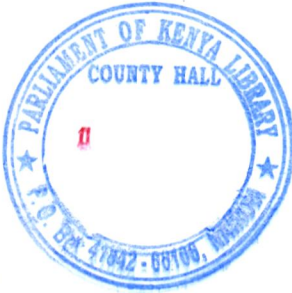


Approved for tabling in the House.

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SNA
7/6/2022



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SIXTH SESSION – 2022

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON-

(PUBLIC PETITION NO 071 OF 2021)

BY THE BOARDS OF MANAGEMENT AND PARENTS CHANGAMWE PRIMARY SCHOOL, CHANGAMWE SECONDARY SCHOOL, AND CHANGAMWE GIRLS SECONDARY SCHOOL REGARDING ENCROACHMENT OF SCHOOL LAND

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI


 THE NATIONAL ASSEMBLY	
DATE: 08 JUN 2022	DAY: WEDNESDAY
TABLED BY: Hon. Rachael Nyamai, MP. The chairperson, Lands.	
CLERK AT THE TABLE: Fwini	JUNE 2022 Auriki

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CHAIRPERSON'S FOREWORD

The Hon. Omar Mwinyi, MP on 1st December 2021, conveyed to the House Public Petition No 071 of 2021 on behalf of the boards of management and parents of Changamwe Primary School, Changamwe Secondary School, and Changamwe Girls Secondary School regarding encroachment of school land.

While considering the Petition, the Committee heard from the Petitioners on 1st April 2022 during a field visit to Changamwe and the Chairperson, National Land Commission on 17th May 2022 at Parliament Buildings. The Committee also received written submissions from the Cabinet Secretary, Ministry of Lands and Physical Planning, dated 31st May 2022.

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 consideration of the Petition. The Committee is also thankful to the Petitioners, the Cabinet Secretary, Ministry of Lands and Physical Planning, and the Chairperson National Land Commission for the submissions they made to the Committee.

Pursuant to the provisions of Standing Order 227 and 199, it is my pleasant duty to table the Report of the Departmental Committee on Lands on its consideration of Public Petition No 071 of 2021 by Changamwe Primary School, Changamwe Secondary School, and Changamwe Girls Secondary School.

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

EXECUTIVE SUMMARY

This report responds to the prayers in Public Petition No 071 of 2021 by the boards of management and parents of Changamwe Primary School, Changamwe Secondary School, and Changamwe Girls Secondary School regarding encroachment of school land.

The Petitioners requested the National Assembly, through the Departmental Committee on Lands intervenes in the matter to secure a comprehensive investigation of the matter by the Ministry of Lands and Physical Planning in collaboration with the National Land Commission with a view to facilitating the reverting of the said parcel of land back to the schools.

Regarding this prayer, the Committee observed that the Cabinet Secretary, Ministry of Lands and Physical Planning submitted that survey of plot No. MN/V/2562 vide Deed Plan No. 86813 of October 1969 confirmed that the land in question measuring 13.8 acres was Government Land set aside for Changamwe Primary.

The Committee also noted that in 1995, parcel no. 3458 measuring 0.8172 Ha was surveyed and hived off from the public land. Further parcel no. 3848 measuring 0.45 Ha was surveyed and hived off from the remainder of the public land in the same year. Land parcel No. 3848 is currently under the possession of Changamwe Secondary school with school buildings on it. A third parcel of land parcel no. 3893 was also hived off from the same Government land.

The Committee also observed that parcel no. 3458 was registered to Turf Developers Limited but transferred ownership interest to Ashok Labhshanker Doshi & Pratibhai Ashock Doshi. The said allocation has also been litigated in three suits. However, the Committee noted that two more parcel plots no. 3848 & 3893 were the irregular allocated numbers with a view to issuing titles to private individuals. However, the two parcels have not been registered. Therefore, the Committee noted a need to urgently stop the processing of titles for the two parcels as they were irregularly hived off from public land meant for three Changamwe schools.

The Committee further observed the failure of the Ministry of Lands and Physical Planning to conduct a ground assessment and submit a ground report prior to the issuance of a grant for land parcel MN/VI/3458 to Turf Developers Limited in 1996. The ground report could have clearly indicated that the land was by then occupied by Changamwe Primary School and Changamwe Secondary schools. Therefore, it was public land and not available for allocation.

The delay in the issuance of title deeds to the three schools for the land they currently occupy continues to expose the public land to illegal acquisition. Therefore, there is an urgent need for the Ministry of Lands and Physical Planning in collaboration with the National Land Commission and the Ministry of Education to facilitate the issuance of title

deeds to Changamwe Primary School, Changamwe Secondary School and Changamwe Girls Secondary schools to secure the land

The Committee recommends that the Cabinet Secretary, Ministry of Lands and Physical Planning, in consultation with the Chairperson, National Land Commission should issue title deeds to Changamwe Primary School, Changamwe Secondary School and Changamwe Girls Secondary school for the land they currently occupy to safeguard it from further illegal subdivision and acquisition by private entities within ninety days of the tabling of this report.

The Committee also recommends that the Chief Land Registrar and the Director-General Land Use and Physical Planning Ministry of Lands and Physical Planning immediately stop the processing titles for land numbers No. 3848 and 3893.

Finally, the Committee recommends that the Ethics and Anti-Corruption commission consider investigating the circumstances under which Land Parcel No. MN/VI/3458 was hived off from Government Land set aside for Changamwe Primary school as per Deed Plan No. 86813 of October 1969 and Part Development Plan Dept. Ref 12.25 CT 3.77 dated 4th November 1977 with a view to instituting measures to revert the land to public use.

PART 1

1.0 PREFACE

1.2 Mandate of the Committee

1. The Departmental Committee on Lands is established under the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference amongst others:

- (i) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations, and estimates of the assigned Ministries and departments.*
- (ii) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation.*
- (iii) make reports and recommendations to the House as often as possible, including the guidance of proposed legislation.*
- (iv) Study and review all legislation referred to it*
- (v) study, access, and analyse the relative success of the Ministries and departments as measured by the results obtained compared with their stated objectives.*
- (vi) investigate and inquire into all matters relating to the assigned Ministries and departments as they deem necessary and referred to them by the House.*
- (vii) study and review all legislation referred to it.*

1.2 Committee subjects

2. The Committee is mandated to consider the following subjects:

- a. Lands
- b. Settlement

1.3 Oversight

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

1.4 Committee Membership

4. The Committee membership comprises:

Chairperson

Hon. Dr Rachael Nyamai, CBS, MP
Kitui South Constituency

Jubilee Party

Vice-Chairperson

Hon. Mishi Mboko, MP
Likoni Constituency

Orange Democratic Movement (ODM)

Hon. Benjamin Washiali, CBS, MP
Mumias East Constituency

Jubilee Party

Hon Joshua Kutuny Serem, MP
Cherangany Constituency

Jubilee Party

Hon. Omar Mwinyi, MP
Changamwe Constituency

Orange Democratic Movement (ODM)

Hon. William Kisang, MP

Hon Jubilee Party

Hon. Ahmed Kolosh, MP
Wajir West Constituency

Jubilee Party

Hon. Ali Mbogo, MP
Kisauni Constituency

Wiper Democratic Movement (WDM)

Hon. Babu Owino, MP
Embakasi East Constituency

Orange Democratic Movement (ODM)

Hon. Caleb Kipkemei Kositany, MP
Soy Constituency

Jubilee Party

Hon George Aladwa, MP
Makadara Constituency

Orange Democratic Movement (ODM)

Hon George Risa Sunkuyia, MP
Kajiado West Constituency

Jubilee Party

Hon. John Muchiri Nyaga, MP
Manyatta Constituency

Jubilee Party

Hon. Josphat Gichunge Kabeabea, MP
Tigania East Constituency

Party of National Unity (PNU)

Hon. Lilian Tomitom, MP
West Pokot County

Jubilee Party

Hon. Owen Yaa Baya, MP
Kilifi North Constituency

Orange Democratic Movement
(ODM)

Hon. Patrick Munene Ntwiga, MP
Chuka/Igambangombe Constituency

Jubilee Party

Hon. Samuel Kinuthia Gachobe, MP
Subukia Constituency

Jubilee Party

Hon. Teddy Mwambire, MP
Ganze Constituency

Orange Democratic Movement
(ODM)

1.5 Committee Secretariat

5. The Committee secretariat
comprises:

Lead Clerk

Mr. Leonard Machira

Senior Clerk Assistant

Mr. Ahmad Guliye
Clerk Assistant II

Ms. Jemimah Waigwa
Legal Counsel I

Mr. Collins Namulen
Fiscal Analyst III

Ms. Maureen Kweyu
Audio Recording Officer

Dr Kefa Omoti
Principal Research Officer

Mr. Joseph Okongo
Media Relations Officer

Ms. Peris Kaburi
Serjeant at Arms

PART 2

2.0 INTRODUCTION

6. The Hon. Omar Mwinyi, MP on 1st December 2021, conveyed to the House Public Petition No 071 of 2021 by the boards of management and parents of Changamwe Primary School, Changamwe Secondary School, and Changamwe Girls Secondary School regarding encroachment of school land.
7. The Petitioners stated that Changamwe Primary School, Changamwe Secondary School, and Changamwe Girls Secondary School occupy the land registered as plot MN/VI/3458R in Changamwe Constituency. The then Municipal Council of Mombasa legally and procedurally allocated the land to the schools as public utility land.
8. Turf Developers Limited of Post Office Box No. 43240 Mombasa irregularly hived off part of the land and acquired a ninety-nine-year lease for the parcel. Subsequently, the firm in 2010 took possession of the said parcel of land and erected a wall around it. This action by the Company denied the schools the right to access and use the land.
9. The schools have been inconvenienced by the illegal subdivision of the land as they require it for use and expansion, considering the increasing student population that is currently at 2,000 students.
10. The boards of management, teachers, and parents of the three schools, have tried to seek appropriate redress on the matter in vain.
11. The issues in respect of which the Petition is made are not pending in any court of law or constitutional Commission.
12. The Petitioners pray that the National Assembly, through the Departmental Committee on Lands:
 - a. Urgently intervenes in the matter to secure a comprehensive investigation of the matter by the Ministry of Lands and Physical Planning in collaboration with the National Land Commission with a view to facilitating the reverting of the said parcel of land back to the schools.
 - b. Make any other recommendation in the interest of the pupils and students of the three schools as it deems fit in the circumstances of the Petition.

PART 3

3.0 HEARING ON THE PETITION

3.1 Submissions by the Petitioners

13. The Committee met the Petitioners on 1st April 2022. The Petitioner through the Principal Changamwe Secondary School and Board Members of Changamwe Primary School and Changamwe Girls Secondary Schools informed the Members as follows:
14. Changamwe Primary School was established in the late 1960s, and it occupied the land in question as evidenced by original plans for the area that set aside the land as Government land for the development of the school.
15. Changamwe Secondary School and Changamwe Girls Secondary were later built on the same land. However, the three schools were not issued title deeds for the land they occupy to date.
16. The Municipal Council of Mombasa allocated a portion of the land to Turf Development Limited in 1996. Subsequently, Changamwe Secondary School sued the Lands Commissioner and the Attorney-General in 2007 and won the case in 2014. However, Turf Development Limited appealed against the court case and won the appeal, with the title reverting to the Company.
17. The school did not appeal the second case as it had been advised to address the same through the Office of the Attorney-General and that it had made a mistake of suing the Attorney General and the Commissioner of Lands in the first case instead of the Company holding a title to a portion of the land it considered to be public land.
2. The National Land Commission also revoked the title MN/VI/3458 in 2014. Turf Developers Limited protested the revocation of the title and challenged the Commission's recommendation in the High Court in Mombasa. On 8th June 2016, the Court set aside the recommendation on the ground that the Commission had no powers to cancel a title deed for private land. The Commission was not represented in the said appeal.
18. In 1996, two more parcels of land No. 3848 measuring 0.45 Ha parcel of land No. 3893 were surveyed and hived off from the remainder of the public land. Therefore, the delay in issuing title deeds to the three schools continued to expose the land to illegal acquisition

3.2 Submissions by the field officers in Changamwe Sub County

19. The Committee met the field officers from the Ministry of Lands and Physical Planning and the National Land Commission during a field visit to Changamwe on 1st April 2022. The officers responded to the issues raised in the Petition as follows:
20. The land occupied by the school and the surrounding private parcels were part of MN/62562 that was originally surveyed in 1965. The area was marked as public land (PL), but no allotment letter was issued to Changamwe Primary School. The parcel originally measured 13.8 acres.
21. In 1995, parcel no. 3458 measuring 0.8172 Ha was surveyed and hived off from the public land and allocated to Turf Developers Limited.
22. In 1996, another parcel of land No. 3848, measuring 0.45 Ha was surveyed and hived off from the remainder of the public land. The said parcel was currently under the possession of Changamwe Secondary school with school buildings on it. A third parcel of land No. 3893 was also hived off in the same year.
23. The Registrar of Titles Mombasa informed the Committee that Parcels numbers. 3848 and 3893 have not been registered, while parcel No. 3458 was registered to Turf Developers Limited but transferred ownership interest to Ashok Labhshanker Doshi and Pratibhai Ashock Doshi. It was, therefore, possible to salvage Plots Numbers 3848 and 3893 by stopping the processing of Part Development Plans and title deeds.
24. The original plan and the Part Development Plan (PDP) of the original allocation would confirm that the land in question measuring 13.8 acres, was Government land set aside for public utility.
25. The Ministry of Lands and Physical Planning records indicated that the parcel of land known as MN/VI/3858 was registered as a new grant being an allocation from the National Government under title number CR 28149 to Turf Developers Limited of Post Office Box Number 43240 Mombasa. The title was registered on 26th February 1996.
26. The Commissioner of Lands, in a letter dated 14th October 2003 to the District Registrar communicated a complaint received from the parents of Changamwe Primary School and Changamwe Secondary School alleging that the land is part of school land.

27. The District Land Officer in a report dated 21st October 2003 indicated that upon a site visit to the schools, he noted that the allocated plot MN 13839 encroaches onto a football pitch used by the schools and on a building meant for expansion of the schools.
28. The Land Officer opined that the allocation should not have been done since it was earmarked for the expansion of the school. He also observed that the status on the ground should be maintained.
29. The Court in Civil Case No. 162 of 2003 revoked the title in respect of land reference MN/VI/3458. However, the ruling was set aside by a court order dated 14th July 2006 in Misc Application No. 37 of 2014. The Court reinstated the suit property to the first allottee Turf Developers Limited and cancelled all transactions made in respect of the revocation.
30. On 7th July 2014, the National Land Commission vide Gazette Notice No.5022 published a notice recommending revocation of the title issued to Turf Developers Limited. The Company wrote to the Commission vide a letter UK/T1861/4 dated 10th July 2014 protesting the revocation of the title.
31. Turf Developers Limited later filed Judicial Review Misc Application No. 37 of 2014 in the High Court in Mombasa challenging the Commission's recommendation for revocation of the title. On 8th June 2016, the Court set aside the recommendation on the ground that the Commission did not have the power to revoke a title in respect of private land.
32. The current ownership status of the parcel of the land as per the Ministry records indicated that it was transferred to Ashok Labhshanker Doshi and Pratibhai Ashok Doshi vide a transfer dated 24th October 2017 for Kshs. 11,000,000.
33. The Registrar of Titles Mombasa tabled copies of the following documents:
 - a. Certified copy of Grant CR 28149 (MN/VI/3458) issued to Turf Developers Limited
 - b. Copy of letter dated 14th October 2003 from the office of the Commissioner of Lands.
 - c. Copy of letter dated 21st October 2003 from the District Land Officer Mombasa
 - d. Copy of complaint letter dated 13th October 2012 from Changamwe Village Development Committee.
 - e. Certified copies of court orders
 - f. Certified copy of transfer dated 24th October 2017 registered on 10th November 2017

3.3 Submissions by the Cabinet Secretary Ministry of Lands and Physical Planning

34. The Committee received written submissions from the Cabinet Secretary Ministry of Lands and Physical Planning dated June 2022. The Cabinet Secretary responded to the issues raised in the Petition as follows:
35. The parcel currently occupied by the schools originally fell within Government Land as shown on the survey of plot No. MN/V/2562 vide Deed Plan No. 86813 of October 1969.
36. In 1977 the delineated Government Land was planned for a proposed Harambee Secondary School and Changamwe Primary School vide Part Development Plan Dept. Ref 12.25 CT 3.77 dated 4th November 1977.
37. However, current records indicate that in 1995 parcel No. MN/VI /3458 measuring 0.8 172 Ha was surveyed from the proposed public utility plot. The parcel was allocated to Turf Developers Limited and was registered in favour of the Company on 26th February 1996.
38. On 23rd September 1997 the Ministry received a complaint from the two schools indicating that Turf Developers Limited was illegally issued a title to their land. The schools requested the Ministry to recall and cancel the title.
39. In March 2007, the Board of Governors of Changamwe Secondary School instituted Civil Case No.162 of 2007 at the High Court in Mombasa against the Commissioner of Lands and the Attorney-General. The school contested the allocation of plot MN/VI/3893 to Turf Developers Limited.
40. In this regard consent was recorded on 8th December 2009 between the Board of Governors of Changamwe Secondary School and the Commissioner of Lands for the cancellation of Grant No. CR.28149 for plot No. MN/VI/3458. The title was cancelled on 18th December 2009.
41. On 7th July 2014, the National Land Commission vide Gazette Notice No.5022 published a notice recommending revocation of the title issued to Turf Developers Limited. The Company wrote to the Commission vide a letter UK/T1861/4 dated 10th July 2014 protesting the revocation of the title.
42. The consent for the revocation of the title was set aside by the Court in a ruling delivered on 30th October 2015 in Civil Case No. 162 of 20027 at the High Court in Mombasa.

43. Turf Developers Limited later filed Judicial Review Misc Application No. 37 of 2014 in the High Court in Mombasa, challenging the Commission's recommendation for revocation of the title. On 8th June 2016, the Court set aside the recommendation on the ground that the Commission did not have the power to revoke title in respect of private land.
44. The Court directed the Registrar of Titles to reinstate the parcel in favour of Turf Developers Limited. The Registrar reinstated the title on 22nd August 2016.
45. Turf Developer Limited transferred the parcel MN/VI/3458 to Ashok Labhshanker Doshi and Pratibhai Ashok Doshi on 11th November 2017.
46. In conclusion, the Cabinet Secretary stated that the Ministry records indicated that Part Development Plan Dept 12.25. CT.3.77 showed that the subject parcel MN/VI/3458 falls on land that was set aside for the schools. Civil case No. 162 of 2007 in the High Court at Mombasa was still ongoing and recommended that the Committee awaits for the outcome of the case.

3.4 Submissions by the Chairperson National Land Commission

47. The Committee met the Chairperson National Land Commission on 17th May 2022. He responded to the issues raised in the Petition as follows:
48. The parents of Changamwe Primary and Secondary schools requested the Commissioner on Land through a letter dated 23rd September 1997 to recall and cancel the title that was illegally and irregularly granted to Turf Developers Ltd.
49. Turf Developers Ltd instituted a suit Civil Suit No. 485 of 2000 against the Board of Governors of the two schools and the Attorney General claiming that the construction of a wall by the school was illegal and prayed for an injunction to restrain the defendants from trespassing within their land.
50. The Court made a ruling on 10th December 2002 declaring that the suit property belongs to Turf Developers Ltd and the erection of the wall illegal. The Court further granted injunction orders sought by the firm and directed the demolition of the wall. The Court stated that there was no defence to the suit.
51. The school proceeded to institute a suit against the Commissioner of Lands and the Attorney General in Civil Case No. 162 of 2007 in the Mombasa High Court, resulting in a judgement and extraction of a decree dated 8th December 2009 in which consent was recorded revoking

Grant No. CR 28149 for plot LR. MN/VI/3458. The consent was however set aside by a ruling delivered on 30th October 2015 and the suit land reverted to Turf Developers Limited.

