by the PAPs on property ownership.

Issue 6: That efforts by the PAPs to secure the collaboration and cooperation of KeNHA and the NLC have been futile.

Response

- x. The Project Affected Persons have been accorded utmost opportunity to air their views and complaints in the road projects throughout the implementation of the project. This has been through continuous public participation and the establishment of the Grievance Redress Mechanism which have been cascaded downwards to the locational committees. The committee is comprised of:
 - a) PAPs elected representative
 - b) Village elder
 - c) Religions leader (Muslim/Christian)
 - d) Person with disability
 - e) Youth presentative

- xi. The community can use these committees to lodge any complaints. The project also has toll free telephone lines for receiving community complaints.

Committee Concerns

- i. **Regarding the measures taken by KeNHA to fast-track the works that had taken long to complete**, the Director-General (DG) indicated that KeNHA had held numerous consultations at various levels with the two parties who had halted construction. This included engaging the Cabinet Secretary for the Ministry of Roads and Transport to settle the matter out of court. However, these efforts have not borne fruit. KeNHA clarified that these two parties were peculiar as they were challenging in court that the road reserve was their land and contesting the compensation awards given by the NLC in court, hence the need for out-of-court negotiations.

- ii. **Regarding claims of deliberate delays in compensating Project Affected Persons (PAPs)**, the DG clarified that the money from KeNHA to the NLC is placed in an NLC bank account, awaiting the beneficiaries to resolve their issues. Despite the money earning interest, the land and property owners

would make a claim on the interest. However, the government would not stall the process for its own benefit.

- iii. **Concerning the identification of beneficiary PAPs and the amounts owed to them**, the DG stated that KeNHA would submit a list of legitimate PAPs, including those who have been compensated and those yet to be compensated. He clarified that the process of identifying legitimate PAPs is rigorous, ensuring that the persons, land, and property affected are genuine. To eliminate illegitimate claimants, there is a cutoff date to identify legitimate PAPs, ensuring that traders who come later seeking compensation are excluded.
- iv. **Regarding the valuation of the land and properties and how the award amount is determined**, the DG clarified that this expertise lies with the NLC.
- v. **Regarding the number of PAPs**, KeNHA indicated that the total number of PAPs was 618, out of which 579 had been compensated, leaving 89 pending, who are not part of the two cases in court. The reason these 89 have not been compensated is due to their own internal family disputes in most cases. These disputes must be resolved and a beneficiary identified. The NLC and KeNHA have assisted in resolving these disputes gradually using community liaison officers before the NLC releases the funds to them. KeNHA committed to expediting the compensation for these 89 PAPs as they are not in court.
- vi. **Regarding pending cases apart from the two companies**, KeNHA submitted that there were eleven (11) cases in court, but the two outstanding cases had stopped the works. The rest had been resolved, including through redesigning the road.
- vii. **Concerning evidence of public participation and the Grievance Redress Committee (GRC)**, KeNHA indicated that meetings were held quarterly or whenever issues arose. Minutes of these meetings could be provided to the committee. Besides the GRC, there was significant public participation and interaction, with officials always reachable.
- viii. **Regarding the process of compulsory acquisition of land**, KeNHA clarified that it is guided by sections 107 to 133 of the Land Act 2012. The process begins with KeNHA submitting a request through the Cabinet Secretary to the NLC. The areas sought for acquisition are mapped and owners engaged. The NLC then gazettes the intention to acquire and the inquiry period, during which all PAPs submit their claims. Every gazettelement by the NLC is

issued to the PAPs for transparency. Thereafter, inspection and valuation for compensation are conducted, written awards are issued to PAPs, who can signify acceptance or rejection.

Following acceptance by PAPs, the NLC prepares a payment schedule for those who have accepted the awards and forwards it to KeNHA for the transmission of compensation funds to the NLC. KeNHA verifies the schedule and remits the funds to the NLC to pay the beneficiaries, providing returns for record reconciliation by KeNHA. The law also allows early entry in certain cases, as a notice of taking possession is issued to PAPs either before or after paying compensation. The government takes possession, a final survey is done, and the land becomes public land.

