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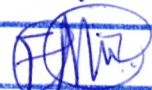


THE NATIONAL ASSEMBLY

12<sup>TH</sup> PARLIAMENT –THIRD SESSION - 2019

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

REPORT ON A PETITION REGARDING THE DEMOLITION NOTICE ISSUED BY  
NEMA AND WRA TO HOME OWNERS OF SEEFAR APARTMENTS

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 02 MAY 2019	
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TABLED BY:	MAJORITY LEADER
CLERK-AT THE-TABLE:	

DIRECTORATE OF COMMITTEE SERVICES,  
CLERK'S CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI

MAY, 2019

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## **LIST OF ABBREVIATION**

NEMA	-	National Environment management Committee
WRA	-	Water Resource Authority
EMCA	-	Environmental Management and Coordination Act
WARMA	-	Water Resources Management Authority
EPL	-	Edermann Properties Limited
AWSB	-	Athi Water Service Board
NCC	-	Nairobi City Council
EIA	-	Environment Impact Assessment

## FOREWORD

The Petition regarding the Demolition Notice issued by the National Environment Management Authority (NEMA) and Water Resources Authority (WARMA) to home owners of Seefar Apartments was presented to the National Assembly by the Hon. Nixon Korir, MP, Langata Constituency on 15<sup>th</sup> November, 2018. The Petition was subsequently committed to the Departmental Committee on Environment and Natural Resources for consideration pursuant to Standing Order 227.

Seefar Apartments registered under LR. No. 209/12108 consisting of a development that comprised of 288 residential apartments is located within Nyayo Highrise Estate along Mbagathi Road. It was constructed by Edermann Property Limited in 2011. The apartments had a total population of 1000 people with approximately 60% of the persons working and residing there, were women and children. About 40% of homeowners of Seefar Apartments had acquired mortgages with various financial institutions and were still servicing loans.

NEMA had issued an Improvement Notice (NEMA/5/4/Vol.II) while the Water Resources Authority (WARMA) had issued Order Serial Number 30366 earmarking the apartments for demolition on allegation that they had been constructed on the riparian land along the Nairobi Dam and Ngong River. However, it is important to note that the development of the apartments had been approved by NEMA vide letters Reference Nos. Appl. Ref. No. PR/8208 dated 29<sup>th</sup> June, 2011 and WARMA's letter Ref. No. WRMA/NRB/RIPARIAN/1(56) dated 17<sup>th</sup> April, 2015 respectively.

On 12<sup>th</sup> October, 2018, Inspectors from NEMA had visited the apartments and issued an Improvement Notice requiring Edermann Property Limited to demolish the structure within 14 days contrary to its earlier admission that the same was not on the riparian reserve vide a Stop Order Ref. No. WRMA/NRB/RIPARIAN/1/ (55) dated 25<sup>th</sup> July, 2011. The Notice and Order issued did not however specify provisions breached either in the Environmental Management and Coordination Act (EMCA Cap 387) Act or the Water Act;

The Petitioners prayed that the Departmental Committee on Environment and Natural Resources:

- i. Intervenes and causes stay of the earmarked demolition pending conclusive investigations; and
- ii. Makes any other order or direction that it deems fit in the circumstance of the matter.

The Committee consequently seized the matter raised in the Petition and invited the Hon. Nixon Korir, the Ministry of Water and Sanitation, the Ministry of Environment and Forestry, the National Environment Management Authority, the Water Resources Authority, the Home owners'

representatives and the Representative of Edermann Property Limited to a meeting on Thursday, 22<sup>nd</sup> November, 2018.

Having reviewed the oral and written evidence submitted to it, the Committee observed that:

1. The notices for demolition issued by NEMA and WRA were wanting since the same entities gave approvals for the construction of the apartments. The doublespeak by the government agencies was scaring away the investors in real estate in the country.
2. There was manifest laxity and lack of diligence among some officers at NEMA and WRA since it had taken too long to establish the alleged encroachment on the said riparian zone. The officers directly involved in the approvals that were being questioned ought to take responsibility for their laxity.
3. It was important for the government to establish who ought to compensate the homeowners in case the Seefar Apartments were demolished since the owners were servicing mortgages used to acquire units in the apartments. The proposed demotion was against the government's Big Four Agenda on affordable housing.
4. The dam was upstream while the Seefar Apartments were down stream. This posed a danger in case of collapse of the dam.
5. There was need to consider the usefulness of the Nairobi dam considering its current status and propose the next course of action for the dam;
6. The residents of Seefar Apartment had hired Eng. J.K. Rutere, a dam expert through the developer, to inspect and give a technical and professional opinion on the safety of the said dam. The Engineer gave the dam a clean bill of health. However, the same had not been authenticated by the relevant government agencies.
7. Various laws such as the Water Act, the Environmental Management and Coordination Act, the Survey Act, the Physical Planning Act and the Agriculture Act provided various definition to the riparian land thereby causing confusion in the implementation of law.
8. There was need for definite timelines for conclusion of the report on the status of the dam by the independent expert. Such timelines ought to tally with the timelines in the extended demolition order.
9. The technical team was working on the technical report on the safety of the dam, yet demolition orders had been issued against Seefar Apartment without any technical report. This was a sign of casualness in handling of matters among the state agencies involved.
10. There was need to lift the demolition orders until such a time that the government had come up with a comprehensive technical report to chart the way forward.
11. The government was engaged in erratic demolition of buildings and therefore there was a was need for a structured, systematic demolition of identified structures. Otherwise the entire exercise risked being viewed as discriminatory.

