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NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FIFTH SESSION – 2017

THE DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE PETITION BY RESIDENTS OF PONGWE AREA, LUNGA LUNGA
CONSTITUENCY ON IMMINENT EVICTION FROM LR.NO.1083, SHIMONI (KWALE)

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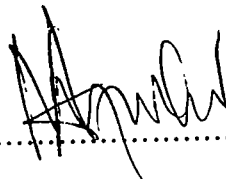
CHAIRMAN'S FOREWORD

On Thursday 23rd, April, 2015 the Hon. Khatib Mwashetani, MP tabled a Petition before the House pursuant to Article 119 (1) of the Constitution of Kenya 2010 and Standing Order 219; on behalf of residents of Pongwe Area, Lunga Lunga Constituency, in Kwale County regarding the imminent eviction from LR. No. 1083, Shimoni Kwale;

The House pursuant to Standing Order 227 referred the Petition to the Departmental Committee on Lands for preparation of the Report. The Committee received the Petition on Tuesday 28th April, 2015 and set out a procedure for the consideration and to report to the House within 60 days as set out in Standing order no 227(2), for the Committee to respond to the prayers sought in the petition conducted an inquiry in order to determine the pertinent issues

On my own behalf, I wish to commend Members of the Committee for their patience, endurance and hard work during the long sitting hours under tight schedules, which enabled the Committee to complete the tasks. Furthermore, the assistance received from the offices of the Speaker and the Clerk of the National Assembly was invaluable. The Committee acknowledges the contribution of witnesses in the preparation of this report by way of submissions and presentations.

Finally, it is my pleasant duty, on behalf of the Departmental Committee on Lands, to present this report in accordance with the provisions of Standing Order 227 which requires that the committee responds to a petition within sixty days through a report addressed to the petitioner(s) and Laid on the Table of the House.

SIGNED:  DATE: 19th May, 2017

(HON. ALEX M. MWIRU, MP)

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON LANDS

EXECUTIVE SUMMARY

This report seeks to respond to prayers sought from the House by residents of Pongwe Area, Lunga Lunga Constituency, in Kwale County regarding their imminent eviction from LR. No. 1083, Shimoni Kwale through the Hon. Khatib Mwashetani, Member of Parliament, Lunga for Lunga Constituency.

In their Petition the Pongwe residents prayed that the House through the Departmental Land Committee intervenes to establish under which circumstances the land which was initially held on leasehold was transferred to other owners on a Freehold basis and further that House intervene to ensure that the National Land Commission looks into issues and the status of the land held under leasehold, especially community land with a view of safeguarding such land for community use.

The Committee held various meetings within Parliament Buildings where it interacted with concerned stakeholders and also undertook a fact finding tour of Pongwe, Lunga Lunga Constituency on Thursday 7th May 2015. The objective of the visit was to assess the situation on the ground and collect views from residents of Pongwe area.

The report is divided into four where the beginning it stipulates the mandate of the Committee, the second part is the introduction which introduced the facts as enumerated by the Petitioners, and expounded on the evidences collected by the Committee, the third parts is about finding or observations and the report concludes with recommendations.

MANDATE OF THE COMMITTEE

The Departmental Committee No. K on Lands is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference:-

1. Investigate, inquire into, and report on all matters relating to the mandate, management, ~~activities, administration, operations, and estimates of the assigned ministries and departments;~~
2. ~~Study the Programme and policy objectives of Ministries and Departments and effectiveness of the implementation;~~
3. Study and review all legislation referred to it;
4. Study, assess and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with their stated objectives;
5. Investigate and inquire into all matters relating to the assigned Ministries and Departments ~~as they may deem necessary, and as they may be referred to them by the House;~~
6. Vet and report on all appointments where the Constitution or any Law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
7. Make reports and recommendations to the House as often as possible, including recommendations on proposed legislation.

The Committee is mandated to Consider the following subjects:-

- a) Land Policy,
- b) Physical Planning,
- c) Land Transactions,
- d) Survey and Mapping,
- e) Land Adjudication,
- f) ~~Settlement,~~
- g) Land registration,
- h) Land Valuation,
- i) Administration of Private, community and Public Land,
- j) Land Information and Management System.

Oversight

In executing its Mandate, The Committee oversees the following Government Departments, Namely:-

- a) The State Department for Lands;
- b) The National Lands Commission.

Members of the Committee

Chairperson

The Hon. Alex Mwiru, M.P.

Vice Chairperson

The Hon. Moses Ole Sakuda, M.P.

Members

The Hon. Mutava Musyimi, M.P.

The Hon. John Kihagi, M.P.

The Hon. Francis W. Nderitu, M.P.

The Hon. Kipruto Moi, M.P.

The Hon. Hellen Chepkwony, M.P.

The Hon. Sarah Korere, M.P.

The Hon. Benson Mbai, M.P.

The Hon. Suleiman Dori, M.P.

The Hon. George Oner, M.P.

The Hon. Mathew L. Lempurkel, M.P.

The Hon. Shakila Abdallah, M.P.

The Hon. Dr. Paul Otuoma, M.P.

The Hon. Thomas Mwadeghu, M.P.

The Hon. Joseph Magwanga, M.P.

The Hon. Ali Shariff Athman, M.P.

The Hon. Francis Njenga, M.P.

The Hon. Hezron Awiti Bollo, M.P.

The Hon. Benard Bett, M.P.

The Hon. Esther Murugi, M.P.

The Hon. Omar Mwinyi, M.P.

The Hon. Onesmus Ngunjiri, M.P.

The Hon. Julius Ndegwa, M.P.

The Hon. Patrick Kingola, M.P.

The Hon. Kanini Kega, M.P.

The Hon. Eusilah Ngeny, M.P.

Secretariat

First Clerk Assistant:-

Mr. James Ginono

Third Clerk Assistant:-

Mr. Joshua Ondari

Third Clerk Assistant:-

Mr. Emmanuel Muyodi

LIST OF RECOMMENDATIONS

Based on the Observations, Investigations, evidence adduced and submission made, the Committee made the following recommendations

1. THAT, There was no possibility of registering the indenture of 1988 since the mortgage of 1965 had not been discharged;
2. THAT, The land belongs to Bhovanbhai Lalji Gadhi and Maganlal Chakubhai Pattani and if efforts to trace the legal heirs fails, provisions of Article 62(d)(e) of the Constitution of Kenya be applied by both the Ministry of Lands and Physical Planning and the National Land Commission to allocate the land to the squatters as individuals or community in the next six months after tabling the report.

1.0 INTRODUCTION

1. Pongwe Residents are a group of Squatters living in Land L.R. No. 1083 Shimoni in Kwale County in their Petition they informed the House that: -
 - b) The advent of colonial administration in Kenya, many families were displaced from their ancestral land to pave way for construction of colonial government facilities and settlement for white settlers;
 - c) On 11th June 1910, the British Crown alienated 320.12 acres of land from the residents of Pongwe and granted it to one Mr. Charles Anduson as LR No. 1083 Shimoni (Kwale on leasehold basis); although they were rendered landless they have continued living on the same land as squatters for over 80 years;
 - d) Even though the leasehold expired, no measures have been initiated by the government to repossess the land and redistribute it to residents;
 - e) Recently, one Mr. Njue threatened to evict squatters residing on the land claiming power of attorney as the owner of the land on freehold basis yet no records show that land had changed from leasehold to freehold;
 - f) Aware this imminent eviction if effected, residents of Pongwe risk permanent loss of their right to Community land as enshrined under Article 63 of the Constitution;
 - g) Efforts and pleas by local leaders to the National Land Commission to intervene in this matter and protect the land have borne no fruits;
2. The Petitioners pray that the House, through the Departmental Committee on Lands to:-
 - a) Intervenes establish under which circumstances the land held on leasehold was transferred to one Mr. Njue on Freehold basis;
 - b) Intervenes to ensure the National Land Commission looks into issues and status of the land held under leasehold, especially community land with a view of safeguarding such land for community use countrywide;

2.0 EVIDENCE

2.1 Evidence from the Member of Parliament, Lunga for Lunga Constituency

The Hon. Khatib Mwashetani, M.P the Member of Parliament, Lunga for Lunga Constituency appeared before the Committee on Thursday 7th May 2015, and informed it as follows:-That

3. On 11th June 1910, the British Crown alienated 320.12 acres of land from the residents of Pongwe and granted it to Mr. Charles Anduson as LR No. 1083 Shimoni (Kwale on leasehold basis); although they were rendered landless they have continued living on the same land as squatters for over 80 years;
4. Though the leasehold expired, no measures have been initiated by the Government to repossess the land and redistribute it to residents;
5. Mr. Njue has threatened to evict squatters residing on the land claiming power of attorney as the owner of the land; and
6. Residents of Pongwe risk permanent loss of their right to Community land as enshrined in Article 63 of the Constitution.

