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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF A PETITION BY HATUA YETU  
COMMUNITY BASED ORGANIZATION REGARDING IMPENDING  
EVICTIONS FROM MAZRUI TRUST LAND

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI


 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 17 OCT 2019	DAY: THURSDAY
TABLED BY:	<i>Hon. Jane W. Njiru</i>
CLERK-AT-THE-TABLE:	<i>For Chair, Lands Committee</i>
	<i>Lemuro</i> <b>OCTOBER 2019</b> <i>Notes</i>

Table of Contents

**1.0 PREFACE .....5**

**1.1 Mandate of the Committee.....5**

**1.2 Committee subjects .....5**

**1.3 Oversight .....5**

**1.4 Committee Membership.....6**

**1.5 Committee Secretariat .....8**

**2.0 INTRODUCTION .....9**

**3.0SUBMISSIONS .....11**

**3.1 Submissions by the Petitioners .....11**

**3.2 Submissions received by the Committee during a field visit to Kilifi County.....12**

**3.3 Submissions by representatives of the Mazrui Community .....13**

**3.4 Submissions by the Ministry of Lands and Physical Planning.....15**

**3.5 Submissions by the National Land Commission .....17**

**4.0 OBSERVATIONS .....18**

**5.0 COMMITTEE RECOMMENDATIONS.....19**

## **CHAIRPERSON'S FOREWORD**

The Petition by Hatua Yetu Community Based Organization regarding impending evictions from Mazrui Trust land was tabled in the House on 21<sup>st</sup> March 2019 by the Hon. Michael Thoyah Kingi MP on behalf of the Petitioners. A similar petition lapsed before the Committee could table a report in the Second Session of the twelfth Parliament. In this regard, the Committee resolved to include submissions made by the Petitioners and other stakeholders during the session in this report.

In considering the Petition, the Committee held meetings with the representatives of Hatua Yetu Community Based Organization on Tuesday 13<sup>th</sup> November 2018, representatives of the Mazrui Community on 3<sup>rd</sup> December 2018 and the Ag. Chief Executive Officer, National Land Commission on 16<sup>th</sup> July 2019. The Committee undertook a field visit to Kilifi County on Friday 23<sup>rd</sup> November 2018. The Committee also received written submissions from the Ministry of Land and Physical Planning dated 23<sup>rd</sup> August 2019.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee is also thankful to the Petitioners, the Ag. Chief Executive Officer, National Land Commission, the Cabinet Secretary, Ministry of Lands & Physical Planning and the representatives of the Mazrui Community 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 Hatua Yetu Community Based Organization regarding impending evictions from Mazrui Trust land.

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

## EXECUTIVE SUMMARY

The purpose of this report is to respond to prayers made by Hatua Yetu Community Based Organization regarding impending evictions from Mazrui Trust land following a Petition that was tabled in the House on 21<sup>st</sup> March 2019 by the Hon. Michael Thoyah Kingi MP on behalf of the Petitioners. The Petitioners prayers are that the National Assembly through the Departmental Committee on Lands does;

- a. investigate and inquire into all matters relating to the Mazrui Trust Lands with a view to ensuring that the Ministry of Lands and Physical Planning and the National Land Commission institute measures to ensure that the said land reverts to the community from whom it was annexed; and
- b. make any other order or direction that it deems fit in the circumstances of this matter;

This report contains the submissions made by the representatives of Hatua Yetu Community Based Organization to the Committee, residents of Takaungu, Kiriba, Basi and Majibu in Kilifi County, representatives of Mazrui Community, Ministry of Lands and Physical Planning and the National Land Commission. It also contains the observations and recommendations of the Committee in response to the Petitioners' prayers.

The Committee observed that the evidence tabled by the Ministry of Lands and Physical Planning indicated that on 21<sup>st</sup> March 1912 the Mazrui Arbitration Board obtained certificates of ownership for five (5) blocks of land in Kilifi measuring approximately 44,420.68 acres, comprising Block No. 1 Certificate of Title 409, Block No. 2, Certificate of Title 408, Block No. 3 Certificate of Title 406, Block No. 4 Certificate of Title 407, and Block No. 5 Certificate of Title 414. However, after several transfers the land currently vested in the Mazrui Lands Trust Board is 4,319.04 acres, which was validated by the Mazrui Trust Land Act.

In view of the above, the Committee noted that according to the Kenya Land Commission Evidence and Memoranda Volume III of 1934, 40,101.64 acres of land initially owned by the Mazrui Arbitration Board was transferred to several persons and companies between 1925 and 1928. Consequently, the heirs of the said land cannot claim to evict the petitioners by invoking the name of the Mazrui Trust Land Act or that of the Mazrui Lands Trust Board.

The Committee further observed that there is need for the Ministry of Lands and Physical Planning to verify and ascertain the way the transfers of 40,101.64 acres were done and determine the persons who benefited from the said transfers from 1925 to date.

The Committee also noted that according to the Kenya Land Commission Evidence and Memoranda Volume III of 1934, part of land Block No. 1 Certificate of Title 409 was leased by Kilifi Plantations Ltd in 1928 for term of 99 years. Consequently, the term of lease is due to expire in 2027. The Committee observed that there are persons from the local communities currently occupying Block No. 1 Certificate of Title 409.

The Committee noted that Mr. Salim Al-Amin Suleiman, the Chairperson of the Mazrui Community stated that the Mazrui Lands Trust Board did not own land in Basi area within Kilifi North Constituency. The Kilifi County National Land Commission Coordinator also averred that ownership records of blocks two (2), ten (10) and eleven (11) in Basi area were missing.

The Committee also noted that National Land Commission and Local Administration were facilitating negotiations between the Mazrui Community and locals in respect of block V measuring 315 acres in Msabaha with a view to facilitate the acquisition of the said land by the squatters.

The Committee recommends that the Ministry of Lands and Physical Planning and the National Land Commission do verify the current ownership of 40,101.64 acres of land transferred from the Mazrui Land Board titles to several persons and companies between 1925 and 1928 as indicated in the Kenya Land Commission Evidence and Memoranda Volume III of 1934 to determine the current owners with a view to allocating any undocumented land to the residents of Kilifi within ninety days of tabling of this Report.

The Committee also recommends Ministry of Lands and Physical Planning and the National Land Commission does adjudicate land in blocks two (2), ten (10) and eleven (11) in Basi area with a view to allocating any unadjudicated land to the persons currently occupying the land within six months of tabling of this Report.

Finally, the Committee recommends that upon the expiry of the lease acquired by Kilifi Plantations Ltd in 1928 for a term of 99 years on part of land Block No. 1 Certificate of Title 409, the National Land Commission does consider recommending the allocation of the land to the residents of Kilifi North Constituency.

## **1.0 PREFACE**

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

2. 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 legislations referred to it.

### **1.2 Committee subjects**

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

### **1.3 Oversight**

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

## 1.4 Committee Membership

5. The Committee membership comprises: -

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

**MP for Kitui South Constituency**

**Jubilee Party**

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

**MP for Lunga Lunga Constituency**

**Jubilee Party**

Hon. Jayne Wanjiru Kihara, MP

Member for Naivasha  
Constituency

**Jubilee Party**

Hon Joshua Kutuny Serem, MP

Member for Cherangany  
Constituency

**Jubilee Party**

Hon. Kimani Ngunjiri, MP

Member for Bahati Constituency

**Jubilee Party**

Hon. Mishi Mboko, MP

Member for Likoni Constituency

**Orange Democratic Movement  
(ODM)**

Hon. Omar Mwinyi, MP

Member for Changamwe  
Constituency

**Orange Democratic Movement  
(ODM)**

Hon. Ali Mbogo, MP

Member for Kisauni  
Constituency

**Wiper Democratic Movement  
(WDM)**

Hon. Babu Owino, MP

Member for Embakasi East  
Constituency

**Orange Democratic Movement  
(ODM)**

Hon. Caleb Kipkemei Kositany,  
MP

Member for Soy Constituency

**Jubilee Party**

Hon. Catherine Waruguru, MP

County Member of Parliament,  
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

County Member of Parliament,  
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

6. 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  
**Research Officer 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

7. The Petition by Hatua Yetu Community Based Organization regarding impending evictions from Mazrui Trust land was tabled in the House on 21<sup>st</sup> March 2019 by the Hon. Michael Thoyah Kingi MP on behalf of the Petitioners. A similar petition had also been submitted
8. The Petitioners wished to draw the attention of the House to the following, that:
  - i. Land is an important economic resource that supports the livelihood of many families;
  - ii. The advent of the Omani Arabs to the coast of East Africa dethroned African rulership and subjugated many coastal communities to foreign dominion;
  - iii. The Mazrui family was among the two Omani Arab Dynasties that annexed land and ruled over the coast of East Africa, particularly Kenya;
  - iv. The Mazrui ruled the port city of Mombasa until they were dislodged from power in 1828 by Sultan Seyyid Said and dispersed to Kilifi;
  - v. In Kilifi, they annexed five (5) blocks of land measuring approximately 77,000 acres and comprising Block No. 1 Certificate of Title 409, Block No. 2, Certificate of Title 408, Block No. 3 Certificate of Title 406, Block No. 4 Certificate of Title 407, and Block No. 5 Certificate of Title 414;
  - vi. The said occupation deprived the indigenous communities, especially in Takaungu, Kiriba Wangwani, Kibarani Mjibu, Mtondia and Mida in Kilifi North Constituency, of land for settlement and agriculture;
  - vii. The Mazrui Trust Land Act established the Mazrui Land Trust Board as the legal and registered Trustees and administrators of the Mazrui Lands;
  - viii. In 1989, the State repealed the Mazrui Trust Land Act and deemed all lands vested in the Mazrui Lands Board of Trustees was declared Trust Land;
  - ix. The Statute further provided that the rights and interests of persons on the said land would be ascertained in accordance with the Land Adjudication Act (Cap 284, Laws of Kenya);
  - x. The Government, through the Kilifi District Land Adjudication and Settlement Officer declared the Mazrui Land at Takaungu (Block 1) an adjudication section as per section 5 of the Land Adjudication Act;
  - xi. Aggrieved by both the repeal of the Mazrui Act and the declaration that Mazrui lands be subjected to the Land Adjudication Act, the Mazrui challenged the repeal of the law in court;
  - xii. In 2012, the court ruling in Civil Case No. 185 of 1991 declared the repeal of the Mazrui Land Trust Act unconstitutional, hence reverting the land to the Mazrui Trust Board;

- xiii. The Court's verdict has brought uncertainties, particularly fear of evictions and displacement to more than 100, 000 families and residents who have lived in the said land for over seven decades;
  - xiv. Efforts to resolve the matter with the relevant bodies have been futile; and
  - xv. The issues in respect of which the petition is made are not pending before any Court of Law, Constitutional or Statutory body.
9. Therefore, the petitioners pray that the National Assembly through the Departmental Committee on Lands;
- a. Investigate and inquiries into all matters relating to the Mazrui Trust Lands with a view to ensuring that the Ministry of Lands and Physical Planning and the National land Commission institute measures to ensure that the said land reverts to the community from whom it was annexed; and
  - b. Makes any other order or direction that it deems fit in the circumstances of this matter;

### 3.0 SUBMISSIONS

#### 3.1 Submissions by the Petitioners

10. The Committee held a meeting with the representatives of Hatua Yetu Community Based Organization on Tuesday 13<sup>th</sup> November 2018 and during a field visit to Kilifi County on Friday 23<sup>rd</sup> November 2018. During the meetings the officials of Hatua Yetu Community Based Organization accompanied by persons residing on the Mazrui land informed the Committee that the Petition was based on claims of historical injustice experienced by residents of Kilifi North Constituency who had live on the land in question that is registered in the name of the Mazrui for more than seven decades. The Petitioners consider the said land to be their ancestral land.
11. **Historical background:** The Petitioners stated that the Mazrui family once ruled the port of Mombasa after rebelling against the Sultan of Oman during the precolonial period. The family exerted its influence and control of land in Kilifi in the 1820s after they were dislodged from Mombasa by Seyyid Said in 1928. They settled in Takaungu area of Kilifi.
12. During the colonial period the Mazrui were allied to the British against the Sultan of Oman who had control over the coastal area and Zanzibar. Based on the friendship between the Mazrui and the British colonial government the Mazrui Trust Land Act was enacted in 1914. The Act vested approximately 77,000 acres of land in the Mazrui family to the exclusion of all other persons. Following the enactment, the Mazrui acquired five (5) blocks of land in Kilifi. The five blocks are; Block No. 1 Certificate of Title 409, Block No. 2, Certificate of Title 408, Block No. 3 Certificate of Title 406, Block No. 4 Certificate of Title 407, and Block No. 5 Certificate of Title 414. The total blocks covered an area of approximately 77,000 acres. They further stated that the Mazrui only occupy about 10% of the said 77,000 acres of land in Block 1 located in Takaungu.
13. The Petitioners also stated that the situation still obtained to date and the affected villages were Takaungu, Kiriba Wangwani, Kabarani Mjibu, Mtondia and Mida in Kilifi North Constituency. The Petitioners and the residents of Kilifi North Constituency considered the said land to be their ancestral land as their forefathers were displaced from the land during the slave trade era.
14. **Repeal of the Mazrui Trust Land Act, 1914:** The Petitioners informed the Committee that in 1989, Parliament repealed the Mazrui Trust Land Act, 1914 and all the land vested in the Mazrui Land Board of Trustees was declared Trust land. Thereafter, in accordance with the provisions on the Land Adjudication Act (Chapter 284), the government through the District Land Adjudication and Settlement Officer of Kilifi declared Mazrui Lands at Takaungu (Block No.1) to be an adjudication section within the meaning of section 5 of the Land Adjudication Act. The repeal of the Act was however quashed by the Court in 2012 after a successful case lodged by the Mazrui.

15. **Fear of eviction:** The Committee was informed that more 100,000 families who reside in the said area live in perpetual fear for imminent evictions as they don't own titles for the said land. The Mazrui had also disposed some parcels of the land to third parties, exposing the people who reside in the said land to evictions.
16. The representatives also stated that there is no alternative land to accommodate the residents currently occupying the Mazrui land within Kilifi should they be relocated.
17. The Community contacted the relevant government agencies such as the National Land Commission seeking redress on the matter, but they had not received any response.

### **3.2 Submissions received by the Committee during a field visit to Kilifi County**

18. The Committee undertook a field visit to Kilifi County on Friday 23<sup>rd</sup> November 2018 and received submissions from the following:

#### **a) Briefing by The Kilifi County Coordinator, National Land Commission**

19. The Kilifi County Coordinator, National Land Commission informed the Committee of the following;
  - i. The Commission received a Historical Injustice claim dated 20<sup>th</sup> September 2014 from Haki Yetu Organisation and Takaungu Land Committee regarding ownership of Mazrui land in Takaungu.
  - ii. The Commission had established that the Community and the County Government of Kilifi recognized the Mazrui's as the landowners as the County Government received a payment of Ksh. 10, 000,0000 for payment of land rates of the Mazrui land.
  - iii. The County Government of Kilifi approved an application by the Mazrui or the construction of a boundary wall on Takungu plot no. 5441 Kilifi North on 2<sup>nd</sup> September 2015. This she argued indicated that Kilifi County Government acknowledges the Mazrui's as the landowners.
  - iv. The Commission undertook a sensitization and awareness programme on Historical land injustices on 29<sup>th</sup> August 2018.
  - v. The land in Basi area comprising blocks two (2), ten (10) and eleven (11) had missing records in respect of ownership.

#### **b) Submissions by residents/ Petitioners during a public Baraza held at Takaungu**

20. The residents of the Takaungu informed the Committee of the following in respect of the public petition;

### **Residents of Kiriba**

- i. Kiriba area in Mavueni-Takaungu had a population of approximately 2500 people as per the 2009 census;
- ii. The disputed plot comprises 143 acres of land and had a fully-fledged primary school with 800 pupils. It has some permanent buildings, coconut plantations, all weather roads, electricity among other infrastructures;
- iii. The Mazruis had been selling, leasing the land and even charging the titles as collateral to banks loans to the detriment of the locals;
- iv. The locals lived in perpetual fear of eviction and cannot access financial services for development due to lack of ownership documents;
- v. The locals had sought redress from relevant government agencies such as the National Land Commission with no success; and
- vi. They recommended the National Land Commission to compulsorily acquire the land pursuant to Article 40(3) of the Constitution of Kenya on grounds of public interest. They also recommended that the Ministry of Lands and Physical Planning adjudicates the said to the locals pursuant to the Land Adjudication Act.

### **Residents the of Basi and Majibu**

21. The residents of the Basi and Majibu informed the Committee that:
  - i. Basi and Majibu has a population of approximately 7000 residents and the area is fully developed with a primary school of 1000 pupils-Basi Primary School;
  - ii. The locals have resided in the area since time immemorial when it was taken as part of the ten (10) mile coastal strip and registered in the names of absentee landlords;
  - iii. The Community lived in the area uninterrupted for more than 7 decades hence the doctrine of adverse possession should apply, and the titles held by the Mazrui be extinguished and vested into the residents; and
  - iv. There was no alternative land to accommodate people within Kilifi should the government consider resettling the residents in alternative land.

