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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF A PETITION BY MR. PHILIP NJUGUNA ON BEHALF OF KANDARA RESIDENTS ASSOCIATION REGARDING IRREGULAR RENEWAL OF LEASES OF LAND LEASED BY DELMONTE KENYA LIMITED

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 21 NOV 2019	DAY: THURSDAY
TABLED BY:	Hon. Rachael Nyamai Chair, Lands Committee
CLERK AT THE TABLE:	Lemunuo Moezi
<b>NOVEMBER 2019</b>	

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## **CHAIRPERSON'S FOREWORD**

The Petition by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases of land leased by Del Monte Kenya Limited was reported to the House by the Honorable Speaker on behalf of the Petitioner on 11<sup>th</sup> June 2019.

In considering the Petition, the Committee held meetings with the Petitioners, the Ag. Chief Executive Officer, National Land Commission, the Chief Administrative Secretary, Ministry of Lands & Physical Planning and the Managing Director Del Monte Kenya Limited

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 Petitioner, representatives of Kandara Residents Association, the Ag. Chief Executive Officer, National Land Commission, the Chief Administrative Secretary, Ministry of Lands & Physical Planning and the Managing Director Del Monte Kenya Limited 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 Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases of land leased by Del Monte Kenya.

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

## EXECUTIVE SUMMARY

The purpose of this report is to respond to prayers made in a Petition by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases of land leased by Del Monte Kenya Limited. The Petitioner's prayers are that the National Assembly through the Departmental Committee on Lands does;

- a) Consider , investigate and inquire into all the matters raised in the petition with a view to ensuring that the process of renewing the lease of the land held by Del Monte Kenya Limited is conducted within the law and in a transparent and participatory process that takes into account the rights and interests of the members of Kandara Residents Association over the said land are safeguarded ;and
- b) Makes relevant recommendations thereof.

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.

The Committee also 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.

The Committee however observed that there are several cases regarding the renewal of leases and the recommendations of the Commission.

The Committee further 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.

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.

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.

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.

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.

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.

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 because both the Petitioners and the Del Monte Company Limited are not opposed to the issue of resurveying of the land in question.

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

The Committee also recommended that 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.

## **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 Changanwe  
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**

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

## 2.0 INTRODUCTION

6. The Petition by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases of land leased by Del Monte Kenya Limited was reported to the House by the Honorable Speaker on behalf of the Petitioner on 11<sup>th</sup> June 2019.
7. The Petitioner wished to draw the attention of the House to the following, that:
  - i. The petition was presented to the National Assembly on behalf of Kandara Residents Association, whose members are drawn from Muranga and Kiambu Counties;
  - ii. The members of the association had originally settled in the land currently occupied by the Del Monte Kenya Limited but were illegally removed and a lease allocated to the company;
  - iii. Upon the expiry of the leases ,the County Government of Muranga renewed leases to Del Monte Kenya Limited contrary to section 13 of the Land Act 2012, which provides that before the expiry of a leasehold tenure, the National Land Commission shall inform the lessee of his or her preemptive right to allocation of the land upon application provided:
    - a) Such lessee if a Kenyan citizen; and
    - b) The land is not required by the national or county government for public purposes.
  - iv. Del Monte Company is fully owned by foreigners and the national and county government has interest in the land;
  - v. There was no public participation done to determine whether the public had an interest in the land;
  - vi. The power to renew a lease is vested in the National Land Commission and not the County Government of Muranga;
  - vii. The National Land Commission failed to implement the resolutions of the Kandara residents held in February, 2017 on the matter, which recommended that the public interest of the residents be held;
  - viii. The determination of the historical land injustice dated 7<sup>th</sup> February 2017 by the National Land Commission recommended that where no surplus land is

found, the county government of Muranga should retain adequate land for the settlement of the claimants and public purpose upon the expiry of the leases;

- ix. The leases expired in May 2019 and the commission is allegedly seeking to renew the leases despite its recommendation;
  - x. The petitioners' efforts to have the matters raised in the petition addressed by the National Land Commission and the County Government of Muranga have been futile; and
  - xi. The matters raised in the petition were not pending in any court of law in Kenya.
8. The petitioner prayed that the National Assembly through the Departmental Committee on Lands
- i. Does consider , investigate and inquire into all the matters raised in the petition with a view to ensuring that the process of renewing the lease of the land held by Del Monte Kenya Limited is conducted within the law and in a transparent and participatory process that takes into account the rights and interests of the members of Kandara Residents Association over the said land are safeguarded; and
  - ii. Makes relevant recommendations thereof.

### 3.0 SUBMISSIONS

#### 3.1 Submissions by the Petitioners

9. The Committee held a meeting with the representatives of Kandara Residents Association on 6<sup>th</sup> August 2019. During the meeting the representatives informed the Committee that:
10. Members of Kandara Residents Association are drawn from Muranga and Kiambu Counties. Their forefathers originally settled in the land currently occupied by the Del Monte Kenya Limited but were illegally removed and leases allocated to the company. Upon the expiry of the leases, the County Government of Muranga renewed them in favour of Del Monte Kenya Limited contrary to section 13 of the Land Act 2012.
11. Del Monte Kenya Limited is fully owned by foreign nations as evidenced by the list of its directors, which does not include a single Kenyan. Therefore, they argued that the company did not enjoy preemptive rights of extension of the leases for land in question and that the company should surrender 50% of the land before the leases would be renewed.
12. The County government of Muranga had no power to renew the leases for land held by Del Monte Kenya Limited because the said powers are held by the National Land Commission as provided in section 13 of the National Land Commission Act 2012. However, the Committee noted that the petitioners were not able to table evidence to indicate that indeed Muranga County Government had renewed the said leases. They clarified that both the County Governments of Muranga and Kiambu had submitted no objection reports to the National Land Commission and had not actually renewed the leases. Therefore, the petition was contesting the no objection reports submitted by the two Counties regarding the renewal of the said leases.
13. The petitioner noted that public participation was mandatory in the renewal of the leases and that Kandara Residents Association through the instructions of the National Land Commission had undertaken extensive public participation on the matter and had held meetings across Muranga County and received views from approximately 4500 persons on the renewal of leases for land held by Del Monte Kenya Limited. A report on the exercise was tabled and approved by the Muranga County assembly.
14. Kandara Residents Association had also lodged a historical land injustice claim with the National Land Commission alleging injustices committed by Del Monte Kenya Limited together with the colonial soldiers and the Anglo-French, who planted sisal in the area and the Kenya Cannery Limited. The Committee was further informed that the Commission had recommended that the land held by Del Monte Kenya Limited be resurveyed to establish if the company was in possession of land that it did not own. It was also recommended that any surplus land should be surrendered to the Association and the County government of Muranga for public purpose in the ratio of 70:30. The company was also required to surrender all public utilities within the land to the relevant National and County Government Agencies whether the leases had expired or not.