2.2 Evidence from Ministry of Lands and Physical Planning

Dr. Fred Matiang'i, Acting Cabinet Secretary Ministry of Lands, Housing and Urban Development accompanied by the Principal Secretary, Ms. Mariam El. Maawy, Mr. Peter Kahuho, Ag. Secretary Lands, Mr. Augustine Masinde, Director physical Planning, Mr. Cesare N. Mbaria, Director of Surveys, Ms. Terry Gathagu, Head of Legal Services, Mr. Francis K. Orioki, Principal Land Registrar and Mr. Paul Mwangi, informed the committee as follows:-That,

7. Before 1498, the East African Coast Land was inhabited by Africans of Bantu origin and Swahili people, who used to trade with Arabs from the Arabian Peninsula;
8. Before the coming of the Portuguese to East Africa, the land was communally owned by Africans and Swahili people who used to trade with Arabs from the Arabian Peninsula;
9. In 1498, the Portuguese explorers headed by Vasco Da Gama were among the earliest Europeans to set foot on the East African Coast;
10. In 1895, the East Africa Protectorate (E.A.P) in Kenya attracted settlers from Britain, South Africa and other British Dominions;
11. In 1901, registration of Documents Act was enacted to register all documents related to land (such documents conferred, limited or extinguished rights, titles or interest in land);
12. Crown Land (Government Land) was defined by East African Land Order in Council (1901) as all Public Land within the larger East Africa Protectorate;
13. In 1902, the Commissioner of Land promulgated Crown Land Ordinance in order to support the 1901 Order in Council. The Commissioner was empowered to sell freehold estates for the land having an acreage of less than 1000 acres and also to sell any land which was not under African occupation without the consent of tribal chief (such land was referred as wasted and unoccupied);

14. In 1908, the Land Titles Act (LTA Cap 282) was enacted to register land covering the 10 miles coastal strip. This was land recovered from Muscat to Zanzibar. The 10 miles coastal strip was leased to the British East African Protectorate by the Sultan of Zanzibar in 1895;
15. In 1910, the Commissioner of Land, on behalf of His Majesty King George the 5th, granted LR. No. 1083 (320.12 acres) to Charles Anderson at a consideration of 642 rupees. This land was granted under freehold tenure (fee simple) subject to the Crown Land Ordinance of 1902, which empowered the Commissioner to sell land on freehold interest;
16. In 1946 Probate dated 17th April 1956 granted by H.M. High Court of Justice at Bristol and sealed in the Supreme Court of Kenya at Mombasa on 13th December, 1947 to Frederica Margarita Louie Gove as Executrix of the will of Charles Arthur Anderson deceased;
17. In 1947 conveyance dated 4th May, 1947 to Theodore Marinus Schouten for Kshs. 3,200 to hold the land in fee simple (freehold tenure);
18. In 1951 conveyance dated 4th May, 1951 to Bhovanbhai Lalji Gadhi and Maganlal Chakubhai Pattani both British Nationals of P. o. Box 43362 Nairobi for Kshs. 32,000 to hold the land in fee simple (freehold tenure) as common tenants of equal shares;
19. The available records in the Ministry reveal that the land was later sold to Kibigo Farm Limited of P. o. Box 74509 Nairobi. The Directors of Kibigo Land Limited are James Kamau Thuku, Stephen Thuku Mangara and Bernard Njinu.
20. An Indenture dated 19/7/1988 to Kibigo Farm Limited for Kshs. 1,000,000 was registered in Mombasa Land Office but is currently missing from their title deed file;
21. The Land Control Board documents LCR No. 15484 dated 14th March 1988 was sent by the Commissioner of Land to Kwale Musambweni District Officer's office to facilitate the issuance of Land Control Board Consent to transfer LR. No. 1083 on freehold tenure (fee simple);
22. The parcel of land measures approximately 320.12 acres and is located along the road to Shimoni from the main Lunga Lunga Mombasa road;
23. The parcel is bordered by Pongwe Kidimu Adjudication section to the North, LR.No.5032 which is now Shimoni Settlement Scheme extension to the East, LR No. 1080 to the South and LR No.5031 to the West. The Parcel cuts across heave wetland traversing from West to East;
24. The Parcel has a freehold title and is highly populated by squatters by past and recent squatters. There are those that come seasonally to farm but reside elsewhere. Some however have temporary structures;
25. The farm in most sections is full of mature coconut trees, Mangoes and cashew nuts on the dry areas and evidence of rice growing along the swampy areas. There is also heavy subsistence farming of cassava, maize and vegetables;
26. Available records show an application to the Lands Control Board for Consent to sell forwarded by Ramesh Manek Advocates dated 3rd March 1988;
27. The registered owners as per the records are Mr. Bhovanbha Hahji Gandhi and Maganlal Chakubhai Pattani;
28. The Ministry does not have conclusive details of the History, acquisition, sale and

transfer of the land in its records.

2.3 Evidence from National Lands Commission

Dr. Mohammad Swazuri, Chairman National Lands Commission, accompanied by Ms. Susan Kidemi, Deputy Director, and Settlement informed the Committee as follows, that:

29. Plot no.1083 in Shimon in Kwale measures approximately 320 acres and is situated along Shimoni Road. Pongwe Kidimi adjudication section and Shimoni Settlement Scheme border it;
30. Available documentation indicate that the Indenture was entered on the 11th June 1910 and registered at the registry of deeds at Shimoni as no.19 of 1910 between His late Most gracious King Edward the Seventh on the one part and Charles Arthur Mason Anderson on the other;
31. Another indenture was entered on the 19th July 1988 between Bhovanbhal Laiji Gadhi and Maganlal Charhubai Pattani (vendors) and Kibigo Ltd on the other (purchasers);
32. Kibigo Limited are the current owners since 1988;
33. There are various other indentures entered along the years in Mombasa Land registry;
34. Details of the land as it relates to the acquisition sale and transfer of the land are not readily available. An application for consent to transfer the land from the land control board is however available;
35. Most of the leases in the coastal strip were on leasehold. The specific Land is however on freehold as per the available documents. There is a possibility that the lease could have changed from leasehold to freehold during the transfer;
36. Kwale leaders have approached the NLC and requested that the NLC calls for a public review of leases; The Directors of Kibigo limited have severally tried to negotiate with the squatters on relocation and possible compensation but without success;
37. The plot is heavily squattered by past and recent entrants. There are those who live permanently there while others farm and live elsewhere; and
38. The land has mature fruit trees like mangoes, coconut and cashew nuts.

2.4 Evidence from Residents of Pongwe Area

Hon. Nassoro B. M gutta, Area Member of the County Assembly, Mr. Halfan C. Kiserecho-Sub-location Chairman, Mr. Badudu R. Kitwaya- elder, and Mr. Mwinyani Akida – Kiwambale area made representations on behalf of the petitioners and informed the Committee as follows; that:-

39. The land is in Pongwe, Kidimi Location, Pongwe Kikomeni Ward in Lunga Lunga Constituency and measures 322 acres;
40. The original inhabitants of the land were eight people from Bandu and Nyamwezi in Tanzania and they settled in the area in the 1890's led by Chief Mohamed Msicha and a group of other men who included Muhaji Jabu, Halfani Kiserecho, Halfani Mwajasho, Ali Mpunguti, Hamisi Mwaushanga, Mtwana Mwakotso, Thomas Mvumba and Sahim Mwakubwa who settled with their families;
41. The land was bare when the ancestors were settling;
42. In 1910 a white settler, Mr. Charles Anderson arrived in Pongwe and the British crown

- alienated 320.12 acres and granted it to him on leasehold basis. The local families had by then increased in population and several other families had occupied the land;
43. When Mr. Charles Anderson left, the farm was administered and managed by his manager who was an Indian;
 44. In 1985 before the expiry of the lease the Manager sold the land for Kshs.1 million to Kibingo farm ltd as confirmed by searches done at the Lands Ministry, claiming that those living within the land were his employees;
 45. There was no transfer from Mr. Charles Anderson to his farm manager nor was there a transfer from the manager to the Kibigo Farm ltd;
 46. The Kibigo Farm ltd could not take possession of the land since it was fully occupied;
 47. The petitioners are not aware if the Farm manger is still alive or not;
 48. In 1985,the lease changed from leasehold to freehold;
 49. On 5th September 2014, the residents received a letter from Mwaura and Wachira advocates giving them notice to vacate the land while informing them that Kibingo farm limited had sold the land to one Swaleh A. Bajabir and requires them to vacate the land to enable Kibingo to hand over vacant possession to the new owner; and
 50. Recently, one Mr. Njue threatened to evict the squatters residing on the land. He even approached local leaders and promised them money if they were able to convince the residents to vacate the land.