- ix. **Regarding the use of forceful eviction**, the DG clarified that KeNHA would not undertake forceful evictions as due process is provided for in the law. Furthermore, development partners in such projects have strict loan conditions that do not allow for forceful evictions. Additionally, some parties have put claims against the maps in court, and the process is ongoing.
- x. **Regarding recommendations by KeNHA to the Committee**, the DG stated that KeNHA would submit a written proposal on how the National Assembly could intervene in cases of public interest stalled by disputes with private parties. Furthermore, KeNHA stated that they have not forwarded all the money to the NLC. Approximately Kshs. 300 million owed to PAPs has yet to be transmitted to the NLC, and this amount could increase after the finalization of court cases. Therefore, the Committee should recommend allocating resources for the compensation of PAPs on projects undertaken by KeNHA.

Committee Resolution

After deliberations, the Committee resolved that KeNHA provides a written submission within two weeks on the following:

- a) A list of all PAPs, including those compensated and those yet to be compensated;
- b) A proposal for the requisition of the amount owed to PAPs and an explanation of whether the amounts might increase based on the matters pending in court;
- c) Documentation confirming the status of the land as public, which has been challenged in court by the two parties; and
- d) Sample minutes of the GRC meetings.

MIN./PPETC/2024/263:

CONSIDERATION OF PUBLIC PETITION NO. 82 OF
2023 ON DELAY IN THE COMPLETION OF JOMVU
KUU-JITONI-RABAI ROAD IN JOMVU SUB COUNTY

Meeting with KURA

The Committee was informed that the Director General of Kenya Urban Roads Authority (KURA) had vide a letter Ref KURA/SP/6 VOL.3(2) and dated 11th June, 2024 submitted advanced written submissions for consideration owing to prior engagement.

Committee Resolution

After deliberations, the Committee resolved to reschedule the meeting to a later date.

MIN./PPETC/2024/264:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 02:30 p.m. The next meeting will be held on Tuesday, 18th June 2024 at 12:00 p.m.

Sign: 

(CHAIRPERSON)

Date..... 18-06-2024



Transforming Urban Mobility

Kenya Urban Roads Authority

Barabara Plaza Mazao Road, Off Airport South Road

P.O BOX 41727-00100 Nairobi, Kenya

0717 105 233 / 020 801 3844/ 020 272 2222

info@kura.go.ke www.kura.go.ke

Ref: KURA/SP/6 VOL. 3 (2)

Date: 11th June, 2024

The Clerk
National Assembly
Parliament Buildings
P.O. Box 41842 – 00100
NAIROBI

Dear Sir,

RE: **MEETING WITH THE PUBLIC PETITIONS COMMITTEE ON PUBLIC PETITION REGARDING THE DELAY IN COMPLETION OF JITONI-RABAI ROAD IN JOMVU SUB-COUNTY**

This is in reference to your letter Ref. No. KNA/DLPS/PPETC/CORR/2024/101 dated 5th June, 2024 on the above subject.

We acknowledge the receipt of the above petition regarding the delay in completion of Jitoni-Rabai Road in Jomvu Sub-County, and the invite for the meeting with the Parliamentary Public Petitions Committee on Thursday, 13th June, 2024. However, the Director General is away from office this week on a Board function.

Therefore, please find our humble written submissions on the responses to the petitions.

Yours faithfully,

Eng. Mike Y. Telienny
Director (RACM)
FOR: DIRECTOR GENERAL

Encl.



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 58TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON
FRIDAY, NOVEMBER 08, 2024, IN MEDUSA 2 ROOM, ENGLISH POINT MARINA AT
10.00. A.M

PRESENT

- | | | |
|---|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Maisori Marwa Kitayama, MP | | |
| 4. Hon. Edith Vethi Nyenze, M.P | | |
| 5. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 6. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 7. Hon. Ernest Ogesi Kivai, M.P. | | |
| 8. Hon. Joshua Chepyegon Kandie, M.P | | |
| 9. Hon. Bidu Mohamed Tubi, M.P. | | |
| 10. Hon. Peter Mbogho Shake, M.P. | | |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. John Walter Owino, M.P.
3. Hon. Caleb Mutiso Mule, M.P.
4. Hon. John Bwire Okano, M.P.
5. Hon. Sloya Clement Logova, M.P.

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Mr. Samuel Kalama | Principal Clerk Assistant II |
| 2. Mr. Ahmad Kadhi | Principal Clerk Assistant II |
| 3. Ms. Roselyn Njuki | Senior Sergeant at Arms I |
| 4. Ms. Anne Shibuko | Clerk Assistant I |
| 5. Ms. Patricia Gichane | Legal Counsel II |
| 6. Mr. Isaac Nabiswa | Legal Counsel II |
| 7. Mr. Willis Obiero | Clerk Assistant III |
| 8. Ms. Nancy Akinyi | Research Officer III |
| 9. Mr. Calvin Karungo | Media Relations Officer III |
| 10. Mr. Benson Muchiri | Audio Officer |

MIN./PPETC/2024/363: PRELIMINARIES

The Chairperson called the meeting to order at 11:00 a.m. and proceedings began with prayers by Hon. Joshua Kandie, M.P.