Consequently, the Committee recommends that:

**1. Prayer One:**

The Committee recommends that:

The Water Resources Authority (WRA) and the National Environment Management Authority (NEMA), *should indefinitely* extend the suspension of demolition orders of Seefar Apartments until submission to the Committee of:

- (a) the report of the Multi-Agency Technical Team relating to a comprehensive study on the safety of the Nairobi Dam, its potential and the socio-economic implications of rehabilitating or decommissioning it as agreed upon during the meeting held between the Ministry of Environment and Forestry and the Committee on 4<sup>th</sup> December, 2018; and
- (b) the report of dam safety analysis commissioned by WRA on the 25<sup>th</sup> October, 2018,

**2. Prayer Two:**

The Committee makes any other order or direction that it deems fit in the circumstance of the matter.

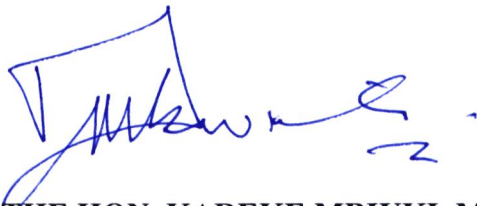
**Recommendations:**

The Committee recommends that:

- I. NEMA and WRA undertakes an audit of all the licences issued across the country to verify the levels of compliance with licence conditions, the extent and reasons for causes of non-compliance, if any, with a view to taking appropriate action against any person whose actions are established to be inconsistent with the law, and table a report before the National Assembly within three months of the tabling of the Report.
- II. The Ministry of Environment and Forestry, the Ministry of Water and Sanitation and the County Government of Nairobi should set up a taskforce to undertake a comprehensive study on the safety of the Nairobi Dam, its potential and the socio-economic implications of rehabilitating or decommissioning it, and table a report before the National Assembly within three months of the tabling of the Report.
- III. The Inter-Agency Technical Team commissioned to assess the safety and viability of the dam should expedite its report to facilitate for further discussion between the home

owners and the government to determine the way forward. In the meantime, the Team should address any immediate safety concerns.

- IV. The Ministry of Water and Sanitation and the Ministry of Environment and Forestry should spearhead consultations with the Ministry of Lands and Ministry of Agriculture to harmonize the definition of the riparian land and subsequently submit an amendment to Parliament for consideration and enactment, and table a report before the National Assembly within three months of the tabling of the Report.
- V. The Government should adopt a harmonized position relating to the principles and process of the demolition exercise so as to assure the investors that the exercise is being undertaken in a manner that is not discriminatory.
- VI. The Ministry of Water and Sanitation should expedite the installation of sewer line/facilities under the Nairobi Regeneration Programme to mitigate the pollution of the Nairobi Dam by effluent from the neighbouring residential areas.



**THE HON. KAREKE MBIUKI, M.P**  
**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND**  
**NATURAL RESOURCES**

## **1.0 PREFACE**

### **1.1 Establishment and Mandate of the Committee**

The Departmental Committee on Environment and Natural Resources is one of the fifteen (15) Departmental Committees of the National Assembly established under *Standing Order 216* whose mandate, pursuant to the *Standing Order 216 (5)*, is as follows:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;
- d) To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- (fa) To examine treaties, agreements and conventions;
- g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) To examine any questions raised by Members on a matter within its mandate.

The subject matter of the Departmental Committee on Environment and Natural Resources are stated in the Second Schedule of the National Assembly Standing Orders No. 216 (f) as follows: climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.



## 1.2 Oversight

In executing its mandate, the Committee oversees the following State Departments, namely:

- The Ministry of Water and Sanitation;
- The Ministry of Environment and Forestry;
- The State Department for Wildlife; and
- The State Department for Mining

## 1.3 Committee Membership

The Committee on Environment and Natural Resources was constituted by the House in December, 2017 and comprises of the following Members: -

1. **The Hon. Kareke Mbiuki, M.P.**                      **Chairperson**
2. **The Hon. Sophia Abdi Noor, M.P.**              **Vice Chairperson**
3. The Hon. Benjamin Jomo Washiali, M.P., CBS<sup>2</sup>
4. The Hon. David Kangogo Bowen, M.P.
5. The Hon. Francis Chachu Ganya, M.P.
6. The Hon. Ali Wario Guyo, M.P.
7. The Hon. Beatrice Cherono Kones, M.P.
8. The Hon. Charity Kathambi Chepkwony, M.P
9. The Hon. Hilary Kiplang'at Kosgei, M.P.
10. The Hon. Peter Kimari Kihara, M.P
11. The Hon. Benjamin Dalu Tayari, MP.
12. The Hon. Charles Ong'ondo Were, M.P.
13. The Hon. Nasri Sahal Ibrahim, M.P.
14. The Hon. Rossa Buyu. M.P.
15. The Hon. Said Hiribae, M.P.
16. The Hon. Hassan Oda Hulufu, M.P.
17. The Hon. Amin Deddy Mohamed Ali, M.P.
18. The Hon. Rehema Hassan, M.P.
19. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.

## 1.4 Committee Secretariat

1. Ms. Esther Nginyo                                      - Second Clerk Assistant/Lead Clerk
2. Mr. Dennis Mogare Ogechi                              - Third Clerk Assistant
3. Mr. Sydney Lugaga                                      - Legal Counsel II
4. Ms. Winnie Kulei                                        - Research officer III
5. Ms. Yunis Amran                                         - Fiscal Analyst III

## 2.0 BACKGROUND INFORMATION

Seefar Apartments registered under LR. No. 209/12108 consisting of a development that comprises 288 residential apartments is located within Nyayo Highrise Estate along Mbagathi Road and was constructed by Edermann Property Limited in 2011. The apartments were home to a population of about 1000 people residing there having acquired the houses through mortgages and loans from various financial institutions.