52. The school moved to the Commission for revocation of the title. The Commission rendered a decision contained in Gazette Notice No. 5022 dated 18th July 2014 revoking Turf Developers Limited's title to the parcel of land
53. Turf Developers Limited filed a Judicial Review Application, Misc No. 37 of 2014 v the Chairman and Members of the National Land Commission on 18th July 2014 seeking the quashing of the decision of the Commission contained in the above-mentioned gazette notice. The Court granted the orders prayed for and indicated that the Commission had acted ultra vires in the exercise of its function as provided in Section 14(1) of the National Land Commission Act.
54. On 13th June 2018, the Court also dismissed the suit filed by Changamwe Secondary in case No. 162 of 2007 on the ground that the plaintiff failed to comply with a court order dated 31st August 2017 directing the plaintiff to amend the plaint dated 4th July 2007 by adding Turf Developers as a party to the suit.
55. The Chairperson National Land Commission suggested that:
 - a. The school fraternity may consult with other institutions such as the Ethics and Anti-Corruption Commission with a view to finding a way forward.
 - b. The Board of Governors may consider pursuing judicial recourse by way of an appeal or review of the judgment of 10th December 2002 regarding Civil Suit No. 485 filed by Turf Developers Limited.

4.0 ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION

That the National Assembly through the Departmental Committee on Lands intervenes in the matter to secure a comprehensive investigation of the matter by the Ministry of Lands and Physical Planning in collaboration with the National Land Commission with a view to facilitating the reverting of the said parcel of land back to the schools

56. Regarding this prayer, the Committee observed that the land occupied by the Changamwe Primary School, Changamwe Secondary School, Changamwe Girls Secondary School, and its surroundings MN/62562 was originally surveyed in 1965 as per survey of plot No. MN/V/2562 vide Deed Plan No. 86813 of October 1969.
57. In 1977 the delineated Government Land was planned for a proposed Harambee Secondary School and Changamwe Primary School vide Part Development Plan Dept. Ref 12.25 CT 3.77 dated 4th November 1977. However, no allotment letter was issued to the school.
58. In 1995, parcel no. 3458 measuring 0.8172 Ha was surveyed and hived off from the public land. Further parcel no. 3848 measuring 0.45 Ha was surveyed and hived off from the remainder of the public land in the same year. Land parcel No. 3848 is currently under the possession of Changamwe Secondary school with school buildings on it. A third parcel of land parcel no. 3893 was also hived off from the same Government land.
59. The Committee also observed that parcel no. 3458 was registered to Turf Developers Limited but transferred ownership interest to Ashok Labhshanker Doshi and Pratibhai Ashock Doshi. The said allocation has also been litigated in three suits. However, the Committee noted that two more parcel numbers 3848 and 3893 were the irregularly allocated numbers with a view to issuing titles to private individuals, However, the two parcels have not been registered. Therefore, the Committee noted a need to urgently stop the processing of titles for the two parcels as they were irregularly hived off from public land meant for three Changamwe schools.
60. The submissions made by the Cabinet Secretary, Ministry of Lands and Physical Planning indicate that plans and the Part Development Plan (PDP) of the original allocation confirm that the land in question measuring 13.8 acres was Government Land set aside for public utility.
61. The Committee further observed the failure of the Ministry of Lands and Physical Planning to conduct a ground assessment and submit a ground report prior to the issuance of a grant for land parcel MN/VI/3458 to Turf Developers Limited in 1996. The ground report could have clearly indicated that the land was by then occupied by Changamwe Primary School

and Changamwe Secondary schools. Therefore, it was public land and not available for allocation.

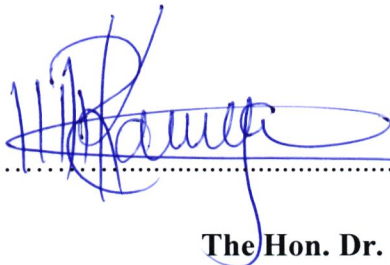
62. The delay in issuance of title deeds to the three schools for the land they currently occupy continues to expose the public land to illegal acquisition. Therefore, there is urgent need for the Ministry of Lands and Physical Planning in collaboration with the National Land Commission and the Ministry of Education to facilitate the issuance of title deeds to Changamwe Primary School, Changamwe Secondary School, and Changamwe Girls Secondary schools to secure the land.
63. The Committee further noted that although the Cabinet Secretary, Ministry of Lands and Physical Planning submitted that Civil case No. 162 of 2007 in the High Court at Mombasa was still ongoing. The submissions made by the Chairperson; National Land Commission indicated that on 13th June 2018 the Court dismissed the suit filed by Changamwe Secondary in case No. 162 of 2007 on the ground that the plaintiff failed to comply with a court order dated 31st August 2017 directing the plaintiff to amend the plaint dated 4th July 2007 by adding Turf Developers as a party to the suit. Therefore, the Committee concluded that there was no case pending in Court regarding the subject of the Petition.
64. Given the foregoing, the Committee was persuaded that there was need to secure a comprehensive investigation of the matter by the Ministry of Lands and Physical Planning in collaboration with the National Land Commission and the Ethics & Anti- Corruption Commission with a view to facilitating the reverting of the said parcel of land back to the schools.

5.0 COMMITTEE RECOMMENDATIONS

65. Under Standing Order 227, the Committee recommends that:

- (i) **The Cabinet Secretary, Ministry of Lands and Physical Planning, in consultation with the Chairperson, National Land Commission should issue title deeds to Changamwe Primary School, Changamwe Secondary School and Changamwe Girls Secondary school for the land they currently occupy to safeguard it from further illegal subdivision and acquisition by private entities within ninety (90) days of the tabling of this report.**
- (ii) **The Chief Land Registrar and the Director-General, Land Use and Physical Planning Ministry of Lands and Physical Planning should immediately stop the processing titles for land numbers No. 3848 and 3893.**
- (iii) **The Ethics and Anti-Corruption Commission should investigate the circumstances under which Land Parcel No. MN/VI/3458 was hived off from Government land set aside for Changamwe Primary school as per Deed Plan No. 86813 of October 1969 and Part Development Plan Dept. Ref 12.25 CT 3.77 dated 4th November 1977 with a view to instituting measures to revert the land to public use.**

Signed.....



Date.....

7/6/2022

The Hon. Dr. Rachael Kaki Nyamai, CBS, MP.

Chairperson, Departmental Committee on Lands

ANNEXE I

ADOPTION LIST



**KENYA NATIONAL ASSEMBLY
TWELFTH PARLIAMENT**

**DEPARTMENTAL COMMITTEE ON LANDS
MEMBERS' ATTENDANCE
ADPOTION LIST -**

Report on the consideration of Public Petition No. 071 of 2021 by Changamwe Primary and Secondary Schools on encroachment of school land

Date: _____ Venue: _____

	NAMES	SIGNATURE
1.	Hon. Dr. Rachael Nyamai, CBS, MP – Chairperson	
2.	Hon. Mishi Mboko, CBS MP V/Chairperson	
3.	Hon. Benjamin Washiali, CBS MP	
4.	Hon. Joshua Kutuny Serem, MP	
5.	Hon. Omar Mwinyi Shimbwa, MP	
6.	Hon. Ahmed Kolosh, MP	
7.	Hon. Ali Mbogo, MP	
8.	Hon. Babu Owino, MP	
9.	Hon. Caleb Kipkemei Kositany, MP	
10.	Hon. George Aladwa, MP	
11.	Hon. George Risa Sunkuyia, MP	
12.	Hon. John Muchiri Nyaga, MP	
13.	Hon. Josphat Gichunge Kabeabea, MP	
14.	Hon. Lilian Tomitom, MP	
15.	Hon. Owen Yaa Baya, MP	
16.	Hon. Patrick Munene Ntwiga MP	
17.	Hon. Samuel Kinuthia Gachobe, MP	
18.	Hon. Teddy Mwambire, MP	
19.	Hon William Kisang MP	

ANNEXE II

ADOPTION MINUTES

MINUTES OF THE 28TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON FRIDAY 3RD JUNE 2022 AT ENGLISH POINT MARINA MOMBASA AT 2:30 PM

PRESENT

- | | |
|--|--------------------|
| 1. Hon. Dr. Rachael Nyamai, CBS, M.P | - Chairperson |
| 2. Hon. Mishi Mboko, CBS, M.P | - Vice-Chairperson |
| 3. Hon. Benjamin Washiali, CBS, M.P | |
| 4. Hon. Omar Mwinyi Shimbwa, M.P | |
| 5. Hon. George Risa Sunkuyia, M.P | |
| 6. Hon. Owen Baya, MP | |
| 7. Hon. Patrick Munene Ntwiga, MP | |
| 8. Hon. Josphat Gichunge Kabeabea, M.P | |
| 9. Hon. Samuel Kinuthia Gachobe, MP | |
| 10. Hon. Teddy Mwambire, M.P | |

APOLOGIES

1. Hon. Joshua Kutuny, MP
2. Hon. Babu Owino, MP
3. Hon. Ali Mbogo, M.P
4. Hon. George Aladwa, M.P
5. Hon. Hon. Caleb Kositany, M.P
6. Hon. John Muchiri Nyaga, MP
7. Hon. William Kisang, MP
8. Hon. Ahmed Kolosh, MP
9. Hon. Lilian Tomitom, MP

THE NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|------------------------|
| 1. Mr. Leonard Machira | - | Senior Clerk Assistant |
| 2. Ms. Jemimah Waigwah | - | Legal Counsel |
| 3. Ms. Peris Kaburi | - | Serjeant at Arms |
| 4. Ms. Maureen Kweyu | - | Audio Officer |

MIN. NO. NA/DC/LANDS/2022/114: PRELIMINARIES

The meeting was called to order at twenty-one minutes to three n o'clock with a word of prayer. Thereafter, introductions were made.

MIN. NO. NA/DC/LANDS/2022/115: CONFIRMATION OF MINUTES

The consideration of the item was deferred.

MIN. NO. NA/DC/LANDS/2022/116: ADOPTION OF A REPORT ON THE CONSIDERATION OF PUBLIC PETITION NO. BY THE BOARDS OF MANAGEMENT AND PARENTS OF CHANGAMWE PRIMARY SCHOOL, CHANGAMWE SECONDARY SCHOOL, AND CHANGAMWE GIRLS SECONDARY SCHOOL REGARDING ENCROACHMENT OF SCHOOL LAND

The Committee unanimously adopted the report after it was proposed by Hon Samuel Gachobe, MP and seconded by Hon Hon. Patrick Munene Ntwiga, MP. The Committee agreed on the following observations and recommendations:

Regarding the prayer by the Petitioners, the Committee observed that:

1. The land occupied by the Changamwe Primary School, Changamwe Secondary School, Changamwe Girls Secondary School, and its surroundings MN/62562 was originally surveyed in 1965 as per survey of plot No. MN/V/2562 vide Deed Plan No. 86813 of October 1969.
2. The Committee also observed that parcel no. 3458 was registered to Turf Developers Limited but transferred ownership interest to Ashok Labhshanker Doshi and Pratibhai Ashock Doshi. The said allocation has also been litigated in three suits. However, the Committee noted that two more parcel numbers 3848 and 3893 were the irregularly allocated numbers with a view to issuing titles to private individuals, However, the two parcels have not been registered. Therefore, the Committee noted a need to urgently stop the processing of titles for the two parcels as they were irregularly hived off from public land meant for three Changamwe schools.
3. The Committee further observed the failure of the Ministry of Lands and Physical Planning to conduct a ground assessment and submit a ground report prior to the issuance of a grant for land parcel MN/VI/3458 to Turf Developers Limited in 1996. The ground report could have clearly indicated that the land was by then occupied by Changamwe Primary School and Changamwe Secondary schools. Therefore, it was public land and not available for allocation.
4. The delay in the issuance of title deeds to the three schools for the land they currently occupy continues to expose the public land to illegal acquisition. Therefore, there is urgent need for the Ministry of Lands and Physical Planning in collaboration with the National Land Commission and the Ministry of Education to facilitate the issuance of title deeds to Changamwe Primary School, Changamwe Secondary School, and Changamwe Girls Secondary schools to secure the land.

5. The Committee further noted that although the Cabinet Secretary, Ministry of Lands and Physical Planning submitted that Civil case No. 162 of 2007 in the High Court at Mombasa was still ongoing. The submissions made by the Chairperson; National Land Commission indicated that on 13th June 2018 the Court dismissed the suit filed by Changamwe Secondary in case No. 162 of 2007 on the ground that the plaintiff failed to comply with a court order dated 31st August 2017 directing the plaintiff to amend the plaint dated 4th July 2007 by adding Turf Developers as a party to the suit. Therefore, the Committee concluded that there was no case pending in Court regarding the subject of the Petition.
6. The Committee agreed with the Petitioners that there was need to secure a comprehensive investigation of the matter by the Ministry of Lands and Physical Planning in collaboration with the National Land Commission and the Ethics & Anti-Corruption Commission with a view to facilitating the reverting of the said parcel of land back to the schools.

The Committee recommended that:

- (i) The Cabinet Secretary, Ministry of Lands and Physical Planning, in consultation with the Chairperson, National Land Commission should issue title deeds to Changamwe Primary School, Changamwe Secondary School and Changamwe Girls Secondary school for the land they currently occupy to safeguard it from further illegal subdivision and acquisition by private entities within ninety (90) days of the tabling of this report.
- (ii) The Chief Land Registrar and the Director-General, Land Use and Physical Planning Ministry of Lands and Physical Planning should immediately stop the processing titles for land numbers No. 3848 and 3893.
- (iii) The Ethics and Anti-Corruption Commission should investigate the circumstances under which Land Parcel No. MN/VI/3458 was hived off from Government land set aside for Changamwe Primary school as per Deed Plan No. 86813 of October 1969 and Part Development Plan Dept. Ref 12.25 CT 3.77 dated 4th November 1977 with a view to instituting measures to revert the land to public use.

MIN. NO. NA/DC/LANDS/2022/117: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at ten minutes to five o'clock. The next meeting will be held on notice.

Signature

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

(Chairperson)



REPUBLIC OF KENYA

TWELFTH PARLIAMENT

THE NATIONAL ASSEMBLY - FIFTH SESSION

PUBLIC PETITION

(No. 071 of 2021)

REGARDING ENCROACHMENT OF SCHOOL LAND IN
CHANGAMWE CONSTITUENCY

I, the **UNDERSIGNED**, on behalf of the Boards of Management, parents and students of Changamwe Primary School, Changamwe Secondary School and Changamwe Girls Secondary School in Changamwe Constituency;

DRAW the attention of the House to the following: -

1. **THAT**, Article 60 of the Constitution of Kenya, 2010 provides that land in Kenya is to be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with, among others, the principles of equitable access to land, security of land rights and transparent and cost effective administration of land;
2. **THAT**, Changamwe Primary School, Changamwe Secondary School and Changamwe Girls Secondary School currently occupy the land registered as Plot No. MN/VI/3458R in Changamwe Constituency, which was procedurally and legally allocated to them as public utility land by the Municipal Council of Mombasa;
3. **THAT**, part of the land was irregularly hived off and allocated to M/s Turf Developers Limited of P.O. Box 43240 Mombasa on a ninety nine-year lease;
4. **THAT**, in May 2000, the proprietors of Turf Developers proceeded to erect a wall around the said parcel of land and illegally took possession of it, thereby denying the Schools their right of access to the land;
5. **THAT**, this illegality has greatly inconvenienced the three Schools since it deprives them of the use and enjoyment of the land, which is urgently needed for their daily use and future expansion plans in view of the fact that the Schools have a combined population of over 2,000 learners whose education is now in jeopardy;

Approved
24/11/21
ME
DANA

Hon. Speaker
may approve
29/1/21

PUBLIC PETITION
REGARDING ENCROACHMENT OF SCHOOL LAND IN
CHANGAMWE CONSTITUENCY

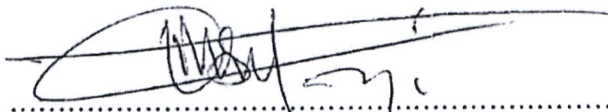
6. **THAT**, repeated attempts by the Boards of Management, teachers and parents of the three Schools to seek appropriate redress concerning the illegal dispossession of their land have not borne much fruit,
7. **AND THAT**, the issues in respect of which this Petition is made are not pending before any Court of law or any Constitutional or legal body.

NOW THEREFORE your humble petitioners PRAY that the National Assembly through the Departmental Committee on Lands: -

- a) urgently intervenes to secure comprehensive investigation of the matter by the Ministry of Lands in collaboration with the National Land Commission with a view to facilitating the reverting of the said parcel of land back to Changamwe Primary School, Changamwe Secondary School and Changamwe Girls Secondary School, and
- b) makes any other orders in the interest of pupils and students of the Three School as it deems fit in the circumstances of the Petition.

And your **PETITIONERS** will ever pray.

PRESENTED BY:



.....
HON. SHIMBWA OMAR MWINYI, MP
MEMBER FOR CHANGAMWE CONSTITUENCY

Date:.....23/11/2021.....

REPUBLIC OF KENYA



*Debtors
Please deal.
Arup Kimani
29/10/201*

THE NATIONAL ASSEMBLY

TWELVETH PARLIAMENT

PUBLIC PETITION

BY THE BOARD OF MANAGEMENT AND PARENTS OF CHANGAMWE PRIMARY SCHOOL, CHANGAMWE SECONDARY SCHOOL AND CHANGAMWE GIRLS SECONDARY SCHOOL IN CHANGAMWE CONSTITUENCY MOMBASA COUNTY

I, THE UNDERSIGNED, on behalf of the Board of Management and Parents of Changamwe Primary School, Changamwe Secondary School and Changamwe Girls Secondary School in Changamwe Constituency, Mombasa County.

DRAW the attention of the House to the following;

- i. THAT, the land in which Changamwe Primary, Changamwe Secondary School and Changamwe Girls Secondary School in which they are located on Plot No. MN/VI/3458R was hived out of and irregularly allocated and granted to Turf Developers Ltd of P.O.BOX 43240, Mombasa on a ninety nine (99) year lease.
- ii. THAT, the three schools were procedurally allocated the plots on which they stand by the Municipal Council of Mombasa and their plot is therefore public utility land .
- iii. THAT, the three schools have a student population of over two thousands pupils (2,000) and are in need of land for their daily use and future expansion.
- iv. THAT, Turf Developers Ltd on or about the month of May 2000, erected a wall around the said plot and unlawfully took possession denying the school its rights of access of its land.

PUBLIC PETITION

BY THE BOARD OF MANAGEMENT AND PARENTS OF CHANGAMWE PRIMARY SCHOOL, CHANGAMWE SECONDARY SCHOOL AND CHANGAMWE GIRLS SECONDARY SCHOOL IN CHANGAMWE CONSTITUENCY MOMBASA COUNTY

- v. THAT, the school has been deprived of the use and enjoyment of the said property.
- vi. THAT, the matter in respect of which this petition is made is not pending before any court of law or tribunal.

THEREFORE your humble Petitioners PRAY that the National Assembly through Departmental Committee on Lands:

Intervenes to have the Government carry out thorough investigations with a view to revert the said parcel of land to the aforementioned schools.

And your PETITIONERS will ever pray.