15. The Committee noted that the petition limited its focus to renewal of leases for land owned by Del Monte Kenya Limited by Muranga County. It therefore meant that the petition did not include land in Kiambu County. It was further noted 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.

### 3.2 Submissions by the Ag Chief Executive, National Land Commission

16. The Committee held a meeting with Ag Chief Executive, National Land Commission on 8<sup>th</sup> August 2019. During the meeting the Chief Executive Officer informed the Committee that:

17. The Commission received a historical injustice claim from Kandara Residents Association against Del Monte Kenya Limited together with the colonial soldiers, the Anglo-French, who planted sisal in the area and the Kenya Cannery Limited. The Commission decided 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. The commission recommended 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.
- The surplus land, if any, should be surrendered to Kandara Residents Association and the County Government for public purpose in the ratio of 70;30 respectively.
- Where no surplus land is found the County Government of Muranga should retain adequate land for the settlement of the claimants and for public purpose upon the expiry of the leases.
- Del Monte Kenya Limited should surrender all public utilities within the land in question to the relevant National and County Government agencies whether the leases have expired or not.

18. The Ag. Chief Executive Officer further informed the Committee that three court cases had been filed in the High Court in Nairobi and Muranga. Therefore, she would not make more comments on the same due to the doctrine of *sub judice* as the matters raised in the petition were also pending determination in court. The cases included the following:

- **ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.** The suit seeks to restrain the National Land Commission from renewing leases in favour of Del Monte Kenya Limited.
- **High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General:** The suit seeks to quash the determination of the National Land Commission Historical Injustice Committee dated 7<sup>th</sup> February 2019 in complaint No. NLC/HLI/004/2017. It also seeks to expel the Gazette Notice No. 1995 dated 1<sup>st</sup> March 2019 and published on 1<sup>st</sup> March 2019 on parcels of land registered under Del Monte Kenya Limited.

- 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 : The suit seeks to compel the Director of Survey to implement the National Land Commission's Historical Land Injustice Committee resolution dated 7<sup>th</sup> February 2019 in complaint No. NLC/HLI/004/2017.

### **3.3 Submissions by the Chief Administrative Secretary of Lands and Physical Planning**

19. The Committee held a meeting with the Chief Administrative Secretary of Lands and Physical Planning on 6<sup>th</sup> August 2019. During the meeting the Chief Administrative Secretary informed the Committee of the following regarding the petition:
20. 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 10862,10741,11312,2953,4873, and 11146.
21. The term of lease for the said land was 49 years effective from 1<sup>st</sup> May 1973. It is due to expire on 1<sup>st</sup> May 2022. He added that an application had been made seeking renewal of the lease to the National Land Commission and the County Government of Muranga. The said application was under consideration by the Commission.
22. The Ministry was not aware of any renewal of lease regarding the said land and had not received any documents recommending the renewal. The Chief Administrative Secretary therefore argued that the petition was premature as it allegedly that the lease had been renewed.
23. The lease Gatwanyaga Farm LR. No. 12203 measuring 2,133 Ha which is in Kiambu County also owned by Del Monte expired on 1<sup>st</sup> July 2019 and an application for renewal had been tendered by the company; and
24. On the question regarding the implementation of a recommendation made by the National Land Commission in a Gazette Notice No. 1995 dated 1<sup>st</sup> March 2019 following a historical land injustice claim lodged by Kandara Residents Association regarding resurveying of the land owned by Del Monte to establish if the company held land that it is not registered to hold, The Chief Administrative Secretary informed the Committee that the Ministry would require three weeks to complete the exercise.

### **3.4 Submissions by the Managing Director, Del Monte Kenya Ltd**

25. The Committee held a meeting with the Managing Director, Del Monte Kenya Limited on 8<sup>th</sup> August 2019. During the meeting the Managing Director, through his advocate,

Mr. Njoroge Regeru informed the Committee that seven court cases had been filed in the High court in Nairobi and Muranga. The seven cases are as follows:

Item	Case Number and Parties	Status / Remarks
1	Nairobi High Court Constitutional Petition No. 398 of 2015 – Del Monte Kenya Limited -vs- The County Government of Muranga and 2 others	Hearing concluded before a 3 – judge bench. Judgement scheduled for 20 <sup>th</sup> September 2019
2	Amended Complaint to the National Land Commission – Kandara Residents Association and Another -vs- Del Monte Kenya Limited	The Amended Complaint was determined vide Determination published in the Kenya Gazettee on 1 <sup>ST</sup> March 2019. The implementation of the determination has since been stayed by the High Court vide its Order given on 22 <sup>nd</sup> May 2019 in petition No. 48 of 2019
3	ELC No. 53 of 2018 at Muranga- Kandara Residents Association and 4 others Vs Del Monte Kenya Limited	The suit was scheduled for hearing on 31 <sup>st</sup> July 2019
4	ELC No. 86 of 2018 – Kenya National Chamber of Commerce and others Vs Del Monte Kenya Limited	The suit was scheduled for ruling on 19 <sup>th</sup> September 2019
5	Muranga Constitutional Petition No. 6 of 2018 – Ephantus Githae and another vs the National Land Commission	
6	Nairobi High Court Constitutional Petition Number 48 of 2019, Del Monte Kenya Limited vs National Land Commission and Another	The suit was scheduled for hearing on 16 <sup>th</sup> October 2019
7	Thika ELC Number 85 of 2019 – Gatuanyaga Residents Association -vs- Del Monte Kenya Limited and 3 others	The matter was scheduled for direction on 1 <sup>st</sup> August 2019