### **3.3 Submissions by representatives of the Mazrui Community**

22. The Committee held a meeting with representatives of the Mazrui Community on 3<sup>rd</sup> December 2018. During the meeting the representatives led by Mr. Salim Al-Amin Suleiman, the Chairperson of the Mazrui Community informed the Committee of the following in respect of the petition.
23. The Mazrui Community at Takaungu comprised the descendants of Sheikh Salim Bin Khamis who have intermarried with members of the Mijikenda Community.
24. Members of the Mazrui Community are Kenyan Citizens by birth and successive generations have lived in Kenya for over 200 years.

25. They stated that the Community own the following parcels of land;
  - a. Block I under certificate of ownership 409 measuring 2716 acres – *Takaungu Village*.
  - b. Block II under certificate of ownership 408 measuring 371 acres – *Mtondia*.
  - c. Block III under certificate of ownership 406 measuring 376 acres- *Roka*.
  - d. Block IV under certificate of ownership 407 measuring 1200 acres – *Uyombo*.
  - e. Block V measuring 315 acres in *Msabaha*.
  
26. They also stated that the Community was undertaking negotiations with the locals in respect of block V. The negotiations are administered by the National Land Commission and the Local Administration.
  
27. Block I –*Takaungu*- is divided into two portions;
  - a. Portion I; farmland measuring about 900 acres inhabited by the Mazrui Community and local squatters
  - b. Portion II; beach frontage measuring about 1800 acers unoccupied but illegally sold to Mombasa Cement during the adjudication process of 1989 to 1991.
  
28. The Community owns the above-mentioned parcels of land jointly through an Islamic Waqf, legally recognized under the Mazrui Lands Trust Act.
  
29. The Community has never charged land rates to the residents nor threatened them with evictions. They harmoniously co-existed with the locals since time immemorial.
  
30. The Community representatives in their concluding remarks stated that;
  - a. That as Kenyans, the Mazrui are entitled to the constitutionally guaranteed protection of the right to property.
  - b. The disputes in relation to occupation or dispossession of the Mazrui lands can and should only be determined in accordance with the constitutionally established mechanisms and or institutions such as the National Land Commission.
  - c. The matter of ownership of the Mazrui land has already been determined by a competent Court of Law; the High Court of Kenya
  - d. Except where specifically abrogated pursuant to the Constitution of Kenya and the International Law, Kenya is bound by International Agreements to which Kenya is party to.

### 3.4 Submissions by the Ministry of Lands and Physical Planning

31. The Ministry of Land and Physical Planning in a submission dated 23<sup>rd</sup> August 2019 submitted the following regarding the petition:
32. **Background:** Mazrui are natives of the Rustag region of Oman, in the 18<sup>th</sup> century they migrated to and settled in the Kenyan Coast and Pemba Island. They opposed the Al Said dynasty that ruled Zanzibar and the Kenyan coast. In 1828 the sultan of Oman, Seyyid Said dislodged the Mazrui family from power and dispersed them to Takaungu in Kikambala area of Kilifi County.
33. According to Kenya Commission Evidence and Memoranda Volume II, on 14<sup>th</sup> March 1912 the acting Governor appointed an Arbitration Board to subdivide the Mazrui land among the families entitled to the land. On 21<sup>st</sup> March 1912 the following certificates of ownership were issued to the Mazrui Arbitration Board as Attorneys of the Mazrui:
  - i. Certificate of Ownership No. 409 dated 1<sup>st</sup> April 1914 for Block No. 1 comprising 9,100 acres;
  - ii. Certificate of Ownership No. 408 dated 8<sup>th</sup> April 1914 for Block No. 2 comprising 10,600 acres;
  - iii. Certificate of Ownership No. 406 dated 19<sup>th</sup> March, 1914 for Block No. 3 comprising 13,040 acres;
  - iv. Certificate of Ownership No. 407 dated 19<sup>th</sup> March, 1914 for Block No. 4 comprising 1,286.68 acres; and
  - v. Certificate of Ownership No. 414 dated 15<sup>th</sup> July 1914 for Block No. 5 comprising 10,394 acres.
34. The five certificates comprised 44,420.68 acres, however several dealings were effected leaving the land vested in the Mazrui Land Trust Board at 4,319.04 acres.
35. **Mazrui Lands Trust Act No. 11 of 1931:** The British Government enacted the Mazrui Land Trust Ordinance No. 11 of 1931 for the purpose of holding and administering the Mazrui land. The Act established the Mazrui Land Board of Trustees as the legal and registered trustees and administrators of the Mazrui land. The then Provincial Commissioner of the Coast Province was the Chairman of the Board, other members included six persons appointed by the Governor through a gazettee notice.
36. In 1989 the State repealed the Mazrui Land Trust Act through the Mazrui Land (Repeal) Act. In 1991 the Mazrui challenged the repeal of the Act in court and in 2012, the court ruling in civil case No. 185 of 1911 declared the repeal of the Act unconstitutional, hence reverting the land to the Mazrui Land Trust Board.



37. **Adjudication of Mazrui land:** Upon repeal of the Act in 1981, apportion of the Mazrui land measuring 11444 ha was declared an adjudication section in 1990. The process of land adjudication progressed to finality in 1993 realizing 807 plots. The Mazrui family filed civil case No. 185 of 1991 at the High Court in Mombasa objecting the repeal of the Act. The Court ruled in favour of the Mazrui thereby ending the adjudication process.

38. **Acreage of land registered under the Mazrui Trust Board:** According to the Mazrui Lands Trust Ordinance of 1931 Schedule, the following parcels of land are registered under the Mazrui Trust Board:

S/No.	Land Parcel	Size
1	Remainder of Certificate of ownership No. 409	3172 acres
2	Subdivision No. 2 Portion No. 5 L.O. NO. 4237	200 acres
3	Subdivision No. 3 Portion No. 5 L.O. NO. 4237	171 acres
4	Subdivision No. 4 Portion No. 1 L.O. NO. 4238	201 acres
5	Remainder of Poka Village subdivision No. 3	174 acres
6	Subdivision No. 2 of Portion No. 2 of portion No. 1 of L.O 4238	0.65 acres
7	L.R. NO. 5044	339.5 acres
	Total	4,319.04 acres

39. **Validity of petitioners' allegations:** The land currently vested in the Mazrui Trust Land Act is 4,319.04 acres which was validated by the Mazrui Trust Land Act as tabulated above. IT is thus not true that the Mazrui family illegally annexed 77,000 acres of land in Kilifi county as alleged by the petitioners.

### 3.5 Submissions by the National Land Commission

40. The Committee held a meeting with the Ag. Chief Executive Officer, National Land Commission on 16<sup>th</sup> July 2019. During the meeting, she informed the Committee that:
41. The Mazrui's claim to land in the Coastal region can be traced back to the Pre-Colonial period when the British found them in charge of some parts of the coastal strip and through treaties and agreements the British took control of the Kenyan coastline.
42. By virtue of certificate 409 of 4<sup>th</sup> April 1914, the Mazrui Lands Trust Board of Trustees was registered as proprietors of land comprising 9,100 acres and a certificate of ownership issued by the Registrar of Titles and registered under the Lands Titles Act (Cap 280) now repealed.
43. The State repealed the Mazrui Land Trust Act in 1989 and converted the Mazrui Land to Trust Land and declared it an adjudication area. The Mazrui lands were therefore available for adjudication and the rights and interests of persons on the said land would be ascertained in accordance with the provisions of the Land Adjudication Act.
44. The matter was taken to Court vide case no 185 of 1991 and a judgement delivered in favour of the Mazrui on 19<sup>th</sup> July 2012 declaring the repeal of the Act as unconstitutional null, void and with no legal effect. The court also ordered that should any of the Mazrui lands be lawfully and properly acquired by the Government for the benefit of persons other than the Mazrui, then prompt, just and full compensation should be first be paid to the Mazrui.
45. She also stated that the Commission was obligated to obey the judgement made by the court order issued on 19<sup>th</sup> July 2012. It was also noted that the State did not make any appeal. Therefore, the Commission recommended that the state should consider deciding to compensate that Mazrui as indicated in one of the orders by the court in the said judgement.
46. The Commission also noted that the matter could be described as a Historical Land Injustice but since the court had pronounced itself on the same, it may be addressed through alternative dispute resolution mechanism.

#### 4.0 OBSERVATIONS

The Committee made the following observations:

1. The evidence tabled by the Ministry of Lands and Physical Planning indicated that on 21<sup>st</sup> March 1912 the Mazrui Arbitration Board obtained certificates of ownership for five (5) blocks of land in Kilifi, measuring approximately 44,420.68 acres comprising Block No. 1 Certificate of Title 409, Block No. 2, Certificate of Title 408, Block No. 3 Certificate of Title 406, Block No. 4 Certificate of Title 407, and Block No. 5 Certificate of Title 414. However, after several transfers the land currently vested in the Mazrui Lands Trust Board is 4,319.04 acres which was validated by the Mazrui Trust Land Act.
2. In view of the above, according to the Kenya Land Commission Evidence and Memoranda Volume III of 1934, 40,101.64 acres of land initially owned by the Mazrui Arbitration Board was transferred to several persons and companies between 1925 and 1928. Consequently, the heirs to the said land cannot claim to evict the petitioners by invoking the name of the Mazrui Trust Land Act or that of the Mazrui Lands Board of Trustee.
3. There is need for the Ministry of Lands and Physical Planning to verify and ascertain the way the transfers of 40,101.64 acres were effected and determine the persons who benefited from the said transfers from 1925 to date.
4. There is need for the ownership of the remaining acres 40,101.64 of land to be verified in order to determine the current owners given that the transfers were done ninety-one years ago.
5. According to the Kenya Land Commission Evidence and Memoranda Volume III of 1934, part of land Block No. 1 Certificate of Title 409 was leased by Kilifi Plantations Ltd in 1928 for term of 99 years. Consequently, the term of lease is due to expire in 2027.
6. There are persons from the local communities currently occupying Block No. 1 Certificate of Title 409.
7. Mr. Salim Al-Amin Suleiman, the Chairperson of the Mazrui Community stated that the Mazrui Lands Trust Board did not own land in Basi area. The Kilifi County National Land Commission Coordinator also averred that ownership records of blocks two (2), ten (10) and eleven (11) in Basi area within Kilifi North Constituency were missing.
8. The National Land Commission and the Local Administration were facilitating negotiations between the Mazrui Community and locals in respect of block V measuring 315 acres in *Msabaha* with a view of facilitating the acquisition of the said land by the residents.

## 5.0 COMMITTEE RECOMMENDATIONS

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

1. **The Ministry of Lands and Physical Planning and the National Land Commission do verify the current ownership of 40,101. 64 acres of land transferred from the Mazrui Land Board titles to several persons and companies between 1925 and 1928 as indicated in the Kenya Land Commission Evidence and Memoranda Volume III of 1934 to determine the current owners with a view to allocating any undocumented land to the residents of Kilifi within ninety days of tabling of this Report.**
2. **The Ministry of Lands and Physical Planning and the National Land Commission do adjudicate land in blocks two (2), ten (10) and eleven (11) in Basi area within Kilifi North Constituency with a view to allocating any unadjudicated land to the persons currently occupying the land within six months of tabling of this Report.**
3. **Upon the expiry of the lease acquired by Kilifi Plantations Ltd in 1928 for a term of 99 years on part of land Block No. 1 Certificate of Title 409, the National Land Commission does consider recommending the allocation of the land to the residents of Kilifi North Constituency.**

Signed..........Date.....17/10/2019.....

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

REPUBLIC OF KENYA



Approved

BN  
25/3/19  
SNA

Hon. Speaker  
for approval  
25/3

THE NATIONAL ASSEMBLY  
THE NATIONAL ASSEMBLY – THIRD SESSION

PUBLIC PETITION

(No. 28 of 2019)

**CONCERNING IMPENDING EVICTIONS FROM MAZRUI TRUST LAND**

I, the undersigned, on behalf of We Hatua Yetu Community Based Organization representing the Kilifi North Community residents;

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

1. **THAT**, land is an important economic resource that supports the livelihoods of many families;
2. **THAT**, the advent of Omani Arabs to the coast of East Africa dethroned African rulership and subjugated many coastal communities to foreign dominion;
3. **THAT**, the Mazrui family was among the two Omani Arab Dynasties that annexed land and ruled over the Coast of East Africa, particularly Kenya;
4. **THAT**, the Mazrui ruled the port city of Mombasa until they were dislodged from power in 1828 by Sultan Seyyid Said and dispersed to Kilifi;
5. **THAT**, in Kilifi, they annexed five blocks of land measuring approximate 77,000 acres and comprising of Block No.1 Certificate of Title No 409, Block No. 2 Certificate of Title No 408, Block No. 3, Certificate of Title No 406, Block No. 4, Certificate of Title No 407 and Block No. 5, Certificate of Title No. 414;
6. **THAT**, the said occupation deprived the indigenous communities, especially in Takaunga, Kiriba Wangwani, Kabarani Mjibu, Mtondia and Mida in Kilifi North Constituency of land for settlement and agriculture;
7. **THAT**, the Mazrui Trust Land Act established Mazrui Land Trust Board as legal and registered Trustees and administrators of the Mazrui Lands;
8. **THAT**, in the 1989, the State repealed Mazrui Land Trust Act and deemed all lands vested in the Mazrui Lands Board of Trustees as Trust Land;
9. **THAT**, the Statute further provided that the rights and interests of persons on the said land would be ascertained in accordance with the Land Adjudication Act (Cap 284, Laws of Kenya);

## PUBLIC PETITION

### CONCERNING IMPENDING EVICTIONS FROM MAZRUI TRUST LAND

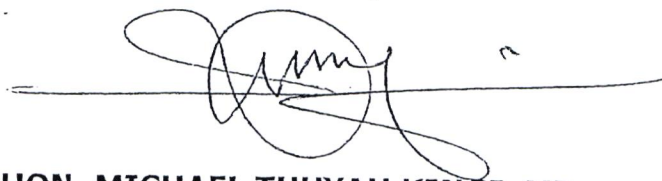
10. **THAT**, the Government, through Kilifi District Land Adjudication and Settlement Officer declared Mazrui Lands at Takaungu (Block No. 1) an adjudication section as per section 5 of the Land Adjudication Act;
11. **THAT**, aggrieved by both the repeal of the Mazrui Land Trust Act and the declaration that Mazrui lands be subjected to the Land Adjudication Act the Mazrui moved to Court to challenge the law;
12. **THAT**, in 2012, the Court ruling in Civil Case No. 185 of 1991 declared the repeal of the Mazrui Land Trust Act unconstitutional, hence reverting the land to the Mazrui Land Trust Board;
13. **THAT**, the Court's verdict has brought uncertainties for fear of evictions and displacement to more than 100,000 families and residents who have lived on the said land for over seven years;
14. **THAT**, if unresolved, the looming evictions would cause untold suffering to residents, who have no alternative land to relocate;
15. **THAT**, efforts to resolve the matter with the relevant bodies have been futile;
16. **THAT**, the issues in respect of which this Petition is made are not pending before any Court of Law, Constitutional or Statutory body.

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

- (i) investigates and inquires into all matters relating to the Mazrui Trust Lands with a view to ensuring that the Ministry of Lands and the National Land Commission institutes measures to ensure that the said land reverts to the community from whom it was annexed; and
- (ii) makes any other order and/or direction that it deems fit in the circumstance.

And your **PETITIONERS** will ever pray.

**PRESENTED BY,**



**THE HON. MICHAEL THUYAH KINGI, MP**  
**MEMBER FOR MAGARINI CONSTITUENCY**

DATE: ..... 21/3/2019 .....

**MINUTES OF THE 73<sup>RD</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON THURSDAY, 3<sup>RD</sup> OCTOBER, 2019 IN 11<sup>TH</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. Joshua Kutuny, M.P
5. Hon. Omar Mwinyi Shimbwa, M.P
6. Hon. Ali Mbogo, M.P
7. Hon. Babu Owino, M.P
8. Hon. George Risa Sunkuyia, M.P
9. Hon. Jane Wanjuki Njiru, M.P
10. Hon. Samuel Kinuthia Gachobe, M.P
11. Hon. Simon Nganga Kingara, M.P
12. Hon. Teddy Mwambire, M.P

**APOLOGIES**

1. Hon. Kimani Ngunjiri, M.P
2. Hon. Mishi Mboko, M.P
3. Hon. Caleb Kositany, M.P
4. Hon. Catherine Waruguru, M.P
5. Hon. Josphat Gichunge Kabeabea, M.P
6. Hon. Owen Baya, M.P
7. Hon. George Aladwa, M.P

**IN ATTENDANCE**

**THE NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Guliye - Clerk Assistant III
3. Ms. Jemimah Waigwa - Legal Counsel
4. Mr. Joseph Tiyan - Research Officer III
5. Mr. John Macharia - Audio Recording Officer
6. Ms. Peris Kaburi - Serjeant – At – Arms

**MIN. NO. NA/DCS/LANDS/2019/278: PRELIMINARIES**

The meeting was called to order at fourteen minutes to ten o'clock and prayers were said.