MIN./PPETC/2024/364: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 10 of 2023 regarding Resettlement of Residents of Muthanga Farm
6. Consideration of Public Petition No. 23 of 2023 regarding Punitive Charges levied by The Kenya National Highways Authority
7. Consideration of Public Petition No. 82 of 2023 regarding Delay in the completion of Jomvu Kuu-Jitoni-Rabai Road in Jomvu Sub County
8. Consideration of Public Petition No. 4 of 2023 regarding Delayed Adjudication and Settlement of Squatters After the Expiry of Lease of Macalder Mines Limited Land
9. Any Other Business
10. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Ernest Kagesi, M.P. and seconded by Hon. Marwa Kitayama, M.P.

MIN./PPETC/2024/365: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The agenda was deferred.

MIN./PPETC/2024/366: CONSIDERATION OF PUBLIC PETITION NO. 10 OF 2023 REGARDING RESETTLEMENT OF RESIDENTS OF MUTHANGA FARM

Observations

The Committee considered the draft Report and made the following observations:

- (i) A similar petition was presented to the House by the Member for Gatundu South Constituency, Hon. Joseph Ngugi Nyumu, MP on 23rd October 2013. In its report, the Departmental Committee on Lands recommended that the government purchase the land from the owners and allocate to the settlers or squatters.
- (ii) In the court judgement dated 12th June 2020 in *Nairobi ELC Suit No.1159 of 2000 Michael Mutune and 9 others vs Luka Kimeu Mutevu and 6 others and Royal Capital Ltd* the Court ruled with respect to the Plaintiff's parcels of land Makuyu/ Kambiti/ Blocks 1/17,44,6,27,48,83,20,15,32,43. The court held that the squatters had trespassed on the Muthanga Farm Ltd's land and their claim under adverse possession did not meet the threshold of 12 years of uninterrupted occupation.

- (iii) The Multiagency Committee led by the Deputy Commissioner of Muranga Subcounty considered the matter extensively by capturing data, validating the data and undertaking in valuation of the land as of 11th June 2024.
- (iv) The members of Muthanga Farm Ltd. disputed the valuation report and cited the need for their own independent valuation. The members were willing to cede 270 acres to government at market rate to settle the squatters.
- (v) There is hostility between the squatters and the members of Muthanga Farm Ltd. who are unable to access the land despite several court rulings.

Recommendation

The Committee recommended that the Ministry of Lands, Public Works, Housing and Urban Development National in consultation with National Lands Commission compensates Muthanga Farm Ltd for the part occupied by the squatters as per the valuation report of the Multiagency Committee and settles the squatters within the Financial Year 2025/2026.

MIN./PPETC/2024/367: CONSIDERATION OF PUBLIC PETITION NO. 23 OF 2023 REGARDING PUNITIVE CHARGES LEVIED BY THE KENYA NATIONAL HIGHWAYS AUTHORITY

Observations

The Committee considered the draft Report and made the following observations:

- (i) The rationale for special permits or licenses for abnormal loads is deterrence for the protection of the public road network and the provision of revenue streams for the maintenance of these roads.
- (ii) The levies for exemption permits are specific to the nature of the abnormal load, such that graders and rollers require different permits. These levies were introduced because exemption permits were previously exploited for more than one specified load.
- (iii) Previously permits or licences were issued for each specific passage, however, to improve efficiency and reduce non-tariff barriers to trade they were reviewed to apply on a quarterly basis. The process of application and renewal of the exemption permits for the transportation of abnormal loads has been made easy and accessible through the KENHA virtual portal.
- (iv) The Traffic Act, 2013 applies to all roads within the country, while the EAC Vehicle Load Control Act only applies to regional road trunk network as provided for in the First Schedule to the Act.

- (v) Under the provisions of the Traffic Act, overloading is criminalised, with recourse through the courts while in the EAC Vehicle Load Control Act, recourse on overloading is determined administratively by an authorised officer and fines are paid to the Authority.