3.0 COMMITTEE FINDINGS, OBSERVATIONS AND CONCLUSIONS

Based on the Investigations, evidence adduced and submission made, the Committee made the following observations.

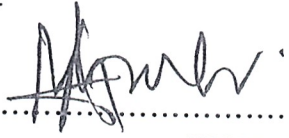
1. THAT, The last verifiable entry on official land documents and transaction of Plot no.1083 in Shimon - Kwale is a charge of a mortgage of 1965 which was never discharged;
2. THAT, There is no record from the Ministry of Lands and Physical Planning or National Lands Commission showing any transfer of Plot no.1083 in Shimon - Kwale from the two Britons i.e Bhovanbhai Lalji Gadhi and Maganlal Chakubhai Pattani to Kibigo Farm Limited;
3. THAT, There are claims of indenture by Kibigo Farm Limited which is not supported by any document in the Ministry of lands and Physical Planning;
4. That, all attempts by the Committee to reach out and get evidence from Kibigo Farm Limited were futile;
5. THAT, There is evidence of settlement by squatters on the land Plot no.1083 in Shimon - Kwale.
6. THAT, the land Plot no.1083 in Shimon - Kwale is held on a freehold basis since 1910.

4.0 RECOMMENDATIONS

Based on the Observations, Investigations, evidence adduced and submission made, the Committee made the following recommendations.

1. THAT, There was no possibility of registering the indenture of 1988 since the mortgage of 1965 had not been discharged;
2. THAT, The land belongs to Bhovanbhai Lalji Gadhi and Maganlal Chakubhai Pattani and if efforts to trace the legal heirs fails, provisions of Article 62(d)(e) be applied by both the Ministry of Lands and Physical Planning and the National Land Commission to allocate the land to the squatters as individuals or community in the next six months after tabling the report.

SIGNED:



DATE:.....

19th May, 2017

(HON. ALEX M. MWIRU, MP)

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON LANDS

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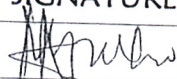





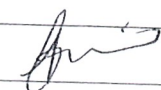
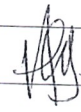
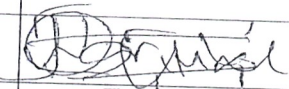


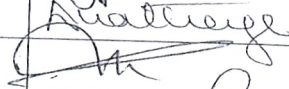
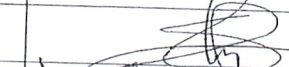
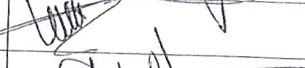
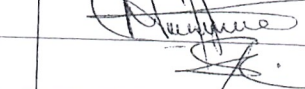


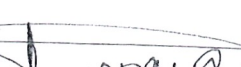

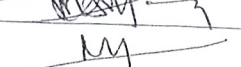



DEPARTMENTAL COMMITTEE ON LANDS
ATTENDANCE LIST

ANNEX 1

Date: May 19th, 2017

Venue: The Pier, English Point Marina, Mombasa

Agenda: Adoption of the report on the Petition by residents of Pongwe area Lunga Lunga Constituency on imminent eviction from LR No. 1083, Shimoni (Kwale)

NO.	NAME	SIGNATURE
1.	The Hon. Alex Mwiru, M.P. (Chairperson)	
2.	The Hon. Moses Ole Sakuda, M.P (Vice-Chairperson)	
3.	The Hon. Onesmas Ngunjiri, M.P.	
4.	The Hon. Mutava Musyimi, M.P.	
5.	The Hon. John Kihagi, M.P.	
6.	The Hon. Francis W. Nderitu, M.P.	
7.	The Hon. Francis Njenga, M.P.	
8.	The Hon. Athman. Shariff, M.P.	
9.	The Hon. Eusilah Jepkosgei, M.P.	
10.	The Hon. Benard Bett, M.P.	
11.	The Hon. Kipruto Moi, M.P.	
12.	The Hon. Hellen Chepkwony, M.P.	
13.	The Hon. Sarah Korere, M.P.	
14.	The Hon. Julius Ndegwa, M.P.	
15.	The Hon. Benson Mbai, M.P.	
16.	The Hon. Kanini Kega, M.P.	
17.	The Hon. Esther Murugi Mathenge, M.P.	
18.	The Hon. Hezron Awiti Bollo, M.P.	
19.	The Hon. Suleiman Dori Ramadhani, M.P.	
20.	The Hon. George Oner Ogalo, M.P.	
21.	The Hon. Lekidime L. Mathew, M.P.	
22.	The Hon. Shakila Abdallah, M.P.	
23.	The Hon. Paul Otuoma, M.P.	
24.	The Hon. Thomas Mwadeghu, M.P.	
25.	The Hon. Patrick Makau, M.P.	
26.	The Hon. Magwanga Joseph Oyugi, M.P.	
27.	The Hon. Omar Mwinyi, M.P.	
28.	The Hon. Charles Nyamai, M.P.	

BY RESIDENTS OF PONGWE AREA IN KWALE, LUNGA LUNGA CONSTITUENCY
ON
IMMINENT EVICTION FROM LR. NO. 1083, SHIMONI (KWALE)

I, THE UNDERSIGNED, on behalf of residents of Pongwe area in Kwale, Lunga Lunga Constituency;

DRAW the attention of the House to the following,

- i) THAT, aware that on the advent of colonial administration in Kenya, many families were displaced from their land to pave way for construction of colonial government facilities and settlement for white settlers;
- ii) THAT, on 11th June 1910, the British Crown alienated 320.12 acres of land from the residents of Pongwe and granted it to one Mr. Charles Anduson as LR No. 1083 in Shimoni (Kwale) on leasehold basis;
- iii) THAT, locals, who were rendered landless have since lived on this land as squatters for over eighty years;
- iv) THAT, even-though the leasehold expired, no measures have been initiated by the government to repossess the land and re-distribute it to residents;
- v) THAT, recently one Mr. Njue threatened to evict the squatters residing on the land, claiming power of the attorney as the owner of the land on freehold basis yet no records show that the land changed from leasehold to freehold;
- vi) THAT, aware that if the imminent eviction is effected, residents of Pongwe risk permanent loss of their right to community land as enshrined under Article 63 of the Constitution;
- vii) THAT, that this inalienable right of the people of Pongwe can only be safeguarded if the land is repossessed by the government and re-distributed to locals who have known no other home but this land;

Approved
 SWA
 23/9/15

CUNYONO
 PLS deep
 FA

26/4
 M. S. S. S. S.
 Please advise for
 completion by the
 23/9/15

PUBLIC PETITION
BY RESIDENTS OF PONGWE AREA IN KWALE, LUNGA LUNGA CONSTITUENCY
ON
IMMINENT EVICTION FROM LR. NO. 1083, SHIMONI (KWALE)

viii) THAT, efforts and please by local leaders to the National Land Commission to intervene in this matter and protect the land for community use have borne no fruits;

~~ix) THAT, to the best of our knowledge, there is no pending case before any court of law in respect to this matter.~~

THEREFORE, the humble petitioners PRAY that the National Assembly, through the Departmental Committee on Lands;

~~a) Investigates the circumstances under which the land held on leasehold was transferred to one Mr. Njue on freehold basis;~~

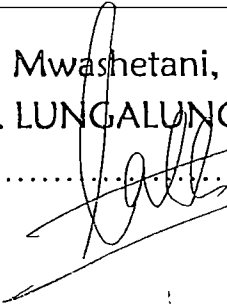
b) Intervenes to ensure the National Land Commission looks into issues and status of land held under leasehold, especially community land with a view to safeguarding such land for community use Countrywide.

And your PETITIONERS will ever pray.