The said apartments had been earmarked for demolition by the National Environmental Management Authority (NEMA) under the Improvement Notice (NEMA/5/4/Vol.II) and the Water Resources Authority (WRA) Order Serial Number 30366. The development of the apartments was approved by NEMA vide letters Reference Nos .Appl. Ref. No. PR/8208 dated 29<sup>th</sup> June, 2011 and WARMA's letter Ref. No. WRMA/NRB/RIPARIAN/1(56) dated 17<sup>th</sup> April, 2015 respectively. NEMA and WARMA contrary to the initial approvals alleged that Seefar Apartments had been constructed on the riparian land that is along the Nairobi Dam and Ngong River.

On 12<sup>th</sup> October, 2018, Inspectors from NEMA visited the apartments and issued an Improvement Notice requiring Edermann Property Limited to demolish the structure within 14 days. This was contrary to its earlier admission that the same was not on the riparian reserve vide a Stop Order Ref. No. WRMA/NRB/RIPARIAN/1/(55) dated 25<sup>th</sup> July, 2011. According to the Petitioner, the Notice and Order issued did not specify provisions breached either in the Environmental Management and Coordination Act (EMCA Cap 387) Act or the Water Act.

The residents in the said apartment were of the opinion that impending demolition was against the spirit of the Government's 'Big Four Agenda' which aimed at ensuring affordable housing for all Kenyans and it will affect the individual home owners who innocently and willfully bought the said houses as investment and never anticipated uncertainties.

The Petitioners therefore prayed that the Departmental Committee on Environment and Natural Resources: -

- i. Intervenes and causes stay of the earmarked demolition pending conclusive investigations;
- ii. Makes any other order or direction that it deems fit in the circumstance of the matter.

The Committee consequently seized the matter raised in the Petition and invited the Hon. Nixon Korir, the Ministry of Water and Sanitation, the Ministry of Environment and Forestry, the National Environment Management Authority, the Water Resources Authority, the Home owners

representatives and the Representative of Edermann Property Limited to a meeting on Thursday, 22<sup>nd</sup> November, 2018.

The petition however lapsed with the end of the second session. It was however resubmitted to the House on 3<sup>rd</sup> April, 2019 and referred to the Committee. The Committee observed that there were no changes on the ground and that petitioners' prayers remained the same. Therefore, no new evidence was adduced in regards to the petition.

### **3.0 SUBMISSIONS BY THE PETIONERS AND STAKEHOLDERS**

The Petition regarding demolition notice issued by WRA and NEMA to home owners of Seefar apartments was committed to the Committee for consideration pursuant to Standing Order 227. Consequently, the Committee held a Sitting with the Petitioners (Seefar apartments homeowners), Ministry of Environment and Forestry and the Water Resources Authority. The Committee also undertook an inspection visit to assess the situation on the ground.

#### **3.1 Submission by the Petitioners, Seefar Apartments Homeowners**

Mr. Otieno Paul Peter, Chairman Seefar Homeowners appeared before the Committee on Thursday, 22<sup>nd</sup> November, 2018 and submitted as follows, that:-

- i. Seefar Apartments comprise a three-joined-blocks of 12 storey building situated on a piece of land L/ R No.209/12108 located right inside Nyayo Highrise F/R No.351/27.
- ii. The building was developed by Edermann Properties Limited (EPL) between 2011 and 2013, got all the required approvals, and was launched by the then Minister for Housing, the Late, Hon. Soita Shitanda, as part of governments agenda for affordable housing.
- iii. Seefar Apartments consisted of 288 houses (2-bedroom houses - 264- and 3-bedroom houses - 24), having a total population of about 1500, taking an average of 5 people per unit for a total of 288 units, with majority being young women and school going children. These were people whose livelihoods affected directly or indirectly thousands of others across the country and in various work places. Seefar also has about 150 daily casual workers.
- iv. Seefar community was horrified by the notices that were issued by staff from NEMA and WRA to the developer of this building and writings put on its walls on Friday, 12<sup>th</sup> October, 2018 afternoon. The notices claimed that the building was on riparian reserve and thus should be removed within 14 days.
- v. This building, despite being developed by EPL, was no longer owned by the developer, but rather by ordinary Kenyans who were struggling to make ends meet. Majority of the buyers were first-time home-owners, some of whom had risen from homelessness. Over 60% were serving mortgages with various financial institutions. EPL only owned a single unit, No. 119.
- vi. The ownership of Seefar comprised of 2 Women Groups (with total membership of about 25), a charity home (for orphans and rehabilitated street children), investment groups (mostly comprising youths and women), individual owners (99 of whom were women, mostly single mothers). Only 28 out of the 288 units were co-owned by couples. The majority age of these home owners was between 28 to 35 years.
- vii. Upon visiting NEMA and WRA (regional) offices in Industrial Area on 15<sup>th</sup> and 16<sup>th</sup> of October, 2018 respectively, to demand explanations and armed with documents of

approvals, the Authorities could not confirm or deny the sanctity of the approvals of this building. Instead, they opted to change the notices to 30 days, from 14 days. They further suggested a joint inspection to establish the facts on the ground, which was to happen within the week, between 16<sup>th</sup> and 19<sup>th</sup> of October, 2018, before making a decision. This did not happen.

- viii. In one of the consultative meetings with WRA on 22<sup>nd</sup> October, 2018, attended by CEO, Mr. Mohamed Shuriye and Engineer Boniface Mwaniki, they suggested that the residents could go ahead and do their own survey. They stated that there were "emerging issues" they were looking at on an "imminent danger" posed by the dam. They however did not have a technical report to back their allegations of an imminent danger.
- ix. The Seefar residents commissioned a survey which established that the closest distance from Seefar Apartments, to the highest water mark of the dam (contour 1669, which should be the level of the spillway, scientifically speaking,) was 42m. This was way outside the 6m-30m stated by the Physical Planning Act (Regulations) Section 15 C, the Environmental Management and Co-ordination Act (Regulations) Section 6 and the Survey Act, Regulations 112 of the Laws of Kenya.
- x. As a result of the safety concerns raised, Eng. J.K. Rutere, a renowned dam expert in Kenya, was requested, through the developer, to inspect and give a technical and professional opinion on the safety of the said dam. In his report, he stated, based on his evaluation, that the dam was safe.
- xi. The notices were issued without a technical report. The fact that the Agencies were compiling the report after the Notice was illegal, unprocedural and inconsiderate to the many Kenyans who live in Seefar Apartments.