PRESENTED BY:

HON. SHIMBWA OMAR MWINYI, MP
MEMBER FOR CHANGAMWE CONSTITUENCY



HON. SHIMBWA OMAR MWINYI, MP
MEMBER FOR CHANGAMWE CONSTITUENCY

DATE: 26th OCTOBER 2021

S/N	NAME	ID NO	TEL NO
1	Rev. Octavian Mwaamburi	8946204	0734529383
2	Jonathan Kombe	10833960	0721895690
3	FVA S. WADUI	11367110	0734527100
4	Jacqueline Maitu	14648061	0720551613
5	Cicobi Amos	9303274	072266625
6	PETER N. MUYURI	2245419	0724944468
7	DORCAS WAMBUI	10958127	0714494297
8	MONICA WANJIKI	2508037	0725978857
9	HELLEN KALECHE	14491104	0721381923
10	PATRICK BARAZA	12771240	0707700845
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[Handwritten signatures and initials next to the table rows, including names like 'Jonathan Kombe', 'FVA S. WADUI', 'DORCAS WAMBUI', 'MONICA WANJIKI', 'HELLEN KALECHE', and 'PATRICK BARAZA'. There are also some illegible scribbles and marks.]



MINISTRY OF LANDS AND PHYSICAL PLANNING

RESPONSES TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON LANDS

Honourable Chair,

Pursuant to a letter Ref. NA/DC/LANDS/2022/(034) dated May 9, 2022, the Committee invited the Cabinet Secretary Ministry of Lands and Physical Planning to respond Public Petition No. 071 of 2021 by Changamwe Primary School and Changamwe Secondary School regarding encroachment of school land.

The Petition

The petitioners state that Changamwe Primary School, Changamwe Secondary School and Changamwe Girls Secondary School currently occupy the land registered as Plot No. MN/VI/3458R in Changamwe Constituency, which was procedurally and legally allocated to them as public utility land by the Municipal Council of Mombasa.

The petitioners further state that part of the land was irregularly hived off and allocated to M/s Turf Developers Limited. That in May 2000, Turf Developers erected a wall around the said parcel of land and took possession of it thereby denying the schools their right of access to the land. This has greatly inconvenienced the three Schools since it deprives them of the use and enjoyment of the land. They state that attempts to seek appropriate redress concerning the dispossession of the land have not borne fruit.

It is thus the petitioners' prayer that the National Assembly through the Departmental Committee on Lands: -

- a) Urgently intervenes to secure comprehensive investigation of the matter by the Ministry of Lands in collaboration with the National Land Commission with a view to facilitating the reverting of the said parcel of land back to Changamwe Primary School, Changamwe Secondary School and Changamwe Girls Secondary School

- b) Makes any other orders in the interest of pupils and students of the Three School as it deems fit in the circumstances of the Petition.

Response

Honourable Chair, I wish to respond as follows:

According to our records, the parcel currently occupied by the schools originally fell within Government Land as shown on survey of Plot No. MN/V/2562 vide Deed Plan No. 86813 of October 8, 1969. A copy of the deed plan is marked **annexure 1**.

In 1977, the delineated Government Land was planned for a proposed Harambee Secondary School and Changamwe Primary School vide Part Development Plan Dept. Ref. 12.25. CT.3.77 dated November 4, 1977. A copy of the PDP is marked **annexure 2**.

However, our records indicate that in 1995 Parcel No. MN/VI/3458 measuring approximately 0.8172 hectares was surveyed from the proposed public utility plot. This parcel was allocated to Turf Developers Limited of Post Office Box Number 43240, Mombasa. **Annexure 3** is a copy of the Letter of Allotment Ref. 90750/VII dated December 15, 1995. The parcel was registered in favour of Turf Developers Limited on February 26, 1996 as Grant Number CR. 28149. A copy of the title is marked **annexure 4**.

On September 23, 1997 the Ministry received a complaint from the Changamwe Primary School and Changamwe Secondary School that Turf Developers Limited were illegally issued with title to their land. The schools requested the Ministry to recall and cancel the title. **Annexure 5** is a copy of the letter.

In March 2007, the Board of Governors of Changamwe Secondary School instituted Civil Case No. 162 of 2007 at the High Court in Mombasa against the Commissioner of Lands and the Honourable Attorney General. The school contested the allocation of plot MN/VI/3893 to Turf Developers Limited.

In this case, a consent was recorded on December 8, 2009 between the Board of Governors of Changamwe Secondary School and the Commissioner of Lands for cancellation of Grant No. CR 28149 for Plot No. LR MN/VI/3458. The title was cancelled on December 18, 2009 as shown on Entry No. 4 of the title which was marked **annexure 4**.

On July 7, 2014, the National Land Commission vide Gazette Notice No. 5022 published a notice recommending revocation of the title issued to Turf Developers Limited (**annexure 6** is a copy of the Gazette Notice). Turf Developers Limited wrote to National Lands Commission vide a letter Ref: UK/T.1861/4 dated July 10, 2014 protesting revocation of the title (**annexure 7** is a copy of the letter).

The consent for revocation of the title was set aside by the court in a ruling delivered on October 30, 2015 in the Civil Case No. 162 of 2007 at the High Court in Mombasa (annexure 8 is a copy of the ruling of Court).

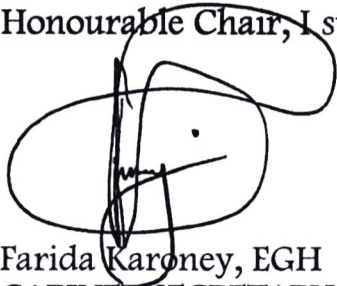
Turf Developers Limited later filed Judicial Review Misc. Application No. 37 of 2014 in the High Court at Mombasa challenging the Commissions' recommendation for revocation of the title. On June 8, 2016 the court set aside the recommendation by the Commission on the ground that the Commission did not have power to revoke title in respect of private land. The Court therefore directed the Registrar of Titles to reinstate the parcel in favour of Turf Developers Limited (annexure 9 is a copy of the ruling of Court). On August 22, 2016 the parcel was reinstated as directed by the court as reflected in Entry No. 8 of the title.

Turf Developers Limited transferred the parcel MN/VI/3458 to Ashok Labhshanker Doshi and Pratibhai Ashok Doshi on November 11, 2017.

Honourable Chair,

From our records, Part Development Plan Dept. Ref. 12.25. CT.3.77 shows that the subject parcel MN/VI/3458 falls on land that was set aside for the schools. Civil Case No. 162 of 2007 in the High Court at Mombasa is still ongoing and we await the outcome of the case.

Honourable Chair, I submit.

A handwritten signature in black ink, consisting of several overlapping loops and a central vertical stroke, positioned above the typed name.

Farida Karoney, EGH
CABINET SECRETARY

May 31, 2022

DISTRICT OF *MOMBASA*
 Locality *Mombasa Municipality*
 Meridional District *South S 372*
D II a

Land Reference No. _____
 (Orig. No. _____)

Subdivision No. 2562 (Orig. No. _____)
 of Section No. VII *Mainland North*

Scale: 1 in. 5000 or Feet to 1 inch

Area = 36.02 Hectares (Approx.)

Distances shown are in Metres

	Bearings			Distances in Metres
	S	I	N	
A-B	33	29	42	15.03
B-C	33	32	20	19.69
D-E	349	19	00	8.62
F-G	320	55	31	23.50
H-I	364	26	05	18.43
J-K	280	39	37	11.80
L-M	254	55	49	38.85



S. M. E.

for Director of Surveys
 Nairobi 5th October 1963

Printed by *East*
 Compared to *Indian*

Please quote this PLAN No. 86613

CHANGAMWE MN

UNPLANNED HARABEJI SECONDARY SCHOOL AND
HARABEJI PRIMARY SCHOOL A SUBURBAN
AND ADJACENT TO PLOT N. 282/1/2/1/1

MINISTRY OF LANDS & SETTLEMENT
PHYSICAL PLANNING DEPARTMENT
PART DEVELOPMENT PLAN

1

SCALE 1:1000

DATE 1/11/2014

DESIGNED BY D.K. MULLIYIL
DRAWN BY SURESH K. MULLIYIL

DEPT. REF 12.25.CT3.77

APPROVED BY
[Signature]

DATE 12/11/2014



PHYSICAL PLANNING DEPARTMENT
MINISTRY OF LANDS & SETTLEMENT

2014

(1) New **ANNEXURE 3**
178169 (3)

REPUBLIC OF KENYA

REGISTERED

DEPARTMENT OF LANDS

P.O. Box 30089

NAIROBI

15th December, 1995

Telegrams: "LANDS", Nairobi
Telephone: Nairobi 718050/9

Turf Developers Ltd.
P.O. Box 43240
MOMBASA

Ref. No. 90750/VII

SIR(S)/MADAM, **UNS. RESIDENTIAL PLOT - CHANGAMVE MOMBASA**

LETTER OF ALLOTMENT

I have the honour to inform you that the Government, on behalf of County Council, hereby offers you a grant of the above plot shown edged red on the attached plan No. 90750/VII subject to your formal written acceptance of the following conditions and to the payment of the charges as prescribed hereunder:

AREA: 0.8172 hectares (approximately).
 TERM: 99 years from the 1.12.1995
 STAND PREMIUM: Sh. 250,000
 ANNUAL RENT: Sh. 50,000 } Subject to adjustment on survey, but there is no claim for reduction in area on survey.

GENERAL: This Letter of Allotment is subject to, and the grant will be made under the provisions of, the Government Lands Act (Cap. 280 of the Revised Edition the Laws of Kenya) and title will be issued under the Registration of Titles Act (Cap. 281) or the Registered Land Act (Cap. 300).

SPECIAL CONDITIONS: See attached.

2. I should be glad to receive your acceptance of the attached conditions together with banker's cheque for the amount as set out below within thirty (30) days of the postmark:

	Sh.
Stand Premium	250,000 ✓
Rent from <u>1.12.1995</u> to <u>31.12.1995</u>	4,170
Conveyancing Fees	1,250 ✓
Registration Fees	250 ✓
Rates on demand	-
Stamp Duty	11,000 ✓
Survey Fees	2,450 ✓
Road and Road Drains	-
Others approval fees	2,000

Receipt No. Less Deposit

TOTAL Sh. 271,120.00

If acceptance and payment respectively are not received within the said thirty (30) days from the date hereof the offer herein contained will be considered to have lapsed.

If the above plot is still unsurveyed at the time you commence building you should exercise the greatest care to ensure that any building or other works are contained within the boundaries of the plot for should you inadvertently overstep the aforesaid boundaries the cost of removal and reconstruction must be borne by you.

The issue of the Government grant or lease will be undertaken as soon as circumstances permit.

Your full name(s) in BLOCK LETTERS should be given for the purpose of the grant which will be submitted later to you. The attached special conditions form part of the offer which should be accepted in writing.

I have the honour to be,
Sir(s)/Madam,
Your obedient servant,

Authority: 102749/8GA/V

OCHIENG G.O.
OCHIENG G.O.

for Commissioner of Lands

ENCL.

Y TO: P/S Ministry of Lands and Settlement, Nairobi

The Director of Surveys, Nairobi.

The Town Clerk. **Mombasa**

The Clerk to the Council, County Council of

The District Commissioner. **Mombasa**

The Director of Physical Planning, Nairobi.

District Land Officer. **Mombasa**

O/C Land Rents.

Rates Assistant.

The Accountant.

O/C Records: *Noted 21/12/96*

Senior Plan Record Officer. *Noted 29/1/96*

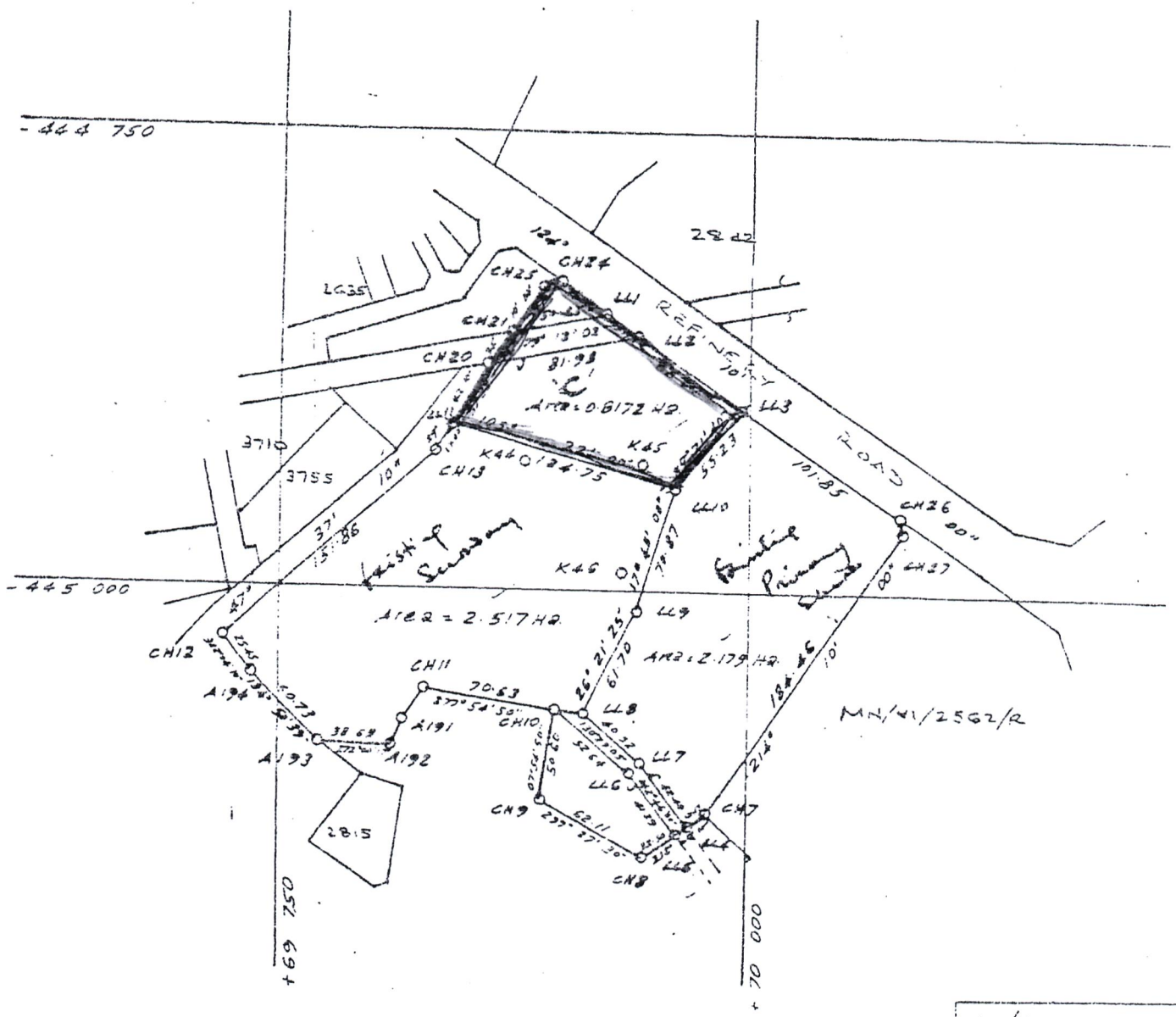
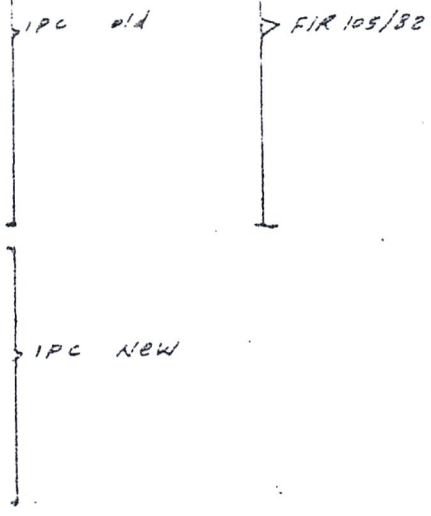
Plot File. *16-2-96*

The Government shall not accept any liability whatsoever in the event of the prior commitment or otherwise.

100 100
100 100
100 100
100 100
100 100

(2)

9	445	054	62	69	827	44
A.91	445	070	83	69	816	65
A.93	445	084	67	69	810	54
A.93	445	083	31	69	771	87
A.94	445	047	54	69	735	90
CH18	445	027	45	69	720	26
CH19	444	775	10	69	832	44
CH20	444	7	86	69	859	38
CH21	444	859	54	69	871	82
CH25	444	834	97	69	888	49
CH24	444	77	35	69	876	96
CH26	444	807	89	70	080	45
CH27	444	866	36	70	082	07
LL1	444	852	45	69	921	57
LL2	444	862	50	69	929	91
LL3	444	900	63	69	996	18
LL4	445	126	35	69	958	78
LL5	445	131	19	69	952	41
LL6	445	098	32	69	937	43
LL7	445	092	52	69	943	07
LL8	445	086	21	69	912	25
LL9	445	010	92	69	939	64
LL10	444	943	39	69	961	15
LL11	444	910	37	69	840	86



SPECIAL CONDITIONS

1. No buildings shall be erected on the land nor shall additions or external alterations be made to any building otherwise than in conformity with plans and specifications previously approved in writing by the Commissioner of Lands and the Local Authority. The Commissioner of Lands shall not give his approval unless he is satisfied that proposals are such as to develop the land, adequately and satisfactorily.



2. The lessee shall within 6 calendar months of the actual registration of the lessee's submit in triplicate to the Local Authority and the Commissioner of Lands plans (including block plans showing the positions of the buildings and system of drainage for the disposal of sewage surface and sullage water) erect on the land and shall within 2 months of the actual registrations of the lease complete and erection of such buildings and the construction of the drainage system in conformity with such plans drawings elevations and specifications as amended (if such be the case) by the Commissioner. Provided that notwithstanding anything to the contrary contained in or implied by Government of Lands Act (Chapter 280) in default shall be made in the performance or observance of any of the requirements of this condition if shall be lawful for the Commissioner of Lands or any person authorized by him on behalf of the President to re-enter into and upon the land or any part thereon in the name of the whole and thereupon the term hereby created shall cease but without prejudice to any right of action or remedy of the President or one Commissioner of Lands in respect of any antecedent breach of any condition herein contained.

3. The lessee shall maintain good and substantial repair and condition all buildings at any time erected on the land.

4. Should the Lessee give notice in writing to the Commissioner of Lands that he is unable to complete to buildings within the period aforesaid the Commissioner of Lands shall (at the Lessee's expense) accept a surrender of land comprised herein PROVIDED FURTHER that if such notice as aforesaid shall be given (1) within twelve months of the actual registration of the lease the Commissioner of Lands shall refund to the Lessee fifty per centum of the said stand premium paid in respect of the land or (or) (2) at any subsequent time prior to the expiration of the said building period the Commissioner of Lands shall refund the lessee twenty five per centum of the said stand premium. In the event of notice being given after the expiration of the said building period no refund shall be made.

5. The land & building shall only be used for
..... Residential in use

6. The buildings shall not cover more than 5% of the total area of the plot.

7. The Lessee shall not sell transfer subject charge or part with the possession of the land or any part thereof or any buildings therein except with prior consent in writing of the Commissioner of Lands. No application for such consent (except in respect of a loan required for building purchases) will be considered until special condition No.2 has been performed.

8. The lessee shall pay to the Commissioner of Lands on demand such
..... of Lands may estimate to be Proportionate cost

The Lessee shall from time to time pay to the Commissioner of lands on demand such proportion of the cost of maintaining all roads and drains serving adjoining the Land as the Commissioner of Lands may assess.

10. Should the Commissioner of Lands at any time require the said ~~roads~~ roads to be constructed to higher standards the lessee shall pay to the Commissioner of Lands on demand such proportion of the cost of such construction as the Commissioner of Lands may assess.

11. The Lessee shall pay such rates, taxes, charges, duties or outgoings of whatever description as may be imposed charge or assessed by the Government of Local Authority upon the land or the buildings erected thereon including any contribution or other sum paid by the President of the Republic of Kenya in lieu thereof.