26. He added that Kandara Residents Association was party to three of the cases and had filed two of the said suits. He argued that based on the doctrine of *sub judice*, the petition should be barred. The three cases as follows:

- **ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.** The suit seeks to restrain the National Land Commission from renewing leases in favour of Del Monte Kenya Limited.
- **High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General:** The suit seeks to quash the determination of the National land Commission Historical Injustice Committee dated 7<sup>th</sup> February 2019 in complaint No. NLC/HLI/004/2017/ It also seeks to expel the Gazette Notice No. 1995 dated 18<sup>th</sup> February 2019 and published on 1<sup>st</sup> March 2019 on parcels of land registered under Del Monte Kenya Limited.
- **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 :** The suit seeks to compel the Director of Survey to implement the National land Commission's Historical Land Injustice Committee dated 7<sup>th</sup> February 2019 in complaint No. NLC/HLI/004/2017.

27. He further observed that the petitioners were required by the National Assembly Standing Orders to indicate that the matters raised in the petition were pending before court. He noted that the Petitioners did not make the said disclosure.

28. In view of the above, the Managing Director urged the Committee to put the consideration of the petition on hold as the matters pending in court mainly dealt on the issue of renewal of leases for land owned by Del Monte Kenya Limited and the same matters were also the key subject of the petition.

29. The Managing Director further informed the Committee that the Company was not opposed to the recommendation made by the National Land Commission in a historical land injustice claim lodged by Kandara Residents Association against Del Monte Kenya Limited 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 against. He added that the company had severally written to the Director of Survey in the Ministry of Lands and Physical Planning seeking the fast tracking of the exercise but had not received a reply from the said office.

### **3.5 Submissions by Hon. Jude Njomo, MP**

30. The Committee received submissions from Hon. Jude Njomo, MP on 7<sup>th</sup> November 2019. He informed the Committee that;



31. The ownership documents held by Del Monte Kenya Limited are not title deeds but agreements between the government and the company that were drawn on 19<sup>th</sup> February 1973. The agreements grant the company use of 20,000 acres of land. He noted that contravention to the said agreements, the company is currently in possession of 22,000 acres.
32. He also stated that part of the land granted to the company has been idle since the agreement were reached. He added that the company in their brochure admitted to utilizing only 6000 Ha out of the 9000 Ha allocated to the company for 50 years hence depriving the residents the use of 3000 Ha of idle land.
- i. He further informed the Committee that Land parcels Nos. LR.10740, LR 10741, LR 11146, LR 10862, LR 2955 and LR.11312 comprising 7,400 acres that were surrendered to the government by two companies namely Sassa Coffee and Rappit B Limited after subdivision, were irregularly being used by Del Monte Kenya Limited. He also stated that the owners of SASSA coffee passed on in Europe and the land held by the company was occupied by residents who were later evicted by Del Monte Kenya Limited from the land.
  - ii. Contrary to the agreement between the government and the company on 19<sup>th</sup> February 1973, Del Monte Kenya Limited had carved off a portion of LR. No. 13169 and allocated it to ANNANAS Holding where a mall has been constructed.
  - iii. He urged the Committee to recommend that the land held by Del Monte Kenya Limited be resurveyed to establish the actual acreage of land occupied by the company.

#### 4.0 OBSERVATIONS

The Committee made the following observations:

1. 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.
2. 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.
3. The Committee however observed that there are several cases regarding the renewal of leases and the recommendations of the Commission.
4. 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.
5. 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.
6. 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.
7. 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:
  - d) ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.;
  - e) High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General; and
  - f) 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.
8. 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

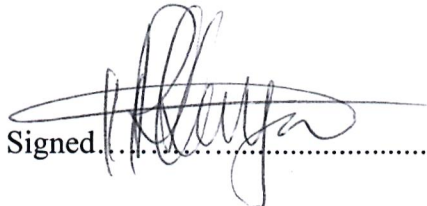
party had been filed in court touching on matters contained in the Petition. The cases included the following:

- d) ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.
  - e) High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General.
  - f) 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.
9. 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.
10. 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.

## 5.0 COMMITTEE RECOMMENDATIONS

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

1. 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.
2. 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.

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 Tiyan - 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 gazette 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.

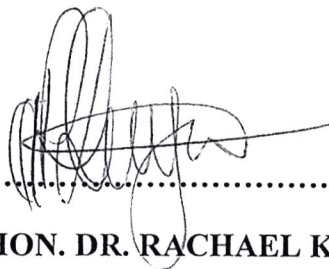
**b. Recommendations**

- 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 .....

**MINUTES OF THE 57<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LANDS HELD ON THURSDAY, 8<sup>TH</sup> AUGUST 2019 IN THE BOARDROOM, 2<sup>ND</sup>  
FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS AT 12 :00 NOON**

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**PRESENT**

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Jayne Kihara, M.P
4. Hon. Mishi Mboko, M.P
5. Hon. Omar Mwinyi Shimbwa, M.P
6. Hon. Babu Owino, M.P
7. Hon. Catherine Waruguru, M.P
8. Hon. George Risa Sunkuyia, M.P
9. Hon. Jane Wanjuki Njiru, M.P
10. Hon. Owen Baya, M.P
11. Hon. Samuel Kinuthia Gachobe, M.P
12. Hon. Simon Nganga Kingara, M.P
13. Hon. Teddy Mwambire, M.P

**APOLOGIES**

1. Hon. Kimani Ngunjiri, M.P
2. Hon. Joshua Kutuny, M.P
3. Hon. George Aladwa, M.P
4. Hon. Ali Mbogo, M.P
5. Caleb Kipkemei Kositany
6. Hon. Josphat Gichunge Kabeabea, M.P

**IN ATTENDANCE**

**DEL MONTE KENYA LTD**

1. Stergios Grialiamalsal - Managing Director
2. Henry Odondi - Legal Counsel
3. Mr. Njoroge Regeru- Legal Counsel (Njoroge Regeru & Co. )
4. Grishon N. Thuo- Legal Counsel (Njoroge Regeru & Co)
5. Camille R. Amolo - Legal Counsel (Njoroge Regeru & Co)

**THE NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Leonard Machira - Clerk Assistant I

- |                       |   |                         |
|-----------------------|---|-------------------------|
| 2. Sydney Lugaga      | - | Legal Counsel II        |
| 3. Mr. Joseph Tiyan   | - | Research Officer III    |
| 4. Mr. Nimrod Ochieng | - | Audio Recording Officer |
| 5. Ms. Peris Kaburi   | - | Serjeant – At - Arms    |

**MIN. NO. NA/DCS/LANDS/2019/- 238: PRELIMINARIES**

The meeting was called to order at sixteen minutes past noon. Prayers were said and thereafter introductions were made.