### **3.2 Submission by the Cabinet Secretary Ministry of Environment and Forestry**

The Hon. Mohamed Elmi, Chief Administrative Secretary, Ministry of Environment and Forestry appeared before the committee on 22<sup>nd</sup> November, 2018 and informed it that:

1. Edermann Property Limited submitted an Environmental Impact Assessment for the development of 3 blocks of Apartments on Plot L.R. No. 209/12108 in Kibera Highrise, off Mbagathi Way on 18<sup>th</sup> February, 2011.
2. As required by law, the report was dispatched to the following lead agencies seeking their comments, recommendations or objections on the proposed project:
  - a) The Director of Housing, Nairobi.
  - b) The Director, Directorate of Occupational Health and Safety Services, Nairobi
  - c) Department of Physical Planning, Ministry of Lands, Nairobi
  - d) The Managing Director, Nairobi City Water and Sewerage Company Limited
  - e) Karen and Lang'ata District Association

- f) Chief Architect, Ministry of Public Works, Nairobi.
  - g) District Environment Committee/District Environment Officer, Westlands and Lang'ata
  - h) The Town Clerk, City Council of Nairobi,
- 3 A technical review was undertaken on 23<sup>rd</sup> May, 2011 taking into consideration the public disclosure and use of the decision-making principles.
  - 4 Conditions for licensing the project were prepared on 31<sup>st</sup> May, 2011 and the proponent consented to adhere to the conditions of the license on 7<sup>th</sup> June, 2011.
  - 5 The project was issued with an EIA license with conditions on 29<sup>th</sup> June 2011 vide License No. 0008382 and given the following conditions amongst others:
    - (a) Condition 2.1 which stated that the proponent shall ensure protection of the Nairobi Dam and the Ngong River by maintaining a 30M riparian reserve from the water bodies
    - (b) Condition 1.5 which stated that the Authority shall take appropriate action against the proponent in the event of breach of any of the conditions stated herein or any contravention to the Environmental Management and Coordination Act, 1999 and Regulations thereunder.
    - (c) Condition 1.6 which states that the license shall not be taken as a statutory defense against charges of environmental degradation or pollution in respect of any manner of degradation/ pollution not specified herein.
    - (d) Condition 1.9 which states that the proponent shall comply with NEMA's improvement orders throughout the project cycle.
  6. On 14<sup>th</sup> January, 2013, the developer was issued with an Improvement Notice by NEMA Environmental Inspectors requiring them to stop dumping of excavated materials on the riparian land.
  7. During the ongoing Nairobi Regeneration Program, a team of Environmental Inspectors, jointly with officers from Water Resources Authority (WRA) undertaking inspections along Ngong River on 12<sup>th</sup> October, 2018, observed that Edermann Property had encroached into the riparian reserve of the Nairobi Dam as well as Ngong River. The Apartments, as was the case with other structures on riparian reserve, was marked and an Order issued to Erdemann Property Ltd as the proponent in the EIA process. Several structures along Ngong River observed to be within the riparian reserve were also marked and issued with orders, for example 6 houses within the Civil Servant Estate in South "C" and Godowns near Mater Hospital. The identification and marking of structures on the riparian reserve was on-going.

8. Further investigations indicated that there was violation of Condition 2.1 of the EIA license and hence the order issued was in accordance with Section 117(3)(g) of the Environmental Management and Coordination Act Cap 387;
9. On 15<sup>th</sup> October, 2018, Seefar Homeowners wrote to the Authority challenging the orders by NEMA and WRA. They proposed a joint inspection with NEMA and WRA officers to ascertain their compliance level to condition 2.1. NEMA responded, and informed the home owners on the extension of the order pending consultation with relevant Lead Agencies.
10. On 15<sup>th</sup> October, 2018, Erdemann Property Limited also wrote to NEMA asking that the Order issued to them on 12<sup>th</sup> October, 2018 be revoked immediately. NEMA responded to Erdemann Limited indicating that NEMA would organize and invite their representatives for the requested joint inspection. Further, the Authority extended the Notice for thirty (30) days upto 15<sup>th</sup> November, 2018 to allow consultation and investigation to guide its decision. However, the Assessment and Technical reports were taking a longer time and therefore the ministry had requested the Director General NEMA, to extend the Order from 30 days for a further 90 days upto 15<sup>th</sup> February, 2019 to allow conclusive engagement.

### **3.3 Submission by the Ministry of Water and Sanitation**

Mr. Mohamed Shuriye the CEO, Water Resources Authority representing the Ministry of Water and Sanitation appeared before the Committee on 22<sup>nd</sup> November, 2018 and informed it that:

1. Between June and August 2011, there were media reports on the impending collapse of Nairobi dam due to excavation done on the Dam embankment during construction works of Seefar Apartments. WRMA responded to this by undertaking an inspection that revealed the following:
  - a) It is true while the Seefar Apartments were being constructed, excavations were made into the dam embankment to create space for the building. In accordance with normal practice, excavating a dam wall weakens it. In this regard a stop was issued on 05/March/ 2011.
  - b) The building site was located on the immediate downstream of the dam wall which is not advisable in law for safety reasons.