**MIN. NO. NA/DCS/LANDS/2019/279: ADOPTION OF AGENDA**

The agenda of the meeting was adopted as stipulated in the notice of meeting after it was proposed and seconded by Hon. Jane Njiru, M.P and Hon. Simon Kingara, M.P.

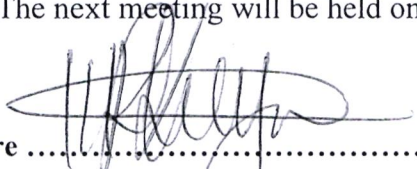
**MIN. NO. NA/DCS/LANDS/2019/280: ADOPTION OF REPORT ON THE PETITION BY HATUA YETU COMMUNITY CONCERNING IMPEDING EVICTIONS FROM MAZRUI TRUST LAND**

The Committee adopted the report on the Petition by Hatua Yetu Community concerning impeding evictions from Mazrui Trust Land and recommended the following after it was proposed and seconded by Hon. Ali Mbogo, M.P and Hon. Teddy Mwambire, M.P respectively, that:

- i. The Ministry of Lands and Physical Planning and the National Land Commission does verify the current ownership of 40,101.64 acres of land transferred from the Mazrui Land Board titles to several persons and companies between 1925 and 1928 as indicated in the Kenya Land Commission Evidence and Memoranda Volume III of 1934 to determine the current owners with a view to allocating any undocumented land to the residents of Kilifi within ninety days of tabling of this Report.
- ii. The Ministry of Lands and Physical Planning and the National Land Commission does adjudicate land in blocks two (2), ten (10) and eleven (11) in Basi area with a view to allocating any unadjudicated land to the persons currently occupying the land within six months of tabling of this Report.
- iii. Upon the expiry of the lease acquired by Kilifi Plantations Ltd in 1928 for a term of 99 years on part of land Block No. 1 Certificate of Title 409, the National Land Commission does consider recommending the allocation of the land to the residents of Kilifi North Constituency.

**MIN. NO. NA/DCS/LANDS/2019/281: ADJOURNMENT**

There being no other business to discuss, the meeting was adjourned at seven minutes to eleven o'clock. The next meeting will be held on Tuesday, 8<sup>th</sup> October, 2019 at 09.30 a.m.

Signature ..... 

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

**(Chairperson)**

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



**MINUTES OF THE 72<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON TUESDAY, 1<sup>ST</sup> OCTOBER, 2019 IN 11<sup>TH</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. George Risa Sunkuyia, M.P
8. Hon. Josphat Gichunge Kabeabea, M.P
9. Hon. Owen Baya, M.P
10. Hon. Samuel Kinuthia Gachobe, M.P
11. Hon. Simon Nganga Kingara, M.P
12. Hon. Teddy Mwambire, M.P

**APOLOGIES**

1. Hon. Joshua Kutuny, M.P
2. Hon. Kimani Ngunjiri, M.P
3. Hon. Caleb Kositany, M.P
4. Hon. Catherine Waruguru, M.P
5. Hon. Ali Mbogo, M.P
6. Hon. Jane Wanjuki Njiru, M.P
7. Hon. George Aladwa, M.P

**IN ATTENDANCE**

**THE NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Guliye - Clerk Assistant III
3. Mr. Nimrod Ochieng - Audio Recording Officer
4. Ms. Peris Kaburi - Serjeant – At – Arms

**MIN. NO. NA/DCS/LANDS/2019/274: PRELIMINARIES**

The meeting was called to order at sixteen minutes to ten o'clock and prayers were said.

**MIN. NO. NA/DCS/LANDS/2019/275: ADOPTION OF AGENDA**

The agenda of the meeting was adopted as stipulated in the notice of meeting after it was proposed and seconded by Hon. Samwel Gachobe, M.P. and Hon. Simon Kingara, M.P.

**MIN. NO. NA/DCS/LANDS/2019/276: CONSIDERATION OF REPORT ON THE PETITION CONCERNING IMPEDING EVICTIONS FROM MAZRUI TRUST LAND**

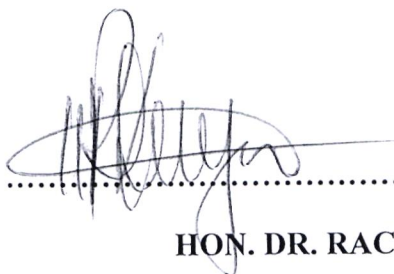
The Committee considered a draft report on the Petition concerning impeding evictions from Mazrui Trust Land and made the following observations;

- i) The Mazrui Arbitration Board obtained certificates for five parcels of land measuring approximately 44,420.68 acres on 21<sup>st</sup> March, 1912. However after several transfers, the land currently vested in the Mazrui Lands Trust Board is 4,319.04 acres.
- ii) There is need for verification of ownership of the remaining 40,101.64 acres to determine the authenticity of the genuine owners.
- iii) The term of lease for the parcel of land that was leased to Kilifi Plantations in 1928 is slated to expire in 2027. However, the lease was prematurely renewed by the National Land Commission before its expiry under unclear circumstances.
- iv) Ownership records could not be found for blocks two (2), ten (10) and eleven (11) in Basi area. This land ought to be adjudicated and allocated to the area residents.

**MIN. NO. NA/DCS/LANDS/2019/277: ADJOURNMENT**

There being no other business to discuss, the meeting was adjourned at twenty-two minutes past eleven o'clock. The next meeting will be held on Thursday, 3<sup>rd</sup> October, 2019 at 09.30 a.m.

Signature .....



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

**(Chairperson)**

Date.....

15/10/2019

**MINUTES OF THE 44<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LANDS HELD ON TUESDAY, 16<sup>TH</sup> JULY 2019 IN THE BOARDROOM, 4<sup>TH</sup> FLOOR,  
CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 11.30 A.M**

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**PRESENT**

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Kimani Ngunjiri, M.P
4. Hon. Mishi Mboko, M.P
5. Hon. Omar Mwinyi Shimbwa, M.P
6. Hon. George Risa Sunkuyia, M.P
7. Hon. Jane Wanjuki Njiru, M.P
8. Hon. Owen Baya, M.P
9. Hon. Simon Nganga Kingara, M.P
10. Hon. Teddy Mwambire, M.P

**APOLOGIES**

1. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
2. Hon. Joshua Kutuny, M.P
3. Hon. Ali Mbogo, M.P
4. Hon. Babu Owino, M.P
5. Hon. Catherine Waruguru, M.P
6. Hon. George Aladwa, M.P
7. Hon. Josphat Gichunge Kabeabea, M.P
8. Hon. Samuel Kinuthia Gachobe, M.P

**THE NATIONAL LAND COMMISSION**

1. Mr. Francis Bor - Ag. Deputy Commission Secretary
2. Ms. Mercy Njamwea - Director, Land Administration
3. Mr. John Mule - Deputy Director
4. Mr. Samuel Odari - Deputy Director
5. Mr. S. K. Mburugu

**THE NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Guliye - Clerk Assistant III
3. Mr. Joseph Tiyan - Research Officer
4. Mr. Nimrod Ochieng - Audio Officer

5. Ms. Peris Kaburi - Serjeant – At - Arms

**MIN. NO. NA/DCS/LANDS/2019/175: PRELIMINARIES**

- i. The meeting was called to order at twenty-four minutes to twelve o'clock, prayers said and thereafter introductions were made.
- ii. The meeting was informed that the Ag. Managing Director, Kenya Pipeline Company who was scheduled to appear before the Committee had sent apologies. and requested that the meeting be rescheduled. The Committee noted his apology and scheduled the meeting to Thursday, 25<sup>th</sup> July 2019 at 9.30 a.m.

**MIN. NO. NA/DCS/LANDS/2019/176: 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. Simon Kingara, M.P and Hon. George Sunkuyia, M.P respectively.

**MIN. NO. NA/DCS/LANDS/2019/177: PRESENTATION BY THE NATIONAL LAND COMMISSION ON THE PETITION BY THE HATUA YETU COMMUNITY BASED ORGANISATION REGARDING IMPEDING EVICTIONS FROM MAZRUI TRUST LAND**

The Ag. Deputy Chief Executive Officer, National Land Commission presented the following in respect of the above petition;

- i. The Mazrui's claim to land in the Coastal region can be traced back to the Pre-Colonial period.
- ii. By virtue of certificate 409 of 4<sup>th</sup> April 1914, the Mazrui Lands Trust Board was registered as proprietors of land comprising 9,100 acres and a certificate of ownership issued by the Registrar of Titles and registered under the Lands Titles Act (Cap 280) now repealed.
- iii. The State repealed the Mazrui Land Trust Act in 1989 and converted the Mazrui Land to be an adjudication area.
- iv. The matter was taken to Court vide case no 185 of 1991 and a judgement delivered in favour of the Mazruis on 19<sup>th</sup> July, 2012 by Justice Tuiyot declaring the repealing of the Act null, void and with no legal effect.
- v. The State has not appealed the verdict hence the Commission was bound by it.
- vi. The Commission proposes Alternative Dispute Resolution be adopted and that the Mazruis be compensated and the parties that claim the land be settled.

**Committee Observation**

The Committee recommended that the Commission Secretariat present this matter before the new

Commissioners upon assumption of office for consideration as Historical Land Injustice for consideration.

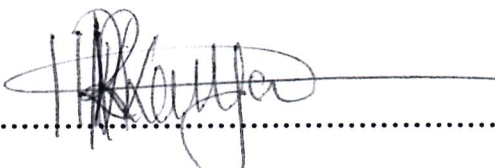
**MIN. NO. NA/DCS/LANDS/2019/178: PRESENTATION BY THE NATIONAL LAND COMMISSION ON THE PETITION BY RESIDENTS OF THARAKA CONSTITUENCY REGARDING ALLEGED DISPLACEMENT, CLOSURE OF SCHOOLS AND LOSS OF PROPERTY IN NTORONI SUB-LOCATION**

The Ag. Deputy CEO, National Land Commission presented the following in respect of the above petition;

- i. The Tharaka and the Meru leadership held divergent views in respect of addressing the conflict in Ntoroni area. The Tharaka leaders insisted that their Community be settled first in the areas they were evicted from prior to 1996/1997 before reestablishing the boundary between Tharaka and Meru counties while their Meru counterparts were of the view that the boundary be established first before undertaking any settlement.
- ii. The solution to the conflict was fairly addressed in the “Ogongo Commission report” and the Commission believed that the full implementation of the Ogongo Commission report would address the issues raised by the Petitioners.

**MIN. NO. NA/DCS/LANDS/2019/179: ADJOURNMENT**

There being no other business to discuss, the meeting was adjourned at fourteen minutes past one o'clock.

Signature ..... 

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

**(Chairperson)**

Date..... 25/7/2019.....

**MINUTES OF THE 87<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS OF THE SUB-COMMITTEE'S FIELD VISIT TO KILIFI HELD ON FRIDAY 23<sup>RD</sup> NOVEMBER 2018 AT TAKAUNGU, KILIFI COUNTY, AT 2.30 P.M**

---

**PRESENT**

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Mishi Mboko, MP
4. Hon. Omar Mwinyi Shimbwa, MP
5. Hon. Ali Mbogo, MP
6. Hon. Jane Wanjuki Njiru, MP
7. Hon. Owen Yaa Baya, M.P
8. Hon. Simon Nganga Kingara, M.P
9. Hon. Teddy Mwambire, MP

**IN ATTENDANCE**

H.E Hon. Amason Jeffa Kingi, - Governor, Kilifi County

**Representatives of Government Departments / Agencies - Kilifi County**

1. Mr. Josphat S Mutisya - Deputy County Commissioner, Kilifi North Sub County
2. Ms. Umi Kugula - Kilifi County Coordinator, NLC
3. Ms. Stella Kinyua - Land Regsitrar, Kilifi
4. Mr. Francis Obiria - Adjudication and Settlement Officer, Kilifi
5. Ms. Mary Muteti - Adjudication and Settlement Officer, Kilifi
6. Mr. Leonard Mwangala - NLC officer, Kilifi
7. Mr. Athman Ngoka - Surveyor, Kilifi
8. Members of the public

**The National Assembly Secretariat**

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Guliye - Clerk Assistant III
3. Mr. John Mungai - Audio Officer
4. Ms. Peris Kaburi - Serjeant At Arms

**MIN. NO. NA/DCS/LANDS/2018/321: PRELIMINARIES**

The meeting was called to order at twelve minutes past ten o'clock and prayers were said.

**MIN. NO. NA/DCS/LANDS/2018/322: SUBMISSIONS BY MEMBERS OF THE PUBLIC OF TAKAUNGU AREA ON THE MATTER OF MAZRUI LAND**

The residents of the Takaungu informed the Committee of the following in respect of the public petition regarding Mazrui Trust Land by Hon. Owen Yaa Baya, M.P;

- i. Kiriba area in Mavueni-Takaungu had a population of approximately 2500 people as per the 2009 census;
- ii. The disputed plot occupies 143 acres and had a fully-fledged primary school with 800 pupils. It has some permanent buildings, coconut plantations, all weather roads, electricity among other infrastructures;
- iii. The Mazruis had been selling, leasing the land and even charging the titles as collateral to banks loans to the detriment of the locals;
- iv. The locals lived in perpetual fear of eviction and cannot access financial services for development due to lack of ownership documents.
- v. The locals had sought redress from relevant government agencies such as the National Land Commission with no success.
- vi. They prayed that the National Assembly through the Departmental Committee on Lands;
  - a. Recommend the National Land Commission to compulsorily acquire the land pursuant to Article 40(3) of the Constitution of Kenya on grounds of public interest.
  - b. Recommend the Ministry of Lands and Physical Planning to adjudicate the said to the locals pursuant to the Land Adjudication Act.

**MIN. NO. NA/LANDS/2018/323: SUBMISSION BY MEMBERS OF THE PUBLIC OF BASI AND MAJIBU AREA ON THE MATTER OF MAZRUI LAND**

The residents of the Basi and Mjibu informed the Committee of the following in respect of the public petition regarding Mazrui Trust Land by Hon. Owen Yaa Baya, M.P;

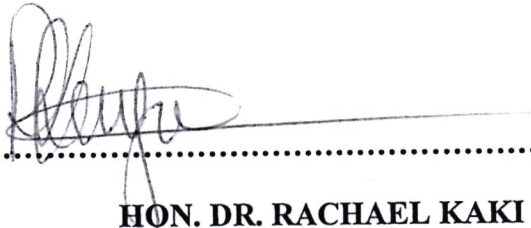
- i. Basi and Mjibu had a population of approximately 7000 residents and fully developed with a primary school of 1000 pupils-Basi Primary School;
- ii. The locals had resided in the area since time immemorial when it was taken as part of the ten (10) mile coastal strip and registered in the names of absentee Arabs;

- iii. The Community lived in the area uninterrupted for more than 7 decades hence the doctrine of adverse possession should apply, and the titles held by the Mazrui be extinguished and vested in to the residents;
- iv. There was no alternative land to accommodate all these people within Kilifi should the government think resettling the residents; and
- v. They prayed that the National Assembly through the Departmental Committee on Lands;
  - a. Recommend the National Land Commission to compulsorily acquire the land pursuant to Article 40(3) of the Constitution of Kenya on grounds of public interest.
  - b. Recommend the Ministry of Lands and Physical Planning to adjudicate the said to the locals pursuant to the Land Adjudication Act.

**MIN. NO. NA/LANDS/2018/324: ADJOURNMENT**

There being no other business the meeting was adjourned at 5.45 p.m.

Signature .....



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

**(Chairperson)**

Date.....

04/12/2018



**MINUTES OF THE 86<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS OF THE SUB-COMMITTEE'S VISIT TO KILIFI HELD ON FRIDAY 23<sup>RD</sup> NOVEMBER 2018 AT COUNTY COMMISSIONER'S OFFICE, KILIFI COUNTY, AT 10.00 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. Mishi Mboko, MP
4. Hon. Omar Mwinyi Shimbwa, MP
5. Hon. Ali Mbogo, MP
6. Hon. Jane Wanjuki Njiru, MP
7. Hon. Owen Yaa Baya, M.P
8. Hon. Simon Nganga Kingara, M.P
9. Hon. Teddy Mwambire, MP

**IN ATTENDANCE**

**Representatives of Government Departments / Agencies - Kilifi County**

1. Mr. Josphat S Mutisya - Deputy County Commissioner, Kilifi North Sub County
2. Ms. Umi Kugula - Kilifi County Coordinator, NLC
3. Ms. Stella Kinyua - Land Registrar, Kilifi
4. Mr. Francis Obiria - Adjudication and Settlement Officer, Kilifi
5. Ms. Mary Muteti - Adjudication and Settlement Officer, Kilifi
6. Mr. Leonard Mwangala - NLC officer, Kilifi
7. Mr. Athman Ngoka - Surveyor, Kilifi

**The National Assembly Secretariat**

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Guliye - Clerk Assistant III
3. Mr. John Mungai - Audio Officer
4. Ms. Peris Kaburi - Serjeant At Arms

**MIN. NO. NA/DCS/LANDS/2018/318: PRELIMINARIES**

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

**MIN. NO. NA/DCS/LANDS/2018/319: BRIEFING BY REPRESENTATIVES OF GOVERNMENT AGENCIES IN KILIFI COUNTY ON PUBLIC PETITION REGARDING MAZRUI TRUST LAND**

**a) The National Land Commission**

The Kilifi County Coordinator, National Land Commission under oath informed the Committee of the following;

- I. The Commission received a claim dated 20<sup>th</sup> September 2014 from Haki Yetu Organisation and Takaungu Land Committee regarding ownership of Mazrui land in Takaungu.
- II. They had established that the Community and the County Government of Kilifi recognize the Mazrui's as the land owners as the County Government received a payment of Ksh. 10,000,0000 for payment of land rates of the Mazrui land.
- III. The County Government of Kilifi approved an application by the Mazrui's for the construction of a boundary wall on Takungu plot no. 5441 Kilifi North on 2<sup>nd</sup> September 2015. This corroborates the fact that Kilifi County Government acknowledges the Mazrui's as the land owners.
- IV. The Commission undertook a sensitization and awareness programme on Historical land injustices on 29<sup>th</sup> August 2018.
- V. The land in Basi area comprising blocks two (2), ten (10) and eleven (11) had missing records in respect of ownership.
- VI. The Committee directed Ms. Umi Kugula to submit to the Committee days a letter indicating that they have submitted for gazettelement the blocks in Basi area that have no recorded owners within seven (7).