**MIN. NO. NA/DCS/LANDS/2019/-239: ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted as outlined in the notice of the meeting after it was proposed and seconded by Hon. Kimani Ngunjiri, M.P and Hon. Simon Kingara, M.P respectively.

**MIN. NO. NA/DCS/LANDS/2019/-240: CONFIRMATION OF PREVIOUS MEETING**

Consideration of the item was deferred to the next sitting.

**MIN. NO. NA/DCS/LANDS/2019/-241: MEETING WITH THE MANAGING DIRECTOR DEL MONTE KENYA LTD ON A PETITION BY MR. PHILIP NJUGUNA ON BEHALF OF KANDARA RESIDENTS ASSOCIATION REGARDING IRREGULAR RENEWAL OF LEASES OF LAND BY DEL MONTE KENYA LIMITED**

The Managing Director, Del Monte Kenya Ltd through Mr. Njoroge Regeru informed the Committee that three court cases had been filed in the High court in Nairobi and Muranga. The petitioners, Kandara Residents Association, were party to the cases and had filed two of the said suits. He argued that based on the doctrine of *sub judice*. the petition should be barred. He further observed that the petitioners were required by the National Assembly Standing Orders to indicate that the matters raised in the petition were pending before court. He noted that the Petitioners did not make the said disclosure. The cases included the following:

- **ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.** The suit seeks to restrain the National Land Commission from renewing leases in favour of Del Monte Kenya Limited.
- **High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General:** The suit seeks to quash the determination of the National land Commission Historical Injustice Committee dated 7<sup>th</sup> February 2019 in complaint No. NLC/HLI/004/2017/ It also seeks to expel the Gazette Notice No. 1995 dated 18<sup>th</sup> February 2019 and published on 1<sup>st</sup> March 2019 on parcels of land registered under Del Monte Kenya Limited.
- **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** : The suit seeks to compel the Director of Survey to implement the National land

Commission's Historical Land Injustice Committee dated 7<sup>th</sup> February 2019 in complaint No. NLC/HLI/004/2017.

In view of the above, the Managing Director urged the Committee to put the consideration of the petition on hold as the matters pending in court mainly dealt on the issue of renewal of leases for land owned by Delmonte Kenya Limited and the same matters were also the key subject of the petition.

The Managing Director further informed the Committee that the Company was not opposed to the recommendation made by the National Land Commission in a historical injustice claim lodged by Kandara Residents Association against Del Monte Kenya Limited 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 against. He added that the company had severally written to the Director of Survey in the Ministry of Lands and Physical Planning seeking the fast tracking of the exercise but had not received a reply from the said office.

The Committee resolved to put the matter on hold in order to seek guidance on whether the *sub judice rule* applied.

**MIN. NO. NA/DCS/LANDS/2019/- 242: ADJOURNMENT**

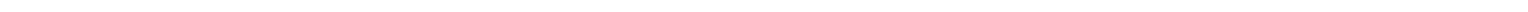
There being no other business to discuss, the meeting was adjourned at seven minutes past one o'clock. The next meeting will be held on 14<sup>th</sup> August 2019 at 11:30 am.

Signature .....  


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

**(Chairperson)**

Date..... 15/10/2019 .....



**MINUTES OF THE 56<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON THURSDAY, 8<sup>TH</sup> AUGUST 2019 IN THE BOARDROOM, 2<sup>ND</sup> FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS AT 9.30 A.M**

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**PRESENT**

1. Hon. Dr. Rachael Nyamai, M.P - Chairperson
2. Hon. Khatib Mwashetani, M.P - Vice Chairperson
3. Hon. Jayne Kihara, M.P
4. Hon. Mishi Mboko, M.P
5. Hon. Omar Mwinyi Shimbwa, M.P
6. Hon. Babu Owino, M.P
7. Hon. Catherine Waruguru, M.P
8. Hon. George Risa Sunkuyia, M.P
9. Hon. Jane Wanjuki Njiru, M.P
10. Hon. Owen Baya, M.P
11. Hon. Samuel Kinuthia Gachobe, M.P
12. Hon. Simon Nganga Kingara, M.P
13. Hon. Teddy Mwambire, M.P

**APOLOGIES**

1. Hon. Kimani Ngunjiri, M.P
2. Hon. Joshua Kutuny, M.P
3. Hon. George Aladwa, M.P
4. Hon. Ali Mbogo, M.P
5. Caleb Kipkemei Kositany
6. Hon. Josphat Gichunge Kabeabea, M.P

**IN ATTENDANCE**

**NATIONAL LAND COMMISSION**

1. Kabale Tache - Ag. Chief Executive
2. Mr. Francis Bor - Ag. Deputy Commission Secretary
3. Ms. Mercy Njamwea - Director, Land Administration
4. Fidelis Mburu - Ag. Director Valuation
5. Edmond Gichuru -
6. Samuel Odari - Deputy Director
7. Charles Wambugu - Legal Officer

## THE NATIONAL ASSEMBLY SECRETARIAT

- |                        |   |                         |
|------------------------|---|-------------------------|
| 1. Mr. Leonard Machira | - | Clerk Assistant I       |
| 2. Sydney Lugaga       | - | Legal Counsel II        |
| 3. Mr. Joseph Tiyan    | - | Research Officer III    |
| 4. Mr. Nimrod Ochieng  | - | Audio Recording Officer |
| 5. Ms. Peris Kaburi    | - | Serjeant – At - Arms    |

### MIN. NO. NA/DCS/LANDS/2019/- 233: PRELIMINARIES

The meeting was called to order at sixteen minutes to noon. Prayers were said and thereafter introductions were made.