PRESENTED BY,

Hon. Khatib Mwashetani, M.P.
MEMBER FOR LUNGALUNGA CONSTITUENCY

Date:.....


21/04/2014

REPUBLIC OF KENYA

THE LAND TITLES ACT

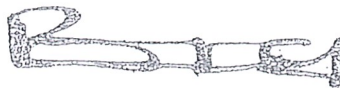
(CAP. 282)

CERTIFICATE OF ABSTRACT OF TITLE AS ON 24/7/2001

LAND REFERENCE NUMBER: 1083 Shimoni (Kwale)

AREA: 320.12 Acres

- Entry No. 1 Conveyance dated 11/6/1910 crown to Charles Anduson of Shimoni
- Entry No. 2 Probate dated 12/4/1946 granted by H.M. High Court of Justice at Bristol and sealed in the Supreme Court of Kenya at Mombasa on 13/12/1947 to Frederica Margarita Louise Groves as Executrix of the Will of Charles Arthur Anduson deceased.
- Entry No. 3 Conveyance dated 17/4/1947 to Theodore Marinus Schouten for Kshs. 3,200/=.
- Entry No. 4 Conveyance dated 4/5/1951 to Bhovanbhai Lalji Gandhi & Maganlal Chakubhai Pattani for Kshs. 32,000/=.
- Entry No. 5 Mortgage dated 15/4/1965 to Mavji Ruda in respect of 1/2 share of Bhovanbhai Lalji Gandhi for Kshs. 75,000/=.
- Entry No. 6 Re-lease of mortgage dated 1/12/1987 of mortgage No. 5 above
- Entry No. 7 Indenture dated 19/7/1988 to Kibigo Farm Limited for Kshs. 1,000,000/=.



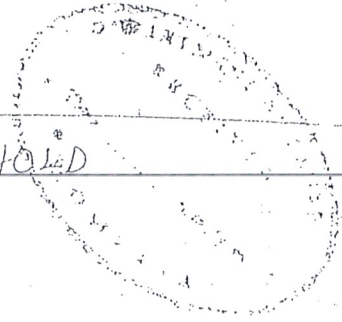
REGISTRAR OF COAST LAND TITLES

FILED U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT
LR No. 1082 - SHIMONI - FREEHOLD 1710

OWNER - INTER-CONTINENTAL HOLDINGS LTD

AREA - 320.22 ACS

MI/FOLIO 77 LT FILE 40



LR No. 1083 - SHIMONI - FREEHOLD

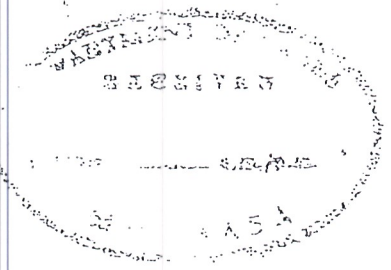
OWNER - KIBIGO FARM LTD

AREA - 320.12 ACS

MI/FOLIO 79 LT FILE 41

LR No. 1084 - SHIMONI - CF - CR

- OWNERS - (1) JOHN THOMAS THEODORE } 1960
(2) FRANCIS MAY VIDALIS }
(3) RICHARD SCOUTEN }
(4) ALEXANDER GEORGE VIDALIS (1963,
Unrevived half (1/2) share of
Richard Scouten (no 3)



Term - Freehold

Area - 320 Acs

PETITION BY RESIDENTS OF PANCHAI TRUST
IN SHIMONI, KWALE OR IMMINENT EVICTION
FROM # LAND LA No. 1083, SHIMONI (K/10/13)

<u>Names</u>	<u>ID No.</u>	<u>Signatures</u>
1) Mwingi Amari Akela	4689662	
2) Njauzi Bakari	8435708	
3) Akela Mwingi Amari A.	4616558	
4) Salim Bakari Boi	0765244	
5) Khalifa Hassan	4619174	
6) Bakari Heri	1368116	
7) Nasoro Bogoo	9304857	
8) Kitema Diwani Mwanuzi	4619162	
9) Mwanuzi Juma Joroko	4619592	
10) Bakari Kitaro	21368068	
11) Bakari Juma Mwanuzi	4619301	
12) Mohamed Bakari M.	4619619	
13) Mohamed Salim M.	8405498	
14) Hussein Bakari	8435762	
15) Juma Salim Mwanduzi	4619183	
16) MSAFIRI KINGI	4619181	
17) ALI KIDUZO	26030365	
18) HAMISI SAKI KIDUZO	1188630	
19) MARIAM KITEMA Mwanuzi	4619090	
20) Mwanuzi Mwanuzi SAKI	4619319	
21) Mwanuzi Mwanuzi	27108830	

NAME	ID NO.	SIGN
(22) MINKHAFATIME DIWANI	11600326	Signature
(23) BAKARI MOHAMED ALI	9633388	Signature
24 SEFU MOH'D MWAMINKA	1368681	Signature
25 RIZIKI ABDULLATI	13630770	Signature
26 MWANACILI ABDULLAH	23401182	Signature
27 MOH'D MWALICHI	25969005	Signature
28 MOJAMBALI JOGOD	8418615	Signature
291 BAVA CHARV	30338339	Signature
30 MAJUMBO UMARI		Signature
31) Signature HAWARI	Signature	
31) NASIRI SKEE	11773158	Signature
32 MWANASILI HAMEI	2061067	MWANASILI
33) CHINA JUMA	8395600	china
34) SIMBA SWALEHE	27385183	Signature
35 FATUMA SWALEHE	4419191	Signature
36 SWALEHE SIMBA	6619200	Signature
37) HASSAN BAKARI	20862416	Signature
38 HAMED B. NGARZI	13630743	Signature
39 NEEMA MWAMWAMBI	14436947	Signature
40 HASSAN ALIFANI	29500824	Signature



ANNEX 3.

Copies of Minutes



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MINUTES OF THE 48TH SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON FRIDAY 19TH MAY, 2014, IN PIER CONFERENCE ROOM, AT ENGLISH POINT MARINA AT 9.00 AM

PRESENT:

- | | |
|-----------------------------------------|-------------------------|
| 1. The Hon. Alex Mwiru, M.P. | Chairperson |
| 2. The Hon. Moses Ole Sakuda, M.P. | Vice Chairperson |
| 3. The Hon. Omar Mwinyi, M.P. | |
| 4. The Hon. Kanini Kega, M.P. | |
| 5. The Hon. Dr. Paul Otuoma, M.P. | |
| 6. The Hon. Hellen Chepkwony, M.P. | |
| 7. The Hon. Joseph Oyugi Magwanga, M.P. | |
| 8. The Hon. Francis W. Nderitu, M.P. | |
| 9. The Hon. John Kihagi, M.P. | |
| 10. The Hon. Francis Njenga Kigo, M.P. | |
| 11. The Hon. George Oner, M.P. | |
| 12. The Hon. Eusilah Ngeny, M.P. | |
| 13. The Hon. Shakila Abdallah, M.P. | |
| 14. The Hon. Julius Ndegwa, M.P. | |
| 15. The Hon. Mathew L. Lempurkel, M.P. | |
| 16. The Hon. Esther Murugi, M.P. | |
| 17. The Hon. Benson Mbai, M.P. | |
| 18. The Hon. Suleiman Dori, M.P. | |
| 19. The Hon. Onesmus Ngunjiri, M.P. | |
| 20. The Hon. Hezron Awiti Bollo, M.P. | |
| 21. The Hon. Thomas Mwadeghu, M.P. | |
| 22. The Hon. Charles Nyamai, M.P. | |

ABSENT WITH APOLOGIES:

1. The Hon. Bernard Bett, M.P.
2. The Hon. Kipruto Moi, M.P.
3. The Hon. Athman Shariff, M.P.
4. The Hon. Patrick Makau, M.P.
5. The Hon. Sarah Korere, M.P.
6. The Hon. Mutava Musyimi, M.P.

IN ATTENDANCE:

KENYA NATIONAL ASSEMBLY

- | | |
|------------------------|----------------------|
| 1. Mr. Daniel Mutunga | Principal Clerk I |
| 2. Mr. James Ginono | Clerk Assistant I |
| 3. Mr. Joshua Ondari | Clerk Assistant III |
| 4. Mr. Emmanuel Muyodi | Clerk Assistant III |
| 5. Mr. Kefa Omoti | Principal Researcher |
| 6. Ms. Mercy Wanyonyi | Legal Counsel II |
| 7. Ms. Rose Ometere | Audio Officer |

MINUTE NO. DCL/LN/2017/166

PRELIMINARIES

The chairman called the meeting to order at 9.00 am with a word of prayer.