12. The President of Kenya or such person or authority as may be appointed for the purpose shall have the right to enter upon the land and have access to water mains service pipes and drains telephone or telegraph wires and electrical mains or all descriptions whether overhead or under ground and the lessee shall not erect any buildings in such a way as to cover or interfere with any existing alignments of main or service pipes or telephone or telegraph wires and electric mains.

13. The Commissioner of Lands reserves the right to revise the annual ground rental payable hereunder after the expiration of the ten years. Such rental shall value of the of the land as at the end of every ten year of the term.

SPECIAL ISSUE**THE KENYA GAZETTE**

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CXVI—No. 86

NAIROBI, 18th July, 2014

Price Sh. 60

GAZETTE NOTICE NO. 5021

THE PUBLIC HOLIDAYS ACT

(CAP. 110)

DECLARATION OF A PUBLIC HOLIDAY

IT IS notified for general information that Tuesday, 29th July, 2014, will be observed as a public holiday to mark Idd-ul-Fitr Day, 2014.

Dated the 15th July, 2014.

JOSEPH OLE LENKU,

*Cabinet Secretary,**Ministry of Interior and Co-ordination of National Government.*

GAZETTE NOTICE NO. 5022

THE NATIONAL LAND COMMISSION ACT

(NO. 5 OF 2012)

REVIEW OF GRANTS/DISPOSITIONS OF PUBLIC LAND

IN EXERCISE of the powers conferred by Article 68 (c) (v) of the Constitution of Kenya and Section 14 (4) (5) (6) (7) and (8) of the National Land Commission Act, 2012, the Chairman of the National Land Commission informs the general public that the National Land Commission upon receipt of complaints from the National Government, County Governments and members of the public undertook review of grants and dispositions (titles) of public land to establish their legality or otherwise. The Commission via a public notice in the national dailies dated 14th April 2014 invited all interested parties to appear before it, inspect documents and make written representations and submissions. Consequently, the Commission has made determination in respect of the following grants and orders as follows:

S/No	Property Description	Location	Interested Parties	Determination
1.	L.R. No. Kisumu Municipality/BLK 2/121	Kisumu Municipality Kisumu County	Ministry of Livestock and Fisheries, Hadija S.B. Hussein	Title revoked
2.	Eldoret Municipality BLK 14/192 Eldoret Municipality BLK 5/151 Eldoret Municipality BLK 5/152 Eldoret Municipality BLK 5/153 Eldoret Municipality BLK 5/154	Eldoret UasinGishu County	UasinGishu Secondary School	Title revoked
3.	L.R. 82/7795 L.R. No. 82/7975 82/779682/7922 82/588482/5883 82/636582/5882 82/508682/5881 82/508782/5880 82/508882/5879 82/508982/5878 82/509082/6198 82/509182/5894	Tena Estate Nairobi County	Tena Residents Association	Title revoked

S/No	Property Description	Location	Interested Parties	Determination
	82/4280 82/4284 82/4281 82/4283 82/4282			
4.	Plot No. Mombasa MN/VI/3458 Plot No. Mombasa MN/VI/3893	Mombasa County	Changamwe Secondary School – Turf Developers Ltd	Title revoked
5.	L.R. No. 209/14272 L.R. No. 209/14277	Upper Hill Nairobi County	Kenya Medical Training College – Robert Mutiso	Title revoked
6.	L.R. No. 27392 No. 28290 No. 28864	Kawala "A", 'B' for KadzidzoMadzimbani Adjudication Area, Mariakani Kilifi County		Title revoked, follow due process to regularized as an adjudication area
7.	L.R. NO. 29026 L.R. NO. 29027	Kawala "A", 'B' for KadzidzoMadzimbani Adjudication Area, Mariakani Kilifi County		Title revoked
8.	Dagoretti/Riruta/707 Dagoretti/Riruta/661 Dagoretti/Riruta/S/930 Dagoretti/Riruta/S/969 Dagoretti/Riruta/S/958 Dagoretti/Riruta/674 Dagoretti/Riruta/668 Dagoretti/Riruta/S/973 Dagoretti/Riruta/S/972 Dagoretti/Riruta/666	Riruta Nairobi County		Title revoked
9.	Nairobi/Block 107/384	Umoja Estate Nairobi County	Umoja Residents/ Redeemed Gospel Church	Title revoked
10.	L.R. No. 209/12686	Cabanas Junction Nairobi County	Kenya Urban Roads Authority, Kenya Power	Title revoked
11.	L.R. No. 209/14030	Lenana Road Nairobi County	Orbit Express Ltd, Ministry of Defence, Kenya Urban Roads Authority	Title revoked
12.	KisiteMpunguti Marine National Park Mpungutiyachi Islands MpungutiyaJuu Island MSA/BLK XXVI/907 MSA/BLK XXVI/955 MSA/BLK XXVI/956	Kwale County	Kenya Wildlife Service	Title revoked
13.	L.R. 209/13296 209/12501 L.R. 209/13295 209/12342 L.R. 209/13294/1 & 2 209/12340 L.R. 209/12341 209/12339 L.R. 209/12344 209/12343	KEVEVAPI Industrial Area Nairobi County		1. Regularise existing titles 2. KEVEVAPI to be issued with title for the remaining allocated land
14.	L.R. 210095 L.R. 21249 L.R. 21248 L.R. 21239 L.R. 21247 L.R. 21240 L.R. 21246 L.R. 21241 L.R. 21245 L.R. 21242 L.R. 21244 L.R. 21243	Karura Forest Nairobi County	Kenya Forest Service and Frankway Ltd, Interfarms Enterprises Ltd, The Nile Source, Silk Investments, Awen Investments, Texas Instruments, Nyamangua Ltd. and Others	Title revoked
15.	L.R. 21288 L.R. 21289 L.R. 21290 L.R. 21291 L.R. 21292 L.R. 21293 L.R. 21294 L.R. 21295 L.R. 21296 L.R. 21297 L.R. 21298	Karura Forest Nairobi County	Kenya Forest Service and Mtaa Holdings, Sonatawi Ltd, Total Enterprises Ltd, Okinawa Enterprises, Chaumet Africa, Sofracom International Ltd, Mambri Investments, Fired Earth Co. Ltd, Texas Investments & Others	Title revoked

Surname	Other Names	County Code	County Name	Const. Code	Constituency Name	Ward Code	Ward Name	Party Code	Party Name	Abbr.	Symbol
Omondi	Odiembo'h Duncan	043	Homa Bay	247	Karachuonyo	1234	Kibiri	023	Forum for Restoration of Democracy-Kenya	Ford-Kenya	Lion
Apollo	Adede Ofafa	043	Homa Bay	247	Karachuonyo	1234	Kibiri	003	The Labour Party of Kenya	LPK	Star
Ondiek	Kennedy Opiyo	043	Homa Bay	247	Karachuonyo	1234	Kibiri	021	Orange Democratic Movement	ODM	Orange

Dated the 17th July, 2014

A.I.HASSAN,
Chairperson,
Independent Electoral and Boundaries Commission.

GAZETTE NOTICE NO. 5024

THE CONSTITUTION OF KENYA

THE ELECTIONS ACT

(NO. 24 OF 2011)

THE ELECTION (GENERAL) REGULATIONS, 2012

TALLYING CENTRES FOR THE BY-ELECTIONS FOR THE MEMBER OF NATIONAL ASSEMBLY—GATUNDU SOUTH AND MATHARE CONSTITUENCIES AND COUNTY ASSEMBLY WARD REPRESENTATIVES FOR KIBIRI WARD

IN EXERCISE of the powers conferred by Article 86, 88 (4) the Constitution of Kenya and Regulations 84 (1) and (2) of the Elections (General) Regulations, 2012 the Independent Electoral and Boundaries Commission hereby gives notice to the public that the places listed in the Seventh Column to the Schedule shall be the Tallying Centers for the above- mentioned By-Elections to be held on 7th August, 2014.

SCHEDULE

TALLYING CENTRES

County Code	County	Constituency Code	Constituency Name	County Assembly Code	County Assembly Ward	Name Of Tallying Centre
022	Kiambu	111	Gatundu South	All	All	Gatundu Educational Hall
047	Nairobi	290	Mathare	All	All	St Teresa Girls Primary School
043	Homabay	247	Karachuonyo	1234	Kibiri	Oriwo Boys High School

Dated the 17th July, 2014

A. I. HASSAN,
Chairperson,
Independent Electoral and Boundaries Commission.

GAZETTE NOTICE NO. 5025

THE CONSTITUTION OF KENYA

THE ELECTIONS ACT

(NO. 24 OF 2011)

THE ELECTION (GENERAL) REGULATIONS, 2012

VOTER POLLING STATIONS FOR THE BY-ELECTIONS OF MEMBER OF NATIONAL ASSEMBLY—GATUNDU SOUTH AND MATHARE CONSTITUENCIES AND MEMBER OF COUNTY ASSEMBLY—KIBIRI WARD

IN EXERCISE of the powers conferred by Articles 86,88, 101 (4), and 194 of the Constitution of Kenya, Sections 16 and 19 of the Elections Act, 2011 and Regulations 7 and 8 of the Elections (General) Regulations, 2012, the Independent Electoral and Boundaries Commission gives notice that voting for the Member of National Assembly- Gatundu South and Mathare Constituencies; and Member of Homa Bay County Assembly –Kibiri Ward By-elections scheduled for 7th August, 2014 shall be conducted at the places gazetted *vide* Gazette Notice No. 1454 of 2013 published on 1st February, 2013.

Dated the 17th July, 2014.

A. I. HASSAN,
Chairperson,
Independent Electoral and Boundaries Commission.

S/No	Property Description	Location	Interested Parties	Determination
	L.R. 209/13266 L.R. 209/13300 L.R. 209/13320 L.R. 209/13343 L.R. 209/13382 L.R.209/13383 L.R. 209/13384 L.R. 209/13385 L.R. 209/13447			

Dated the 1st July, 2014

MUHAMMAD A. SWAZURI,
Chairman, National Land Commission.

GAZETTE NOTICE NO. 5023

THE CONSTITUTION OF KENYA

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT

(NO. 9 OF 2011)

THE ELECTIONS ACT

(NO. 24 OF 2011)

THE ELECTION (GENERAL) REGULATIONS, 2012

NOMINATED CANDIDATES FOR MEMBER OF NATIONAL ASSEMBLY- GATUNDU SOUTH AND MATHARE CONSTITUENCIES AND MEMBER OF COUNTY ASSEMBLY-KIBIRI WARD BY-ELECTIONS

IN EXERCISE of the powers conferred by Articles 84, 85, 88 (4), 97 (1) (a), 99, 101 (4) (b), 177 (1) (a), 193 and 194 of the Constitution of Kenya, Section 4 (d), (j), (k) of the Independent Electoral and Boundaries Commission Act, 2011, Sections 13(3), 16, 22, 24, 25, 26, 31, 32 and 33 of the Elections Act, 2011 Part III, V and VIII and Regulations 51 (2), (5) and (6) of the Elections (General) Regulations, 2012 the Independent Electoral and Boundaries Commission hereby gives notice to the public that the persons listed in the 1st and 2nd Column to the First, Second and Third Schedules stand validly nominated for the Member of National Assembly—Gatundu South and Mathare Constituencies: and Member of the Homa-Bay County; Kibiri Ward, By-elections to be held on 7th August, 2014.

FIRST SCHEDULE

MEMBER OF NATIONAL ASSEMBLY—GATUNDU SOUTH CONSTITUENCY

Surname	Other Names	County Code	County Name	Constituency Code	Constituency Name	Party Code	Party Name	Abbr.	Symbol
Kamere	Joachim Kiarie	022	Kiambu	111	Gatundu South	040	New Democrats	ND	Bridge
Kuria	Moses Kiarie	022	Kiambu	111	Gatundu South	035	The National Alliance	TNA	Dove

SECOND SCHEDULE

MEMBER OF NATIONAL ASSEMBLY—MATHARE CONSTITUENCY

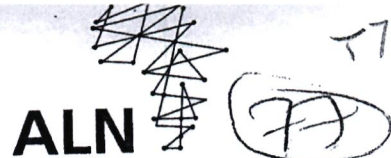
Surname	Other Names	County Code	County Name	Const. Code	Constituency Name	Party Code	Party Name	Abbr.	Symbol
Blasto	Barack Obat	047	Nairobi	290	Mathare	Ind	Independent Candidate	IND	Neck Tie
Ojiwa	Billian Okoth	047	Nairobi	290	Mathare	048	National Labour Party	NLP	Bull
Nyangangali	Crispus Fwamba	047	Nairobi	290	Mathare	028	Maendeleo Democratic Party	MDP	Scissors
Wanjohi	George Mike	047	Nairobi	290	Mathare	035	The National Alliance	TNA	Dove
Macharia	Mariam Muthoni	047	Nairobi	290	Mathare	Ind	Independent Candidate	IND	Roof
Inziria	Nixon Kawai Kambarage	047	Nairobi	290	Mathare	Ind	Independent Candidate	IND	Isukuti Drum
Mudanya	Sammy Jentruo	047	Nairobi	290	Mathare	025	Progressive Party Of Kenya	PPK	Battery Torch
Kariuki	Steven	047	Nairobi	290	Mathare	021	Orange Democratic Movement	ODM	Orange

THIRD SCHEDULE

MEMBER OF HOMA BAY COUNTY ASSEMBLY KIBIRI WARD

Surname	Other Names	County Code	County Name	Const. Code	Constituency Name	Ward Code	Ward Name	Party Code	Party Name	Abbr.	Symbol
Oyieko	Joel Omolo	043	Homa Bay	247	Karachuonyo	1234	Kibiri	48	National Labour Party	NLP	Bull
Odira	Michael Onyango	043	Homa Bay	247	Karachuonyo	1234	Kibiri	012	Wiper Democratic Movement- Kenya	WDM-K	Umbrella

F. 178169



ANJARWALLA & KHANNA

WINNER AFRICAN LAW FIRM OF THE YEAR 2013

SKA House, Dedan Kimathi Avenue
PO Box 83156-80100, Mombasa, Kenya

T +254 (0) 41 231 2848/9, +254 (0) 41 231 1741, +254 (0) 41 231 4211
M +254 (0) 722 276 401, +254 (0) 733 786 296
F +254 (0) 41 222 4996, +254 (0) 41 231 2013
E mba@africalegalnetwork.com
www.africalegalnetwork.com



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KENYA | MALAWI | MAURITIUS
NIGERIA | RWANDA | SUDAN
TANZANIA | UGANDA | ZAMBIA

AFFILIATE OFFICE IN DUBAI:
ANJARWALLA COLLINS & HAIDERMOTA

② SPRO
Please confirm
if this property is
part of public land
Kilgusya
11/8/2012

OUR REF: UK/T.1861/4
YOUR REF: CF/513/(3)
DATE : 10th July, 2014

The Chairman
National Land Commission
Ardhi House,
Ngong Road
P.O. Box 44417
Nairobi

Attention: Dr. Muhammad A Swazuri PhD OGW

Dear Sir,

Plot No. L R MN/VI/3458

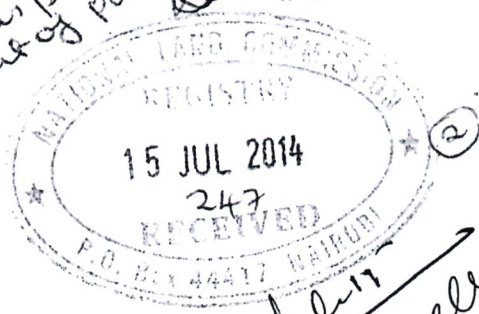
We act for Turf Developers Limited with instructions to draw to your attention the advert published in the Daily Nation of Monday the 7th July 2014 by the National Land Commission (NLC) whereby our clients' title in connection with the above has been revoked under Section 14 of the National Land Commission Act, (Act).

Please note that our clients' said title relating to the above plot is **NOT PUBLIC LAND** as alleged by the NLC.

Section 14 of the Act gives no powers to the NLC to revoke any title.

Furthermore we would bring to your attention that you have no right in law to revoke our clients' title and that such action is ultra vires the Act and such erroneous decision to revoke the title made by NLC is null and void.

Furthermore as pointed out to you by our letter dated 14th April, 2014 the issue as to ownership of the above title is sub judice and is pending the decision of the Court of Appeal.



① VC client
Vereley Allen
16/07/14

④ Comm. Rese
Munyoka
Please
TNT
Kilgusya
11/8/2014

③ VC, NLC
Please refer to your ② above.
The said plot encroaches on public
land (Changamwe primary school). You may
seek for more details. The
same title

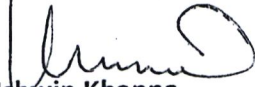
76

76

Anjarwalla & Khanna
Continuation Sheet No. 1

We are instructed to take appropriate action in having your decision to revoke our clients' title quashed, at your risk as to costs and consequences.

Yours faithfully,



Ushwin Khanna
for and on behalf of Anjarwalla & Khanna

Copy to: Client



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ENVIRONMENT AND LAND COURT AT MOMBASA

ELC CIVIL SUIT NO. 162 OF 2007

THE BOARD OF GOVERNOR

CHANGAMWE SECONDARY SCHOOL.....PLAINTIFF

-VERSUS-

THE COMMISSIONER OF LANDS

THE ATTORNEY GENERAL.....DEFENDANTS

AND

TURF DEVELOPERS LIMITED.....APPLICANT

RULING

1. The chamber summons application for ruling is dated 12th January 2010 seeking the following orders :-

1. That this application brought by TURF DEVELOPERS LIMITED be certified as urgent and service thereof upon the Plaintiff and Defendants be dispensed with in the first instance.

2. That the Decree passed on the 9th day of December 2009 and all consequential orders be set aside.

3. That this Honourable Court be pleased to join the applicant Turf Developers Limited as a Defendant to this suit.

4. That the plaintiff by itself, its servants, agents or employees and or students howsoever be restrained from entering onto or trespassing upon or from taking possession of or damaging, wasting, developing, selling, leasing, alienating, transferring, charging, mortgaging or in any way from dealing whatsoever with all that parcel of land known as Plot No. MN/VI/3458 until the hearing and final determination of this suit or until further orders of this Honourable Court.

5. That costs of this application be provided for.

2. The application is supported by several grounds on the face of it and the affidavit sworn by Ashok Labshanker Doshi. Briefly, the applicant deposes that he is the registered owner of land parcel No MN/vi/3458 having absolute and indefeasible rights and annexed thereto a copy of the title deed. He deposed further that the plaintiff misrepresented material facts and failed to disclose the existence of the HCCC No 485 of 2000 involving the same parties and same subject matter. The applicant avers that orders were issued in HCCC No 485 of 2000 and certain negotiations entered into between the parties.

3. The applicant deposes that the plaintiff/respondent agreed to have this suit marked as settled vide correspondences annexed as ADL 6, 7, 8 and 9. When the applicant's advocate received no confirmation to the said correspondences, he instructed the advocate to peruse this Court file only to ascertain that the parties had fraudulently entered into a consent judgement revoking his title. This order was also registered against the title at the lands registry. He urged the Court to set aside the decree passed on the 9th December 2009 through the consent order.

4. The plaintiff opposed the application via preliminary objection filed in Court on 25th February 2010. In the objection, three grounds were raised

(i) The Court has no jurisdiction to set aside the Decree between the Plaintiff and the Defendant herein and the Court is now *functus officio*.

(ii) That by dint of Section 24 of the Registration of Titles Act Cap 281 the intended Defendant/Applicant cannot set aside the Decree herein but can only bring a fresh action to recover damages if any.

(iii) The Court cannot grant the orders sought by virtue of the provisions of Section 24 of Cap 281. The plaintiff prays that the Application be dismissed with costs.