**b) Ministry of Lands and Physical Planning**

- i. The Central Land Registrar, Mombasa region sent his apology to the Committee and delegated the officer in charge of Kilifi to brief the Committee on the matter;
- ii. The officer informed the Committee that the records were in Mombasa central office and had no information regarding the matter; and
- iii. The Committee directed that Mr. Wanjohi to prepare a comprehensive report on this matter and avail it to the Committee within seven (7) days.

**MIN. NO. NA/DCS/LANDS/2018/320: ADJOURNMENT**

There no being no other business to discuss, the meeting was adjourned at 12.30 hours.

Signature ..... 

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

**(Chairperson)**

Date..... 

**MINUTES OF THE 81<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LANDS HELD ON TUESDAY 13<sup>TH</sup> NOVEMBER 2018 IN THE BOARD ROOM 4<sup>TH</sup>  
FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS AT 11.30 A.M**

---

**PRESENT**

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

**APOLOGIES**

1. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Joshua Kutuny, M.P
4. Hon. Kimani Ngunjiri, M.P
5. Hon. Ali Mbogo, M.P
6. Hon. Babu Owino, M.P
7. Hon. Caleb Kositany, M.P
8. Hon. George Aladwa, M.P
9. Hon. Josphat Gichunge Kabeabea, M.P

**IN ATTENDANCE**

**HATUA YETU COMMUNITY BASED ORGANISATION**

1. Mr. Eliud Mwavita - Chairperson
2. Mr. Joseph Thoya - Vice Chairperson
3. Mr. Salim Khamis - Secretary
4. Ms. Katsaka Kirao - Treasurer
5. Mr. William K Nyundo - Vice Secretary
6. Mr. Stephen K Chombo - Member
7. Ms. Furaha Charo - Member

8. Mr. Zedekiah Adika - Kituo Cha Sheria

#### **KENYA NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Leonard Machira	-	Clerk Assistant I
2. Mr. Ahmad Guliye	-	Clerk Assistant III
3. Mr. Joseph Tiyan	-	Research Officer
4. Mr. John Mungai	-	Audio Officer
5. Ms. Peris Kaburi	-	Serjeant At Arms

#### **MIN. NO. NA/DCS/LANDS/2018/299: PRELIMINARIES**

The meeting was called to order at forty seven minutes past eleven o'clock and prayers were said. Introductions were made and the agenda was adopted as outlined in the notice of meeting.

#### **MIN. NO. NA/DCS/LANDS/2018/300: CONFIRMATION OF MINUTES**

- i. The minutes of the 66<sup>th</sup> sitting held on Tuesday 31<sup>st</sup> July 2018 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Jane Wanjuki, M.P and Hon. Simon Kingara, M.P respectively;
- ii. The minutes of the 67<sup>th</sup> sitting held on Tuesday 7<sup>th</sup> August 2018 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Georgee Sunkuyia, M.P and Hon. Omar Mwinyi, M.P respectively;
- iii. The minutes of the 68<sup>th</sup> sitting held on Thursday 9<sup>th</sup> August 2018 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Samuel Gachobe, M.P and Hon. Teddy Mwambire, M.P respectively;
- iv. The minutes of the 69<sup>th</sup> sitting held on Thursday 16<sup>th</sup> August 2018 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Owen Baya M.P and Hon. Mishi Mboko, M.P respectively;
- v. The minutes of the 70<sup>th</sup> sitting held on Tuesday 25<sup>th</sup> September 2018 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Jane Wanjuki, M.P and Hon. Teddy Mwambire, M.P respectively;
- vi. The minutes of the 71<sup>st</sup> sitting held on Friday 28<sup>th</sup> September 2018 at 9.00 a.m. were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Omar Mwinyi, M.P and Hon. Samuel Gachobe, M.P respectively;
- vii. The minutes of the 72<sup>nd</sup> sitting held on Friday 28<sup>th</sup> September 2018 at 2.30 p.m were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Catherine Waruguru, M.P and Hon. Mishi Mboko, M.P respectively;
- viii. The minutes of the 73<sup>rd</sup> sitting held on Tuesday 2<sup>nd</sup> October 2018 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Simon Kingara, M.P and Hon. George Sunkuyia, M.P respectively;

- ix. The minutes of the 74<sup>th</sup> sitting held on Thursday 4<sup>th</sup> October 2018 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Omar Mwinyi, M.P and Hon. Mishi Mboko, M.P respectively;
- x. The minutes of the 75<sup>th</sup> sitting held on Tuesday 9<sup>th</sup> October 2018 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Jane Wanjuki, M.P and Hon. Teddy Mwambire, M.P respectively;
- xi. The minutes of the 76<sup>th</sup> sitting held on Thursday 11<sup>th</sup> October 2018 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Teddy Mwambire, M.P, and Hon. Samuel Gachobe, M.P respectively;
- xii. The minutes of the 77<sup>th</sup> sitting held on Thursday 18<sup>th</sup> October 2018 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Mishi Mboko, M.P, and Hon. Owen Baya, M.P respectively;
- xiii. The minutes of the 78<sup>th</sup> sitting held on Thursday 25<sup>th</sup> October 2018 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Simon Kingara, M.P, and Hon. Catherine Waruguru, M.P respectively;
- xiv. The minutes of the 79<sup>th</sup> sitting held on Tuesday 6<sup>th</sup> November 2018 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. Owen Baya, M.P, and Hon. Simon Kingara, M.P respectively; and
- xv. The minutes of the 80<sup>th</sup> sitting held on Thursday 8<sup>th</sup> November 2018 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. George Sunkuyia, M.P, and Hon. Mishi Mboko, M.P respectively.

**MIN. NO. NA/DCS/LANDS/2018/301: MEETING WITH REPRESENTATIVES OF HATUA YETU COMMUNITY BASED ORGANISATION ON THE PETITION REGARDING THE MAZRUI TRUST LAND**

During the meeting the officials from Haki Yetu Community Based Organization informed the Committee w that the petition was based on claims of historical injustice experience by residents of Kilifi North Constituency who had lived on land registered in the name of the Mazrui. The petitioners consider the said land to be their ancestral land.

**a) Historical background:**

- i. The petitioners stated that the Mazrui family once ruled the port of Mombasa after rebelling against the Sultan of Oman during the precolonial period. The family exerted its influence and control of land in Kilifi in the 1820s after they were dislodged from Mombasa by Seyyid Said in 1928. They settled in Takaungu area of Kilifi.
- ii. During the colonial period the Mazrui were allied to the British against the Sultan of Oman who had control over the coastal area and Zanzibar. Based on the

friendship between the Mazrui and the British colonial government that the Mazrui Trust Land Act, 1914 was enacted. The Act provided vested approximately 77,000 acres of land on the Mazrui family to the exclusion of all other persons. Following the enactment, the Mazrui acquired five (5) blocks of land in Kilifi. The five blocks are; Block No. 1 Certificate of Title 409, Block No. 2, Certificate of Title 408, Block No. 3 Certificate of Title 406, Block No. 4 Certificate of Title 407, and Block No. 5 Certificate of Title 414. The total blocks covered an approximately 77,000 acres.

- iii. They stated that the situation still obtained to date and the villages affected were Takaungu, Kiriba Wangwani, Kabarani Mjibu, Mtondia and Mida in Kilifi North Constituency. The petitioners and the residents of Kilifi North Constituency considered the said land to be their ancestral land as their forefathers were displaced from the land during the era of slave trade.

**b) Repeal of the Mazrui Trust Land Act, 1914:**

- i. The petitioners informed the Committee that in 1989, Parliament repealed the Act and all the land vested in the Mazrui Land Board of Trustees declared a Trust land. ascertained in accordance with the provisions on the Land Adjudication Act (Chapter 284 Laws of Kenya.
- ii. The Government through the District Land Adjudication and Settlement Officer of Kilifi declared Mazrui Lands Act Takaungu (Block No.1) to be an adjudication section within the meaning of section 5 of the Land Adjudication Act. The repeal was however quashed by the Court in 2012 after a successful case lodged by the Mazrui.

**c) Fear of eviction:**

- i. The more 100,000 families who reside in the said area live in perpetual fear for imminent evictions as they don't own titles for the said land. The mazruis had also been disposing off some parcels of the land to third parties hence exposing the indigenous people who reside in the said land to imminent evictions
- ii. The Community contacted the relevant government agencies such as the National Land Commission seeking redress on the matter, but they had not received a response from the National Land Commission.

**d) Prayers:**

The petitioners made the following prayers:

- a. The National Assembly passes a motion directing the National Land Commission to compulsorily acquire the Mazrui Land pursuant to Article 40(3) of the Constitution of Kenya 2010 on grounds of public interest.
- b. The Ministry of Lands and Physical Planning do proceed with the adjudication exercise pursuant to the Land Adjudication Act for registration of interests and issuance of the title deeds to persons in possession and occupation of the said lands.

- c. That pursuant to Article of the Constitution of Kenya, the National Assembly expedites deliberation and passage of the Minimum and the Maximum Land Holding Acreage Bill 2015 that will prescribe minimum and maximum private land holding acreages.

The Committee resolved to engage with the relevant stakeholders with a view of addressing the matters raised in the petition.

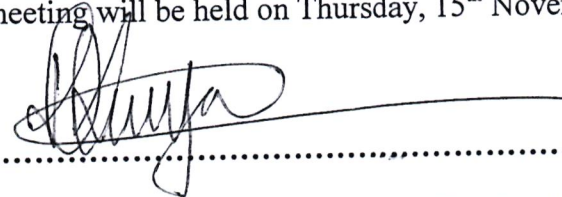
**MIN. NO. NA/DCS/LANDS/2018/302: ANY OTHER BUSINESS (A.O.B)**

The members were informed that a petition by the Hon. Michael Thoya Kingi, M.P regarding dispossession of ancestral land in Magarini was committed to the Committee on Thursday November 8, 2018. The petition will be due for reporting on Tuesday 8<sup>th</sup> January 2019.

**MIN. NO. NA/DCS/LANDS/2018/303: ADJOURNEMENT**

There being no other business to discuss, the meeting was adjourned at thirty-four minutes past one o'clock. The next meeting will be held on Thursday, 15<sup>th</sup> November 2018.

Signature .....



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

**(Chairperson)**

Date.....

27/11/2018





# MINISTRY OF LANDS AND PHYSICAL PLANNING

Tel: +254(0)20 2718050  
Fax: +254(0)20 2724470  
When replying please quote

Ardhi House  
1<sup>st</sup> Ngong Avenue  
P.O. BOX 30450-00100  
NAIROBI, KENYA

**REF: MOLPP/ADM 19/6**

23<sup>rd</sup> August 2019

The Clerk,  
The National Assembly  
**NAIROBI**

① Dfunt 26/8/19

## PETITION BY HATUA YETU COMMUNITY BASED ORGANIZATION REGARDING CONCERN ON IMPENDING EVICTIONS FROM MAZRUI TRUST LAND

We refer to your letter Ref. NA/DC/LANDS/2019/ (044) on the above subject.

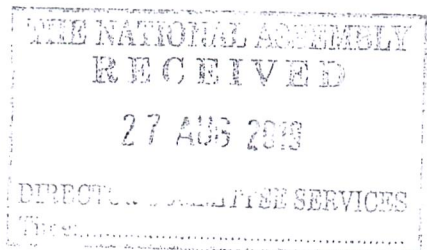
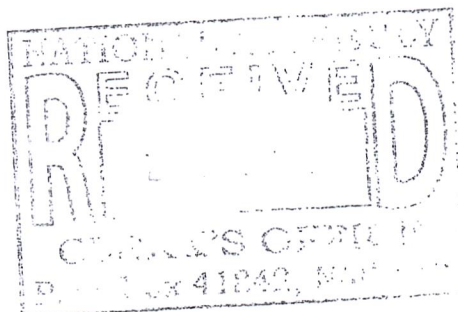
Kindly find attached herewith the response to the matters raised in the petition.

Yours Sincerely,

**SAMUEL M. MWATI**  
FOR: PRINCIPAL SECRETARY

③ Chemweno  
Please note  
FA  
27/8/19

Copy to : Cabinet Secretary  
Chief Administrative Secretary  
Principal Secretary



② MACHIA  
Please deaf  
FA  
27/8/19



## **RESPONSES TO ISSUES RAISED BY THE NATIONAL ASSEMBLY COMMITTEE ON LANDS TO RESPOND TO PETITIONS AND STATEMENTS BEFORE THE NATIONAL ASSEMBLY**

### **1. Petition by Hatua Yetu Community Based Organization regarding concern on impending evictions from Mazrui Trust Land.**

#### **Issues**

1. The acreage of the parcels of land registered under the name of Mazrui Trust Board, and
2. Confirm the validity of the allegations made by the Petitioners that the Mazrui family had illegally annexed 77,000 acres of land in Kilifi County, comprising Block No. 1 Certificate of Title No. 409, Block No. 2 Certificate of Title No. 408, Block No. 3 Certificate of Title No. 406, Block No. 4 Certificate of Title No. 407 and Block No. 5 Certificate of Title No. 414.

**Honourable Chair I wish to respond as follows;**

#### **1.1. BACKGROUND INFORMATION**

##### **History of Mazrui Land in Kenya**

Mazrui tribes were native to the Rustag region of Oman, they lived in the Arabian Peninsula of South East Asia. In the early 18<sup>th</sup> Century, they migrated and settled in the Kenyan Coast and Pemba Island. They reigned over the Kenyan Coast from the 18<sup>th</sup> Century to early 20<sup>th</sup> Century. The Mazrui opposed the Al Said dynasty that ruled Zanzibar and the East African Coast particularly, Kenya. In 1828, Sultan Seyyid Said of Zanzibar dislodged the Mazrui family from power and dispersed them to the Kilifi area of Kenya's Coastal region and more particularly to a small rural village located in Kikambala division of Kilifi County known as Takaungu.

According to Kenya Land Commission Evidence and Memoranda Volume III, on March 14, 1912 the acting Governor appointed an Arbitration Board to subdivide

the Mazrui blocks among the families entitled to the land. A copy of the Memoranda is attached as **Annexure 1**.

The Arbitration Board made an application under the Land Titles Ordinance for a certificate of ownership. On March 21, 1912 the Recorder of Titles set aside certain lands for the Mazrui. The following certificates of ownership were issued to the Mazrui Arbitration Board, as Attorneys of the Mazrui: -

- a) Certificate of Ownership No. 409, dated April 1, 1914, for Block No. 1 comprising 9,100 acres.
- b) Certificate of Ownership No. 408, dated April 8, 1914, for Block No. 2 comprising 10,600 acres.
- c) Certificate of Ownership No. 406, dated March 19, 1914, for Block No. 3 comprising 13,040 acres.
- d) Certificate of Ownership No. 407, dated March 19, 1914, for Block No. 4 comprising 1,286.68 acres.
- e) Certificate of Ownership No. 414, dated July 15, 1914, for Block No. 5 comprising 10,394 acres.

The total area comprised in the five certificates of ownership amounted to 44,420.68 acres. As at 1931, there were several dealings which were effected leaving the area vested in the Mazrui Land Trust at 4,319.04 acres.

## **1.2. Mazrui Lands Trust Act No. 11 Of 1931**

The British Government allowed the enactment of Mazrui Lands Trust Ordinance No. 11 of 1931 for the purpose of holding and administering all the lands of the Mazrui. The Ordinance validated the titles granted by the Arbitration Board. A copy of the ordinance is hereby attached as **Annexure 2**.

The **Mazrui Lands Trust Act No. 11 of 1931** established the Mazrui Land Board of Trustees as legal and registered trustees and administrators of the Mazrui lands. The then Provincial Commissioner (PC) of the Coast Province was the Chairman of the Board. Other members included six persons appointed by the Governor through a gazette notice.