MINUTE NO. DCL/LN/2017/167

ADOPTION OF THE REPORT ON THE
PETITION BY RESIDENTS OF PONGWE
AREA, LUNGA LUNGA CONSTITUENCY
ON IMMINENT EVICTION FROM
LR.NO.1083, SHIMONI (KWALE)

The Committee considered the report and upon deliberations made the following observations:-

1. THAT, The last verifiable entry on official land documents and transaction of Plot no.1083 in Shimon - Kwale is a charge of a mortgage of 1965 which was never discharged;
2. THAT, There is no record from the Ministry of Lands and Physical Planning or National Lands Commission showing any transfer of Plot no.1083 in Shimon - Kwale from the two Britons i.e Bhovanbhai Lalji Gadhi and Maganlal Chakubhai Pattani to Kibigo Farm Limited;
3. THAT, There are claims of indenture by Kibigo Farm Limited which is not supported by any document in the Ministry of lands and Physical Planning;
4. That, all attempts by the Committee to reach out and get evidence from Kibigo Farm Limited were futile;
5. THAT, There is evidence of settlement by squatters on the land Plot no.1083 in Shimon - Kwale.
6. THAT, the land Plot no.1083 in Shimon - Kwale is held on a freehold basis since 1910.

Upon making the above-mentioned observations the Committee resolved as hereunder:-

1. THAT, There was no possibility of registering the indenture of 1988 since the mortgage of 1965 had not been discharged;
- 2.
3. THAT, The land belongs to Bhovanbhai Lalji Gadhi and Maganlal Chakubhai Pattani and if efforts to trace the legal heirs fails, provisions of Article 62(d)(e) be applied by both the Ministry of Lands and Physical Planning and the National Land Commission to allocate the land to the squatters as individuals or community in the next six months after tabling the report.

Consequently, the report was proposed and adopted unanimously by the Members present and signed by the Chair.

MINUTE NO. DCL/LN/2017/168

ADJOURNMENT

There being no any other business, and the time being 10:00 am the meeting was adjourned.

SIGNED.....

(CHAIRPERSON)

DATE..... 19th May, 2017

11/11/11

MINUTES OF THE 201ST SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON TUESDAY 1ST OCTOBER, 2015, AT THE FOURTH FLOOR BOARD ROOM PROTECTION HOUSE AT 2.00 PM

PRESENT:

1. The Hon. Sarah Korere, M.P. - Chairing
2. The Hon. Onesmus Ngunjiri, M.P.
3. The Hon. John Kihagi, M.P.
4. The Hon. Francis W. Nderitu, M.P
5. The Hon. Joseph Oyugi Magwanga, M.P.
6. The Hon. Hellen Chepkwony, M.P.
7. The Hon. Patrick Makau, M.P.
8. The Hon. Benson Mbai, M.P.
9. The Hon. Gideon Mung'aro, M.P.
10. The Hon. Thomas Mwadeghu, M.P.
11. The Hon. Mathew L. Lempurkel, M.P
12. The Hon. Dr. Paul Otuoma, M.P.
13. The Hon. Eusilah Ngeny, M.P.
14. The Hon. A. Shariff, M.P.
15. The Hon. Kipruto Moi, M.P.
16. The Hon. Shakila Abdallah, M.P.
17. The Hon. Kanini Kega, M.P
18. The Hon. Bernard Bett, M.P.
19. The Hon. Hezron Awiti Bollo, M.P
20. The Hon. Francis Njenga Kigo, M.P.

ABSENT WITH APOLOGIES:

1. The Hon. Alex Mwiru, M.P. - Chairperson
2. The Hon. Moses Ole Sakuda, M.P. - Vice Chairperson
3. The Hon. Esther Murugi, M.P.
4. The Hon. Julius Ndegwa, M.P.
5. The Hon. George Oner, M.P.
6. The Hon. Mutava Musyimi, M.P.

ABSENT WITHOUT APOLOGIES:

1. The Hon. Oscar Sudi, M.P
2. The Hon. Mpuru Aburi, M.P.
3. The Hon. Suleiman Dori, M.P.

IN ATTENDANCE:

KENYA NATIONAL ASSEMBLY

1. Mr. James Ginono Clerk Assistant I

- | | |
|------------------------|-------------------------|
| 2. Ruth Mwhaki | Clerk Assistant III |
| 3. Mr. Emmanuel Muyodi | Clerk Assistant III |
| 4. Christine Odhiambo | Legal Counsel |
| 5. Mr. Noah Too | Research Officer |
| 6. Mr. Yakub Ahmed | Media Relations Officer |

MINISTRY OF LANDS AND PHYSICAL PLANNING

~~1. Dr. Fred Matiangi~~ ~~A.g Cabinet Secretary for Ministry of Lands and Physical Planning~~

MINUTE NO. DCL/LN/2015/716 PRELIMINARIES

The Chairman called the meeting to order at 2.15 p.m. with a word of prayer from the Hon. John Kihagi, M.P.

MINUTE NO. DCL/LN/2015/717 ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as hereunder after being proposed by the Hon. John Kihagi, M.P. and seconded by the Hon. Gideon Mung'aro, M.P.

AGENDA

1. Prayers
2. Preliminaries/introduction
3. Confirmation of Minutes
4. Matters Arising
5. Bills
6. Petition
7. Papers
8. Statements
9. **Substantive Agenda:- Meeting with Dr. Fred Matiagi, Cabinet Secretary for Ministry of Lands on Petition by residents of Pongwe Area, Lunga Lunga Constituency on imminent eviction from LR. NO. 1083 Shimoni, Kwale**
10. Any Other Business
11. Date of the Next Sitting

MINUTE NO. DCL/LN/2015/718

SUBMISSION FROM THE CABINET SECRETARY

Dr. Fred Matiagi, Acting Cabinet Secretary Ministry of Lands, Housing and Urban Development accompanied by the Principal Secretary, Ms. Mariam El. Maawy, Mr. Peter Kahuho, Ag. Secretary Lands, Mr. Augustine Masinde, Director physical Planning, Mr. Cesare N. Mbaria, Director of Surveys, Ms. Terry Gathagu, Head of Legal Services, Mr. Francis K. Orioki, Principal Land Registrar and Mr. Paul Mwangi, informed the committee as follows: -
That,

Petition by Residents of Pongwe area, Lunga Lunga Constituency on imminent Eviction from LR 1083

The Committee learnt as hereunder:

1. Before 1498, the East African Coast Land was inhabited by Africans of Bantu origin and Swahili people, who used to trade with Arabs from the Arabian Peninsula;