As a result:

- i. WRA issued Order No 315 on 20<sup>th</sup> July, 2011 stopping excavation on the plot until Nairobi Dam and Ngong River riparian areas were demarcated and pegged;
- ii. On 22<sup>nd</sup> July, 2011, WRA pegged and demarcated as well as 22m from the highest water mark from Nairobi dam and 15m from Ngong River.
- iii. In 2012 WARMA issued another further order in April stopping further backfilling of the reservoir and returning the water flow through original spillway.
- iv. Erdeman Properties wrote to WRA vide letter Ref. EPL/0172/PRT dated 10<sup>th</sup> April, 2015 requesting for confirmation of the pegging of the riparian land and their compliance with

the same. Consequently, WRA staff visited the site on 13<sup>th</sup> and 14<sup>th</sup> April, 2015 and inspected both the riparian and dam repair works. The staff confirmed compliance by the developer. However, the request by the developer and the subsequent inspection and confirmation were not tallying with earlier determinations of the riparian area in 2011. Disciplinary action against the concerned staff was being pursued.

- v. On 12<sup>th</sup> October, 2018, Mr. Michael Muturi, a Surface Water Officer with WRA had earlier inspected on 13<sup>th</sup> and 14<sup>th</sup> April, 2015 and confirmed compliance by the developer again issued a demolition order. Consequently, a compliance letter was issued by the then Sub-Regional Manager Samson Oiro to the developer.
- vi. WRA had extended the validity of its Order No 30365 for 90 days from 13<sup>th</sup> November 2018 to give room for further consultations, survey work and investigations before the execution of the order; However, caution needed to be taken because of the eminent danger posed by the dam.
- vii. Due to the complexity of the matter, the developer and house owners requested for a joint multi agency (NEMA, WRA and Survey of Kenya) inspection of the Nairobi Dam and Ngong River riparian reserve in order to address the issue exhaustively. WRA had already written to Survey of Kenya to establish the exact river course of Ngong River.
- viii. On 25<sup>th</sup> October, 2018, WRA wrote to the dam owner (Nairobi City County Government) requesting for a dam safety analysis report within 21 days expiring on 25<sup>th</sup> November 2018.
- ix. There was need to consider the usefulness of the Nairobi dam considering its current status and propose the next course of action for the dam;
- x. In conclusion he stated that:
  - Seefar Apartments were within the riparian land as per 2011 determination. But the original course of Ngong River would be determined by the Survey of Kenya.
  - There was eminent threat to lives, environment and property due to the likelihood of Nairobi dam breaking since its bank has been weakened by excavation and construction works as per the 2012 order.

### **3.4 Inspection Visit to the Seefar Apartment.**

The Committee undertook an inspection visit to the Seefar Apartment to assess the situation on the ground on Wednesday, 6<sup>th</sup> March, 2019. During the Visit, Mr. Joel Kitili, Ministry of Environment and Forestry briefed the Committee on site that:

1. The Seefar Apartments were sitting on part of the dam embankment hence compromising the integrity of the embankment and the safety of the residents.
2. There was need to rehabilitate the dam and were plans to have independent engineers to make a technical assessment of the dam before charting the way forward.
3. The dam was initially used for recreational purposes.



### **3.4.1 Members' Observations from the Visit**

After assessing the state of the Nairobi Dam /Seefar Apartments Members observed that:

1. The dam was not operational as it was choked by vegetation and including the water hyacinth. It was serving as a sewage repository from the neighbouring residents.
2. On the proposal for seeking to have independent consultants to assess the status of the dam, it was noted that it was wasteful of public resources when there existed public institutions whose mandate would identify the same.
3. The ministry ought to urgently ensure the technical report on the dam was provided to the National Assembly as the way forward is charted.

### **3.5 Submission by the Ministry of Environment and Forestry**

The Cabinet Secretary for Environment and Forestry, Mr. Keriako Tobiko appeared before the Committee on Thursday, 7<sup>th</sup> March, 2019 and informed it that:

1. On the Status of the Notice issued for the demolition of the Seefar Apartment he stated that:
  - a) Both the Water Resources Authority (WRA) and the National Environment Management Authority (NEMA), extended the period of their respective Orders for a further ninety (90) days. The extension was effective from 13<sup>th</sup> February 2019, the date when the period of previous Orders expired.
  - b) The Notices were extended in order to give time to the Multi-Agency Technical Team to carry out a comprehensive study on the safety of the Dam, its potential and the socio-economic implications of rehabilitating or decommissioning it as agreed upon during the meeting held between the Ministry and the Committee on 4<sup>th</sup> December, 2018.
2. On the Multi-Agency Comprehensive report on Safety of Nairobi Dam and the Socio-Economic Implications of Sustaining the Dam he stated that:
  - a) The Committee had given the Ministry a time line of up to end of February to finish the report. However, the report had not been finalized because the Technical Committee resolved to engage a dam expert to carry out the study since two of the key members of the Multi-Agency Technical Team namely WRA and NEMA, were interested parties in the issue. It is therefore prudent to have independent experts to carry out the study to avoid possible conflict of interest.
  - b) The Inter-Agency Technical Team had drawn the Terms of Reference for the study and the process of procuring the dam expert was ongoing. Among the outputs expected from the Study were: -
    - i) Report on Inspection and safety review of the Dam
    - ii) Current built engineering drawings for the Dam infrastructure

- iii) Dam break analysis and inundation maps: - to show the residences and investments that are at risk should the Dam break and recommend the best way of protecting them
- iv) A detailed analysis on the economic value of the Dam and recommendations on its future existence and use.

### **3.6 Submission by the Joint Secretary, Inter-Agency Steering Committee on The Nairobi Regeneration.**

Mr. Moses Nyakiongora, CEO/Secretary, National Buildings Inspectorate on behalf of the Principal Secretary for Housing/Joint Secretary Inter-Agency Steering Committee on the Nairobi Regeneration appeared before the Committee and informed it that:

1. The Seefar Apartment was structurally sound and therefore safe for habitation.
2. The process of technical assessment of the status of the Nairobi dam was ongoing in order to determine the next course of action.