In 1989 the State repealed the Mazrui Land Trust Act through the Mazrui Land Trust (Repeal) Act. In 1991 the Mazrui family moved to court to challenge the repealing of the Act. In 2012, the court ruling in civil case No. 185 of 1991 declared the repeal of the Mazrui Land Trust Act unconstitutional, hence reverting the land to the Mazrui Land Trust Board.

### 1.3. Adjudication of Mazrui Land

Upon repeal of the Act in 1989, a portion of the Mazrui land measuring 1144 ha was declared an adjudication section in the year 1990. The process of Land Adjudication progressed to finality in 1993 realizing a total of 807 plots. The Mazrui family filed civil case 185 of 1991 at the High Court in Mombasa objecting the repealing of the Mazrui Land Trust Act (CAP 289). The court ruled in favour of the Mazruis thereby bringing to an end the adjudication process.

### 2. ACREAGE OF LAND REGISTERED UNDER MAZRUI TRUST BOARD

According to the Mazrui Lands Trust Ordinance of 1931 Schedule, the following parcels of land are registered under the Mazrui Trust Board (Annex. 1 – Ordinance Schedule No. 11 of 1931);

L.R. NO.	SIZE (ACRES)
Remainder of certificate of ownership No. 409	3,172 acres
Subdivision No. 2 of Portion No. 5 of L.O. NO. 4237	200 acres
Subdivision No. 3 of Portion No. 5 of L.O NO. 4237	171 acres
Subdivision No. 4 of Portion No. 1 of L.O. NO. 4238	201 acres
Remainder of Poka Village subdivision No. 3	174.89 acres
Subdivision No. 2 of Portion No. 2 of Portion No. 1 of L.O. No. 4238	0.65 acres
L.R. NO. 5044	399.5 acres
<b>Total</b>	<b>4,319.04 acres</b>

### 3. Validity of the Petitioner's allegations

The total area comprised in the five certificates of ownership amounted to 44,420.68 acres. However after several dealings the area left and vested in the Mazrui Land Trust is 4,319.04 acres which was validated by the Mazrui Trust Land Act as tabulated above. It thus not true that the Mazrui family illegally annexed 77,000 acres of land in Kilifi County.

  
Farida Karoney, OGW  
**CABINET SECRETARY**

August 22, 2019

# ANNEXURE I

## KENYA LAND COMMISSION

### EVIDENCE AND MEMORANDA

#### VOLUME III

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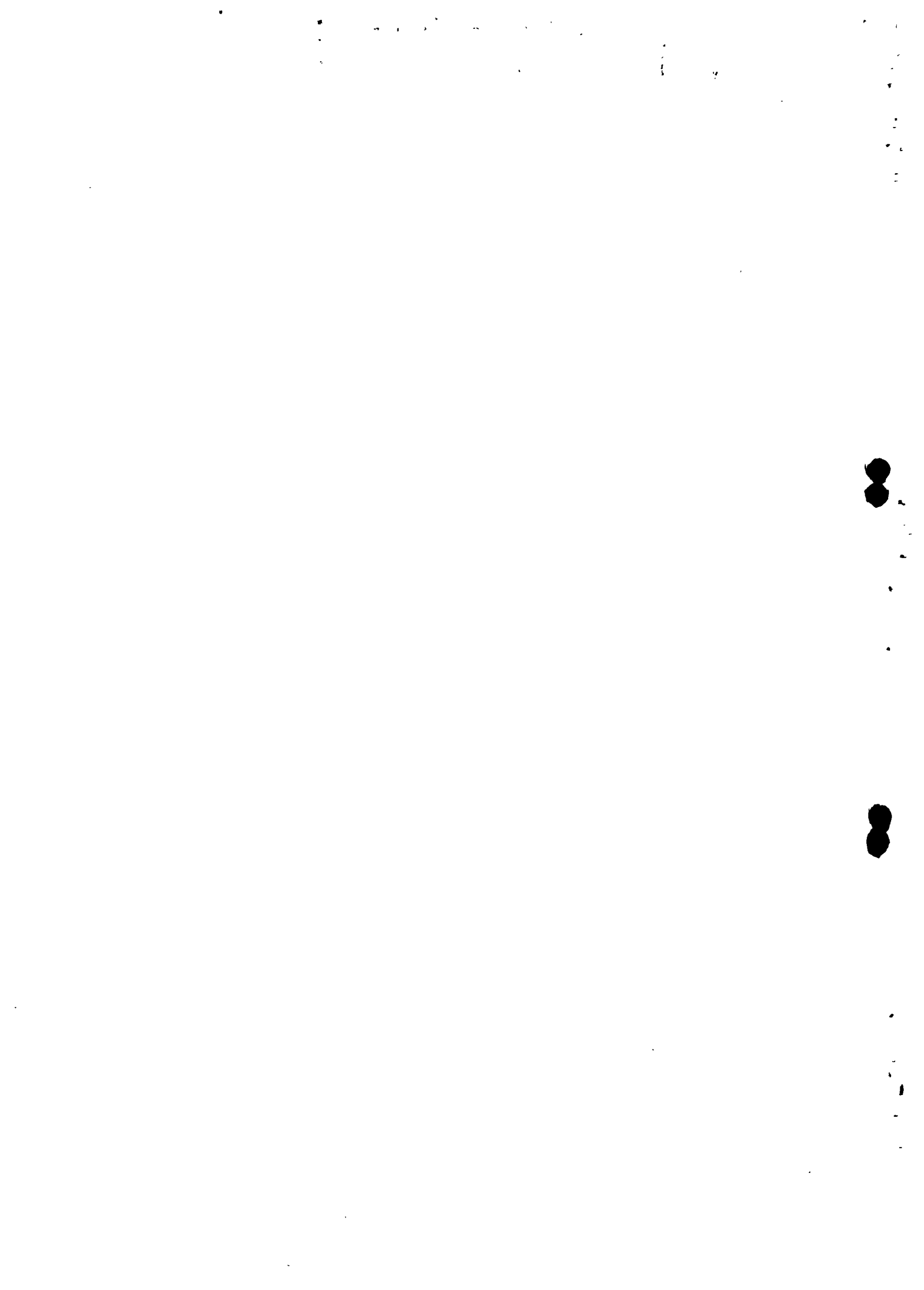
*Ch. But. Colonial B.*

COLONIAL No. 91

88-301-91-3

(23508-3) W.C. P109-3192 300 4/34 P. St. G. J

*Jm*



## COAST PROVINCE.

MEMORANDUM.

Mr. E. B. LLOYD—*contd.*

## MEMORANDUM.

MR. E. B. LLOYD, *Registrar of Titles, Mombasa.*  
*Mazrui Lands Board, Mainland North.*

By a notice appearing at page 178 of the Official Gazette of the 14th March, 1912, the Acting Governor appointed an Arbitration Board as follows, to subdivide the Mazrui blocks situate in the Malindi District (including the Takaungu Subdistrict), amongst all families entitled to land: Rashid bin Salim (chairman), Mohamed bin Sud, Mohamed bin Seif, Mohamed bin Juma, Riziki bin Mohamed, Khalfan bin Abdulla, Abdulla bin Rashid.

The members of the Arbitration Board duly made application under the Land Titles Ordinance for a certificate of ownership, and in Application Cause No. 31 D of 1912 the Recorder of Titles gave judgment on the 21st March, 1912, setting aside certain lands for the Mazrui.

In accordance with that judgment and an order made by the Recorder of Titles on the 18th March, 1914, the following certificates of ownership were issued to Rashid bin Salim bin Khamis, or Liwali Ali bin Salim, his attorney, together with the other duly gazetted members of the Mazrui Arbitration Board, as attorneys for the Mazrui:—

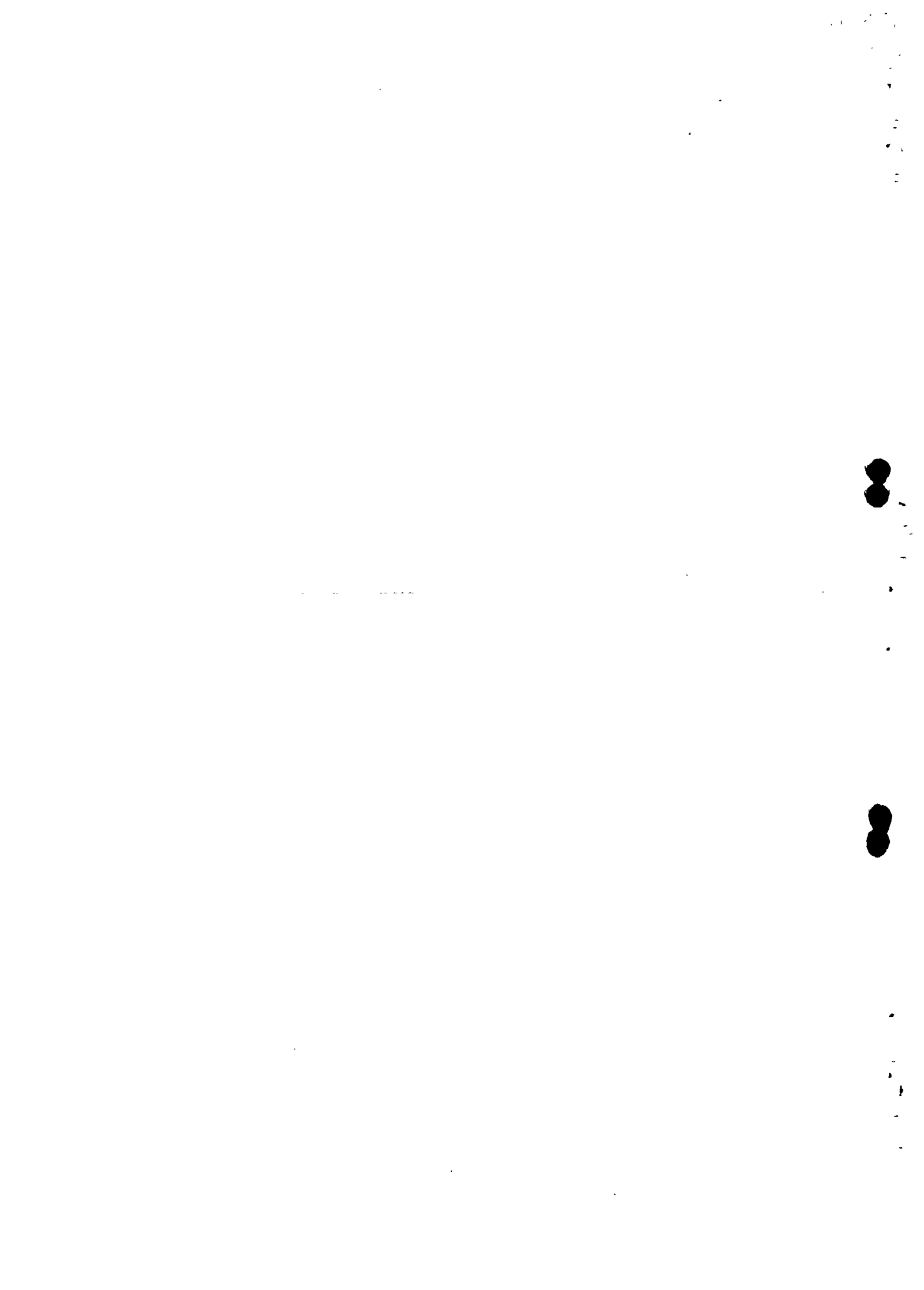
- (a) Certificate of ownership No. 409, dated 1st April, 1914, for Block No. 1, comprising 9,100 acres.
- (b) Certificate of ownership No. 408, dated 8th April, 1914, for Block No. 2, comprising 10,600 acres.
- (c) Certificate of ownership No. 406, dated 19th March, 1914, for Block No. 3, comprising 13,040 acres.
- (d) Certificate of ownership No. 407, dated 19th March, 1914, for Block No. 4, comprising 1,286.68 acres.

And to Sheikh Ali bin Salim, as attorney for Rashid bin Salim bin Khamis, the Paramount Chief, and the members for the time being of the Mazrui Arbitration Board duly gazetted:—

- (e) Certificate of ownership No. 414, dated 15th July, 1914, for Block No. 5, comprising 10,394 acres.

I attach a schedule showing the dealings which have been effected since the issue of the said certificates of ownership. It will be observed from the summary to the schedule that the total area comprised in the five certificates of ownership amounted to 44,420.68 acres, and that the area at present vested in the Mazrui Lands Trust is 4,319.04 acres.

I attach a copy (*filed with the original evidence*) of the Mazrui Lands Trust Ordinance (No. 11 of 1911). That Ordinance validated the titles granted by the Arbitration Board appointed by the notice referred to in the first paragraph of this memorandum, and provided for the establishment of a Mazrui Lands Board of Trustees.





**MAZRUI LANDS BOARD TITLES**

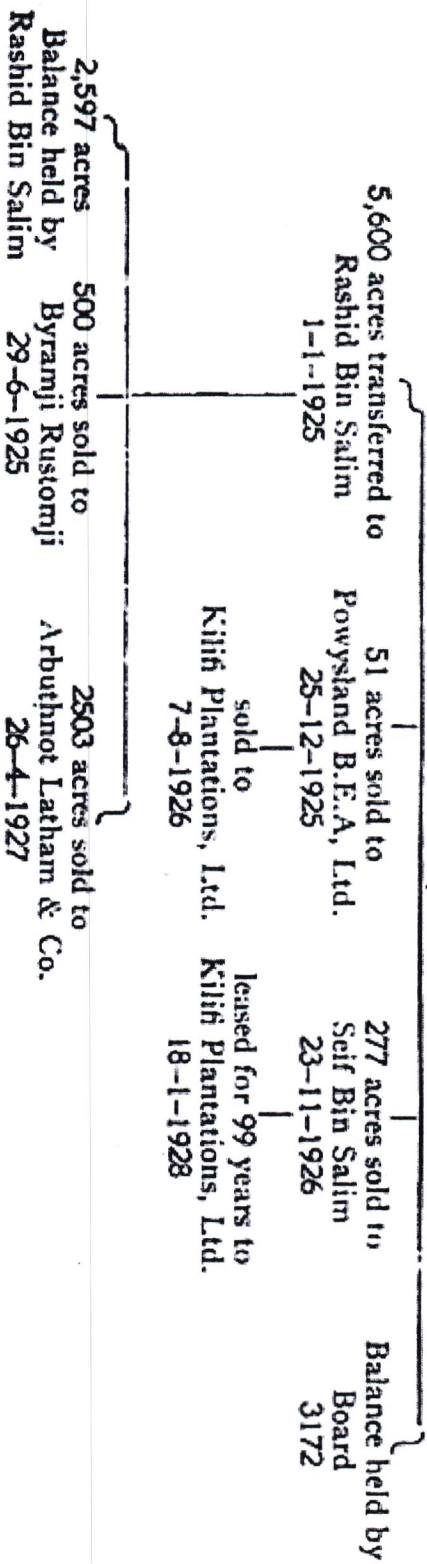
*Under the Land Titles Ordinance*

Reg. No. L.T. 9/18 Folio 290.