### MIN. NO. NA/DCS/LANDS/2019/-234: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as outlined in the notice of the meeting after it was proposed and seconded by Hon. Kimani Ngunjiri, M.P and Hon. Simon Kingara, M.P respectively.

### MIN. NO. NA/DCS/LANDS/2019/-235: CONFIRMATION OF PREVIOUS MEETING

Consideration of the item was deferred to the next sitting.

### MIN. NO. NA/DCS/LANDS/2019/-236: MEETING WITH THE AG CHIEF EXECUTIVE OFFICER NATIONAL LAND COMMISSION ON PETITIONS PENDING BEFORE THE COMMITTEE

The Ag. Chief Executive Officer National Land Commission requested for two weeks to provide comprehensive responses to the following petitions:

- i. Petition by Hon Andrew Mwadime MP on behalf of Taita Taveta Teachers Investment Company Limited on illegal occupancy of land owned by Taita Taveta Teachers Investment Company Limited;
- ii. Petition by Hon. David Gikaria, M.P on behalf of Ms. Juliet Nyaguthii regarding public access and use of public utility plots in Nakuru West Ward in Nakuru County;and
- iii. Petition by of former workers of the Late Mayor Jacob Samuels regarding invasion and eviction of former workers of the Late Mayor Jacob Samuels from their land in Roysambu Constituency by the Kenya Defence Forces.

She then informed the Committee as follows regarding three other petitions:

- i. **Petition by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases of land by Del Monte Kenya Limited**

The Commission received a historical injustice claim from Kandara Residents Association against Del Monte Kenya Limited together with the colonial soldiers, the Agro French, who planted sisal in the area and the Kenya Cannery Limited. The Commission decided on 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. The Commission recommended 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.
- The surplus land, if any, should be surrendered to Kandara Residents Association and the County Government for public purpose in the ratio of 70:30 respectively.
- Where no surplus land is found the County Government of Muranga should retain adequate land for the settlement of the claimants and for public purpose upon the expiry of the leases.
- Del Monte Kenya Limited should surrender all public utilities within the land in question to the relevant National and County Government agencies whether the leases have expired or not.

The Ag. Chief Executive Officer further informed the Committee that three court cases had been filed in the High Court in Nairobi and Muranga. Therefore, she would not make more comments on the same due to the doctrine of *sub judice* as the matters raised in the petition were also pending determination in court. The cases included the following:

- **ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.** The suit seeks to restrain the National Land Commission from renewing leases in favour of Del Monte Kenya Limited.
- **High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General:** The suit seeks to quash the determination of the NATIONAL Land Commission Historical Injustice Committee dated 7<sup>th</sup> February 2019 in complaint No. NLC/HLI/004/2017/ It also seeks to expel the Gazette Notice No. 1995 dated 18<sup>th</sup> February 2019 and published on 1<sup>st</sup> March 2019 on parcels of land registered under Del Monte Kenya Limited.
- **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:** The suit seeks to compel the Director of Survey to implement the National Land Commission's Historical Land Injustice Committee dated 7<sup>th</sup> February 2019 in complaint No. NLC/HLI/004/2017.

ii. **Petition by Tapsimate Araap Borowo and Kipsoi Araap Chemorore regarding historical land injustices in Kimulot area in Kericho and Bomet Counties**

The Commission received a historical injustice claim from Borowo and Kipsigis Clan self – help group No. NLC HLI/173/2017. The Commission heard the matter on 14<sup>th</sup> 2018 and 17<sup>th</sup> November 2018. The claimants were represented by Mr. Peter Kiprotich Bett.



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The Claim stated that Araap Borowo and the Kipsigis clans had been evicted by the British Colonial government from their land in Kericho and Bomet Counties and the petitioners sought to be compensated for the killings, mental and physical torture meted on the Kipsigis clan, forceful recruitment of their youth to fight for the British and that they be granted graveyards for their ancestors that were within the Multinational estates.

The petitioners also noted that there were not involved negotiations between the British Government and the Governors of Kericho and Bomet seeking that upon expiry of the respective leases the land be issued to the county governments yet the Borowo and Kipsigis Clans were in fact the rightful owners. They sought the said negotiations to be stayed until the commission decided their Historical Injustice Claim.

**Commission recommendations on the claim:** The Commission admitted the claim and recommended that:

- A resurvey be done on the lands being held by tea estates to determine if there is any surplus land to be held in trust for the community by the county government
- The County government and the multinationals to sign an MOU for the multinationals to provide public utilities to the community.
- The renewal of leases to be withheld until an agreement is reached with the county governments of Kericho and Bomet.
- Upon the expire of the subject leases the county governments of Kericho and Bomet give priority to the claimants on allocation of the subject parcels of land.

The Ag Chief Executive Officer made the following comments on the specific prayers in the petition:

- On the prayer that the Committee intervenes to ensure a fresh and transparent recognition of the matter of disposition of the petitioners' land without compensation being paid to the Chemorei and Borowo family. She noted that the commission had undertaken investigations in the and decided the matter of NLC /HLI/173/2017.
- The prayer to consider the evictions of the Kipsigis that commenced on 26<sup>th</sup> February 1952 to have been unlawful, unjust and a gross violation of the human rights and dignity of the victim. Was beyond the remedies that the Historical Land Injustice claim would offer.

The Committee was also informed that after the commission gazetted the recommendations through gazette notice No. 1195 of 1<sup>st</sup> March 2019. The Kenya Tea Growers Association comprising multinational tea firms that include ;James Finlays Kenya Ltd, Sotik Tea Company, Sotik Highlands Tea Company Limited, Chongoi /Lelsa Tea Company Limited , Tinderet Tea Estates Ltd, Kaimosi Tea Estates Ltd, Kaisugu Ltd , Emrock(EPZ) Tea Factory Ltd challenged the decision in the High Court at Nairobi through JR.MISC APPLICATION No.95. The Association sought the recommendations made by the National Land Commission in gazettee notice No. 1995 quashed.