#### 4.0 COMMITTEE OBSERVATIONS

Having reviewed the evidence submitted to it by the stakeholders', the Committee observed that:

- i. The notices for demolition issued by NEMA and WRA were wanting since the same entities gave approvals for the construction of the apartments. The doublespeak by the government agencies was scaring away the investors in real estate in the country.
- ii. There was manifest laxity and lack of diligence among some officers at NEMA and WRA since it had taken too long to establish the alleged encroachment on the said riparian zone. The officers directly involved in the approvals that were being questioned ought to take responsibility for their laxity.
- iii. It was important for the government to establish who ought to compensate the homeowners in case the Seefar Apartments were demolished since the owners were servicing mortgages used to acquire units in the apartments. The proposed demotion was against the government's Big Four Agenda on affordable housing.
- iv. The dam was upstream while the Seefar Apartments were down stream. This posed a danger in case of collapse of the dam.
- v. There was need to consider the usefulness of the Nairobi dam considering its current status and propose the next course of action for the dam;
- vi. The residents of Seefar Apartment had hired Eng. J.K. Rutere, a dam expert through the developer, to inspect and give a technical and professional opinion on the safety of the said dam. The Engineer gave the dam a clean bill of health. However, the same had not been authenticated by the relevant government agencies.
- vii. Various laws such as the Water Act, the Environmental Management and Coordination Act, the Survey Act, the Physical Planning Act and the Agriculture Act provided various definition to the riparian land thereby causing confusion in the implementation of law.
- viii. There was need for definite timelines for conclusion of the report on the status of the dam by the independent expert. Such timelines ought to tally with the timelines in the extended demolition order.
- ix. The technical team was working on the technical report on the safety of the dam, yet demolition orders had been issued against Seefar Apartment without any technical report. This was a sign of casualness in handling of matters among the state agencies involved.
- x. There was need to lift the demolition orders until such a time that the government had come up with a comprehensive technical report to chart the way forward.
- xi. The government was engaged in erratic demolition of buildings and therefore there was a need for a structured, systematic demolition of identified structures. Otherwise the entire exercise risked being viewed as discriminatory.

## 5.0 COMMITTEE RECOMMENDATIONS

### 1. Prayer One:

The Committee intervenes and causes stay of the earmarked demolition pending conclusive investigations.

#### Recommendations

The Committee recommends that:

The Water Resources Authority (WRA) and the National Environment Management Authority (NEMA), *should indefinitely* extend the suspension of demolition orders of Seefar Apartments until submission to the Committee of:

- (a) the report of the Multi-Agency Technical Team relating to a comprehensive study on the safety of the Nairobi Dam, its potential and the socio-economic implications of rehabilitating or decommissioning it as agreed upon during the meeting held between the Ministry of Environment and Forestry and the Committee on 4<sup>th</sup> December, 2018; and
- (b) the report of dam safety analysis commissioned by WRA on the 25<sup>th</sup> October, 2018,

### 2. Prayer Two

The Committee makes any other order or direction that it deems fit in the circumstance of the matter.

#### Recommendations:

The Committee recommends that:

- I. NEMA and WRA undertakes an audit of all the licences issued across the country to verify the levels of compliance with licence conditions, the extent and reasons for causes of non-compliance, if any, with a view to taking appropriate action against any person whose actions are established to be inconsistent with the law, and table a report before the National Assembly within three months of the tabling of the Report.
- II. The Ministry of Environment and Forestry, the Ministry of Water and Sanitation and the County Government of Nairobi should set up a taskforce to undertake a comprehensive study on the safety of the Nairobi Dam, its potential and the socio-economic implications

of rehabilitating or decommissioning it, and table a report before the National Assembly within three months of the tabling of the Report.

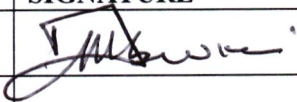
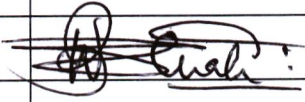
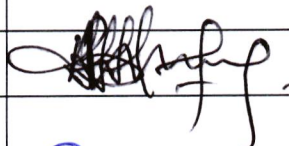


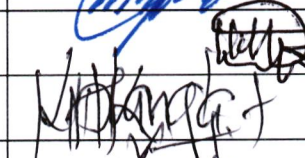
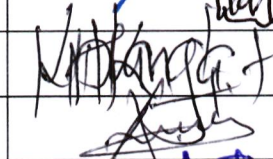
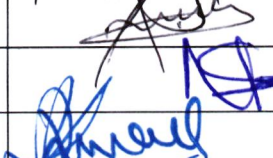
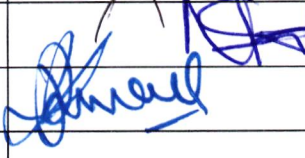
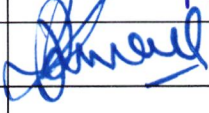
- III. The Inter-Agency Technical Team commissioned to assess the safety and viability of the dam should expedite its report to facilitate for further discussion between the home owners and the government to determine the way forward. In the meantime, the Team should address any immediate safety concerns.
- IV. The Ministry of Water and Sanitation and the Ministry of Environment and Forestry should spearhead consultations with the Ministry of Lands and Ministry of Agriculture to harmonize the definition of the riparian land and subsequently submit an amendment to Parliament for consideration and enactment, and table a report before the National Assembly within three months of the tabling of the Report.
- V. The Government should adopt a harmonized position relating to the principles and process of the demolition exercise so as to assure the investors that the exercise is being undertaken in a manner that is not discriminatory.
- VI. The Ministry of Water and Sanitation should expedite the installation of sewer line/facilities under the Nairobi Regeneration Programme to mitigate the pollution of the Nairobi Dam by effluent from the neighbouring residential areas.