BLOCK No. 1, 9,100 acres

Certificate No. 409 d/1-4-14

Mazru Board



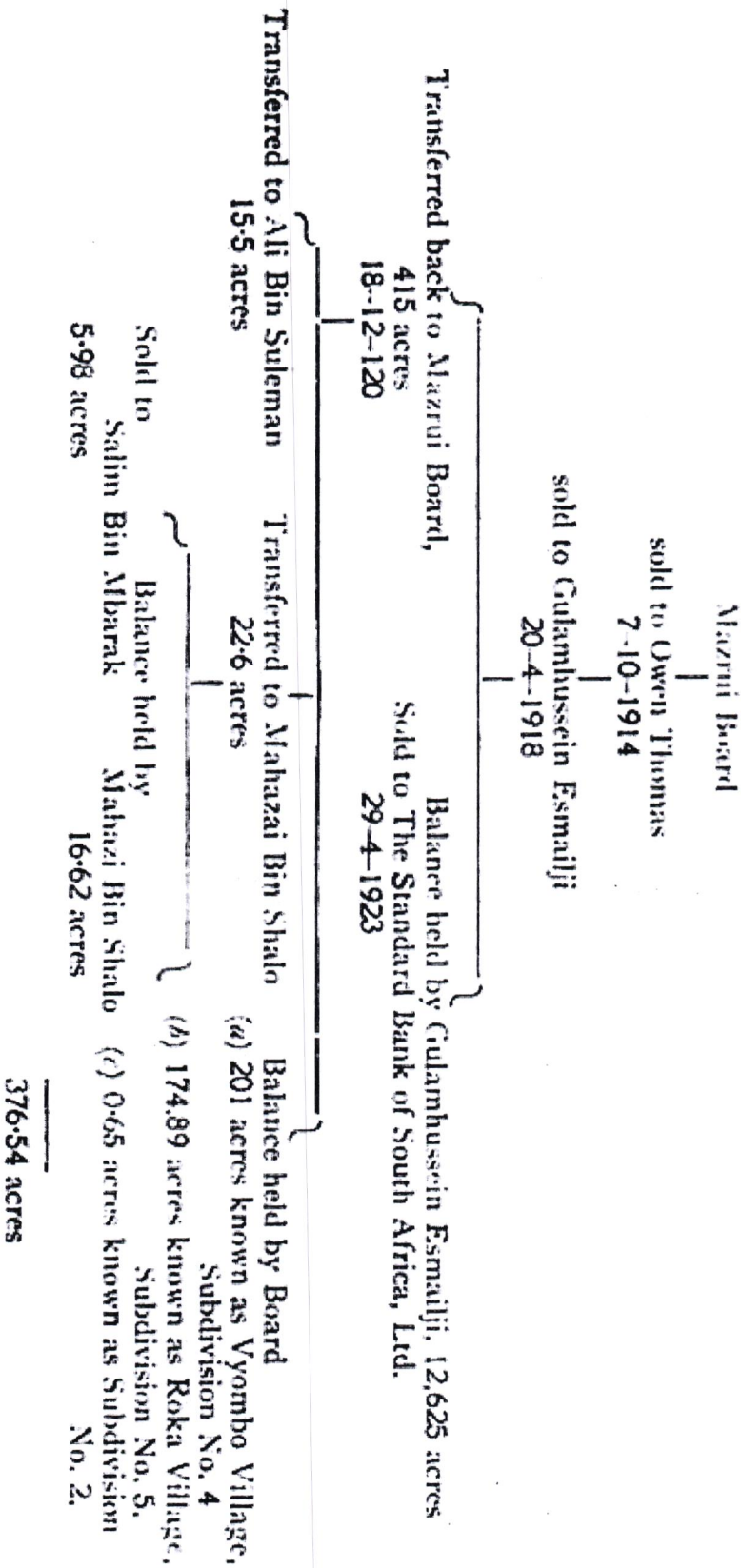


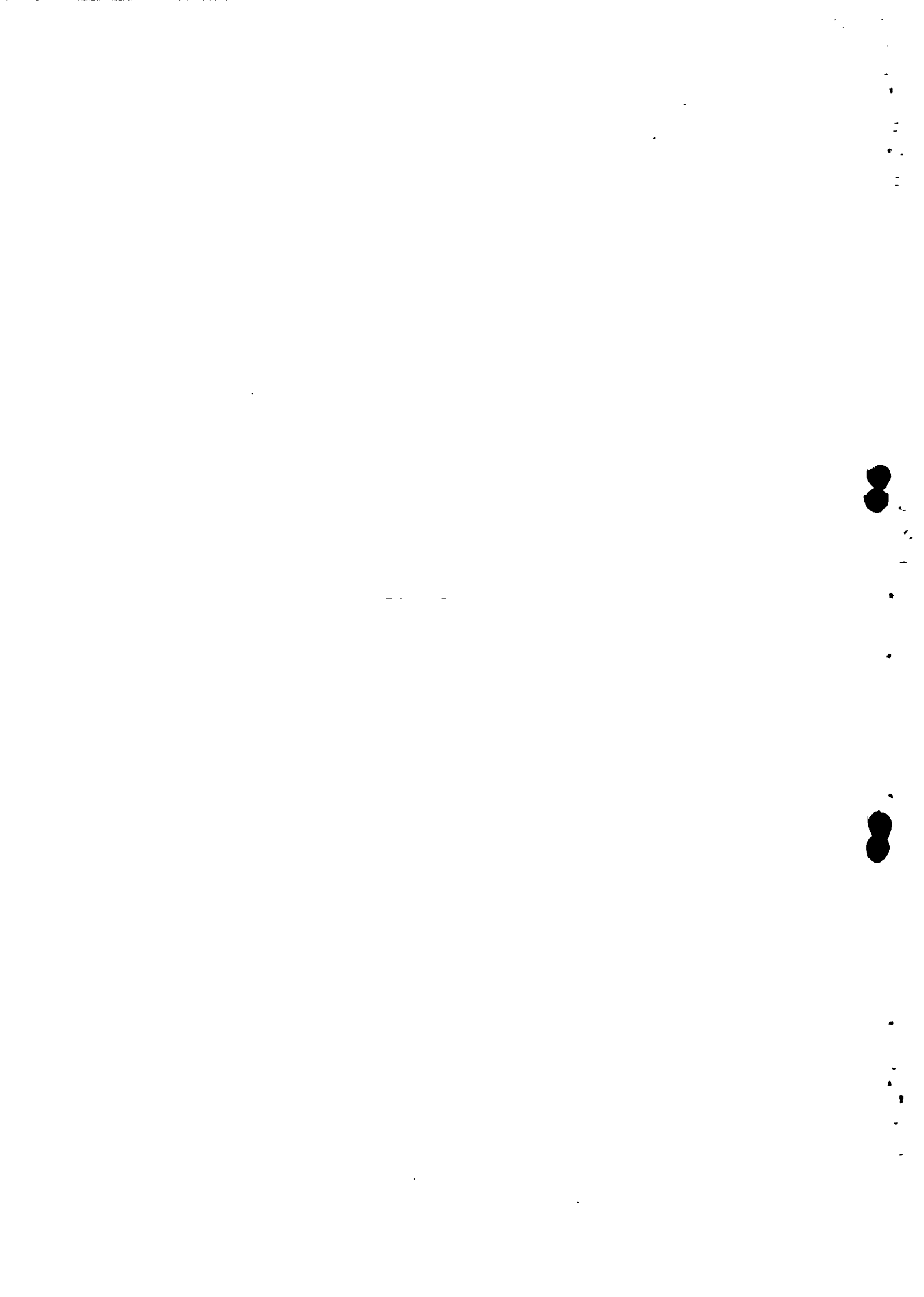
MAZRUJI LANDS BOARD TITLES—(Contd.)

Reg. No. L. T. 9/18 Folio 2/6.

Block No. 3, 13,040 acres.

Certificate No. 406 d/19 3-14



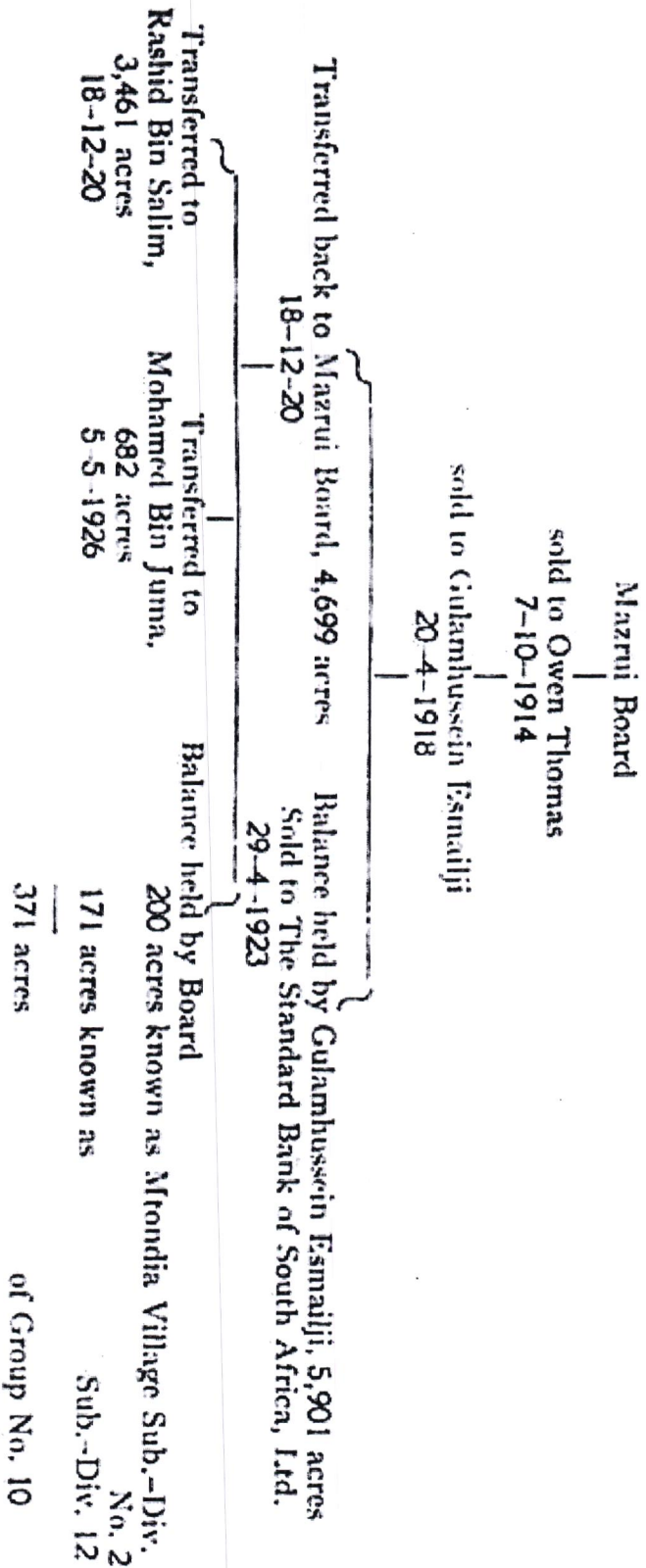


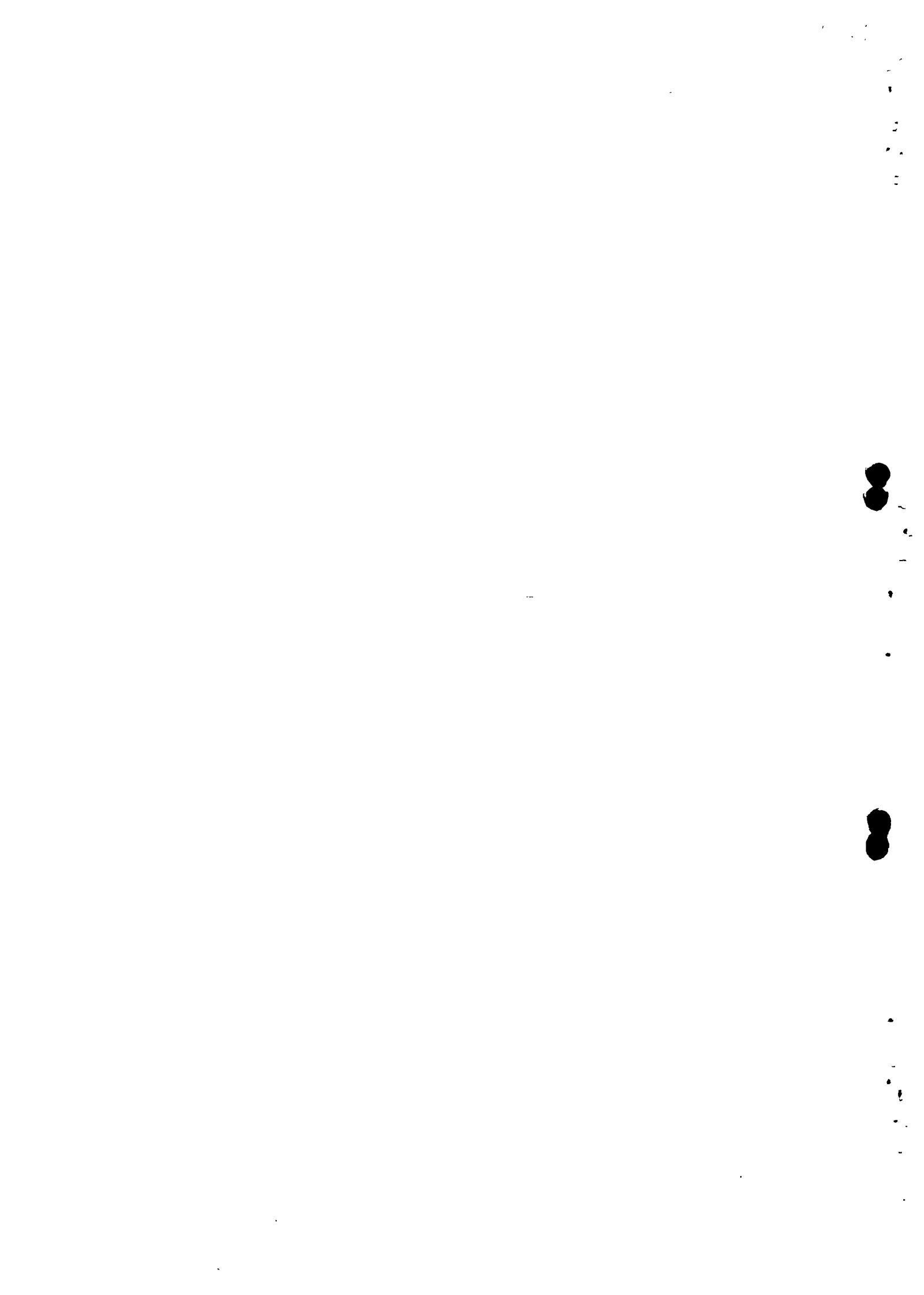
MAZRUI LANDS BOARD TITLES.—(contd.)

Reg. No. L.T. 9/18 Folio 314.

Block No. 2, 10,600 acres.

Certificate No. 408 d/8-4-14





MAZRUI LANDS BOARD TITLES.—(contd.)

Reg. No. L.T. 9/18 Folio 278.

BLOCK No. 4, 12,86.68 acres.

Certificate No. 407 d/19-3-14

Reg. No. L.T. 9/18 Folio 326.

BLOCK No. 5, 10,394.00 acres.

Certificate No. 414 d/15-7-14

Mazrui Board

Sold to Owen Thomas

Block No. 4 and Block No. 5.

7-10-1914

Sold to Gulamhussein Esmailji

Block No. 4 and Block No. 5.

20-4-1918

Sold to The Standard Bank of South Africa, Ltd.

Block No. 4 and Block No. 5.

29-4-1923

Transferred to the Trustees of the Mazrui Lands Trust, 399.5 acres, Subdivision No. 5044 (Orig. Mazrui Res. No. 5/1) in pursuance of Declaration of Trust contained in Conveyance from the Mazrui Board to Sir Owen Thomas registered in Volume 9, Folio 266/2.

*Summary.*—The areas which were vested in the Mazrui Arbitration Board by Certificates of Ownership Nos. 409, 408, 406, 407, and 414 are as follows:—

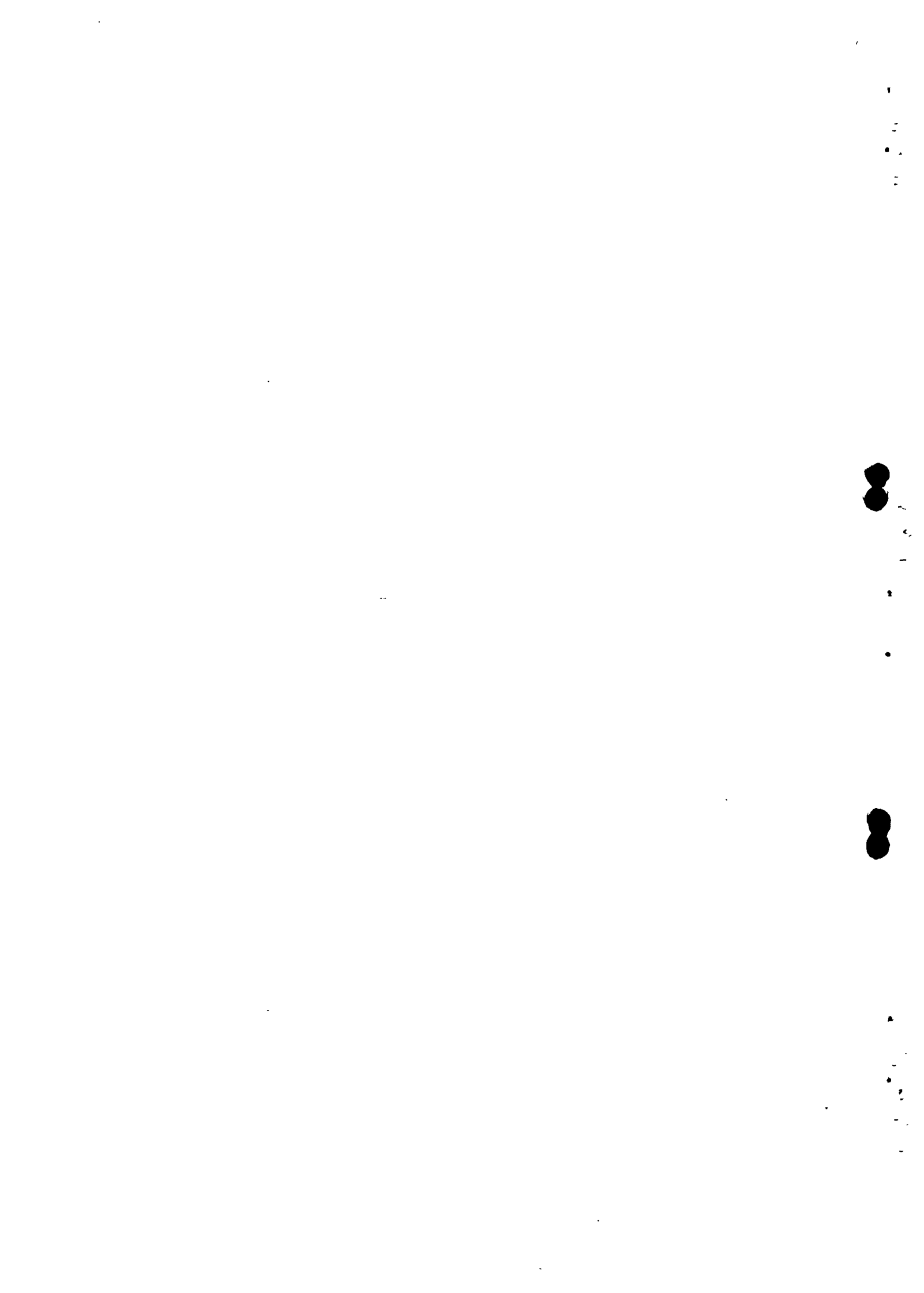
Block No.	acres
1 ..	9,100.0
2 ..	10,600.0
3 ..	13,040.0
4 ..	1,286.68
5 ..	10,394.0
<i>Total.</i>	44,420.68

Areas remaining vested in the Mazrui Lands Board of Trustees as at 20th November, 1932, in accordance with information in the Register:—

Block No.	acres
1 ..	3,172.0
2 ..	371.0
3 ..	376.54
4 ..	Nil
5 ..	399.5
<i>Total.</i>	4,319.04

1st December, 1932.