5. The defendants also opposed the application by them filing grounds of opposition. The grounds included inter alia :-

a) The relief sought is improper and incapable of being granted

b) The Court is *functus officio* in so far as the applicant involvement in HCCC No 162 of 2007 is concerned.

(c) The applicant was all along aware of the suit yet it took no action to enjoin itself before the said consent was recorded.

(d) It is in the public interest that the consent remain undisturbed.

6. The advocates for the applicant and the plaintiff made oral submissions. Mr Khanna for the applicant submitted that the applicant is directly affected by the outcome of this case. That the plaintiff illegally acquired the property and prayers (a) and (b) of the plaint are still pending for the Court to determine. Further that the consent circumvented the authority of the Court in making the declaratory orders that were sought. Mr Khanna submits that order 1 rule 10 (2) of the Civil Procedure Rules, 2010 gives the Court powers to enjoin parties who are to be affected by its orders. He urged the Court to exercise its powers and admit the applicant as a necessary party. He also urged the Court to set aside the decree

since the consent order was executed and the grant cancelled. He continued that the land was a public utility by the school and a grant is a special title which can be cancelled by either the Court or the Commissioner of Lands. That the Commissioner of Lands conceded the allocation was erroneous and the applicant can only challenge the cancellation by seeking damages from the Commissioner. Mr Odiaga submitted that there is no prayer pending as the other prayers have been abandoned. The plaintiff submitted that prayer (a) and (b) of the plaint was withdrawn on 16th December 2014. He urged the Court to reject the application and dismiss it with costs.

8. Mr Khanna in brief response submitted that he was shocked to learn of the notice of discontinuance of the prayer (a) and (b) since none had been served on them. He said the notice went against the oxygen principles and urged the Court to disallow it. He submitted that the respondents were relying on the fact that the suit land was public property yet there was no evidence to that effect. He stated that page 42 of what does not show the grant was cancelled and the decree only revoked the plot. Lastly he submitted that the issues of special conditions can only be determined at a full trial. He urged the Court to allow the application.

9. Considering the pleadings filed and submissions rendered, I find two issues for determination in this application ;

- a) Whether there is a suit before the Court for the applicant to join or this Court is *functus officio*
- b) Whether this Court can set aside the decree of 9th December 2009 obtained by way of a consent order.

10. In a plaint dated 4th July 2007, the plaintiff sought three main prayers in terms of prayer (a), (b) and (c). The consent order between the parties to this suit allowed prayer (c) of the plaint leaving prayers (a) and (b) pending. On 16th December 2014 during the pendency of this application, the plaintiff filed a "notice of withdrawal" in which the plaintiff withdrew and discontinued prayer (a) and (b) of the plaint. From the record of this file, this application was first heard and determined with a dismissal. However it was later re-instated following the Court of appeal decision. It is the plaintiff's case that there is no suit pending before this Court for the applicant to join.

11. The record does show that at the time when this application was filed, the two prayers in the plaint were still pending. Otherwise there would have been no reason for the plaintiff to file the notice of withdrawal on 16th December 2014. The application is seeking to join the applicant as well as set aside the decree of 9th December 2009. The question whether there was a suit for the applicant to join when the application was filed would be answered in the positive. This is so because the consent order only partially settled the suit. What is then the effect of the discontinuance of the pending prayers in to the applicant joining the suit " In my considered view, the notice of withdrawal filed 4 years down after the application was filed cannot be used to defeat the rights of the applicant who already moved the Court to join this suit. In any event if this Court does get to set aside the consent judgement then there will still be dispute to be determined. The notice of withdrawal of suit has also not been endorsed as an order of this Court. Consequently I find the prayer of seeking to be joined as capable of being granted and this Court is not functus officio in this matter.

12. The second issue is whether the consent of 9th December 2009 can be set aside. The applicant submitted that it was illegally and fraudulently obtained. The principles for setting aside consent orders/judgement was laid out in the case of **Flora Wasike vs Wamboko (1988) IKLR 429** where the Court of Appeal held that a consent judgement or order has contractual effect and can only be set aside on grounds which would justify setting aside a contract or if certain conditions remain to be fulfilled which

are not. The Court of appeal in this case referred to the case of **Purcell vs F. C Trigell Ltd (1970) 2 All ER 671** in which Winn L. J said at 676 ;

“It seems to me that if a consent order is to be set aside, it can only be set aside on grounds which would justify the setting aside of a contract entered into with the knowledge of the material matters by legally competent persons...”

13. Further in the case of **Hirani vs Kassam (1952) 19 EACA 131**, the Justices quoted Seton on Judgements and Orders 7th Edn Vol 1 page 124 where it is stated that consent orders/judgements may be set aside if

- i) Obtained by fraud or collusion
- ii) By Agreement contrary to the policy of the Court
- iii) When given without sufficient material facts or misrepresentation or in ignorance of material facts
- iv) In general for a reason which would enable the Courts to set aside an agreement.

This provision was also followed in the case of **Brook Bond i.e big vs Mallya (1975) EA** where it was held “a consent judgement may only be set aside for fraud, collusion or for any reason which would enable the Court to set aside an agreement.

14. In relation to the present case, the applicant was not a party to the consent. He has submitted that the consent was entered without the parties disclosing material facts or mis representing facts as they did not disclose the existence of the suit HCCC No 485 of 2000 involving the same parties and same subject matter. The record show the facts not disputed by the respondents are

- i) This applicant is the registered owner of the suit property
- ii) Before this suit was filed, the applicant had sued the plaintiff and the defendants vide MBS HCCC No 485 of 2000
- iii) Some consent order was entered into on 16.4.2009 in HCCC 485 of 2000 between the applicant's advocates, the plaintiff's advocate on record and Muturi Gakuo & Kibara Advocates
- iv) There were correspondences on record as regards the settlement of this suit and HCCC No 485 of 2000 (see annexures “ALD 5”, “ALD 6”, AKLD 7” to the application).

15. The plaintiff submitted that the land in dispute is a public utility being used by school therefore the applicant has no interest in it as a private citizen. From the chronology of facts set out above, when the consent was being reached by the plaintiffs and the defendants, they were well aware of the applicant's interest in the subject matter in dispute because of the existence suit HCCC 485/2000. The consent was reached in my view in collusion between the defendant and the plaintiff to defeat the interests of the applicant and defeat the orders issued in HCCC No 485 of 2000. The parties in reaching this consent indeed mis represented facts to the Court. The attorney general in his grounds of opposition shifted blame on the applicant for not joining this suit despite being made aware to protect his interests. It is my

16. I am of the view and I so hold that the circumstances of which the parties herein entered the consent judgement was clouded with collusion and failure to disclose material facts. Consequently I am convinced that this is a matter of general importance for the Court to set aside the consent judgement to enable the applicant get an opportunity to present his case and defend his title deed. In the case of **Evan Gachoki Njuki & 3 others vs Wilson Njuki Karukuma (2008) eKLR**, Kasango J. while setting aside a consent judgement in an application brought by an applicant who was not a party in that suit held that the parties in entering into the consent in that matter concealed material facts and misrepresented the truth. On locus of the applicant, the Judge stated that section 80 of the Civil Procedure Act and Order XLIV allowed any one aggrieved by an order to approach the Court. In the present case, the applicant invoked the discretion of the Court under section 3A of the Civil Procedure Act. I am satisfied that the the applicant is aggrieved by consent judgement and is right to challenge it by bringing the present application.

17. In conclusion and for the reasons contained in the body of this ruling, I find the chamber summons dated 12th January 2010 to be merited and allow it in terms of prayer 2, 3 and 5. I find prayer 4 was not proved. These are my orders.

RULING dated and delivered at Mombasa this **30th** day of **October 2015**

A. OMOLLO

JUDGE



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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL, JUDICIAL REVIEW DIVISION

MISC. APPLICATION NO. 37 OF 2014

THE MATTER OF: AN APPLICATION BY TURF DEVELOPERS LIMITED FOR LEAVE TO APPLY FOR JUDICIAL REVIEW AND ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF: PARCEL OF LAND KNOWN AS PLOT NO. L.R. MOMBASA/MNVI/3458

AND

IN THE MATTER OF: THE NATIONAL LAND COMMISSION ACT, 2012, THE CONSTITUTION OF KENYA 2010 AND THE REGISTRATION OF TITLES ACT (CAP 281), LAWS OF KENYA (REPEALED)

BETWEEN

REPUBLIC.....APPLICANT

AND

THE CHAIRMAN & MEMBERS OF NATIONAL LAND COMMISSION.....RESPONDENTS

EX PARTE APPLICANT: TURF DEVELOPERS LTD

RULING

1. In a Notice of Motion (the Application) dated 12th August, 2014 and filed on 13th August, 2014, the ex parte Applicant, Turf Developers Limited, sought –

(1) an order of certiorari to issue to remove into the court for the purpose of being quashed the decision of the Chairman and members of the National Land Commission herein contained in the Gazette Notice No. 5022 published in the Kenya Gazette dated 1st July, 2014 revoking the Applicant's Title to parcel of land known as Plot No. Mombasa/MN/VI/3458;

(2) an order of prohibition prohibiting the Respondents herein, their servants and/or agents from alienating, handing over possession of or vesting the Title of the parcels of land known as Plot No.

Mombasa/MN/3458 or any of them to any other person and from having any other dealing whatsoever with the said property or taking any further proceeding or action in relation thereto;

(3) an order of mandamus do issue directed at the Respondents herein commanding them to reinstate the Applicant's Title over the parcel of land known as Plot No. Mombasa/MN/3458 by inter alia, reinstating the Applicant's name in the register of the said property as the proprietor of the leasehold interest therein, and to revoke and/or cancel any dealing with the said title and any entry in the register of the said property made pursuant to the purported revocation of the Applicant's Title.

(4) the costs of and incidental to this application be provided for.

2. The Application was supported by the Affidavit Verifying the Facts sworn on 12th August, 2014, by one Ashok Labshanker Doshi, sworn on 24th July, 2014 in support of the Chamber Summons dated 24th July, 2014 for leave to commence Judicial Review proceedings and filed on 24th July, 2014, and the grounds on the face of the application.

3. The Applicant's case as set out in the Application, the Supporting Affidavit aforesaid, and the Applicant's counsel's submissions dated 19th May, 2015 and filed on 20th May, 2015 and the Reply to the submissions of the Interested Party dated 2nd June, 2015 and filed on 3rd June, 2015 is that the Applicant was the registered owner of the parcel of land known as Mombasa/MN/VI/3458 (the suit property) before the Respondents unlawfully purported to revoke its title and grant the same to the Interested Party, the Board of Governors, Changamwe Secondary School (the School) (which opposed the Application).

4. The Applicant submits that a dispute over the ownership of the suit property between the Applicant and the Interested Party in Mombasa ELC No. 162 of 2007 was resolved in favour of the Applicant in a Ruling delivered on 30th October, 2015 and which Ruling set aside the purported consent decree entered into between the Interested Party and the Commissioner of Lands and the Attorney-General dated 8th December, 2009, and issued on 17th December, 2009.

5. The Applicant's main ground for seeking the orders herein is based on the ground that the Respondents had no jurisdiction to revoke the Applicant's title, and more importantly also, the revocation of title was done without reference to the Applicant and thus in breach of the rules of natural justice, contrary to both Section 14(1) and 14(7) of the National Land Commission Act, 2012

6. For those reasons, the Applicant urged the court to allow the Application.

THE RESPONDENT'S CASE

7. The Respondent never filed any reply to the Application.

THE INTERESTED PARTY'S CASE

8. The Application was opposed by the Interested Party, through **firstly** the Replying Affidavit of Josephine Nduku Ndivo, the Principal of the Interested Party, sworn on 28th February, 2015 and filed on 6th February, 2015. **Secondly**, the application was opposed through the written submissions of counsel for the Interested Party dated and filed on 26th May, 2015.

General as Defendants. It was counsel's submission that the said order had never been set aside and was still valid.

10. Counsel also argued a technical point that neither the proceedings nor the Gazette Notice was attached to any of the Affidavits in support of the Application, and that even if the court were to quash the Gazette Notice the proceedings would be intact. The court would therefore be acting in vain. Counsel therefore urged the court to dismiss the Application with costs.

ANALYSIS OF THE APPLICATION AND SUBMISSIONS

11. I have considered the submissions by the counsel for the respective parties. The question is whether the Respondent had any jurisdiction to revoke the Applicant's title to the suit property. To answer that question the court will examine the Respondent's powers under the Constitution, and its constituting statutes, the National Land Commission Act 2012 (the Act). The Respondent is established under Article 67(1) of the Constitution. Its functions as set out in Article 67(2)(e) include to –

“initiate investigations, on its own initiative or on a complaint, into present or historical land injustices and recommend appropriate redress.”

12. And Article 68(2) empowers Parliament to enact legislation to *inter alia*, enable the review of all grants or dispositions of public land to establish their propriety or legality.

13. The National Land Commission Act 2012 (the Act), was enacted pursuant to the said Article 68(2)(1) provides in Section 14(1) and (7) as follows –

“14(1) Subject to Article 68(c)(v) of the Constitution, the Commission shall, within five years of the commencement of this Act, on its own motion or upon a complaint by the national or county government, community or an individual review all grants or dispositions of public land to establish their propriety or legality.

(2) – (6)

(7) No revocation of title shall be effected against a bona fide purchaser for value without notice or defect in the title.”

14. The dispute over the suit land goes back to Civil Case No. 162 of 2007 between the Board of Governors Changamwe Secondary School vs. the Commissioner of Lands and the Attorney-General in which a consent was recorded on 8th December, 2009, that the Grant No. CR 28149 for Plot No. LR MN/VI/3458 be revoked.

15. That consent was however set aside by a Ruling delivered on 30th October, 2015, which in effect meant that the suit land reverted to the Applicant. Ownership is however not the issue in this application. The issue here is whether the Respondent has jurisdiction to revoke the Applicant's title to land at all or let alone without reference to the Applicant.

16. In light of the clear provisions of both the Constitution and the National Land Commission, the Commission has no power to revoke titles in respect of private land. The suit land had been alienated and a grant made to the predecessor in title of the Applicants and from whom the Applicants bought it. The Respondents had no jurisdiction to revoke such title under Section 14(7) of the National Land Commission Act, 2012 without reference to the Applicants. The purported revocation is therefore null

and void.

17. There shall therefore issue an order of certiorari to bring to this court, and quash by order of certiorari, Gazette Notice Number 5022 published in the Kenya Gazette dated First July 2014 containing the Respondent's decision to revoke and revoking the Applicant's Title to parcel of land known as Mombasa/MN/VI/3458.

18. Likewise there shall be an order of prohibition prohibiting the Respondents herein, their servants and/or agents from alienating, allocating, handing over possession or vesting the Title of the suit property to any other person or having any other dealing whatsoever with suit property or taking any further proceedings or action in relation thereto.

19. There shall also issue an order of mandamus directed at the Respondents directing them or their agents to reinstate the title to the suit property to the Applicant's name in the Register of Titles as proprietor of the leasehold interest and revoke and/or cancel any dealing with the said title and any entry in the Register of the suit property made pursuant to the purported revocation of the Applicant's title.

19. I direct that the costs herein be borne by each party.

20. There shall be orders accordingly.

Dated, Signed and Delivered in Mombasa this 8th day of June, 2016.

M. J. ANYARA EMUKULE, MBS

JUDGE

In the presence of:

Mr. Khanna for Petitioner

No Appearance for Respondent

No Appearance for Interested Party

Mr. S. Kaunda Court Assistant



ANNEXE IV

Submissions by the Chairperson National Land Commission



NATIONAL LAND COMMISSION

**RESPONSES TO PETITIONS AND COMPLAINT REFERRED TO THE LANDS
COMMITTEE OF THE NATIONAL ASSEMBLY**

REPORT BY:

**GERSHOM OTACHI BW'OMANWA
CHAIRMAN**

17TH MAY, 2022

RESPONSE TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON LANDS

Honourable Chair,

Pursuant to a letter Ref: NA/DC/LANDS/2022/ (033) dated 9th May 2022, the Committee invited the National Land Commission (NLC) to respond to a petition regarding alleged encroachment of school land in Changamwe Constituency. The petitioners aver that:

1. That the land in which Changamwe Primary, Changamwe Secondary School and Changamwe Girls Secondary School are located being Plot No MN/VI/3458R was hived out and irregularly allocated and granted to Turf Developers Ltd of P.O Box 43240 Mombasa on a ninety-nine (99) year lease.
2. That Turf Developers Ltd on or about the month of May 2000 erected a wall around the said plot and unlawfully took possession denying the school its rights of access of its land

Response

Honourable Chair, I wish to respond as follows: -

The investigated the matter as requested by your Committee and established the following;

a) *Background Information: Chronology of events:*

- a) The parents of Changamwe Primary and Secondary School via their counsel Gikandi & Company Advocates wrote a letter to the Commissioner of Lands dated 23rd September 1997 requesting the Commissioner to recall the title illegally and irregularly granted to Turf Developers ltd and to direct the Registrar of Titles to cancel the same.
- b) Turf Developers ltd instituted a suit against the Board of Governors Changamwe Secondary School and the Attorney General, Civil Suit No 485 of 2000 on 12th October 2000. They claimed that the construction of a wall by the School was illegal and prayed for injunction to restrain the defendants from trespassing within their land.

- c) The Court delivered a judgment on the 10th December 2002, declaring that the suit property belongs to Turf Developers Ltd and the erection of the wall illegal. The court further granted injunction orders sought and directed the demolition of the wall. The court based their decision on the evidence presented before them, having stated that there was no defense to the suit.
- d) The School proceeded to institute a suit against the NLC of Lands and the Attorney General, Civil Case No 162 of 2007 in the Mombasa High Court, resulting in a judgment and extraction of a decree dated 8th December 2009, in which a consent was recorded revoking Grant No C.R. 28149 for Plot No. L.R. MN/VI/3458. The consent was however set aside by a Ruling delivered on 30th October 2015, which in effect meant that the suit land reverted to Turf Developers Limited.
- e) The School moved the NLC for revocation of the title. The Commission rendered a Decision contained in the Gazette Notice No 5022 published in the Kenya dated 18th July 2014 revoking Turf Developers Limited's title to the parcel of land.
- f) Turf Developers Limited filed a Judicial Review Application, Miscellaneous Application No 37 of 2014, R v The Chairman and Members of the National Land Commission and Members of the National Land Commission dated 12th August 2014 seeking for the quashing of the decision of the Commission contained in the Gazette Notice No 5022 published in the Kenya Gazette dated 18th July 2014 revoking the applicant's title to the parcel of land, an order prohibiting the NLC by itself or by its agents from alienating or handing over possession of the property and an order directing the NLC to reinstate the Turf Developers Limited's name in the register as the proprietor of the suit property. The learned judge in the matter granted the orders prayed for, alluding to the fact that the National Land Commission had acted ultra vires in exercise of its functions as provided in Section 14 (1) of the National Land Commission Act. The judge averred that the Commission had no power to revoke titles in respect to private land since the land had been alienated and a grant made to the predecessor in

title, from whom the applicants purchased the property. The court stated that the Commission therefore did not have any powers to revoke titles in respect of private land.

- g) On 13th June 2018, the Learned Judge, Justice Omollo dismissed the suit filed by Changamwe Secondary School, Land Case No 162 of 2007, Changamwe Secondary School v the Commissioner of Lands and the Attorney General. The grounds for dismissal were based on the Plaintiff's failure to comply with an order of the court dated 31st August 2017 directing the Plaintiff (Changamwe Secondary School) to amend the plaint dated 4th July 2007 by adding the Turf Developers Limited as a party to suit.