2. Before the coming of the Portuguese to East Africa, the land was communally owned by Africans and Swahili people who used to trade with Arabs from the Arabian Peninsula;
3. In 1498, the Portuguese explorers headed by Vasco Da Gama were among the earliest Europeans to set foot on the East African Coast;
4. In 1895, the East Africa Protectorate (E.A.P) in Kenya attracted settlers from Britain, South Africa and other British Dominions;
5. In 1901, registration of Documents Act was enacted to register all documents related to land (such documents conferred, limited or extinguished rights, titles or interest in land);
6. Crown Land (Government Land) was defined by East African Land Order in Council (1901) as all Public Land within the larger East Africa Protectorate;
7. In 1902, the Commissioner of Land promulgated Crown Land Ordinance in order to support the 1901 Order in Council. The Commissioner was empowered to sell freehold estates for the land having an acreage of less than 1000 acres and also to sell any land which was not under African occupation without the consent of tribal chief (such land was referred as wasted and unoccupied);
8. In 1908, the Land Titles Act (LTA Cap 282) was enacted to register land covering the 10 miles coastal strip. This was land recovered from Muscat to Zanzibar. The 10 miles coastal strip was leased to the British East African Protectorate by the Sultan of Zanzibar in 1895;
9. In 1910, the Commissioner of Land, on behalf of His Majesty King George the 5th, granted LR. No. 1083 (320.12 acres) to Charles Anderson at a consideration of 642 rupees. This land was granted under freehold tenure (fee simple) subject to the Crown Land Ordinance of 1902, which empowered the Commissioner to sell land on freehold interest;
10. In 1946 Probate dated 17th April 1956 granted by H.M. High Court of Justice at Bristol and sealed in the Supreme Court of Kenya at Mombasa on 13th December, 1947 to Frederica Margarita Louie Gove as Executrix of the will of Charles Arthur Anderson deceased;
11. In 1947 conveyance dated 4th May, 1947 to Theodore Marinus Schouten for Kshs. 3,200 to hold the land in fee simple (freehold tenure);
12. In 1951 conveyance dated 4th May, 1951 to Bhovanbhai Lalji Gadhi and Maganlal Chakubhai Pattani both British Nationals of P. o. Box 43362 Nairobi for Kshs. 32,000 to hold the land in fee simple (freehold tenure) as common tenants of equal shares;
13. The available records in the Ministry reveal that the land was later sold to Kibigo Farm Limited of P. o. Box 74509 Nairobi. The Directors of Kibigo Land Limited are James Kamau Thuku, Stephen Thuku Mangara and Bernard Njiru.
14. An Indenture dated 19/7/1988 to Kibigo Farm Limited for Kshs. 1,000,000 was registered in Mombasa Land Office but is currently missing from their title deed file;
15. The Land Control Board documents LCR No. 15484 dated 14th March 1988 was sent by the Commissioner of Land to Kwale Musambweni District Officer's office to facilitate the issuance of Land Control Board Consent to transfer LR. No. 1083 on freehold tenure (fee simple);
16. The parcel of land measures approximately 320.12 acres and is located along the road to Shimoni from the main Lunga Lunga Mombasa road;
17. The parcel is bordered by Pongwe Kidimu Adjudication section to the North, LR.No.5032 which is now Shimoni Settlement Scheme extension to the East, LR No. 1080 to the South and

- LR No.5031 to the West. The Parcel cuts across heave wetland traversing from West to East;
18. The Parcel has a freehold title and is highly populated by squatters by past and recent squatters. There are those that come seasonally to farm but reside elsewhere. Some however have temporary structures;
 19. The farm in most sections is full of mature coconut trees, Mangoes and cashew nuts on the dry areas and evidence of rice growing along the swampy areas. There is also heavy subsistence farming of cassava, maize and vegetables;
 - ~~20. Available records show an application to the Lands Control Board for Consent to sell forwarded by Ramesh Manek Advocates dated 3rd March 1988;~~
 - ~~21. The registered owners as per the records are Mr. Bhovanbha Hahji Gandhi and Maganlal Chakubhai Pattani;~~
 22. The Ministry does not have conclusive details of the History, acquisition, sale and transfer of the land in its records.

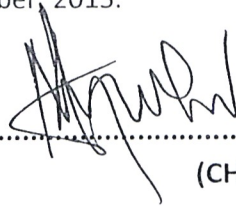
MINUTE NO. DCL/LN/2015/719

ADJOURNMENT & DATE OF THE NEXT

SITTING

There being no any other business, and the time being 3.05 pm, the meeting was adjourned. The next meeting will be on Tuesday 6th October 2015.

SIGNED



.....
(CHAIRPERSON)

DATE

19th May, 2017
.....

MINUTES OF THE 200TH SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON TUESDAY 1ST OCTOBER, 2015, AT THE FOURTH FLOOR BOARD ROOM PROTECTION HOUSE AT 10.00 AM

PRESENT:

1. The Hon. Sarah Korere, M.P. - Chairing
2. The Hon. Onesmus Ngunjiri, M.P.
3. The Hon. John Kihagi, M.P.
4. The Hon. Francis W. Nderitu, M.P
5. The Hon. Joseph Oyugi Magwanga, M.P.
6. The Hon. Hellen Chepkwony, M.P.
7. The Hon. Patrick Makau, M.P.
8. The Hon. Benson Mbai, M.P.
9. The Hon. Gideon Mung'aro, M.P.
10. The Hon. Thomas Mwadeghu, M.P.
11. The Hon. Mathew L. Lempurkel, M.P
12. The Hon. Dr. Paul Otuoma, M.P.
13. The Hon. Eusilah Ngeny, M.P.
14. The Hon. A. Shariff, M.P.
15. The Hon. Kipruto Moi, M.P.
16. The Hon. Shakila Abdallah, M.P.
17. The Hon. Kanini Kega, M.P
18. The Hon. Bernard Bett, M.P.
19. The Hon. Hezron Awiti Bollo, M.P
20. The Hon. Francis Njenga Kigo, M.P.

ABSENT WITH APOLOGIES:

1. The Hon. Alex Mwiru, M.P. - Chairperson
2. The Hon. Moses Ole Sakuda, M.P. - Vice Chairperson
3. The Hon. Esther Murugi, M.P.
4. The Hon. Julius Ndegwa, M.P.
5. The Hon. George Oner, M.P.
6. The Hon. Mutava Musyimi, M.P.

ABSENT WITHOUT APOLOGIES:

1. The Hon. Oscar Sudi, M.P
2. The Hon. Mpuru Aburi, M.P.
3. The Hon. Suleiman Dori, M.P.

IN ATTENDANCE:

KENYA NATIONAL ASSEMBLY

1. Mr. James Ginono Clerk Assistant I

- | | |
|------------------------|-------------------------|
| 2. Ruth Mwhaki | Clerk Assistant III |
| 3. Mr. Emmanuel Muyodi | Clerk Assistant III |
| 4. Christine Odhiambo | Legal Counsel |
| 5. Mr. Noah Too | Research Officer |
| 6. Mr. Yakub Ahmed | Media Relations Officer |

NATIONAL LAND COMMISSION

-
- | | |
|------------------------------|------------------------------------|
| 1. Dr. Mohammed Swazuri | Chairman, National Land Commission |
| 2. Mr. Cyrus Kiogora Mburugu | Senior Lands Officer |
-

MINUTE NO. DCL/LN/2015/716 PRELIMINARIES

The Chairman called the meeting to order at 10.15 a.m. with a word of prayer from the Hon. John Kihagi, M.P.

MINUTE NO. DCL/LN/2015/717 ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as hereunder after being proposed by the Hon. John Kihagi, M.P. and seconded by the Hon. Gideon Mung'aro, M.P.

AGENDA

1. Prayers
 2. Preliminaries/introduction
 3. Confirmation of Minutes
 4. Matters Arising
 5. Bills
 6. Petition
 7. Papers
 8. Statements
 9. **Substantive Agenda:- Meeting with Dr. Mohamed Swazuri, Chairman – National Lands Commission on Petition by residents of Pongwe Area, Lunga Lunga Constituency on imminent eviction from LR. NO. 1083 Shimoni, Kwale**
-
10. Any Other Business
 11. Date of the Next Sitting

MINUTE NO. DCL/LN/2015/718

SUBMISSION FROM THE NATIONAL LAND COMMISSION

While appearing before the Committee, Dr. Mohammed Swazuri, Chairman, National Land Commission and Mr. Cyrus Kiogora Mburugu, Senior Lands Officer informed the Committee as follows:

Petition by Residents of Pongwe area, Lunga Lunga Constituency on imminent Eviction from LR 1083

The Committee learnt as hereunder:

1. Plot no.1083 in Shimon in Kwale measures approximately 320 acres and is situated along Shimoni Road. Pongwe Kidimi adjudication section and Shimoni Settlement Scheme border it;

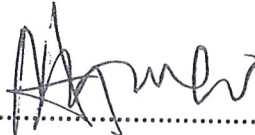
2. Available documentation indicate that the Indenture was entered on the 11th June 1910 and registered at the registry of deeds at Shimoni as no.19 of 1910 between His late Most gracious King Edward the Seventh on the one part and Charles Arthur Mason Anderson on the other;
3. Another indenture was entered on the 19th July 1988 between Bhovanbhal Laiji Gadhi and Maganlal Charhubai Pattani (vendors) and Kibigo Ltd on the other (purchasers);
4. Kibigo Limited are the current owners since 1988;
5. There are various other indentures entered along the years in Mombasa Land registry;
6. Details of the land as it relates to the acquisition sale and transfer of the land are not readily available. An application for consent to transfer the land from the land control board is however available;
7. Most of the leases in the coastal strip were on leasehold. The specific Land is however on freehold as per the available documents. There is a possibility that the lease could have changed from leasehold to freehold during the transfer;
8. Kwale leaders have approached the NLC and requested that the NLC calls for a public review of leases; The Directors of Kibigo limited have severally tried to negotiate with the squatters on relocation and possible compensation but without success;
9. The plot is heavily squattered by past and recent entrants. There are those who live permanently there while others farm and live elsewhere; and
10. The land has mature fruit trees like mangoes, coconut and cashew nuts.