The Ag Chief Executive Officer concluded that the commission had adequately responded to the Historical Land Injustice claim made by the petitioners, but the commission would consider any additional recommendation made by the Committee on the matter.

## Committee Observations

The Committee observed that the response and the Historical Injustice claim handled by the commission was generalised to include land in Kericho and Bomet Counties and sought compensation for the killings, mental and physical torture meted on the Kipsigis clan, forceful recruitment of their youth to fight for the British and that they be granted graveyards for their ancestors that were within the Multinational estates. However, the petition was specific and focused on consolidated parcels of land registered as LR No. 8804 measuring 4,500 acres and the displacement of the families of Tapsimate Araap Borowo and Kipsoi Araap Chemorore. There the commission had not addressed the specific issues raised in the petition.

The Committee also noted that the case lodged by the multinational tea companies did not specifically relate to the said parcel of land.

### **iii) Petition by residents of Matisi Community in Kitale on compensation of land owned by the Matisi the Kitale – Endebess – Suam Road**

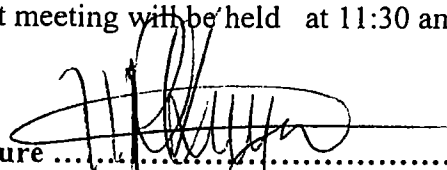
The Ag Chief Executive Officer made the following comments on the petition:

1. The Commission was undertaking land acquisition in the Matisi section of the of the Kitale – Endebess – Suam Road on behalf of the Kenya National Highways Authority (KeNHA). The acquiring body (KeNHA) had identified the land to be acquired for the expansion of the road and had prepared an acquisition plan together with a list of the affected parcels of land. The Commission then issued a gazette notices No. 9488 dated 14<sup>th</sup> September 2018 and 1106 dated 26<sup>th</sup> October 2018 on the intention to acquire the said land based on the acquisition plan and list of affected parcels of land.
2. The Commission also conducted inspections and recorded improvements affected by the road expansion for purposes of verification and determination of just compensation through valuation. The exercise was undertaken in the presence of land and property owners and in collaboration with KeNHA and the local administration officials.
3. Inquiry hearings were held as per the schedule published in the gazette notice where interested parties presented their identification and land ownership documents to the Commission to facilitate determination of payees. During the inquiry various issues that required the gazette of addendums were identified but this would await the appointment of Commissioners before the same could be addressed.
4. The Commission was informed by KeNHA that some of the residents of Matisi had built of land that is part of the road reserve as per existing survey maps of the area that set the road corridor at 60 meters. The two agencies noted that the said landowners hold title deeds for the said road reserve and that some of the landowners had purchased the land. The Ag. Chief Executive Officer, however, admitted that the commission had been previously compelled by the court to compensate landowners for land deemed to be on a road reserve who hold title deeds issued by the government

5. The Commission would compensate owners of structures erected on the road reserve on consideration of occupiers in good faith. However, the commission needed to consult further with the County Surveyor, Land Registrar and Physical Planner and advise KENHA on the matter.
6. Compensation of occupiers in good faith who do not hold title deeds does not require listing in the Kenya Gazette. Further the Commission had already undertaken physical identification of the affected developments and would embark on the personal identification of the owners of the said structures.
7. Finally, the Ag. Chief Executive Officer stated that that Commission would recommend that no demolition of structure should be undertaken before compensation and that KeNHA should not undertake any demolition before compensation of the structures.

**MIN. NO. NA/DCS/LANDS/2019/- 237: ADJOURNMENT**

There being no other business to discuss, the meeting was adjourned at seven minutes past one o'clock. The next meeting will be held at 11:30 am.

Signature ..... 

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

**(Chairperson)**

Date..... 15/10/2019 .....

**MINUTES OF THE 55<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LANDS HELD ON TUESDAY, 6<sup>TH</sup> AUGUST 2019 IN THE BOARDROOM, 2<sup>ND</sup> FLOOR,  
PROTECTION HOUSE, PARLIAMENT BUILDINGS AT 11.30 A.M**

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**PRESENT**

1. Hon. Dr. Rachael Nyamai, M.P - Chairperson
2. Hon. Khatib Mwashetani, M.P - Vice Chairperson
3. Hon. Jayne Kihara, M.P
4. Hon. Mishi Mboko, M.P
5. Hon. Babu Owino, M.P
6. Hon. Catherine Waruguru, M.P
7. Hon. George Risa Sunkuyia, M.P
8. Hon. Owen Baya, M.P
9. Hon. Samuel Kinuthia Gachobe, M.P
10. Hon. Simon Nganga Kingara, M.P
11. Hon. Teddy Mwambire, M.P

**APOLOGIES**

1. Hon. Kimani Ngunjiri, M.P
2. Hon. Omar Mwinyi Shimbwa, M.P
3. Hon. Joshua Kutuny, M.P
4. Hon. George Aladwa, M.P
5. Hon. Jane Wanjuki Njiru, M.P
6. Hon. Ali Mbogo, M.P
7. Caleb Kipkemei Kositany
8. Hon. Josphat Gichunge Kabeabea, M.P

**IN ATTENDANCE**

**KANDARA RESIDENTS ASSOCIATION**

1. Mr. David Kimani Wathugi
2. Mr. John K. Mahuti
3. Mr. Nganga Njoroge
4. Ms. Phyllis Nyamweru
5. Ms. Mary Wanjiru
6. Mr. Daniel Machenge
7. Mr. Titus Itongu
8. Mr. Geoffrey Kairo
9. Mr. Philip Warutu

- 
10. Karira Kimara
  11. Duncan Okatch – Advocate
  12. Jackson Ikua – Advocate

#### **THE NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Leonard Machira - Clerk Assistant I
2. Sydney Lugaga - Legal Counsel II
3. Mr. Joseph Tiyan - Research Officer III
4. Mr. Nimrod Ochieng - Audio Recording Officer
5. Ms. Peris Kaburi - Serjeant – At - Arms

#### **MIN. NO. NA/DCS/LANDS/2019/- 227: PRELIMINARIES**

The meeting was called to order at fifteen minutes to noon. Prayers were said and thereafter introductions were made.