Hon. Chair, in view of the above, the National Land Commission suggests the following for consideration;

- i. The NLC had exercised its mandate under S. 14 of the National Land Commission Act and revoked the title. This Decision was, however, reversed by Court. Therefore, may not have any further role in the matter.
- ii. The school fraternity may consult with other institutions, such as EACC, with a view to finding a way forward.
- iii. Board of Governors may consider pursuing judicial recourse by way of an appeal or review of the judgment delivered on 10th December 2002 with regard to Civil Suit No 485 of 2000 filed by Turf Development Limited.

Honourable Chair, I submit.



GERSHOM OTACHI BW'OMANWA
CHAIRMAN

17TH MAY, 2022

ANNEXE V

Submissions by the Field Officers in Chagamwe Sub County



REPUBLIC OF KENYA

MINISTRY OF LAND AND PHYSICAL PLANNING

Telegram
Telephone: 041/2312914

**DEPARTMENT OF LANDS,
P.O. BOX 80053-80100
MOMBASA.**

**When replying please quote:
Ref: CF.19768**

31st March, 2022

The Clerk of the National Assembly
Parliament Building
NAIROBI

**RE: BRIEF OVER LAND REFERENCE NO. MN/VI/3458 TO THE
DEPARTMENTAL COMMITTEE ON LANDS ON THE FIELD VISIT TO
CHANGAMWE CONSTITUENCY IN RESPONSE TO A PETITION
REGARDING ENCROACHMENT OF SCHOOL LAND IN THE AREA**

The above matter and letter dated 29th March, 2022 addressed to Dr. Nicholas Muraguri CBS (PS Ministry of Lands and Physical Planning)) refers.

This is to confirm that according to record in our custody all that land known as MN/VI/3458 is registered as New Grant being an allocation from the National Government under Title Number CR.28149. The registered owner on first registration is documented as TURF DEVELOPERS LIMITED of Post Office Box Number 43240, Mombasa. The Title thereof was registered on 26th February, 1996.

In a letter dated 14th October, 2003 the office of the Commissioner of Land communicated to the District Land Registrar that a complaint had been received from parents of Changamwe Primary and Secondary School. There was an allegation that the land is part of the school land. In his report under letter dated 21st October, 2003 the District Land Officer upon site visit noted that the allocated plot MN/VI/3893 encroaches on a football pitch being used by the schools and on a building meant for expansion of the school.

It was the Land Officer considered opinion that the allocation should not have been done since that was the area earmarked for expansion of school. He observed that the status on the ground should be maintained. You will note that Court Decree issued

in Civil Case no. 162 of 2007 revoking the title in respect of Land Reference MN/VI/3458 was set aside by Court Order dated 14th July, 2016 in Misc. Application No. 37 of 2014. The Court ordered immediate reinstatement of the suit property to the first allottee TURF DEVELOPERS LIMITED and revoked/cancelled all transaction made in respect of the revocation.

The record in our custody indicate that the ownership interest was transferred to ASHOK LABHSHANKER DOSHI and PRATIBHAI ASHOK DOSHI vide a transfer dated 24th October, 2017 for Kshs.11,000,000/=. This is the current status an ownership.

I have enclosed the following documents for perusal and reference.

1. Certified copy of forwarding letter dated 16th February, 1996.
2. Certified copy of Grant CR.28149 (MN/VI/3458) issued to Turf Developers Limited
3. Copy of letter dated 14th October, 2003 from office of Commissioner of Land
4. Copy of letter dated 21st October, 2003 from District Land Officer Mombasa
5. Copy of complaint letter dated 13th October, 2012 from Changamwe Village Development committee.
6. Certified copy of Orders registered under entries No.3 – No. 7
7. Certified copy of transfer dated 24th October, 2017 registered on 10th November, 2007


S. K. Mwangi
REGISTRAR OF TITLES
MOMBASA

Encls.

Copy to: Dr. (Eng.) Karanja Kibicho, CBS
Principal Secretary
State Department of Interior & Border Management
Ministry of Interior and Coordination of National Government
Harambee House
NAIROBI.

Dr. Nicholas Muraguri, CBS
Principal Secretary
Ministry of Lands and Physical Planning
Ardhi House
NAIROBI.

Ms. Kabale Tache
Ag. Chief Executive Officer
National Land Commission
Ardhi House
NAIROBI.

Dr. Fred Matiangi, EGH
Cabinet Secretary
Ministry of Interior and Coordination of National Government
Harambee House
NAIROBI

Ms. Farida Karoney, EGH
Cabinet Secretary
Ministry of Lands and Physical Planning
Ardhi House
NAIROBI.

Hon. Omar Mwinyi, MP
Member of Parliament
Changamwe Constituency
Parliament Buildings
NAIROBI.

MINISTRY OF LANDS AND SETTLEMENTS

File



Telegrams: "LANDS", Nairobi
Telephone: Nairobi 718050/719010
When replying please quote
Ref. No. : 178169
and date



DEPARTMENT OF LANDS
P.O. BOX 30089
NAIROBI

16th February 1996

✓ Registrar of Titles
MOMBASA

DISTRICT LAND REGISTRY
MOMBASA
26 FEB 1996
TIME
D. N. No. 2424

RE: MN/VI/3458

Enclosed herewith please find the above Grant in
duly signed and stamped for your registration.

Registration fees of Ksh. 250/0 has been paid vide
receipt, No. D 379462 of 26th January 1996.

[Signature]
S.M. KAGWI
FOR: COMMISSIONER OF LANDS

cc
Turf Developers Limited
P O Box 43240
MOMBASA

[Large handwritten signature]

[Handwritten signature]

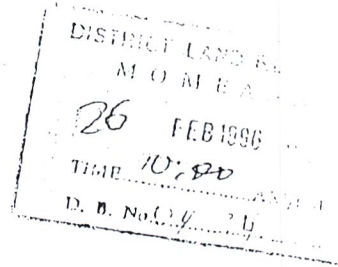
[Handwritten signature]

[Large handwritten signature]

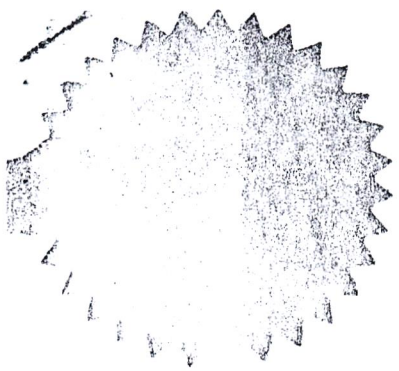
RECEIVED
REVENUE STAMP

31/3/2011

[Handwritten signature]



2



REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT
(Chapter 281)

GRANT: Number GR. 28149

ANNUAL RENT: Shs.50,000/- (REVISABLE)

TERM: 99 years from 1.12.1995

SO 550
K
16.2.96

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of shillings two hundred and fifty thousand (Shs.250,000/-) by way of stand premium paid on or before the execution hereof THE PRESIDENT OF THE REPUBLIC OF KENYA hereby GRANTS unto TURF DEVELOPERS LIMITED, a limited liability company having its registered office at MOMBASA (Post Office Box Number 43240)

(hereinafter called "The Grantee") ALL that piece of land situate in Mombasa Municipality in District containing by measurement nought decimal eight one seven two (0.8172) of a hectares or thereabouts that is to say L.R. No. MN/VI/3458

which said piece of land with the dimensions abutments and boundaries thereof is delineated on the plan annexed hereto and more particularly on Land Survey Plan Number 202797 deposited in the Survey Records Office at Nairobi

TO HOLD

for the term of ninety nine (99) years from the first Day of December One thousand nine hundred and ninety five SUBJECT to (a) the payment in advance on the first day of January in each year of the annual rent of shillings fifty thousand (Shs.50,000/-) (REVISABLE)

(b) the provisions of the Government Lands Act (Chapter 280) and (c) the following Special Conditions (namely):

[P.T.O.]

REGISTERED


CERTIFIED UNCLASSIFIED
REG. PAID. ADV. SER. DEPEND. STAMP SHS.

31/3/2022

SPECIAL CONDITIONS

1. No buildings shall be erected on the land nor shall additions or external alterations be made to any buildings otherwise than in conformity with plans and specifications previously approved in writing by the Commissioner of Lands and the Local Authority. The Commissioner shall not give his approval unless he is satisfied that the proposals are such as to develop the land adequately and satisfactorily.
2. The Grantee shall within six calendar months of the actual registration of the Grant submit in triplicate to the Local Authority and the Commissioner of Lands plans (including block plans showing the positions of the buildings and a system of drainage for disposing of sewage surface and sullage water) drawings elevations and specifications of the buildings the Grantee proposes to erect on the land and shall within 24 months of the actual registration of the Grant complete the erection of such buildings and the construction of the drainage system in conformity with such plans drawings elevations and specifications as amended (if such be the case) by the Commissioner PROVIDED that notwithstanding anything to the contrary contained in or implied by the Government Lands Act if default shall be made in the performance or observance of any of the requirements of this condition it shall be lawful for the Commissioner of Lands or any person authorized by him on behalf of the President to re-enter into and upon the land or any part thereof in the name of the whole and thereupon the term hereby created shall cease but without prejudice to any right of action or remedy of the President or the Commissioner of Lands in respect of any antecedent breach of any condition herein contained.
3. The Grantee shall maintain in good and substantial repair and condition all buildings at any time erected on the land.
4. Should the Grantee give notice in writing to the Commissioner of Lands that it is unable to complete the buildings within the period aforesaid the Commissioner of Lands shall (at the Grantee's expense) accept a surrender of the land comprised herein:
 - (i) Provided further that if such notice as aforesaid shall be given within 12 months of the actual registration of the Grant term the Commissioner of Lands shall refund to the Grantee 50 per centum of the stand premium paid in respect of the land, or
 - (ii) at any subsequent time prior to the expiration of the said building period the Commissioner of Lands shall refund to the Grantee 25 per centum of the said stand premium. In the event of notice being given after the expiration of the said building period no refund shall be made.
5. The land and the buildings shall only be used for Residential purposes only
6. The buildings shall not cover more than fifty per centum of the area of land or such lesser area as may be laid down by the Local Authority in its by-laws.
7. The land shall not be used for any purpose which the Commissioner of Lands considers to be dangerous or offensive.
8. The Grantee shall not subdivide the land, without the prior consent in writing of the Commissioner of Lands.
9. The Grantee shall not sell transfer sublet charge or part with the possession of the land or any part thereof or and buildings thereon except with the prior consent in writing of the Commissioner of Lands. No application for such consent (except in respect of a loan required for building purposes) will be considered until Special Condition No. 2 has been performed.
10. The Grantee shall pay to the Commissioner of Lands on demand such sum as the Commissioner of Lands may estimate to be the proportionate cost of constructing all roads and drains and sewers serving or adjoining the land and the proportionate cost for the supply of both the water and the electric power and shall on completion of such construction and the ascertainment of the actual proportionate cost either pay (within 7 days of demand) or be refunded the amount by which the actual proportionate cost exceeds or falls short of the amount paid as aforesaid.
11. The Grantee shall from time to time pay to the Commissioner of Lands on demand such proportion of the cost of maintaining all roads and drains serving or adjoining the land as the Commissioner may assess.
12. Should the Commissioner of Lands at any time require the said roads to be constructed to a higher standard the Grantee shall pay to the Commissioner on demand such proportion of such construction as the Commissioner may assess.
13. The Grantee shall pay such rates taxes charges duties assessments or outgoings of whatever description as may be imposed charged or assessed by any Government or Local Authority upon the land or the buildings erected thereon including any contribution or other sum paid by the President in lieu thereof.

✓

CERTIFIED / CERTIFIED
 TAXES PAID ADHESIVE REVENUE STAMP SH.
 21/3/22


REPUBLIC OF KENYA

DISTRICT OF *MOHABASA*

Land Reference No.

Locality *Mombasa Municipality*

(Orig No.)

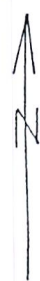
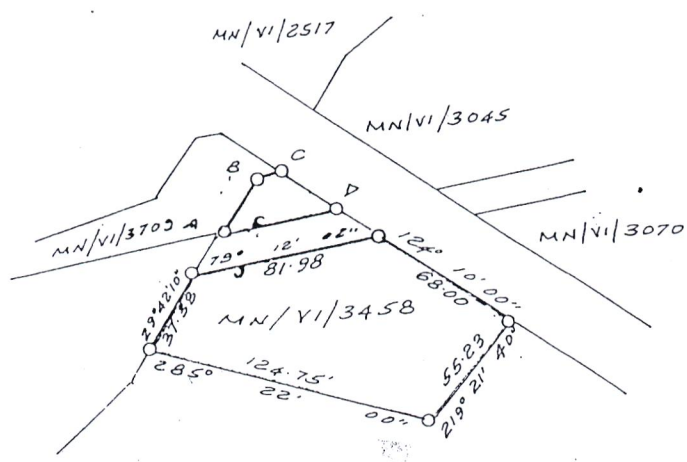
Reference Map *South. B. 372*
D. II. a.

Sub division No. *3458* (Orig No.)

of Section No. *VI* Mainland North.

Area = *0.8172* Ha. (Approx.)

	Bearings			Distances
	o	'	"	Metres
A-B	34	10	00	29.70
B-C	79	10	00	8.82
C-D	124	10	00	29.74
D-A	259	12	02	50.65



CERTIFIED / CERTIFIED
FEE PAID / ADJUDICATING FEE PAID STAMP
3/3/22
[Signature]

M. J. Kiguru
Licensed Surveyor

G. O. OBARA

Scale 1 in 2500

9TH FEBRUARY 2006

202797

Traced by
Checked by

5

- 14. The President or such person or authority as may be appointed for the purpose shall have the right to enter upon the land and lay and have access to water mains service pipes and drains telephone or telegraph wires and electric mains of all descriptions whether overhead or underground and the Grantee shall not erect any buildings in such a way as to cover or interfere with any existing alignments of main or service pipes or telegraph wires and electric mains.
- 15. Commissioner of Lands reserves the right to revise the annual ground rent payable hereunder on the 31st January, 1989 and thereafter at the expiration of every ten years of the term. Such rental shall be at a rate to be determined by the Commissioner of Lands; of the unimproved freehold value of the land as at 31st December, 1988 as assessed by the Commissioner of Lands or at the rate in force on the 31st December, 1988 whichever is the greater.
- 16. Commissioner of Lands reserves the right to revise the annual ground rent payable hereunder at the expiration of every ten years of the term. Such rental shall be at a rate to be determined by the Commissioner of Lands of the unimproved value of the land as at the end of every tenth year of the term.
- 17. The Commissioner of Lands reserves the right to revise the annual ground rent payable hereunder on 31st December, 1998 and thereafter at the expiration of every ten years of the term.

IN WITNESS WHEREOF I WILSON GAGANJA
 the Commissioner of Lands have by order of
 the President hereunto set my hand this
 15th day of FEB
 One thousand nine hundred and ninety six
 in the presence of:

[Handwritten Signature]

[Handwritten Signature]
 REGISTRAR OF TITLES

CERTIFIED / CERTIFIED
 TAXES PAID ADHESIVE REVENUE STAMP

LAND TITLES REGISTRY - MOMBASA
 REGISTRATION OFFICE
 28744/1
 26th FEBRUARY 1996
 TIME 10:00 AM

INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE
 OF VANDER OF KENYA
 OF KINYOI / ABOVE

136
 Date of Registration 12.9.2002

2

VEAT UNDER SECTION 65(1)(f) 3/3/22

14.9.2000

4

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE
DECREE CIVIL CASE NO. 162
OF 2007. DATE 17TH DECEMBER 2009
REVOKING THE ABOVE MENTIONED PLOT
NO. (CR. 28149) PLOT NO. MN/VII/3458

Registration No. 331 Date of Registration 16.12.09 *[Signature]*

THE FOLLOWING
ORDER CIVIL SUIT NO 162 OF 2007 RESTRAINING
THE PLAINTIFF FROM TRESPASSING, DAMAGING, WAITING,
DEVELOPING, SELLING, LEASING, ALIENATING,
DANSIONING, CHARGING, MORTGAGING OR IN ANY WAY
FROM DEALING WHATSOEVER ON THE ABOVE PLOT
Registration No. 152. 10.12.2012 *[Signature]*

THE FOLLOWING
ORDER CIVIL SUIT NO 162 OF 2007 19TH MARCH
2012 BRINGING INTERIM ORDERS OF STAY OF
THE ORDERS MADE IN COURT RULING DELIVERED ON
12TH MARCH 2012 DURING HEARING OF THIS APPLICATION INTERIM
Registration No. 153 10.12.2012 *[Signature]*

31/3/2012

4

THE
COURT ORDER DATED 30TH OCTOBER 2015,
CIVIL SUIT NO. 162 OF 2007
ORIGINALLY THAT THE DECREE PASSED
ON THE 9TH DECEMBER 2009 AND ALL
CONSEQUENTIAL ORDERS BE SET ASIDE.
Registration No. 170 Date of Registration 20.1.2016 *[Signature]*

D. J. Safari *304

8

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE
COURT ORDER DATED 14 JULY 2016, AN APPLICATION
NO. 37 OF 2014 ORDERING THE REINSTATEMENT
OF THE SUIT PROPERTY TO THE DEVELOPERS.
LIMITED AND REVOKE AND/OR CANCEL ANY TRANSACTIONS
MAD IN THE SUIT PROPERTY PURSUANT TO THE PURPOSES
REGVOR...
Registration No. 339 22.7.2016 *[Signature]*

Application

*204

7

TRANSFER DATED 24th DECEMBER 2017
TO - AJHOK LABHSHANKER DSHH
AND PRATIBHA AJHOK DSHH
FOR KRS 11000, 000/-

Presentation No. 150 Date of Realisation 10.11.2017

~~Signature~~
D. J. Sagar 2017

CERTIFIED / VERIFIED
TAXES PAID ADMISSIVE REVENUE STAMP
DATE 31/3/21
~~Signature~~

Attn: Berita

19 768

8

20457

MINISTRY OF LANDS AND SETTLEMENT

Telegrams: "LANDS", Nairobi
Telephone: Nairobi 718050-9
When replying please quote

Ref. No. 555981/X.
and date



DEPARTMENT OF LANDS
P.O. Box 30089
NAIROBI

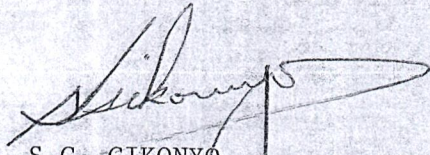
14th October,, 20.03.

The District Land officer
P.o. Box
MOMBASA

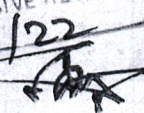
RE: COMPLAINT ON MN/V1/3458 AND 3893- CHANGAMWE PRIMARY AND
SECONDARY SCHOOL

This office has received a complaint from the parents of the
above schools alleging that the above two plots were curved
out of the school plot No. L.R. MN/V1/2562.

Please investigate the matter and urgently furnish this
office with your report.


S.G. GIKONYO
FOR: COMMISSIONER OF LANDS

c.c. Town Clerk
Mombasa Municipal Council
MOMBASA

CERTIFIED, CERTIFIED
FEES PAID ADHESIVE REVENUE STAMP SH.
DATE 31/3/22


ATT: BERITA

9

20457

21st October 2003

The Commissioner of Lands
P.O. Box 30089
NAIROBI

RE: LR POS. 3458 & 3893/VI/MI - CHANGAMWE
PRIMARY & SECONDARY SCHOOL

I refer to your letter ref. 555981/X dated 14th
October 2003 in connection with the above.

I visited the site and noted the following:-

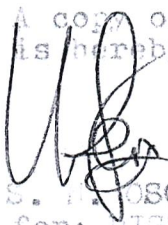
The plot is fenced by stone wall covering the
entire compound of the two schools.

- The allocated plot 3893/VI/MI encroaches
into a football pitch being used by both
schools plus a building meant for expansion
of the school.
- The registered allottee has obtained a Court
order giving him permission to fence off
his land but he has not done it due to stiff
resistance from the locals.