MINUTE NO. DCL/LN/2015/719

ADJOURNMENT & DATE OF THE NEXT
SITTING

There being no any other business, and the time being 13.05 pm, the meeting was adjourned. The next meeting will be on Tuesday 6th October, 2015.

SIGNED


.....
(CHAIRPERSON)

DATE

20th May 2012
.....

1998

MINUTES OF THE 152ND SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON
LANDS HELD ON THURSDAY, 7TH MAY, 2015 IN PONGWE, LUNGA LUNGA
CONSTITUENCY AT 11.00 A.M

PRESENT:

1. The Hon. Alex Mwiru, M.P. (Chairperson)
2. The Hon. Onesmas Ngunjiri, M.P.
3. The Hon. John Kihagi, M.P.
4. The Hon. Eusilah Jepkosgei, M.P.
5. The Hon. Benard Bett, M.P.
6. The Hon. Benson Mbai, M.P.
7. The Hon. Gideon M. Mung'aro, M.P.
8. The Hon. Hezron Awiti Bollo, M.P.
9. The Hon. George Oner Ogallo, M.P.
10. The Hon. Thomas Mwadeghu, M.P.
11. The Hon. Magwanga Joseph Oyugi, M.P.

ABSENT WITH APOLOGIES

1. The Hon. Moses Ole Sakuda, M.P. (Vice Chairperson)
2. The Hon. Mutava Musyimi, M.P.
3. The Hon. Francis W. Nderitu, M.P.
4. The Hon. Francis Njenga, M.P.
5. The Hon. A. Shariff, M.P.
6. The Hon. Kipruto Moi, M.P.
7. The Hon. Oscar Sudi, M.P.
8. The Hon. Hellen Chepkwony, M.P.
9. The Hon. Sarah Korere, M.P.
10. The Hon. Julius Ndegwa, M.P.
11. The Hon. Kanini Kega, M.P.
12. The Hon. Esther Murugi, M.P.
13. The Hon. Suleiman Dori Ramadhani, M.P.
14. The Hon. Lekidime Lempurkel Mathew, M.P.
15. The Hon. Shakila Abdallah, M.P.
16. The Hon. Paul Otuoma, M.P.
17. The Hon. Aburi Lawrence Mpuru, M.P.
18. The Hon. King'ola Patrick Makau, M.P.
19. The Hon. Oscar Sudi, M.P.

IN ATTENDANCE

1. The Hon. Khatib Abdallah Mwashetani, M.P. - Lunga Lunga Constituency
 2. The Hon. Zainab Chidzuga, M.P. - Kwale County Women Representative
-

KWALE COUNTY COMMISSIONERS OFFICE

1. Mr. Mwangangi Mwanja –Deputy County Commissioner

KENYA NATIONAL ASSEMBLY

1. Mr. James Ginono Clerk Assistant I
 2. Ms. Ruth Mwihaki Clerk Assistant III
 3. Mr. Muyodi Emmanuel Clerk Assistant III
 4. Mr. Saitoti Kone Audio Officer
-

MINUTE NO. DCL/LN/2015/505

PRELIMINARIES

The Chairman called the meeting to order at 11.10 a. m with a word of prayer.

MINUTE NO. DCL/LN/2015/506

SUBMISSIONS FROM THE PETITIONERS

1. LR.1083 SHIMONI KWALE

Hon. Nassoro B. Mgutta, Area Member of the County Assembly, Mr. Halfan C. Kiserecho-Sub-location Chairman, Mr. Badudu R. Kitwaya- elder, and Mr. Mwinyani Akida –Kiwambale area informed the Committee as follows:

- a. The land is in Pongwe, Kidim Location, Pongwe Kikomeni Ward in Lunga Lunga Constituency and measures approximately 322 acres;
- b. The original inhabitants of the land were 8 and came from Bandu and Tanzania in Nyamwezi and settled in the area in the 1890's led by Chief Mohamed Msicha and a group of other men who included Muhaji Jabu, Halfani Kiserecho, Halfani Mwachasho, Ali Mpunguti, Hamisi Mwaushanga, Mtwana Mwakotso ,Thomas Mvusumba and Sahim Mwakubwa who settled with their families;
- c. The land was bare when they started settling;
- d. In 1910, a white settler, Mr. Charles Anduson arrived and the British crown then alienated 320.12 acres and granted it to him on leasehold basis. The local families had by then expanded into several families;
- e. When the white man left, he left the farm to the manager who was an Indian, the manager later sold the land in 1985 before the expiry of the lease for Kshs.1 million as per the searches in Mombasa Lands Office;
- f. The manager sold the land claiming that those living within it were his employees;
- g. There was no transfer from the white settler to the Indian farm manager nor was there a transfer from the manager to the new owners, Kibingo farm;

- h. The first buyer from the manager could not take possession of the land since it was occupied;
- i. The petitioners are not aware if the manager is still alive or not;
- j. In 1985, the lease changed from leasehold to freehold;
- k. On 5th September 2014, the residents received a letter from Mwaura and Wachira advocates giving them notice to vacate the land while informing them that Kibigo farm limited had sold the land to one Swaleh A. Bajabir and requires them to vacate the land to enable Kibigo to hand over vacant possession to the new owner;
- l. Recently, one Mr. Njue threatened to evict the squatters residing in the land. He even approached local leaders and promised them money if they were able to convince the residents to vacate the land;

Committee Observation

The Committee observed the following:

- (i). The area had public utilities namely Mosque, cemetery and a nursery school but has no public school or hospital;
- (ii). The entire shamba is occupied by squatters who have planted trees and the squatters are practicing subsistence farming in the land;

Committee Resolution:

That the National Land Commission to be invited to appear before the Committee on the Petition.

2. KENYA PORTS AUTHORITY LAND LR No.16121

Mr. Hussein Hapicha Mamo, Senior Surveyor at the Kenya Ports Authority informed the Committee that:

- a. The Kenya Ports Authority owns 2.516 ha (about 6.25 acres) in Baharini;
- b. KPA bought the land in 1974 from Rahole Enterprises (LR no.16121);
- c. During purchase, the land was vacant but area leaders later grabbed the land and subdivided it. The title is however still held by KPA;
- d. The land has been set aside for fisheries port. Expert from Netherlands have conducted studies and established that the area is ideal for a fisheries port.
- e. There are claims of several other titles existing to the land whereas Kenya Ports Authority has the original title.

He thereafter tabled the following documents:

- Copies of the original title and transfer document from Lahore to Kenya Ports Authority (grant no 23255)
- Deed plan for the land (no.162048)

3. MSAMBWENI COUNTY REFERRAL HOSPITAL

Mr. Daniel N. Mangale, board member, Msambweni County referral Hospital informed the Committee that the hospital land's (LR no.2606) original title was under the Kwale County Council. The title has since been subdivided and about 36 ha (322 acres) of the hospital land in prime areas has been sold and only about 15 ha is remaining.

He requested that the Committee intervenes in the matter to ensure that the hospital land is secured.

Committee Resolution

The Committee resolved that the complainant writes to the Committee to look into the matter and attaches relevant evidence/documents and thereafter the Hospital Board be invited to appear before the Committee.

4. WASINI LAND

Mr. Alawi Abzain Alawi informed the Committee as follows:

- a) Plot no.33 has a land ordinance title of 1908;
- b) The land belongs to his family and lies between Wasini and Mkwiro. It's vacant with quarrying going on;
- c) On 23/5/1969, court ruling showed Hassan Bin Nassir and Alawi Nassir as owners;
- d) Family wrote to the chief land registrar who confirmed ownership to the family;
- e) In 1979, Wasini Island was declared an adjudication section;
- f) In 1981, the family sued those who issued titles
- g) In 1985, ruling was given and no appeals were conducted;
- h) On 11/4/1997 vide a gazette notice no.1948 the title deeds were cancelled;
- i) The main issue is that some of the title holders are not Wasini residents;
- j) The land has no squatters;
- k) There are 87 people who grabbed the land and they include senior government officials (list of names tabled);
- l) 10 % of the land is owned by the family of the local chief who are not part of the Wasini family;
- m) Wasini family is not staying on the land;
- n) Those outsiders who got the land were given, as evidenced from the green cards to protect the family of the local chief;
- o) After the 1995 ruling, they started building since they could not sell the land;
- p) They were seeking the intervention of the Committee for the land to be surveyed as per the court ruling of 1985.