**DC-ENR: DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES**

**REPORT ON THE PETITION BY HON. NIXON KORIR, MP REGARDING THE PROPOSED DEMOLITION OF SEEFAR APARTMENT**

**ADOPTION LIST**

**Date: Tuesday 30<sup>th</sup> April, 2019**

	<b>NAME</b>	<b>SIGNATURE</b>
1.	<b>The Hon. Kareke Mbiuki, M.P. - Chairperson</b>	
2.	<b>The Hon. Sophia Abdi Noor, M.P. – Vice Chairperson</b>	
3.	The Hon. David Kangogo Bowen, M.P.	
4.	The Hon. Benjamin Jomo Washiali, M.P.	
5.	The Hon. Francis Chachu Ganya, M.P.	
6.	The Hon. Beatrice Cheronno Kones, M.P.	
7.	The Hon. Benjamin Dalu Tayari, MP.	
8.	The Hon. Amin Deddy Mohamed Ali, M.P.	
9.	The Hon. Charity Kathambi Chepkwony, M.P	
10.	The Hon. Charles Ong'ondo Were, M.P.	
11.	The Hon. Hassan Oda Hulofo, M.P.	
12.	The Hon. Hilary Kiplang'at Kosgei, M.P.	
13.	The Hon. Ali Wario Guyo, M.P.	
14.	The Hon. Nasri Sahal Ibrahim, M.P.	
15.	The Hon. Peter Kimari Kihara, M.P	
16.	The Hon. (Eng.) Paul Musyimi Nzengu, M.P.	
17.	The Hon. Rehema Hassan, M.P.	
18.	The Hon. Rozaah Buyu. M.P.	
19.	The Hon. Said Hiribae, M.P.	



**MINUTES OF THE 27<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY 30<sup>TH</sup> APRIL, 2019 AT 9:30 AM IN THE 2<sup>ND</sup> FLOOR BOARDROOM, PROTECTION HOUSE, PARLIAMENT BUILDINGS.**

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**PRESENT**

1. **The Hon. Kareke Mbiuki, M.P.**                      **Chairperson**
2. The Hon. Charles Ong'ondo Were, M.P.
3. The Hon. Peter Kimari Kihara, M.P
4. The Hon. Nasri Sahal Ibrahim, M.P.
5. The Hon. Charity Kathambi Chepkwony, M.P
6. The Hon. Benjamin Jomo Washiali, M.P., CBS
7. The Hon. Ali Wario Guyo, M.P.
8. The Hon. Hilary Kiplang'at Kosgei, M.P.
9. The Hon. Hassan Oda Hulufu, M.P
10. The Hon. Benjamin Dalu Tayari, MP

**APOLOGIES**

1. **The Hon. Sophia Abdi Noor, M.P.**                      **Vice Chairperson**
2. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.
3. The Hon. Beatrice Cherono Kones, M.P.
4. The Hon. Francis Chachu Ganya, M.P.
5. The Hon. David Kangogo Bowen, M.P.
6. The Hon. Rehema Hassan, M.P.
7. The Hon. Said Hiribae, M.P.
8. The Hon. Rozaah Buyu. M.P.
9. The Hon. Amin Deddy Mohamed Ali, M.P.

**FRIEND OF THE COMMITTEE**

The Hon. Kubai Iringo, MP

**IN ATTENDANCE**

**MINISTRY OF ENVIRONMENT AND FORESTY**

1. Hon. Mohamed Elmi                      -                      Chief Administrative Secretary

**THE NATIONAL ASSEMBLY**

1. Ms. Esther Nginyo                      -                      Clerk Assistant II
2. Mr. Dennis Mogare                      -                      Clerk Assistant III



- 3.Ms. Emmah Esendi - Legal Counsel I
- 4.Ms. Winnie Kulei - Research Officer III
- 5.Mr. Eugene Luteshi - Audio Recording Officer

**AGENDA**

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Consideration and Adoption of a Report on a Petition Regarding the Demolition Notice Issued by NEMA and WRA to Home Owners at Seefar Apartments.**
- v) **Meeting with the Cabinet Secretary for Environment and Forestry to Respond to Questions Asked by the Following Members: - (I) Hon. Jessica Mbalu, MP (II) Hon. Hon. Kubai Iringo, MP.**
- vi) **Consideration of the Statute Law (Miscellaneous Amendments) Bill, 2019**
- vii) Any Other Business
- viii) Date of the next Sitting

**MIN.NO. DC/ENR/127/2019: - PRELIMINARIES**

The meeting was called to order at 9.32 a.m. after which prayers were said. The Chairperson then asked all those present to introduce themselves. He then stated that the main agenda of the meeting was:

- i) Consideration and Adoption of a Report on a Petition Regarding the Demolition Notice Issued by NEMA and WRA to Home Owners at Seefar Apartments.
- ii) Meeting with the Cabinet Secretary for Environment and Forestry to Respond to Questions Asked by the Following Members: - (I) Hon. Jessica Mbalu, MP (II) Hon. Hon. Kubai Iringo, MP.
- iii) Consideration of the Statute Law (Miscellaneous Amendments) Bill, 2019

The Members adopted the Agenda of the meeting.

**MIN.NO.DC/ENR/128/2019: - CONFIRMATION OF MINUTES**

Confirmation of Minutes of the previous Sittings was deferred to the next sitting.