#### **MIN. NO. NA/DCS/LANDS/2019/-228: ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted as outlined in the notice of the meeting after it was proposed and seconded by Hon. George Risa Sunkuyia, M.P and Hon. Simon Kingara, M.P respectively.

#### **MIN. NO. NA/DCS/LANDS/2019/-229: CONFIRMATION OF PREVIOUS MEETING**

Consideration of the item was deferred to the next sitting.

#### **MIN. NO. NA/DCS/LANDS/2019/-230: MEETING WITH PETITIONERS IN A PETITION BY MR. PHILIP NJUGUNA ON BEHALF OF KANDARA RESIDENTS ASSOCIATION ON IRREGULAR RENEWAL OF LEASES OF LAND BY DELMONTE KENYA LIMITED**

The petitioners informed the Committee that;

- i. Del Monte Kenya Limited was fully owned by foreign nations as evidenced in the list of its directors, which did not include a single Kenyan. Therefore, the petitioners argued that the company did not enjoy preemptive right of extension of the lease for land currently held by the company and that the company should surrender 50% of the land in question before the lease would be renewed;
- ii. The County government of Muranga had usurped the powers to renew the lease held by Del Monte Kenya Limited when the said powers were held by the National Land Commission contrary to section 13 of the National land Commission Act 2012. However, the petitioners were not able to table evidence to indicate that indeed Muranga County Government had renewed the said leases. They clarified that both the County Governments of Muranga and Kiambu had submitted no objection reports to the National Land Commission and had not actually renewed the leases. Therefore, the

- petitioners were contesting the no objection reports submitted by the two Counties regarding the said renewal of leases for land held by Del Monte Kenya Limited;
- iii. Public participation was mandatory in the renewal of the lease and that Kandara Residents Association through the instructions of the National land Commission had undertaken extensive public participation on the matter and had held meeting across Muranga county and received views from approximately 4500 person on the said renewal of lease for land held by Del Monte Kenya Limited. A report on the exercise was tabled and approved by the Muranga County assembly;
  - iv. Kandara Residents Association had also lodged a Historical Injustice claim with the National Land Commission alleging injustices committed by Del Monte Kenya Limited together with the colonial solders and the Agro French, who planted sisal in the area and the Kenya Cannerns. The Committee was further informed that the commission had recommended that the land held by Del Monte Kenya Limited be resurveyed to establish if the company was in possession of land that it did not own. It was also recommended that any surplus land should be surrendered to the Association and the County government of Muranga for public purpose in the ratio of 70:30. The company was also required to surrender all public utilities within the land to the relevant National and County Government Agencies whether the leases had expired or not

The Committee noted that the petition limited its focus to renewal of lease for land owned by Del Monte by Muranga County. It therefore meant that the petition did not include land in Kiambu County. It was further noted 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 was the mandate of the National land Commission.

**MIN. NO. NA/DCS/LANDS/2019/- 231 MEETING WITH THE PETITIONERS ON A PETITION BY OF FORMER WORKERS OF THE LATE MAYOR JACOB SAMUELS REGARDING INVASION AND EVICTION OF FORMER WORKERS OF THE LATE MAYOR JACOB SAMUELS FROM THEIR LAND IN ROYSAMBU CONSTITUENCY BY THE KENYA DEFENCE FORCES**

The petitioners informed the Committee as follows:

- a) The petitioners are former workers of the late Mayor Jacob Samuels who owned land in question land in Roysambu constituency. The owner was deported from the county after he declined an offer to compulsory acquire the land made by the Kenya Defence Forces. After the landowner left the county his two sons came to manage the land and operate the business. The owner had made an offer of Ksh. 26 million for the land while the department offered Ksh 3 million. They added that although the KDF intended to acquire the said land ,senior military officers advise that land was not suitable for use by the military as it was located in the middle of a densely settled area and it would require the force to acquire adjacent land to create enough land to secure a military facility. There was also no evidence to indicate that the military paid any compensation to the owner.

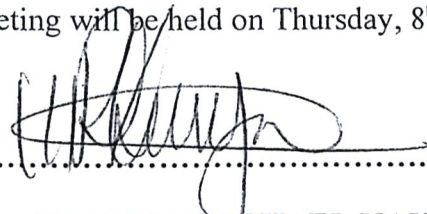
- b) In 2003 the government declined to renew the lease for the land and the two sons also left the county leaving the workers with no income. The workers then decided to start business that included a garage and parking of lorries in order to make ends meet.
- c) In 2004 a group of invaders attempted to enter the land and erect old containers on it. However, the invaders were repulsed. Following the attempted grabbing of the land the petitioner were advised to register a company and use it to acquire the land
- d) On 6<sup>th</sup> May 2004 the petitioners registered a company known as Roysa Community Development Society No. 446760 and used it to request the County Government of Nairobi to allocate them the land.
- e) On 17<sup>th</sup> February 2014 the County Government of Nairobi the land to Roysa Community Development Society and the Chief Land Officer wrote to the National Land Commission indicating that the County Government had allocate the land to the society. The commission rejoinder dated 10<sup>th</sup> MARCH 2014 informed the County Government of Nairobi that since the lease to the land had expired and was not renewed, the land had reverted to the county government and therefore it was in order for the county government to allocate it to Roysa Community Development Society. The petitioners tabled the said correspondence to the committee.
- f) The petitioners accepted the offer and paid for the issuance an allotment letter through their trustees and they also paid the required fee to amend the index map and for valuation of the parcel of land to facilitate subdivision and issues of a certificate of subdivision and lease.

However on 2019 a group of people in green lorries invaded the land and displaced the petitioners. The invaded also erected six tens on

**MIN. NO. NA/DCS/LANDS/2019/- 232: ADJOURNMENT**

There being no other business to discuss, the meeting was adjourned at forty minutes past one o'clock. The next meeting will be held on Thursday, 8<sup>th</sup> August 2019 at 9:30 am.