E. B. LLOYD,  
Registrar of Titles.





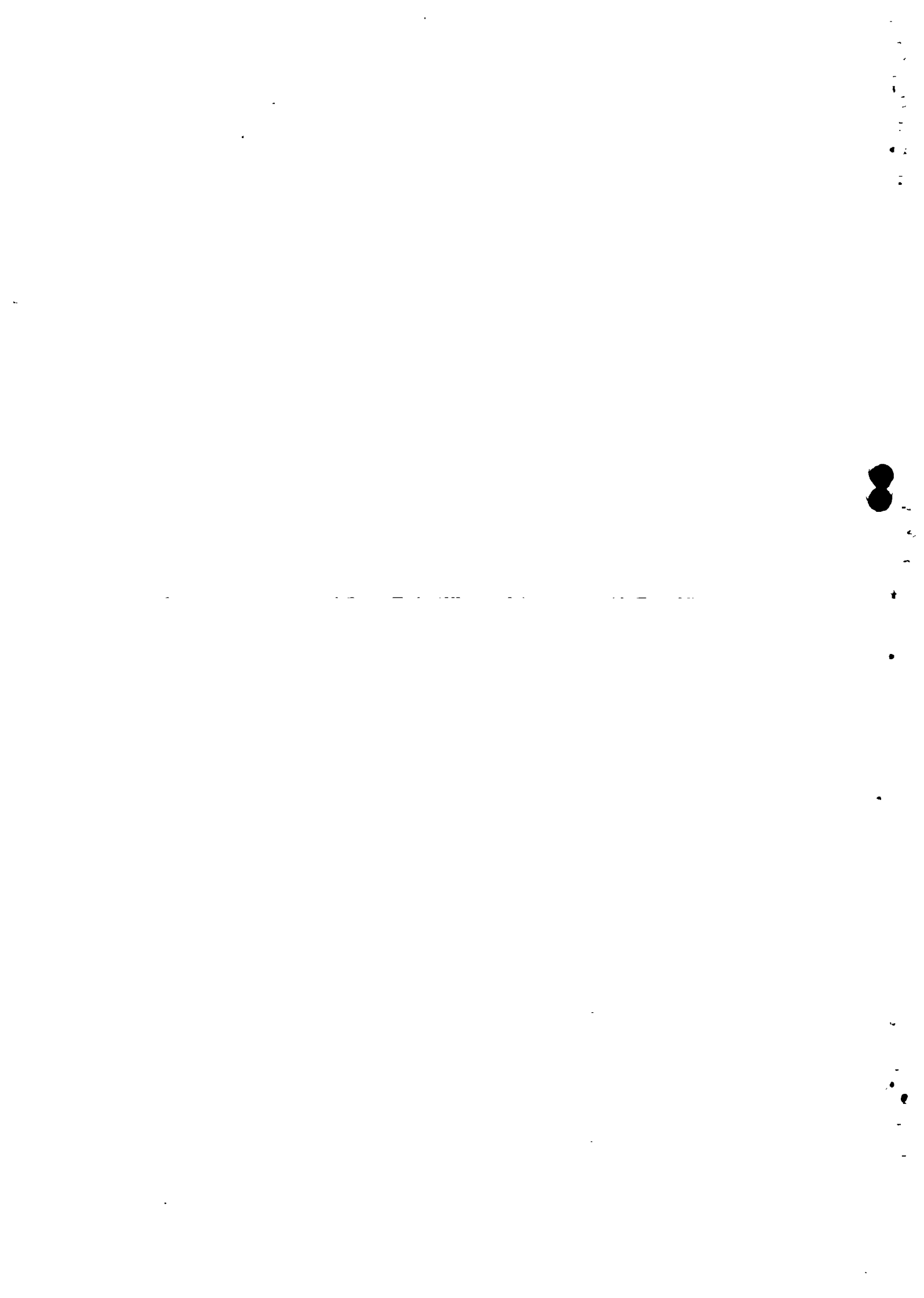
# ANNEXURE 2

File No. 552/8 Malindi

(6)

17/2  
31

The Malindi Lands Trust Ordinance  
1951



1931

*Asiatic Widows' and Orphans' Pension*

No. X

Provided that where any part of the contributions have been repaid under section 28 of the Principal Ordinance such part shall not be deemed contributions for the purpose of this section.

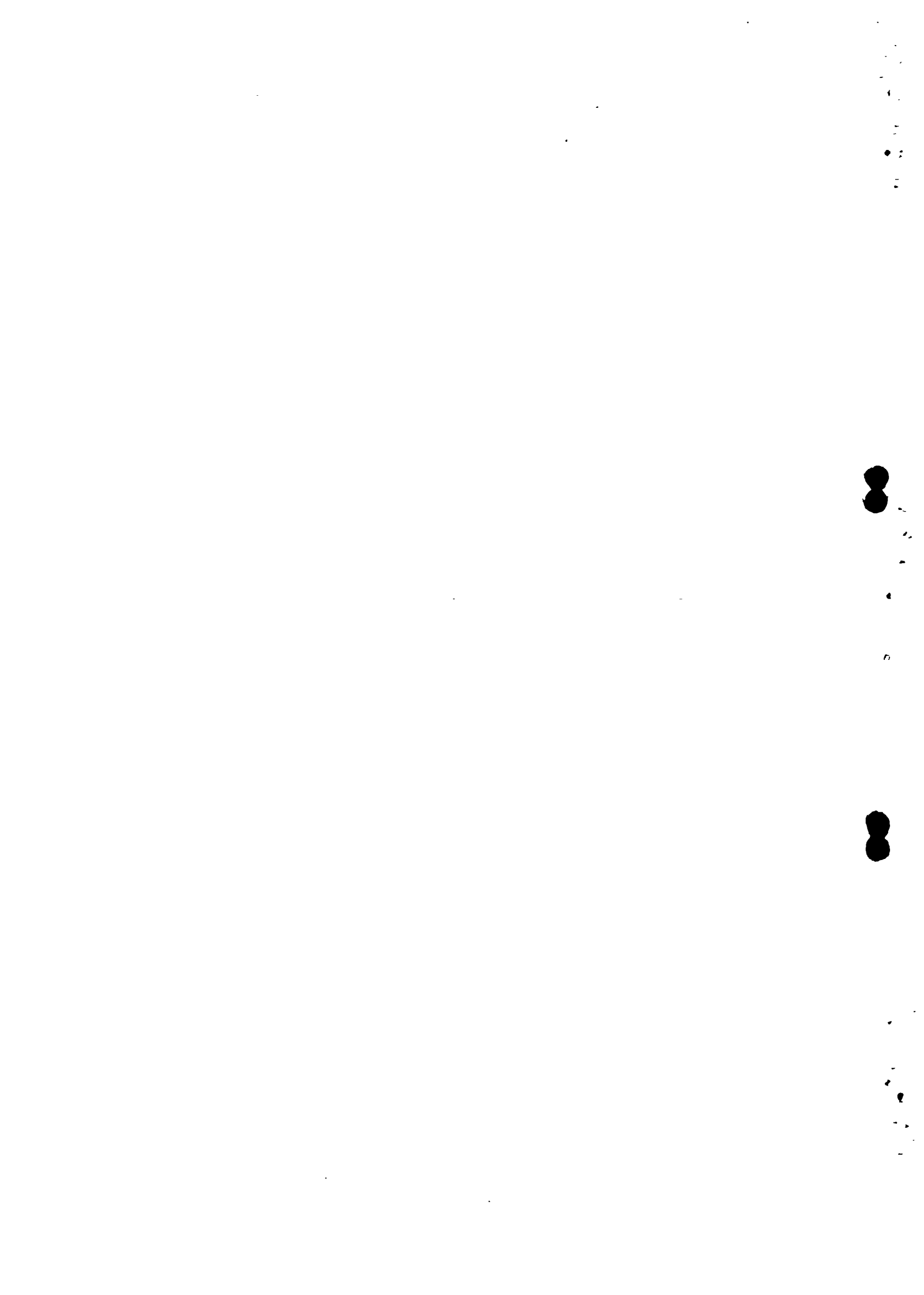
11. Where a contributor is transferred to the service of an administration in which he is not eligible to join a Widows and Orphans' Pension Scheme he may elect, within three months of his transfer, to continue his contributions, in which case his contributions shall be the same as he was contributing at the date of his transfer or where the contributor is on an incremental scale his contributions shall be those which he would contribute if he remained in the Colony on that scale and obtained each increment at the earliest possible date.

Contributions of officers transferred to other administrations.

Provided that contributions can only be continued while the contributor is in the service of the administration aforesaid or on pension therefrom and he shall, while contributing and at the date of his leaving such service, if then contributing, be deemed a contributor contributing in the Colony.

12. Where any contributor on leaving the service of this Government becomes a contributor in an administration having provisions relating to pensions of widows and orphans of Asiatic officers similar to those in the Colony or on so leaving is deemed to be a contributor in the Colony, sections 28 and 29 of the Principal Ordinance shall not apply to such contributor, while he is contributing as aforesaid or while he is deemed to be a contributor in the Colony.

Sections 28 and 29 of the Principal Ordinance not to apply in certain cases.



1931

*Mazrui Lands Trust*

No. XI

divide the aforesaid blocks of land amongst all the families of the Mazrui tribe entitled to land—

Rashid bin Salim *Chairman*

Mohamed bin Sud *Member*

Mohamed bin Seif

Mohamed bin Juma

Rizki bin Mahomed

Khalfan bin Abdallah

Abdulla bin Rashid

AND WHEREAS certain land has been alienated by the said Board

AND WHEREAS doubts exist as to the validity of the titles granted by the said Board in respect of the land so alienated

AND WHEREAS it is deemed expedient to validate all such titles by legislation

AND WHEREAS it is also deemed expedient to establish a Board of Trustees in whom shall be vested all the Mazrui land not yet alienated or which may hereafter devolve upon the Mazrui and to specify the powers and control which such Board may exercise over such land

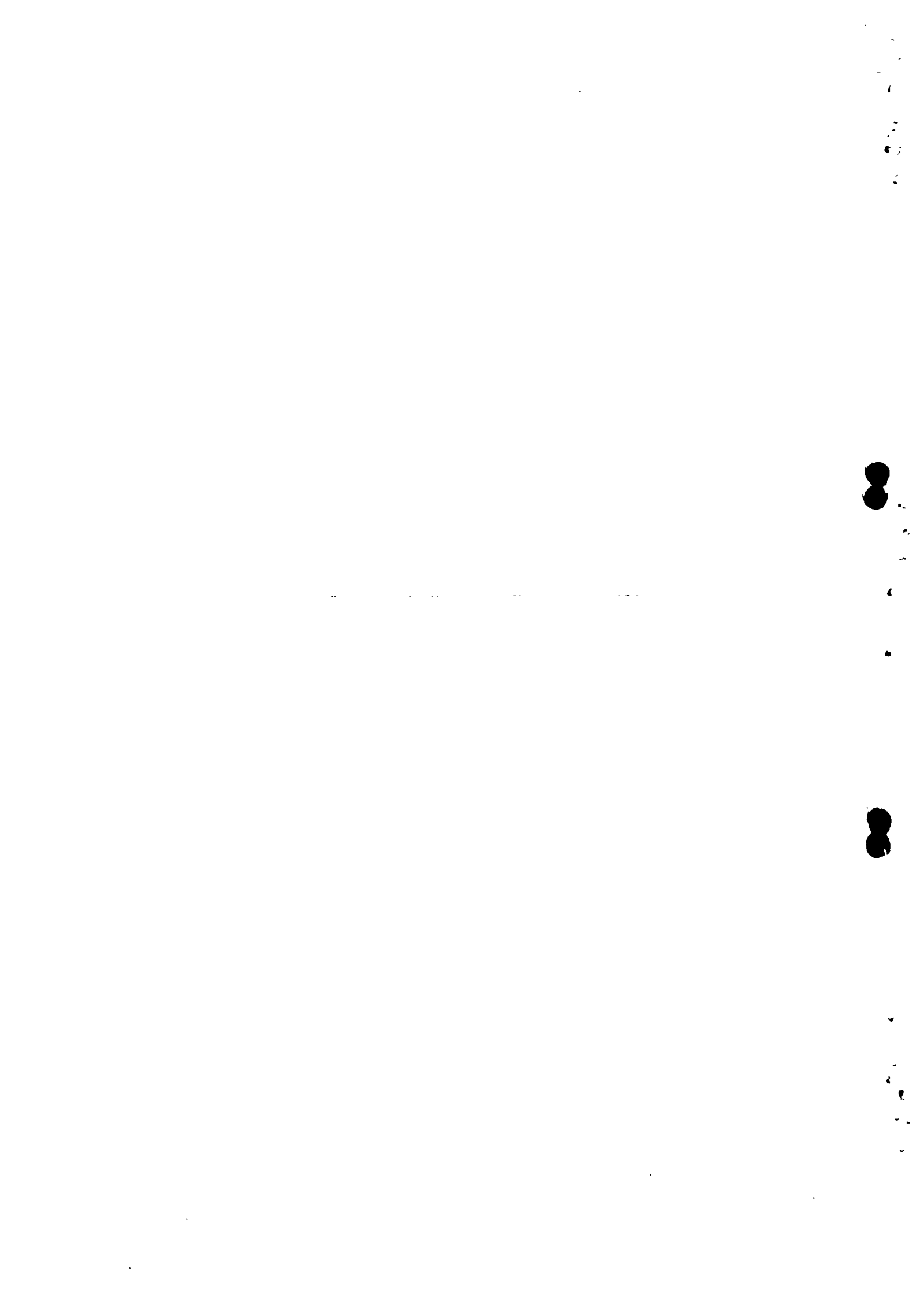
BE IT THEREFORE ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as "the Mazrui Lands Trust Ordinance, 1931." Short title.

2. In this Ordinance, "the Mazrui" means the Mazrui and Shakh's followers of Salim bin Khamis. Interpretation.

3. There shall be established a Mazrui Lands Board of Trustees (hereinafter called "the Board") for the purpose of holding and administering all the lands of the Mazrui; such Board shall consist of the Provincial Commissioner of the Coast Province as Chairman and such other persons not exceeding six in number as the Governor may by notice in the Gazette appoint. Establishment of Board.

4. The Board shall be a body corporate and shall have perpetual succession and a common seal, and may sue and be sued in such corporate name and, subject to the provisions of this Ordinance, may hold, and by instrument under their common seal may convey, mortgage, assign and demise any Board a corporate body.



1931

Mazru Lands Trust

No. XI

(2) No suit, prosecution or legal proceeding whatsoever whether civil or criminal shall be instituted against the Arbitration Board referred to in the last preceding sub-section, or any member thereof, in respect of any act, matter or thing directed or done in good faith in exercise or purported exercise of their or his appointment as aforesaid, or in relation to the alienation in good faith of any land of the Mazru and the validity of any act, matter or thing as directed or done shall not be liable to be contested by suit or otherwise.

8. The Governor may make Rules prescribing—

Power to make Rules.