In my opinion the allocation should not have been
done in the first place since this is the area
earmarked for expansion of the school and given
that the same is fenced by both the schools, the
status on the ground should be maintained.

The hostilities by the locals cannot also allow
anybody to interfere with the stone wall fencing
by the schools.

A copy of the plans illustrating the ground situation
is hereby attached for your reference.

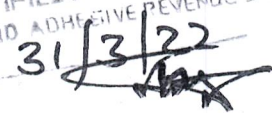

S. J. JOSCOB
for: DISTRICT LAND OFFICER
LOMBASA/LWALE

cc. The Town Clerk

SBC/
LOMBASA

/wk

N.C.C. file 19762

IDENTIFIED / CERTIFIED
TAXES PAID ADHESIVE REVENUE STAMP SHEET
31/3/22


10

CHANGAMWE VILLAGE DEVOPMENT COMMITTEE
P.O. BOX 83765, MOMBASA TEL: 0734 – 799796

Date: 13th October, 2003

**THE MINISTER FOR
LANDS & SETTLEMENT,
P.O. BOX 30450,
NAIROBI.**

Dear Sirs,

**RE: PLOT NO. 3458 AND PLOT NO. 3893 CHANGAMWE CARVED
FROM MAIN PLOT NO. 2562./VI/MN/ FOR PRIMARY SCHOOL.**

Plot No. 3458 is for Turf Developers Ltd who has the title deed. Plot No. 3893 has not been given the name of the person who was allocated by the Commissioner of Lands and the P.D.P is not yet completed in Mombasa Registry.

Both of these plots were carved from Changamwe Primary School ground in one plot with that of Changamwe Secondary School.

M/s Turf Developers Ltd has obtained a court order to demolish the wall fence and one of the girls classrooms in Secondary school area. Parents of both schools and the Changamwe Village Developers Committee elders are requesting you to nullify this plot through the High Court to avoid confrontations between the concerned parties.

This matter was given to the Njonjo Commission of inquiry since the year 2000. However this is a public land and cannot go to one person.

This unfortunate matter was attributed by the Land Grabbers in 1995 and 1996 who did not think of the future of the school, which has over 1300 pupils both secondary and primary.

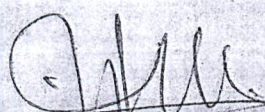
The Minister, this matter is very serious and unless you act very first things might get out of the hand, for the community will not watch an individual demolish the institution of the public guarded by police to destroy our school.

CERTIFIED / UN-CERTIFIED
TAXES PAID ADHESIVE REVENUE STAMP
DATE 31/3/22

11

We will react back offensively. We are waiting for your prompt action.

Yours faithfully,
Changamwe Village Development Committee


WILSON W. NDOLO
SECRETARY

- c.c : Minister for Education
Ministry of Education
P.O. Box 30040,
Nairobi.
- : Minister for Local Government,
P.O. Box 30004,
Nairobi.
- : Permanent Secretary
Ministry of Lands & Settlement,
P.O. Box 30450,
Nairobi.
- : District Officer,
Changamwe.
- : O.C.S. Changamwe Police Station
- : Area Councillor,
Changamwe Ward.
- : School Committee,
Secondary & Primary
- : Senior Areas Chief
Changamwe
- : Sub-Chief
Changamwe.

UNRECORDED / UNRECORDED
FES PAID ADHESIVE REVENUE STAMP 500
DATE 31/3/22

Lands Office
Mombasa

CF 19768

14



THE NATIONAL LAND COMMISSION

Telegrams: "MINILANDS", Nairobi

Telephone: Nairobi 2718050

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

Ref: CF/513/ (4)

Date: 9TH JULY, 2013

THE DISTRICT LAND REGISTRAR
MOMBASA DISTRICT
P. O. BOX
MOMBASA.

Dear Sirs,

RE: L.R. NO. MOMBASA MN/VI/3458

The Commission has received a complaint regarding the above property to the effect that it is Public Land belonging to Changamwe Secondary School.

The purpose of this letter is to ask you place restrictions on the above property title with a view to ceasing all transactions until this case is determined.

In the meanwhile please provide the registration details of the above property for our information and further action.

Yours faithfully,

**ABIGAEL MBAGAYA-MUKOLWE (MRS.)
VICE- CHAIRPERSON
NATIONAL LAND COMMISSION**

UNRECORDED / UNRECORDED
TAXES PAID / TAXES PAID
ADHESIVE REVENUE STAMP 500
31/3/22

land file

REPUBLIC OF KENYA
PUBLIC NOTICE
CAVEAT EMPTOR — BUYER BE WARE
L. R. NO. MN/VI/3458
CHANGAMWE PRIMARY AND SECONDARY SCHOOL
THE IRREGULAR ALLOCATION TO A PRIVATE PERSON
OF THE PUBLIC
UTILITY PLOT

We are referring to the above plot which has been hived out of land belonging to Changamwe Primary School and Changamwe Secondary School and irregularly allocated to **TURF DEVELOPERS LIMITED** of P.O. Box 43240, Mombasa (an Associate of Doshi Group of Companies).

We have been instructed by the parents and the Board of Governors of the Changamwe Primary School and Changamwe Secondary School and we advise any person who is in the process of or intends to develop, charge as bank security, lease, occupy, purchase or in any other way deal with the above mentioned plot to be aware of its irregular allocation to Turf Developers Limited. Neither the Commissioner of Lands nor any other authority in Kenya has any authority to create private ownership titles in respect of land reserved for public utility as confirmed by the ruling of Justice **P. N. Mbiti** in **Betty Kalia versus Robert Mutiso** (HCCC No. 688 of 1996 and HCCC No. 704 of 1996 (Nairobi) and the ruling of Justice Mbogholi Msagha in **Paul Nderitu & 2 Others versus Pashito Holdings Limited and Another** (HCCC No. 3063 of 1996 (Nairobi)).

For these reasons, members of the public should be forewarned and should not in any way deal with the above plot as we intend to file a suit if the Commissioner of Lands does not revoke its irregular allocation immediately as per a demand letter we have already sent to him. Moreover, the Commissioner of Lands is in the process of issuing four (4) other titles to four (4) other personalities in respect of the remaining piece of land. This caveat applies **MUTATIS MUTANDIS** to any such titles that may be issued hereinafter.

DATED at MOMBASA this 23rd day of September, 1997.

DRAWN BY:-
 Gikandi & Company,
 Advocates,
 11th Floor, Bima Tower,
 P.O. Box 87669,
 MOMBASA.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA DISTRICT REGISTRY
CIVIL SUIT NO. 485 OF 2000

TURF DEVELOPMENTS LIMITED. PLAINTIFF

VERSUS

THE BOARD OF GOVERNORS
CHANGAMWE SECONDARY SCHOOL. 1ST DEFENDANT

THE ATTORNEY GENERAL. 2ND DEFENDANT

ORDER

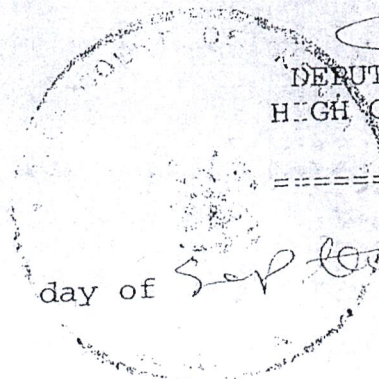
[In Chambers before Honourable Lady Justice J. Khaminwa]

UPON READING the application presented to this Honourable Court on 13th May, 2003 by the Counsel for the Plaintiff under Section 3A of the Civil Procedure Act, under Order L. Rule 1 of the Civil Procedure Rules and UPON READING the Affidavit in support thereof sworn by Ashok Labshanker Doshi on 13th May, 2003 and the annexures thereto and UPON HEARING Mr. Ushwin Khanna of Kapila Anjarwalla & Khanna, Advocates for the Plaintiff and Mr. Kalama, Advocate holding brief for Gikandi & Company, Advocates for the 1st Defendant IT IS HEREBY ORDERED:-

1. THAT the Plaintiff be and is hereby at liberty to demolish the wall which is erected along the boundary of the Plaintiff's Plot L.R. No. MN/VI/3453;
2. THAT the officer commanding the Police Station at Changamwe do provide security to the Plaintiff during the demolition exercise;
3. THAT the costs of the demolition incurred by the Plaintiff be assessed by the Taxing Master of this Honourable Court and in any event be paid by the 1st Defendant together with the costs of the suit.
4. THAT the 1st Defendant do pay for the costs of this application.

GIVEN under my hand and the seal of the Court at Mombasa this 21st day of August, 2003.

CERTIFIED/CERTIFIED
TAXES PAID ADDITIONAL REVENUE STAMP 500
31/3/22


 DEPUTY REGISTRAR
 HIGH COURT OF KENYA
 MOMBASA

ISSUED this

12th

day of

September

2003

Att: Berita

13

2

PENAL NOTICE

TAKE NOTICE that in the event of disobedience or breach of any of the terms of this order, you may be liable to be charged for contempt of Court which is a criminal offence, punishable by imprisonment for a term not exceeding six (6) months.

Mr. Herbat NGISIAN GIE
from the High Court.
court bailif

CERTIFIED / CERTIFIED
FEE PAID ADM. CIVIL REVENUE STAMP SHEET
31/3/22

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CONSTITUTIONAL, JUDICIAL REVIEW DIVISION
MISC. APPLICATION NO. 37 OF 2014

DISTRICT LAND REGISTRY **R3**
MOMBASA
DATE 22 JUL 2016
TIME: 0300
D. B. No. 229

IN THE MATTER OF: AN APPLICATION BY TURF DEVELOPERS LIMITED FOR LEAVE TO APPLY FOR JUDICIAL REVIEW AND ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS.

AND

IN THE MATTER OF: PARCEL OF LAND KNOWN AS PLOT NO. L.R. MOMBASA/MN/VI/3458.

AND

IN THE MATTER OF: THE NATIONAL LAND COMMISSION ACT, 2012, THE CONSTITUTION OF KENYA 2010 AND THE REGISTRATION OF TITLES ACT (CAP. 281), LAWS OF KENYA (REPEALED).

BETWEEN

REPUBLIC.....APPLICANT

AND

THE CHAIRMAN AND MEMBERS OF NATIONAL LAND COMMISSION.....RESPONDENTS

EX-PARTE APPLICANT: TURF DEVELOPERS LIMITED

AND

THE BOARD OF GOVERNORS CHANGAMWE SECONDARY SCHOOL.....INTERESTED PARTY

CERTIFIED TRUE COPY
TAXES PAID ADHESIVE REVENUE STAMP BY
DATE 31/3/22

ORDER

In Court before Hon. Justice M. J. Anyara Emukule on 8th June, 2016

CLAIM FOR:-

1. An order of Certiorari do issue to remove into this Honourable Court for the purpose of being quashed the decision of the Chairman and Members of the National Land Commission herein contained in the Gazette Notice No. 5022 published in the Kenya Gazette dated 1st July, 2014 revoking the Applicant's Title to parcel of land known as Plot No. Mombasa/MN/VI/3458;
2. An order of Prohibition prohibiting the Respondents herein, their servants and/or agents from alienating, allocating, handing over possession of or vesting the

Titles of the parcels of land known as Plot No. Mombasa/MN/VI/3458 or any of them to any other person and from having any other dealing whatsoever with the said property or taking any further proceeding or action in relation thereto;

3. An order of Mandamus do issue directed at the Respondents herein commanding them to reinstate the Applicant's Title over the parcel of land known as Plot No. Mombasa/MN/VI/3458 by, inter alia, reinstating the Applicant's name in the register of the said property as the proprietor of the leasehold interests therein and to revoke and/or cancel any dealing with the said titles and any entry in the register of the said property made pursuant to the purported revocation of the Applicant's Title;
4. The costs of and incidental to this application.

PAID ADHESIVE REVENUE STAMP
DATE 31/3/2016

THIS MATTER coming up for hearing of the Notice of Motion application dated 12th August, 2014 and filed on 13th August, 2014 by the Counsel for the Ex-parte Applicant, Turf Developers Limited on 11th May, 2016 and for ruling on 8th June, 2016 in the presence of Mr. Ushwin Khanna, Advocate of Anjarwalla & Khanna, Advocates for the Ex-parte Applicant and Mr. Oddiaga, Advocate of Stephen Oddiaga & Company, Advocates for the Interested Party in the absence of the Advocates for the Respondents who were duly served but did not appear **IT IS HEREBY ORDERED:-**

1. **THAT** in light of the clear provisions of both the Constitution and the National Land Commission, the Commission has no power to revoke titles in respect of private land.
2. **THAT** the Respondents had no jurisdiction to revoke such title under Section 14(7) of the National Land Commission Act, 2012 without reference to the Applicants. The purported revocation is therefore null and void.
3. **THAT** an order of Certiorari is hereby issued to bring to this Court and quash by order of Certiorari, Gazette Notice No. 5022 published in the Kenya Gazette dated 1st July, 2014 containing the Respondents' decision to revoke and revoking the Ex-parte Applicant's title to parcel of land known as Mombasa/MN/VI/3458.
4. **THAT** an order of Prohibition is hereby issued prohibiting the Respondents herein, their servants and/or agents from alienating, allocating, handing over possession or vesting the title of the suit property to any other person or having any other dealing whatsoever with the suit property or taking any further proceedings or action in relation thereto.
5. **THAT** an order of Mandamus is hereby issued directed at the Respondents directing them or their agents to reinstate the title to the suit property to the Ex-parte Applicant's name in the Register of Titles as proprietor of the leasehold

interest and revoke and/or cancel any dealing with the said title and any entry in the Register of the suit property made pursuant to the purported revocation of the Ex-parte Applicant's title.

6. **THAT** each party shall bear its own costs.

GIVEN under my Hand and Seal of the Honourable Court this 8th day of **June, 2016**.



[Signature]
**DEPUTY REGISTRAR
HIGH COURT OF KENYA
MOMBASA**
=====

ISSUED at **MOMBASA** this 14th day of *July* 2016

PENAL NOTICE

TAKE NOTICE that in the event of disobedience or breach of any of the terms of this order, you may be liable to be charged for contempt of Court which is a criminal offence, punishable by imprisonment for a term not exceeding six (6) months.

LAND TITLES REGISTRY - MSA.
REGISTRATION OF TITLES ACT
REGISTRY NO CR. 28149/7
PRESENTED. 22ND July 2016
Time 3.00 PM
[Signature]
D. J. Safari *304

CERTIFIED / VERIFIED
PRES PAID ADHESIVE REVENUE STAMP Sh.
DATE 3/3/22
[Signature]

162

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 162 OF 2007

18/12/09
3:30R

THE BOARD OF GOVERNOR
CHANGAMWE SECONDARY SCHOOL.....PLAINTIFF

-VERSUS-

331

1. THE COMMISSIONER OF LANDS
2. THE ATTORNEY GENERAL.....DEFENDANTS

DECREE

Claim for:-

- (a) A declaration that the allocation of Public utility Land to an individual was and is illegal null and void.
- (b) A declaration that the Plaintiff being a Public Institution has a better title to this Public utility land than the individual allocated.
- (c) An order canceling and revoking Grant number C.R. 28149 Plot No. MN/VI/3458 Mombasa issued by the 1st Defendant.
- (d) Such other or further relief or order which this Honorable Court may deem fit to grant.
- (e) Costs and interest of this suit.

UNRECORDED
NOTIFIED / NOTIFIED
TAXES PAID ADHESIVE REVENUE STAMP SH.
DATE: 21/3/2022

UPON READING the Consent letter dated 8th December 2009 and filed in Court on 9th December 2009.

IT IS DECREED

(1) THAT by Consent the Grant No. C.R. 28149 for Plot No. L.R. MN/VI/3458 be and is hereby revoked.

(2) THAT parties bear their own costs of the suit.

GIVEN under my hand and the Seal of this Court at MOMBASA this 8th day of December 2009.

DEPUTY REGISTRAR
HIGH COURT OF KENYA
MOMBASA.

ISSUED at MOMBASA this 17th day of December 2009.

LAND TITLES REGISTRY—MSA KENYA
REGISTRATION OF TITLE ACT
REGISTRATION No. CR. 28149/3
Presented 18 DECEMBER 2009
Time 3:30
Registrar

CERTIFIED / VERIFIED
TAXES PAID ADHESIVE REVENUE STAMP SH.
DATE 31/3/20

UK/T.1861/2

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO.162 OF 2007

THE BOARD OF GOVERNORS
CHANGAMWE SECONDARY SCHOOL PLAINTIFF

VERSUS

- 1. THE COMMISSIONER OF LANDS
- 2. THE ATTORNEY GENERAL DEFENDANTS

AND

TURF DEVELOPERS LIMITED APPLICANT

ORDER

[In Court before the Honourable Justice J.B Ojwang']

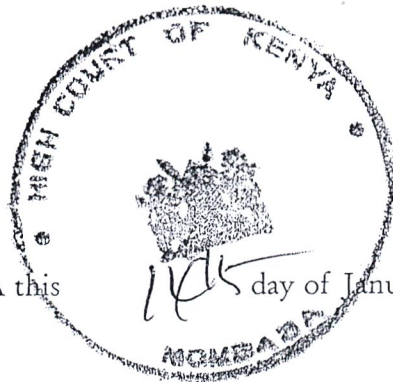
THIS SUIT coming up for ex parte hearing of the Applicant's application by way of Chamber Summons dated 12th January 2010 brought under Order I rule 10, Order XXXIX rules 1, 2, 3 and 9 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act and UPON READING the Chamber Summons dated 12th January 2010 and the Affidavit of ASHOK LABSHANKER DOSHI sworn on 12th January, 2010 in support thereof and UPON HEARING Mr. Ushwin Khanna, Advocate of Anjarwalla & Khanna, Advocates for the ex-parte Applicant, IT IS HEREBY ORDERED:-

- 1. THAT this Application brought by TURF DEVELOPERS LIMITED be certified as urgent and service thereof upon the Plaintiff and the Defendants be dispensed with in the first instance;
- 2. THAT the Plaintiff by itself, its servants, agents or employees and/or students howsoever be restrained from entering onto or trespassing upon or from taking possession of or damaging, wasting, developing, selling, leasing, alienating, transferring, charging, mortgaging or in any way from dealing whatsoever with all that parcel of land known as Plot No. MN/VI/3458 until inter partes hearing and disposal of the instant application or until further Orders of this Honourable Court;
- 3. THAT the Applicant's Application is to be given a priority date at the Registry for inter partes hearing; and
- 4. THAT costs of this Application be in the cause.

RECEIVED
FEE PAID
3/13/22
[Signature]

19

GIVEN under my hand and the seal of the Court at Mombasa this 13th day of January, 2010.



DEPUTY REGISTRAR
HIGH COURT OF KENYA
AT MOMBASA
=====

ISSUED at MOMBASA this 13th day of January, 2010

PENAL NOTICE

TAKE NOTICE that in the event of disobedience or breach of any of the terms of this order, you may be liable to be charged for contempt of Court which is a criminal offence, punishable by imprisonment for a term not exceeding six months.

CERTIFY THAT THIS IS A TRUE
COPY OF THE ORIGINAL.