Mr. Feizal Abdallah Mohamed, Chief informed the Committee as follows:

- a) He served as chief between 1987 and 2004;
- b) He owns 5.5 acres but has since subdivided and sold 2 acres ;
- c) The complainant family did participate in the adjudication exercise;

- d) The Wasini residents were not involved in the court process and only received court orders informing them that the title deeds had been cancelled;
- e) Over 50 people have built permanent structures in the land.

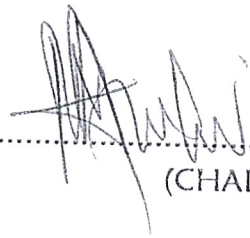
Committee Resolutions

- a) That the Committee visits Wasini Island on a date to be scheduled.
- b) The Ministry of Lands submits a report on Wasini land, LR 1083-Pongwe, Kenya Ports Authority and Msambweni(Country Referral Hospital land) in 7 days.

MINUTE NO. DCL/LN/2015/507 ADJOURNMENT & DATE OF THE NEXT SITTING

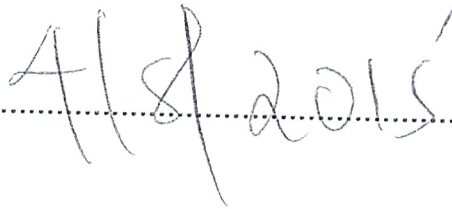
And the time being thirty six Minutes past 3 O'clock, the meeting was adjourned.

SIGNED



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(CHAIRPERSON)

DATE



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MINISTRY OF LAND, HOUSING & URBAN DEVELOPMENT

MEETING WITH DEPARTMENTAL COMMITTEE ON LANDS

The Petition by residents of Pongwe area in Kwale, Lunga Lunga Constituency on imminent eviction from LR. No. 1083, Shimoni (Kwale County)

- (a) Chronological history of the land:
- (b) Acquisitions, sale and transfer done on the land:
- (c) How the land changed from leasehold to freehold.

Question (a) Chronological history of the land

Hon. Chairman, I wish to respond as follows;

Before 1498, the East African Coast Land was inhabited by Africans of Bantu origin and Swahili people, who used to trade with Arabs from the Arabian Peninsula.

1498 – The Portuguese explorers headed by Vasco da Gama were among the earliest Europeans to set foot on East African Coast.

1593 – Mombasa became the site of Fort Jesus meant to strengthen Portuguese economic hegemony.

1730 – The Ottomans Arabs of the Omani Sultanate under Seyyid Said defeated the Portuguese in the Kenyan coast.

1866 – The Anglo-German treaty recognize 10 mile coast strip as the rightful dominion of sultanate of Zanzibar.

1895 – The East Africa Protectorate (E.A.P.) in Kenya was known to attract European settlers from Britain, South Africa and a few other British dominions.

1901 – Registration of Document Act was enacted to register all documents related to land (such documents conferred, limited or extinguished rights, title or interest in land).

Crown Land (Government Land) was defined by East African Land Order in Council (1901) as all Public Land within the larger East Africa Protectorate.

1902 – The Commissioner of Land promulgated Crown Land Ordinance 1902 in order to support the 1901 Order in Council. The Commissioner was empowered to sell freehold estates for land having an acreage of less than 1000 acres and also to sell any land which was not under Africans occupation without the consent of tribal chief (Such Land was referred to as waste and unoccupied).

1908 – The Land Titles Act (LTA Cap 282) was enacted to register land covering the 10 miles coastal strip. This was land recovered from the Portuguese in 1856 when Sultan Said Seyyid transferred his headquarters from Muscat to Zanzibar. The 10 miles coastal strip was leased to the British East African Protectorate by the Sultan of Zanzibar in 1895.

HISTORY OF LR NO. 1083 – SHIMONI KWALE

This land was before the coming of Portuguese to East Africa, communally owned by Africans and Swahili people who used to trade with Arabs from the Arabian Peninsula.

In **1910**, the Commissioner of Land, on behalf of His Majesty King George the 5th, granted **LR No. 1083 (320.12 Acres)** to Charles Anderson at a consideration of 642 rupees. This land was granted under freehold tenure (fee simple) subject to the Crown Land Ordinance of 1902, which empowered the Commissioner to sell land on freehold interest. (**Annex A - Copy of 1910 Indenture attached**).

1946 Probate dated 19/4/1946 granted by H.M. High Court of Justice at Bristol and sealed in the Supreme Court of Kenya at Mombasa on 13/12/1947 to Frederica Margarita Louie Gove as Executrix of the Will of Charles Arthur Anduson deceased. (**Annex B - Copy of probate attached**).

1947 Conveyance dated 17/4/1947 to Theodore Marinus Schouten for Khs.3,200/= to hold the land in fee simple (freehold tenure). (**Annex C - Copy of indenture attached**).

1951 Conveyance dated 4/5/1951 to Bhovanbhai Lalji Gandhi & Maganlal Chakubhai Pattani both British Nationals of P.O. Box 43362 Nairobi for Khs.32,000/= to hold the land in fee simple (freehold tenure) as tenants in common in equal shares. (**Annex D - Copy of indenture attached**).

1965 Mortgage dated 15/4/1965 to Mavji Ruda in respect of ½ share of Bhovanbhai Lalji Gandhi for Kshs.75,000/=. (**Annex E - Copy of mortgage documents attached**).

Available records in the Ministry reveal that the land was later sold to Kibigo Farm Limited of P.O. Box 74509 Nairobi. The Directors of Kibigo Land Limited are James Kamau Thuku, Stephen Thuku Mangara and Benard Njinu. Indenture dated 19/7/1988 to Kibigo Farm Limited for Ksh.1,000,000/= was registered in our Mombasa Land Office but is currently missing from our deed file. The Land Control Board documents **LCR No. 15484** dated 14/3/1988 was sent by the Commissioner of Land to Kwale-Musabweni District Officer's office to facilitate the issuance of Land Control Board Consent to transfer **LR No. 1083** on freehold tenure (fee simple).

Question (b) Acquisitions, sale and transfer done on the land:

The Acquisitions, sale and transfer on L.R. No. 1083, Shimoni (Kwale County) is as stated at question (a) above.

Question (c) How the land changed from leasehold to freehold

This land has never been held under leasehold tenure, history reveals that the land has been held under freehold tenure from the beginning of the 20th century.

ANNEX 5



NATIONAL LAND COMMISSION

Telegrams "MINILANDS" Nairobi

Telephone Nairobi 2718050

When replying please quote

ARDHI HOUSE
NGONG ROAD
P.O. BOX 41777
NAIROBI

Ref: NLC/PARL/6

14th October, 2015

The Clerk of National Assembly
Parliament Building
NAIROBI

Dear Sir,

RE: REPLY TO PARLIAMENTARY PETITIONS

Further to our appearance in parliament on 1st October 2015, to give answers to various petitions forwarded to National Land Commission, we were ordered to provide further details on some petitions and to re do others. The revised petitions are now forwarded herewith.

ABIGAEL MBAGAYA - MUKOLWE

For: CHAIRMAN

NATIONAL LAND COMMISSION

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According to our correspondences file (CF), registration transactions were done under GLA Registration file Vol.I Folio 79, File No. M.41 Mombasa Coast Registry and a search for this file in registry has proved fruitless hence not possible to give the current status of the said title.

- b) Establish whether the lease is leasehold or freehold and how the lease changed from leasehold to freehold if the latter is the case.**

Answer

From the available information, L.R. No. 1083 is held on a freehold title, from the date of first registration, that is why in 1988, the owners had to apply for land control board consent to transfer the said land to Kibigo Farm as it is narrated under item A here above.

Additional information needed after presenting in parliament on 1/10/2015

Committee insisted on National Land commission to provide copy of the title for LR No. 1083 and the Commission has not been able to get the same from the chief land registrar.

Petition No. 3

Petition by the residents of Chuka Igambangombe Constituency on alleged grabbing of public land belonging to the Township Primary School

- a) Provide a history of the land and the L.R. No.....
- b) Provide information regarding the acreage and current status of the land occupied by Chuka Township Primary School.
- c) Provide the Physical Plan for the school and the original Town Development Plans showing the school initial allocation.