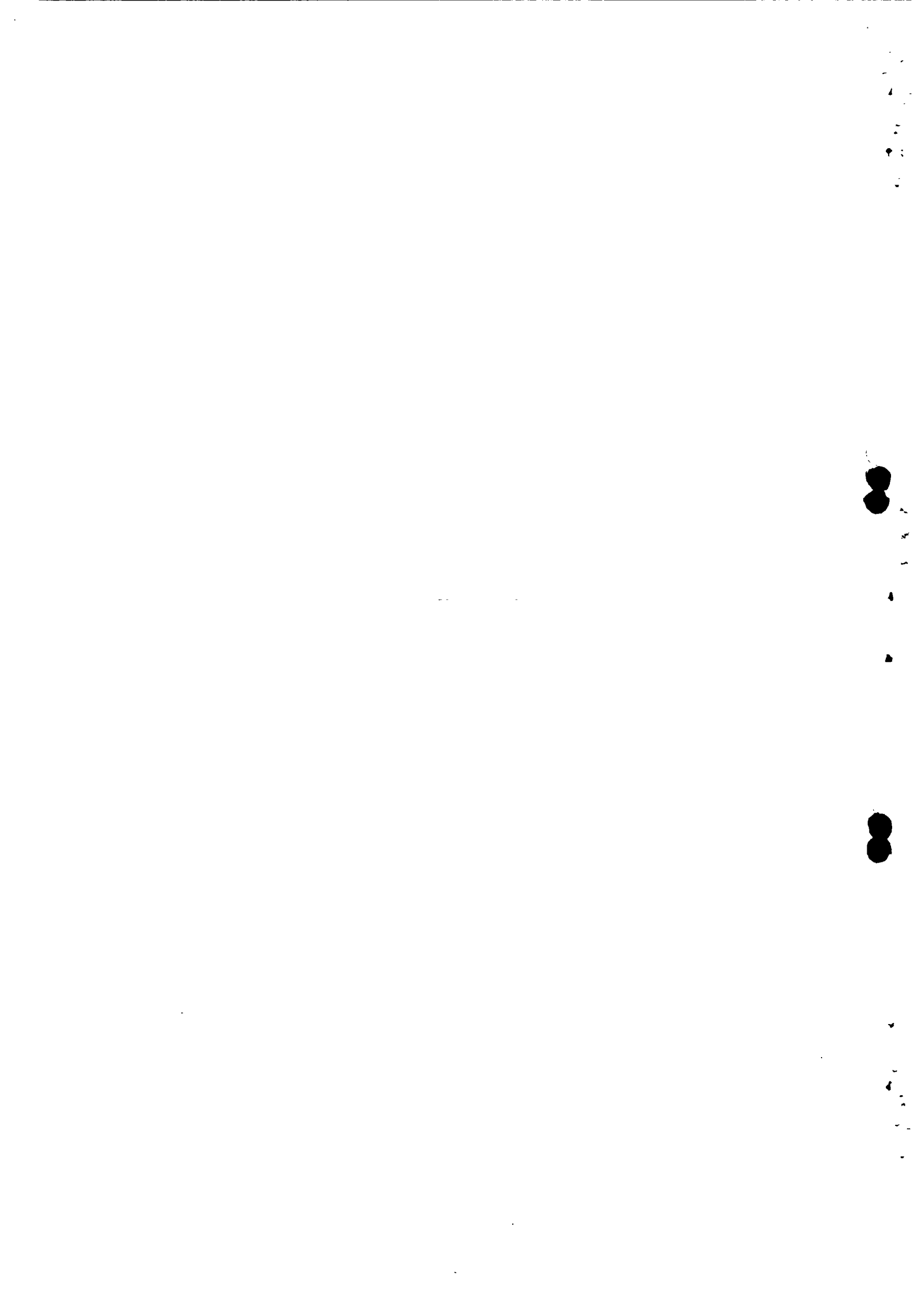
- (a) the tenure and avoidance of office of trustees appointed under this Ordinance;
- (b) the number of trustees who may act on behalf of the Board;
- (c) the opening of a banking account and generally the transaction of the business of the Board;
- (d) the conduct of meetings of the Board and the powers of the Chairman;
- (e) the majority of trustees necessary to authorise the doing of any act as to which the Board is not unanimous;
- (f) the device of the common seal;
- (g) the custody and use of the common seal;
- (h) generally for the purpose of administering the land vested in the Board.

SCHEDULE

1. All that piece or parcel of land situate to the south of Kilifi Creek in the Malindi District in the Coast Province of the Kenya Protectorate containing by admeasurement 3172 acres or thereabouts being the balance of all that piece or parcel of land containing 9100 acres or thereabouts comprised in Certificate of Ownership No. 409 issued by the Recorder of Titles on the 1st day of April, 1914, after deduction of the following portions transferred before the commencement of this Ordinance—

- (a) All that piece or parcel of land containing 277 acres or thereabouts comprised in a conveyance dated the 23rd day of November, 1926, and registered in the Coast Lands Registry at Mombasa, in Volume L.T. IX, Folio 300/1.

REVENUE STAMP  
DATE 26th June 2017





1931

## Mazruu Lands Trust

No. XI

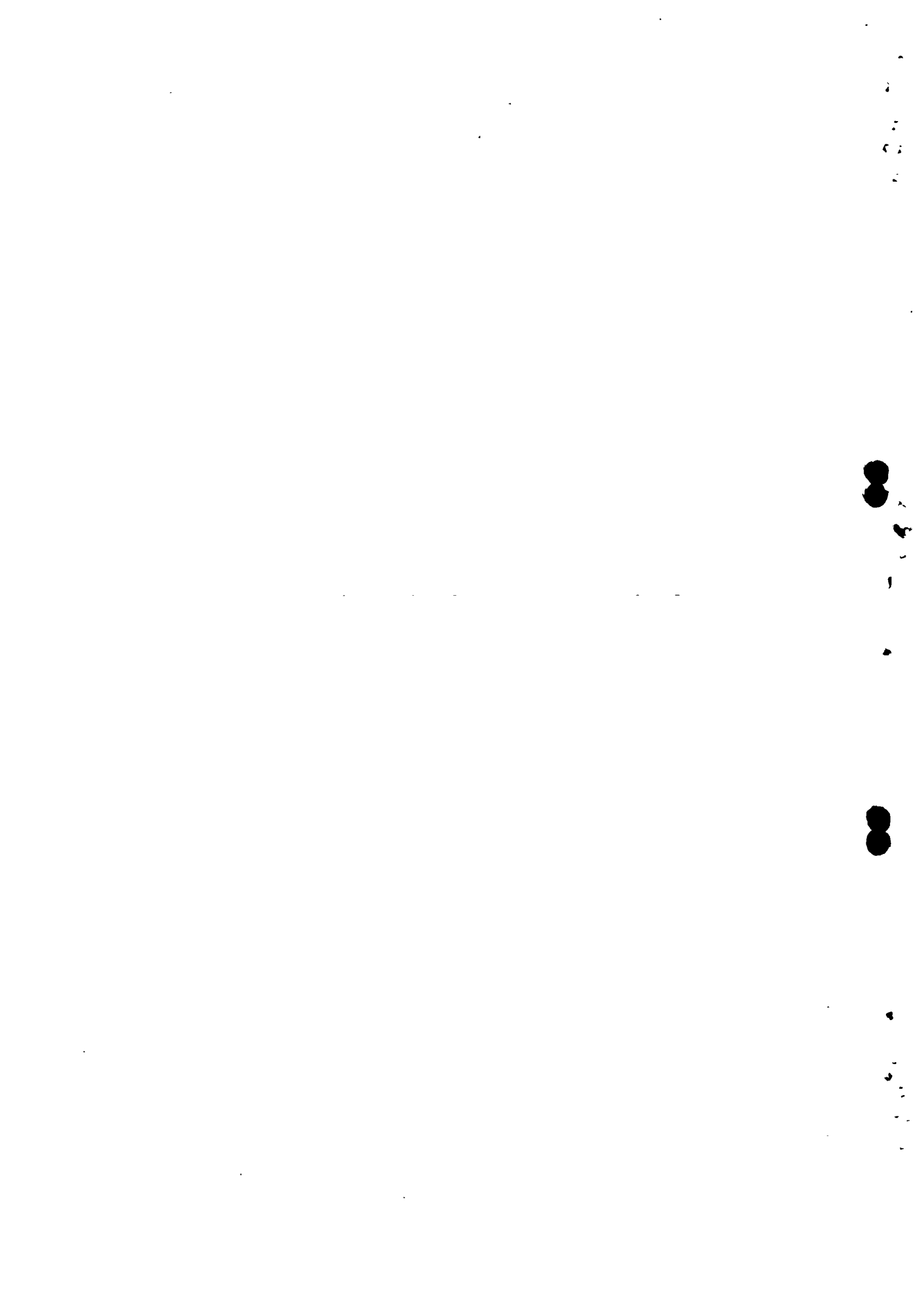
of Portion No. 1, L.O. No. 4238 of Meridional District South A 37 after deduction of Re-Subdivisions Nos. 6, 7, 12, 13, 18, 22, 25, comprising together 38.11 acres or thereabouts previously transferred.

- (c) All that piece or parcel of land situate to the south-west of Mida Creek in the Malindi District in the Coast Province of the Kenya Protectorate containing by admeasurement 0.65 acres or thereabouts known as Subdivision No. 2 (of Mazruu Reserve, No. 3) of Portion No. 1 of L.O. No. 4238 of Meridional District South A 37

4. All that piece or parcel of land situate to the south of Malindi Township in the Kilifi District of the Kenya Protectorate containing by admeasurement 399.5 acres or thereabouts known as L.R. No. 5044 (Orig. No. 4240/1) or Mazruu Reserve No. 5/1) of Meridional District South A 37

W. I. c.

26th June 2019



EAST AFRICA PROTECTORATE

MINERAL RECORDS

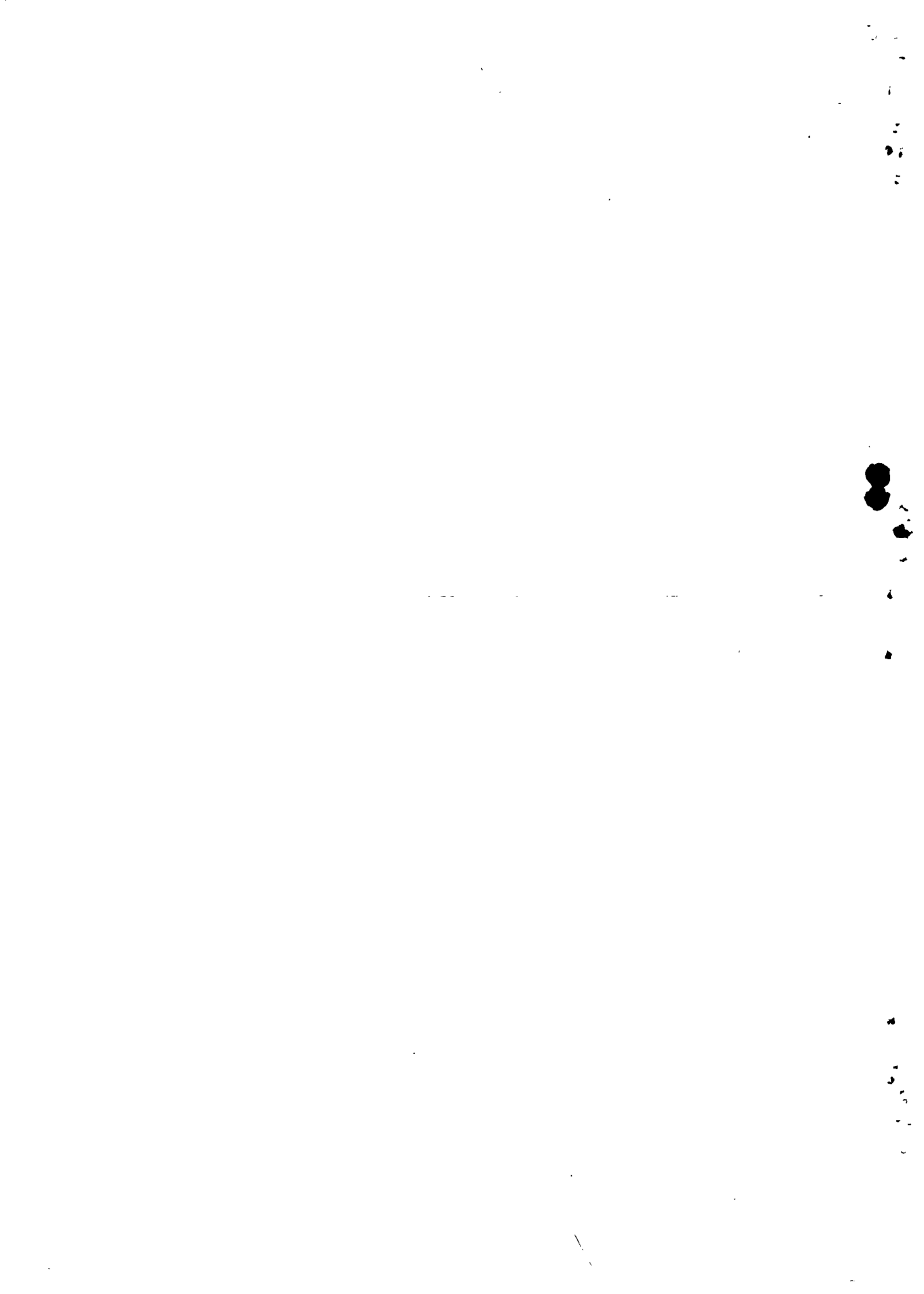
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*Handwritten signature*

REGISTERED





**NATIONAL LAND COMMISSION**

**PRESENTED BY**

**KABALE TACHE ARERO**

**ACTING SECRETARY/CEO**

**TO**

**THE DEPARTMENTAL COMMITTEE ON LANDS**

**ON PETITION BY HATUA YETU COMMUNITY BASED  
ORGANIZATION REGARDING ALLEGED INJUSTICES  
EXPERIENCED BY RESIDENTS OF KILIFI COUNTY ON THE  
MAZRUILAND TRUST**

**TUESDAY JULY 16, 2018**

## **Introduction**

Hon Chairman, The National Land Commission (NLC) is an Independent Constitutional Commission established under Article 67 of the Constitution of Kenya, 2010. It was operationalized through Acts of Parliament that gave effect to Article 67 of the Constitution, namely; the National Land Commission Act, 2012; the Land Act, 2012 and the Land Registration Act, 2012, to carry out its mandate as outlined both in the Constitution and in the aforementioned legislations.

We received a letter dated 8th November 2018 inviting us to assist the committee to determine a petition raised by by Hatua Yetu Community Based Organization regarding alleged injustices experienced by residents of Kilifi County on the Mazrui Land Trust

## **Background**

The Mazruis claim to Takaungu and other coastal areas can be traced to the pre-colonial period. The British found the Mazruis in charge of some parts of the coastal strip and through treaties and agreements, the British took over control and administration of over 400km of Kenya's coastline.

By virtue of certificate of title no 409 of 4<sup>th</sup> April 1914, the Mazrui Lands Trust Board were registered as proprietors of land containing 9,100 acres or thereabouts comprised in a certificate of ownership issued by the Registrar of Titles and registered under the Land Titles Act (cap 280) now repealed.

As clearly stated in the petition (paragraph 7) the state repealed the Mazrui Land Trust Act in 1989 in the process converting the Mazrui land to Trust Land .The 1989 statute further provided that the rights and interests of persons on the said land would be ascertained in accordance with the provisions of the Land Adjudication Act. The Mazrui lands, were therefore

declared an adjudication area within the meaning of section 5 of the Land Adjudication Act repealed.

The matter was taken to court vide civil case no 185 of 1991 and judgment delivered on 19<sup>th</sup> July, 2012 by Justice Tuiyot.

### **The following is the order of the court**

1).The applicants (read Mazrui) right to property as guaranteed by Article 40 of the Constitution of Kenya and as previously guaranteed in section 75 of the former Constitution of Kenya was and is being violated by the Mazrui Land Trust Act (1989).

2.) A declaration that the Mazrui Lands Trust Act 1989 is unconstitutional, null and void and of no legal effect.

### **Other orders**

Should any of the Mazrui lands aforesaid be lawfully and properly acquired by the Government for the benefit of persons other than Mazrui's, then prompt, just and full compensation should first be paid to the Mazrui in accordance with the provision of Section 75(1) (c) of the former Constitution and Article 40 of the New Constitution.

A declaration that in so far as the Mazrui's land are concerned, the minister concerned or his servants or agents have no power to determine the questions of the ownership of such land as the proprietor of the said lands are known and have title under specific Act of Parliament .

### **Proposed way forward and recommendations**

***We wish to bring to the attention of the committee that the petition was first brought to the attention of the Commission in November 2018. The then Chair of the Commission made the following recommendations:***

1. The Commission is obliged to obey separation of powers as enshrined in the Constitution and would therefore stand guided by the court

order issued on 19<sup>th</sup> July, 2012. It should be noted that the state did not make an appeal. As indicated in one of the orders, an arrangement could be made to compensate the Mazruis to allow the Government to settle other parties other than Mazrui's. We would propose that the Committee considers this proposal as one way of addressing the matter.

2. The matter can perfectly be described as a Historical Land Injustice. However, since the court has pronounced itself on the matter, the Commission would propose an Alternative Dispute Resolution approach in the resolution of this matter.
3. The Commission will consider any recommendations made by the Committee upon conclusion of investigations.
4. The Commission shall appreciate all efforts by the Committee to find a lasting solution to the problem.



**KABALE TACHE ARERO**  
**ACTING SECRETARY/CEO**

**JULY 16 2019**