Recommendations

Pursuant to the provisions of Standing Order 227, the Committee made the following recommendations—

- (i) The Cabinet Secretary in charge of Ministry of Roads and Transport undertakes the review of Kenya Roads (KENHA) Regulations of 2013 for the licensing of transportation of abnormal loads and report on its findings to the House within ninety (90) days of tabling of this report.
- (ii) The Committee notes that the existing framework provides for quarterly renewal of licences was effected recently and has been made easy and accessible through the KENHA virtual portal. Therefore, the Committee rejects this prayer.
- (iii) The Committee notes that impounded vehicles are required to ensure compliance within three days as per the provisions of section 17 (6) of the East Africa Community (EAC) Vehicle Load Control (VLC) Act, 2016 and regulation 13 (2) of the EAC VLC (Enforcement) Regulations, 2018. Therefore, the Committee recommends that KENHA strictly adheres to the timelines for release of impounded vehicles.
- (iv) The Cabinet Secretary in charge of the Ministry of Roads and Transport makes legislative and policy proposals on harmonization of the relevant aspects of the Traffic Act with East Africa Community (EAC) Vehicle Load Control (VLC) Act, 2016 and present to the National Assembly within (90) days of tabling of this report.

MIN./PPETC/2024/368: CONSIDERATION OF PUBLIC PETITION NO. 82 OF 2023 REGARDING DELAY IN THE COMPLETION OF JOMVU KUU-JITONI-RABAI ROAD IN JOMVU SUB COUNTY

Observations

The Committee considered the draft Report and made the following observations:

- (i) The Jomvu Kuu-Jitoni-Rabai Road is classified as an urban road and pursuant to the provisions of section 10 of the Kenya Roads Act, the road falls under the responsibility of the Kenya Urban Roads Authority.
- (ii) The contract for construction of the road to bitumen standards was awarded to M/S Associated Construction Limited and the contract period was 24 months.

- (iii) The tarmacking of Jomvu Kuu Jitoni-Rabai Road in Mombasa County was yet to be completed as the contractor suspended works due to delayed payment to the contractor.
- (iv) The untarmacked section of the road was in a dilapidated state, with poor drainage systems and dusty condition affecting the wellbeing of the residents in the area including businesses.
- (v) According to Report of the Auditor-General on Kenya Urban Roads Authority for the year ended 30th June, 2022:
 - a. an audit inspection exercise carried out in February, 2023 revealed that the project implementation was behind schedule going by the project extended completion date of 21st March, 2022. The works had stalled, and the contractor was not on site.
 - b. Some completed sections of the road had been worn out and required to be redone. In the circumstances, the project completion was behind schedule as approximately 11 months had elapsed from the revised project completion date of 21st March, 2022.
- (vi) The project was extended six times for a period totalling 80 months as of 11th June 2024. This would adversely impact on realization of value for money by the citizens.

Recommendations

Pursuant to the provisions of Standing Order 227, the Committee made the following recommendations—

- (i) The National Treasury disburses the remaining funds to KURA in the Financial Year 2024/2025 or through a Supplementary budget, if any, to enable completion of the road; and
- (ii) KURA to undertake measures with a view to making the remaining section of the road passable, and mitigate the environmental concerns, including dust.

MIN./PPETC/2024/369: CONSIDERATION OF PUBLIC PETITION NO. 4 OF 2023 REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS AFTER THE EXPIRY OF LEASE OF MACALDER MINES LIMITED LAND

The Committee considered the draft Report and noted that—

- (i) through Legal Notice 85 of 2023 dated 13th June, 2023, the Cabinet Secretary in the Ministry of Environment, Climate Change and Forestry, declared the subject land as a forest area pursuant to section 31(2) of the Forest Conservation and Management Act.

(ii) there was a suit filed at the Environment and Land Court at Migori challenging the declaration of the subject land as forest area.

Committee Resolution

The Committee deliberated on the matter and agreed to have a round table discussion with—

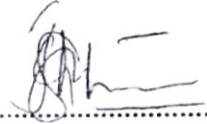
- (i) the Cabinet Secretary, Ministry of Lands, Housing and Urban Development;
- (ii) the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry; and
- (iii) the County Government of Migori County.

The Committee would utilise the round table discussion to have the above parties withdraw the suit and allow the parliamentary process to be concluded.

MIN./PPETC/2024/370:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 01:00 p.m. The next meeting will be held on Friday, 8th September 2024 at 02:00 p.m.

Sign: 

for (CHAIRPERSON)

Date..... 19-11-2024