DEPUTY REGISTRAR
HIGH COURT OF KENYA
MOMBASA

28149/4
10th DECEMBER 2012
9:30 AM
Chelwa

CERTIFIED / VERIFIED
FEES PAID ADHESIVE REVENUE STAMP
DATE 31/3/22

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 162 OF 2007

HIGH COURT OF KENYA
COMMERCIAL DIVISION
JUDICIAL OFFICE MOMBASA
30 NOV 2012
MOMBASA
RECEIVED

THE BOARD OF GOVERNORS
CHANGAMWE SECONDARY SCHOOL..... PLAINTIFF

VERSUS

1. THE COMMISSIONER OF LANDS
2. THE ATTORNEY GENERAL..... DEFENDANTS

AND

TURF DEVELOPERS LIMITED..... APPLICANT

DISTRICT LAND REGISTRY
MOMBASA
DATE: 10 DEC 2012
TIME: 10:30
D.B.N. AS

ORDER

[In Court before the Honourable Justice F. Tuiyott]

UPON READING the application presented to this Honourable Court on 16th March, 2012 by Counsel for the Applicant under Certificate of Urgency dated 16th March, 2012 by way of Notice of Motion dated 16th March, 2012 under Order 42 r, 6 Civil Procedure Rules, O. 51 r. 3 of the Civil Procedure Rules and UPON READING the Affidavit in support thereof sworn by Ashok Labshanker Doshi on 16th March, 2012 and UPON HEARING Mr. Ushwin Khanna, Advocate of Anjarwalla & Khanna, Advocates for the Applicant IT IS HEREBY ORDERED:-

1. THAT this application be and is hereby certified as urgent;
2. THAT service of this application on the Plaintiff and Defendants is hereby dispensed with and this application be heard ex-parte in the first instance;
3. THAT interim orders of stay of the orders made in the Court Ruling delivered on 12th March, 2012 is hereby granted pending the hearing of this application inter-partes;
4. THAT the application dated 16th March, 2012 be heard inter-partes on 29th March, 2012.

RECEIVED BY THE REGISTRAR
TAXES PAID ADDRESSEE REVENUE STAMP
DATE 31/3/12

GIVEN under my hand and the seal of the Court at Mombasa this 16th day of March, 2012.

CERTIFY THAT THIS IS A TRUE
COPY OF THE ORIGINAL
DEPUTY REGISTRAR
HIGH COURT OF KENYA
MOMBASA

DEPUTY REGISTRAR
HIGH COURT OF KENYA
MOMBASA

~~CANCELLED~~
10th Dec 2011
9:30

211

PENAL NOTICE

TAKE NOTICE that in the event of disobedience or breach of any of the terms of this order, you may be liable to be charged for contempt of Court which is a criminal offence, punishable by imprisonment for a term not exceeding six (6) months.

~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~
28149/5
10th DECEMBER 2022
9:30 AM
J. E. [Signature] 270

CERTIFIED / REVERIFIED
FEE PAID ADHESIVE REVENUE STAMP 5H
31/3/22
[Signature]

22

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 162 OF 2007

DISTRICT LAND REGISTRY
MOMBASA
DATE 20 JAN 2016
TIME 11:00 A.M.
D. B. No. 170

THE BOARD OF GOVERNORS
CHANGAMWE SECONDARY SCHOOL.....PLAINTIFF

VERSUS

1. THE COMMISSIONER OF LANDS
2. THE ATTORNEY GENERAL.....DEFENDANTS

AND

TURF DEVELOPERS LIMITED.....APPLICANT

ORDER

[In Court before the Honourable Lady Justice A. Omollo]

UPON READING the application presented to this Honourable Court on 12th January, 2010 by way of Chamber Summons dated 12th January, 2010 under Order 1 Rule 10; Order XXXIX Rules 1, 2, 3 and 9 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act and UPON READING the Affidavit in support thereof sworn by Ashok Labshanker Doshi on 12th January, 2010 and UPON HEARING Mr. Ushwin Khanna, Advocate of Anjarwalla & Khanna, Advocates for the Applicant, Mr. Oddiaga, Advocate of Stephen Oddiaga & Company, Advocates for the Plaintiff and in the absence of the State Counsel for the Attorney General for the Defendants IT IS HEREBY ORDERED:-

1. THAT the Decree passed on the 9th day of December, 2009 and all consequential orders be and are hereby set aside;
2. THAT the Applicant, Turf Developers Limited be and is hereby joined as a Defendant to this suit; and
3. THAT the costs of this application be granted to the Applicant.

GIVEN under my hand and the seal of the Court at Mombasa this 30th day of October, 2015.



DEPUTY REGISTRAR
HIGH COURT OF KENYA
MOMBASA
=====

ISSUED at MOMBASA this 16 day of January 2016

NOTIFIED - CERTIFIED COPY
FEES PAID ADDITIONAL REVENUE STAMP SH
31/3/22

LAND TITLES REGISTRY

REGISTRATION DEPARTMENT

REGISTRY DEPT

PRESIDENTIAL

Time 11:00 A.M

28749/6
2014 JANUARY 2016

~~28749/6~~
D. J. Safari *304

26

DATED THIS 24th

DAY OF October

2017

TRANSFER

OF


LAND REFERENCE NUMBER 3458 SECTION VI MAINLAND NORTH

TURF DEVELOPERS LIMITED

TO

ASHOK LABHSHANKER DOSHI and PRATIBHA ASHOK DOSHI

DRAWN BY:
A. A. SAID & CO.
ADVOCATES
SHELLA CHAMBERS BUILDING
ARCHBISHOP MAKARIOS ROAD
P.O. BOX 3601 - 80100
MOMBASA.

31/3/22


28

FSD 22000
DISTRICT LAND REGISTRY
MOMBASA
NOV 2017
33000/-
15000/-
24/10/17
Safar

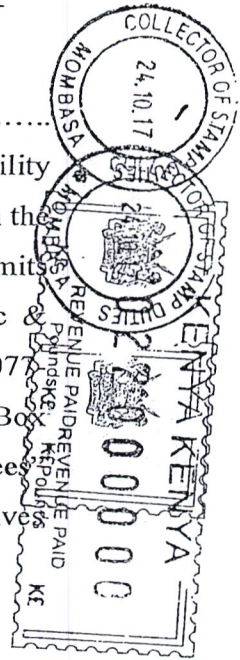
REPUBLIC OF KENYA
IN THE MATTER OF THE LAND ACT (NO. 6 OF 2012)
IN THE MATTER OF THE LAND REGISTRATION ACT (NO. 3 OF 2012)
IN THE MATTER OF THE REGISTRATION OF TITLES ACT (CAP 281) (REPEALED)

TITLE NUMBER C.R. NO. 28149
ANNUAL RENT: KSHS. 50,000/- P.A. (REVISABLE)
TERM: 99 YEARS FROM 1.12.1995

TRANSFER OF LEASE

THIS INSTRUMENT OF TRANSFER is made the 24th day of October

Two Thousand and Seventeen BETWEEN **TURF DEVELOPERS LIMITED**, a limited liability company incorporated in the Republic of Kenya and of Post Office Box Number 43240-80100 in the said Republic (hereinafter called "the Transferor" which expression where the context so admits shall include its successors in Title and Assigns respectively) of the one part and Republic & **ASHOK LABHSHANKER DOSHI** ID Number 5323099 of Post Office Box Number 82077-80100 Mombasa and **PRATIBHA ASHOK DOSHI** ID Number 5325750 of Post Office Box Number 82077-80100 Mombasa in the Republic of Kenya (hereinafter called "the Transferees" which expression where the context so admits shall include their respective personal representative and assigns) of the other part.



WHEREAS:-

The Vendor is the registered proprietor as Lessees for a term of Ninety Nine (99) years from the 1st day of December One Thousand Nine Hundred and Ninety Five from the Government of Kenya (Subject however to payment of an annual rent of Kenya Shillings Fifty Thousand (K.Shs.50,000/=) (revisable) of **ALL THAT** piece or parcel of land situate within Mombasa County containing by measurement Nought Decimal Eight One Seven Two (0.8172) of a hectare or thereabouts and known as L.R. No. MN/VI/3458 and more particularly delineated on Land Survey Plan Number 202797 annexed to a lease registered as Number C.R. 28149/1

NOW THIS INSTRUMENT WITNESSETH:

That in pursuance of the said Agreement and in consideration of the said sum of Kenya Shillings **Eleven Million Only** (K.Shs. 11,000,000/-) paid to the Transferor by the Transferee on or before the execution hereof (receipt of which said sum the Transferor doth hereby acknowledges) the Transferor **HEREBY TRANSFER** unto **ASHOK LABHSHANKER DOSHI** and **PRATIBHA ASHOK DOSHI** all its right title and interest in and to **ALL THAT** piece of Land hereinbefore fully described **TOGETHER WITH** the buildings erections and improvements erected and maintained thereon (if any).-

CONFIRMED BY THE DEPT.
FEES PAID ADHESIVE REVENUE STAMP BY
31/3/22

IN WITNESS WHEREOF the Transferor and the Transferee have set their respective hands the day and year first hereinabove written.

SEALED with the Common Seal)
of the transferor the said)
TURF DEVELOPERS LIMITED
In the presence of: -



I/D No. 5323099

PIN No. A000185230C

SIGNATURE *Labhshanker*

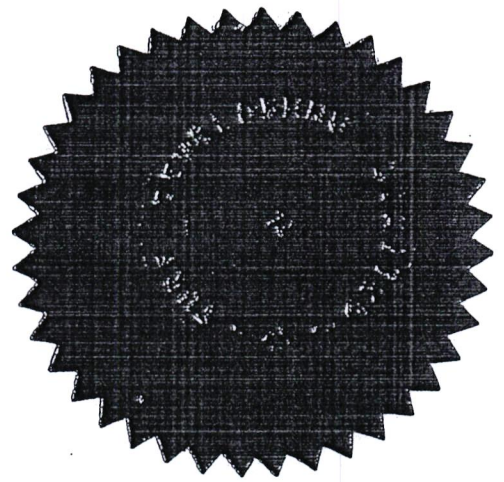
DIRECTOR/SECRETARY



I/D No. 5325750

PIN No. A000149211B

SIGNATURE *Pratibha*



CERTIFIED / VERIFIED
TAX PAID ADHESIVE REVENUE STAMP
DATE 31/3/22

I certify that I was present and saw ASHOK LABHSHANKER DOSHI and PRATIBHA ASHOK DOSHI the Directors of TURF DEVELOPERS LIMITED execute this transfer. I certify that the photographs affixed hereto are a true likeness of ASHOK LABHSHANKER DOSHI and PRATIBHA ASHOK DOSHI and that the National Identity Cards belong to them and Tax Pin Numbers are genuine and belong to them.

A. A. SAIL
ADVOCATE
P. O. BOX 3601
MOMBAY

Signature and Designation of Person Certifying

SIGNED by the Transferees]

ASHOK LABHSHANKER DOSHI]

In the presence of: -]



A. A. SAID
ADVOCATE
P. O. BOX 3601
MOMBASA

I/D No 5923099

PIN No A000185230C

SIGNATURE L. Doshi

PRATIBHA ASHOK DOSHI]

In the presence of: -]



A. A. SAID
ADVOCATE
P. O. BOX 3601
MOMBASA

I/D No 5925750

PIN No A001149211B

SIGNATURE P. Doshi

I certify that I was present and saw ASHOK LABHSHANKER DOSHI and PRATIBHA ASHOK DOSHI execute this Transfer. I certify that the photograph affixed hereto is a true likeness of ASHOK LABHSHANKER DOSHI and PRATIBHA ASHOK DOSHI and that the National Identity Card/Passport Number and Tax Pin Number are genuine and belong to them.

A. A. SAID
ADVOCATE
P. O. BOX 3601
MOMBASA

Signature and Designation
of Person Certifying

REVISED REVENUE STAMP
PAID
31/3/22

Drawn by:
A. A. Said & Company
Advocates
Shella Chambers, Opposite Total Petrol Station
Archbishop Makarios Road, Ganjoni
P.O. Box 3601-80100
Mombasa.

LAND TITLES REGISTRY - MSA
REGISTRATION OF TITLES ACT
REGISTRY NO CP 28109/9
PRESENTED TO THE REGISTRY ON 21 NOVEMBER 2021
25/11/21
Registrar of Titles



NATIONAL LAND COMMISSION

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

ARDHI HOUSE
1st NGONG AVENUE
OFF NGONG ROAD
P.O. Box 44417
NAIROBI

Ref: 3458


11th August, 2016

Cabinet Secretary to the Treasury
P.O. Box 30007 - 00100
NAIROBI

RE: MN/VI/3458 – CHANGAMWE SECONDARY SCHOOL

Please find attached hereto the Letter of Allotment for the above parcel of land, which was issued on 9th March, 2016.

A copy of the Letter of Allotment is forwarded to the Principal of Changamwe Secondary School so that she can effect payment.


EMMA NJOGU
COMMISSIONER
FOR: CHAIRMAN

cc: ✓ **The Principal**
Changamwe Secondary School
MOMBASA



THE NATIONAL LAND COMMISSION
REGISTERED

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

ARDHI HOUSE
NGONG ROAD
P.O. Box 41777
NAIROBI

REF: 3458

9th March 2016

The Cabinet Secretary to the Treasury
P O Box 30007 - 00100
NAIROBI

SIR(s) MADAM

RE: MN//VI/3458- CHANGAMWE SECONDARY SCHOOL

LETTER OF ALLOTMENT

I have the honor to inform you that the National Land Commission, on behalf of the County Government of Mombasa, thereby offers you a grant of the above plot shown edged red on the attached Plan No. subject to your formal written acceptance of the following conditions and to the payment of the charges as prescribed hereunder:

- AREA: ...0.8172 Hectares (approximately).
- TERM:99..... years from the1.3.2016
- STAND PREMIUM: **Kshs. NIL** } Subject to adjustment on survey, but
- ANNUAL RENT: **Kshs. 72/-** } there is no claim for reduction in area on Survey.

GENERAL: This Letter of Allotment is subject to, and the offer is made under the provisions of, the Lands Act (No. 6 of 2012) and title shall be issued under the Land Registration Act (No. 3 of 2012)

I should be glad to receive your acceptance of the attached conditions together with a Banker's cheque for the amount as set out below within thirty (30) days of the postmark:

Stand Premium	.....	Shs NIL
Rent from	1.3.2016 to 31/12/2016	60/=
Conveyancing Fees	.....	1,250/=
Registration Fees	.....	500/=
Rates	.....on demand.....	-
Stamp Duty	.....	100/=
Survey Fees	.....	-
Road and Road Drains	on demand	-
Others	Approval fees	5,000/=

Receipt No. Less Deposit

TOTAL Kshs. 6,910/=

*Delete as appropriate

[P.T.O.]

If acceptance and payment respectively are not received within the said ninety (90) days from the date hereof the offer herein contained will be considered to have lapsed.

If the above plot is still unsurveyed at the time you commence building you should exercise the greatest care to ensure that any building or other works are contained within the boundaries of the plot for should you inadvertently overstep the aforesaid boundaries the cost of removal and reconstruction must be borne by you.

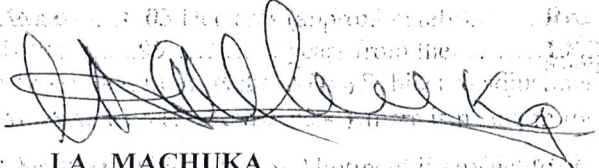
The issue of the Commission grant or lease will be undertaken as soon as circumstances permit.
Any lease issued without the Commission Seal and signature renders this offer null and void.

Your full name (s) in BLOCK LETTERS should be given for the purpose of the grant which will be submitted later to you. The attached special conditions form part of the offer which should be accepted in writing. The Commission shall not accept any liability whatsoever in the event of prior commitment or otherwise.

I have the honour to be,
Sir(s) Madam,
Your obedient servant,

NO. LA. NO. 1570/LX/19

Authority: NLC Approval-Vide
File No. 3458
Minute No.
Prepared by: I.A. Machuka
Serial No. 125



I.A. MACHUKA
For: CHAIRMAN,
NATIONAL LAND COMMISSION

ENCL
TO: P/S Ministry of Lands, Housing and Urban Development
The Director of Surveys, NAIROBI
The Director of Physical Planning, NAIROBI
The County Secretary, MOMBASA
The County Commissioner,
District Land Officer, MOMBASA
O/C Land Rents.
Rates Assistant.)
The Accountant.)
O/C Records.) All to note.
Senior Plan Records Officer.)
)

SPECIAL CONDITIONS - EDUCATIONAL PURPOSES

1. No buildings shall be erected on the land nor shall additions or external alterations be made to any building otherwise than in conformity with plans and specifications previously approved by the National Land Commission and the County Government. The National Land Commission shall not give approval unless it is satisfied that the proposals are such as to develop the land adequately and satisfactorily.
2. The Grantee/Lessee shall within 12(twelve) months of the actual registration of the Grant/Lease submit in triplicate to the County Government and the National Land Commission plans (including block plans showing the positions of the buildings and a system of drainage for disposing of sewage surface and sullage water) drawings elevations and specifications of the buildings the Grantee/Lessee proposes to erect on the land and shall within 36 (thirty six) months of the actual registration of the Grant/Lease complete the erection of such buildings and the construction of the drainage system in conformity with such plans, drawings, elevations and specifications as amended (if such be the case) by the National Land Commission PROVIDED that notwithstanding anything to the contrary to the contained in or implied by the Lands Act if default shall be made in the performance or observance of any of the requirements of this conditions it shall be lawful for the National Land Commission or any person authorized by him on behalf of the County Government to re-enter into and upon the land or any part thereof in the name of the whole and thereupon the term hereby created shall cease but without prejudice to any right of action or remedy of the County Government or the National Land Commission in respect of any antecedent breach of any condition herein contained.
3. The Grantee/Lessee shall maintain in good and substantial repair and condition all buildings erected on the land.
4. The land and the buildings shall only be used for educational purposes and accommodation for the headmaster/principal.
5. If the school erected on the land shall cease to function as such under the provisions of the Education Act of 1968 or such other Act amending or repealing it or may be in force then the terms hereby created shall ipso facto be determined and the land shall be deemed automatically to have reverted to the Government as from the date of such cessation without the necessity of any formal surrender thereof.
6. The land shall not be used for any purpose which the National Land Commission considers to be dangerous or offensive.
7. The Grantee/Lessee shall not subdivide, sell, transfer, sublet charge or part with the possession of the land.

8. The Grantee/Lessee shall pay to the National Land Commission on demand such sum as the National Land Commission may estimate to be the proportionate cost of construction all roads and drains and sewers serving or adjoining the land and the proportionate cost for the supply of both the water and the electric power to the land and shall on completion of such construction and the ascertainment of the actual cost either pay within 7 days of demand) or be refunded the amount by which the actual proportionate cost exceeds or falls short of the amount paid as aforesaid.
- 9.. The Grantee/Lessee shall from time to time pay the National Land Commission on demand such proportion of the cost of maintaining all roads and drains serving or adjoining the land as the National Land Commission may assess.
10. Should the National Land Commission at any time require the said roads to be constructed to a higher standard the Grantee shall pay to the Commission on demand such proportion of such construction as the Commission may assess.
11. The Grantee/Lessee shall pay such rates charges duties assessments or outgoings of whatever description as may be imposed charged or assessed by National Land Commission or County Government upon the land or the buildings erected thereon including any contribution or other sum paid in lieu thereof.
12. The Commission or such person or authority as may be appointed by the Commission for the purpose shall have the right to enter upon the land and lay and have access to water mains service plans and drains telephone or telegraph wires and electric mains of all description whether overhead or underground and the grantee shall not erect any buildings in such a way as to cover or interfere with any existing alignment of main or service pipes or telephone or telegraph wires and electric mains.
13. Notwithstanding anything to the contrary contained herein or implied by the Lands Act the Grantee/Lessee shall on receipt of six months' notice in writing in that behalf surrender all or any part of the land required for public purposes with payment of compensation save in respect of such of the approved buildings as may have to be evacuated or demolished. No compensation shall be payable in respect or surrender of part of the land by reason of such surrender.
14. The National Land Commission reserves the right to revise the annual ground payable hereunder and thereafter at the expiration every ten years of the term.