Signature .....



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

**(Chairperson)**

Date.....

15/10/2019

# REPUBLIC OF KENYA



## THE NATIONAL ASSEMBLY (THIRD SESSION)

### CONVEYANCE OF PUBLIC PETITION

*(No. 50 of 2019)*

#### REGARDING IRREGULAR RENEWAL OF LEASES OF LAND LEASED BY DEL MONTE KENYA LIMITED

**Honourable Members,** Standing Order 225(2) (b) requires the Speaker to report to the House any Petition, other than those presented by a Member. I therefore wish to report to the House that my office has received a Petition, submitted by Mr. Philip Njuguna on behalf of Kandara Residents Association, which draws its members from Murang'a and Kiambu counties. The Petitioners claim to be the original owners of land presently occupied by Del Monte Kenya Limited but were illegally displaced and the land was leased to Del Monte Kenya Limited.

The Petitioners aver that, in anticipation of expiry of the Lease, the County Government of Muranga has irregularly renewed the Lease in favour of Del Monte Kenya Limited, contrary to the provisions of section 13 of the Lands Act, 2012, which provides that, at the expiry of a leasehold tenure, the National Land Commission shall inform the lessee of his or her pre-emptive right to allocation of the land upon application, provided that-



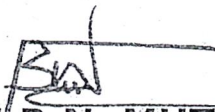
- a) such lessee is a Kenyan citizen; and
- b) the land is not required by the National or County Government for public purposes.

**Honourable Members,** the Petitioners opine that, by proceeding to unilaterally renew the Lease, the County Government of Murang'a not only usurped the exclusive power vested in the National Land Commission to renew leases but also side-stepped the constitutional principle of public participation to determine whether the public also had an interest in the land. This is in total disregard of the resolutions of Kandara residents made in February 2017 that the public interest of the residents be upheld. The Petitioners also allege that the National Land Commission intends to renew the Lease despite recommending on 7<sup>th</sup> February 2017 that, to address the historical land injustice, the County Government of Murang'a should retain adequate amounts of land for settlement of claimants and public purpose, when the leases expire in May 2019.

**Honourable Members,** given the said developments, the Petitioners are concerned that their hope of reclaiming ancestral land at the expiry of the lease held by Del Monte Kenya Limited will be permanently curtailed. They are therefore praying that, the National Assembly, through the Departmental Committee on Lands, inquires into the matter with a view to ensuring that the process of renewing the Lease of land held by Delmonte Kenya Limited is conducted within the law and in a transparent and participatory process that takes into account the rights and interests of members of Kandara Residents Association over the said land are safeguarded.

**Honourable Members,** pursuant to the provisions of Standing Order 227, this petition stands committed to the Departmental Committee on Lands. The Committee is requested to consider the Petition and report its findings to the House and Petitioner in accordance with Standing Order 227(2).

**I thank you!**

  
**THE HON. JUSTIN B.N. MUTURI, EGH, MP**  
**SPEAKER OF THE NATIONAL ASSEMBLY**

**Tuesday, 11<sup>th</sup> June , 2019**

**PETITION PURSUANT TO ARTICLE 119 OF THE CONSTITUTION,  
PETITION TO PARLIAMENT (PROCEDURE) ACT NO. 22 OF 2012  
AND THE NATIONAL ASSEMBLY STANDING ORDERS**

**TO THE SPEAKER OF THE NATIONAL ASSEMBLY,**

**P.O BOX 41842-00100,**

**NAIROBI.**

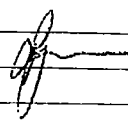
1. **THAT** the Petitioners are the members of the Kandara Residents Association who are members from Muranga and Kiambu.
2. **THAT** the Petitioners had originally settled in the land currently occupied by the Del Monte Kenya Limited but were illegally removed and a lease allocated to Del Monte Kenya Limited.
3. **THAT** upon the expiry of the lease, the County Government of Muranga renewed a lease to Del Monte Kenya Limited contrary to section 13 of the Lands Act, 2012 which provides that before the expiry of a leasehold tenure, the National Land Commission shall inform the lessee of his or her pre-emptive right to allocation of the land upon application provided that
  - (a) such lessee is a Kenyan citizen; and
  - (b) the land is not required by the national or county government for public purposes.
4. **THAT** Delmonte Company is fully owned by foreigners and the national and county government has interest in the land.
5. **THAT** there was no public participation done to determine whether the public had an interest in the land.
6. **THAT** the power to renew a lease is vested in the National Land Commission and not the County Government of Muranga.
7. **THAT** the National Land Commission failed to implement the resolutions of the Kandara residents held in February, 2017 on the matter which recommended that the public interest of the residents be upheld.
8. **THAT** the determination of the historical land injustice dated 7<sup>th</sup> February, 2017 by the National Land Commission recommended that where no surplus

**PETITION PURSUANT TO ARTICLE 119 OF THE CONSTITUTION,  
 PETITION TO PARLIAMENT (PROCEDURE) ACT NO. 22 OF 2012  
 AND THE NATIONAL ASSEMBLY STANDING ORDERS**

land is found, the county government of Muranga should retain adequate amounts of land for settlement of the claimants and public purpose upon expiry of the leases.

9. **THAT** the leases expire in May, 2019 and the Commission is allegedly seeking to renew the leases despite its recommendation.
10. **THAT** despite our efforts to have the matters raised in this Petition addressed by the National Land Commission and the County Government of Muranga, our efforts have been futile.
11. **THAT** the matters raised in this Petition are not also pending in any court of law in Kenya.
12. **THAT** the Petitioners therefore prays for-
  - (a) pursuant to National Assembly Standing Order 216, the Standing Committee on Lands does consider, investigate and inquire into all the matters raised in this Petition;
  - (b) pursuant to the National Assembly Standing Order 216, the Standing Committee on Lands does make the relevant recommendations thereof.

Petition presented by:

Name	Address	Identification Number	Signature
Petitioners	Muranga	5192415	

**ANNEXTURE I**

**SUBMISSIONS BY THE PETITIONER**