**MIN.NO. DC/ENR/129/2019: - CONSIDERATION AND ADOPTION OF A REPORT ON A PETITION REGARDING THE DEMOLITION NOTICE ISSUED BY NEMA AND WRA TO HOME OWNERS AT SEEFAR APARTMENTS.**

The Report on a Petition Regarding the Demolition Notice Issued by NEMA and WRA to Home Owners at Seefar Apartments was considered and adopted after being proposed and seconded by the Hon. Peter Kimari Kihara, M.P and the Hon. Nasri Sahal Ibrahim, M.P. respectively.

It was adopted with the following recommendations:

1. **Prayer One:** The Committee intervenes and causes stay of the earmarked demolition pending conclusive investigations.

The Committee recommended that the Water Resources Authority (WRA) and the National Environment Management Authority (NEMA), *should indefinitely* extend the suspension of demolition orders of Seefar Apartments until submission to the Committee of:

- (a) the report of the Multi-Agency Technical Team relating to a comprehensive study on the safety of the Nairobi Dam, its potential and the socio-economic implications of rehabilitating or decommissioning it as agreed upon during the meeting held between the Ministry of Environment and Forestry and the Committee on 4<sup>th</sup> December, 2018; and
  - (b) the report of dam safety analysis commissioned by WRA on the 25<sup>th</sup> October, 2018,
2. **Prayer Two:** The Committee makes any other order or direction that it deems fit in the circumstance of the matter.

The Committee recommended that:

- I. NEMA and WRA undertakes an audit of all the licences issued across the country to verify the levels of compliance with licence conditions, the extent and reasons for causes of non-compliance, if any, with a view to taking appropriate action against any person whose actions are established to be inconsistent with the law, and table a report before the National Assembly within three months of the tabling of the Report.
- II. The Ministry of Environment and Forestry, the Ministry of Water and Sanitation and the County Government of Nairobi should set up a taskforce to undertake a comprehensive study on the safety of the Nairobi Dam, its potential and the socio-economic implications of rehabilitating or decommissioning it, and table a report before the National Assembly within three months of the tabling of the Report.
- III. The Inter-Agency Technical Team commissioned to assess the safety and viability of the dam should expedite its report to facilitate for further discussion between the home owners and the government to determine the way forward. In the meantime, the Team should address any immediate safety concerns.
- IV. The Ministry of Water and Sanitation and the Ministry of Environment and Forestry should spearhead consultations with the Ministry of Lands and Ministry of Agriculture

to harmonize the definition of the riparian land and subsequently submit an amendment to Parliament for consideration and enactment, and table a report before the National Assembly within three months of the tabling of the Report.

- V. The Government should adopt a harmonized position relating to the principles and process of the demolition exercise so as to assure the investors that the exercise is being undertaken in a manner that is not discriminatory.
- VI. The Ministry of Water and Sanitation should expedite the installation of sewer line/facilities under the Nairobi Regeneration Programme to mitigate the pollution of the Nairobi Dam by effluent from the neighbouring residential areas.

**MIN.NO. DC/ENR/130/2019:**

- **MEETING WITH THE CABINET SECRETARY FOR ENVIRONMENT AND FORESTRY TO RESPOND TO QUESTIONS ASKED BY THE FOLLOWING MEMBERS: - (I) HON. JESSICA MBALU, MP (II) HON. HON. KUBAI IRINGO, MP.**

The Hon. Mohamed Elmi, Chief Administrative Secretary, Ministry of Environment and Forestry, appeared before the Committee on behalf of the Cabinet Secretary.

The Hon. Kubai Iringo, MP posed his question as follows:

- a) *Is the Cabinet Secretary aware that trees and other vegetation including indigenous trees were either destroyed or taken away as wood and timber by a contractor installing a power line at the Nyambene Repeater Station in Nyambene Forest?*
- b) *Could the Cabinet Secretary state the amount of money allocated for the contract and when the installation of the power line is expected to be completed?*

The Hon. Mohamed Elmi asked more time (one week) in order to prepare a comprehensive response. He however noted that the second part of the question wasn't within the purview of his ministry and requested that the same be directed to the Ministry responsible for energy.

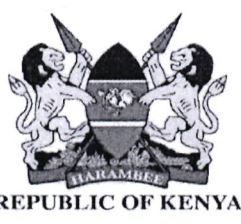
**Resolution**

It was resolved that:

1. The Ministry of Environment and Forestry avails a comprehensive response on Thursday 9<sup>th</sup> May, 2019 and that the second part of the question be directed by the member to the Ministry of Energy.
2. The Ministry of Environment and Forestry equally prepares a comprehensive response to the question by the Hon. Jessica Mbalu, MP, who wasn't available to pose her question.

3112

DF&A  
Approved  
Review budget coordination  
So we process only those in  
compliance with PSC policy  
Sg. 06/02/19



REPUBLIC OF KENYA



PARLIAMENT OF KENYA

OFFICE OF THE SPEAKER OF THE NATIONAL ASSEMBLY

**MEMO**

Forwarded  
J.M.  
06/02/2019.

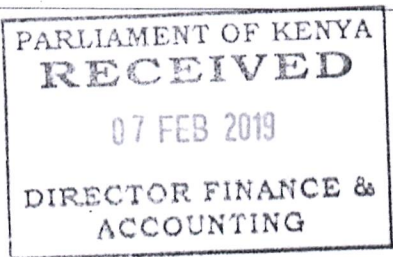
TO : CLERK OF THE NATIONAL ASSEMBLY  
THRO : DIRECTOR, SPEAKER'S OFFICE  
FROM : COORDINATING COMMITTEE CHAIRPERSON  
DATE : FEBRUARY 6, 2019

**REQUEST FOR IMPREST TO CATER FOR PARK FEES AT THE DAVID SHELDRIK TRUST AND FOR DAILY SUBSITENCE ALLOWANCES FOR SECURITY OFFICERS DEPLOYED TO FACILITATE THE VISIT BY THE SPEAKER OF THE NATIONAL ASSEMBLY OF SERBIA**

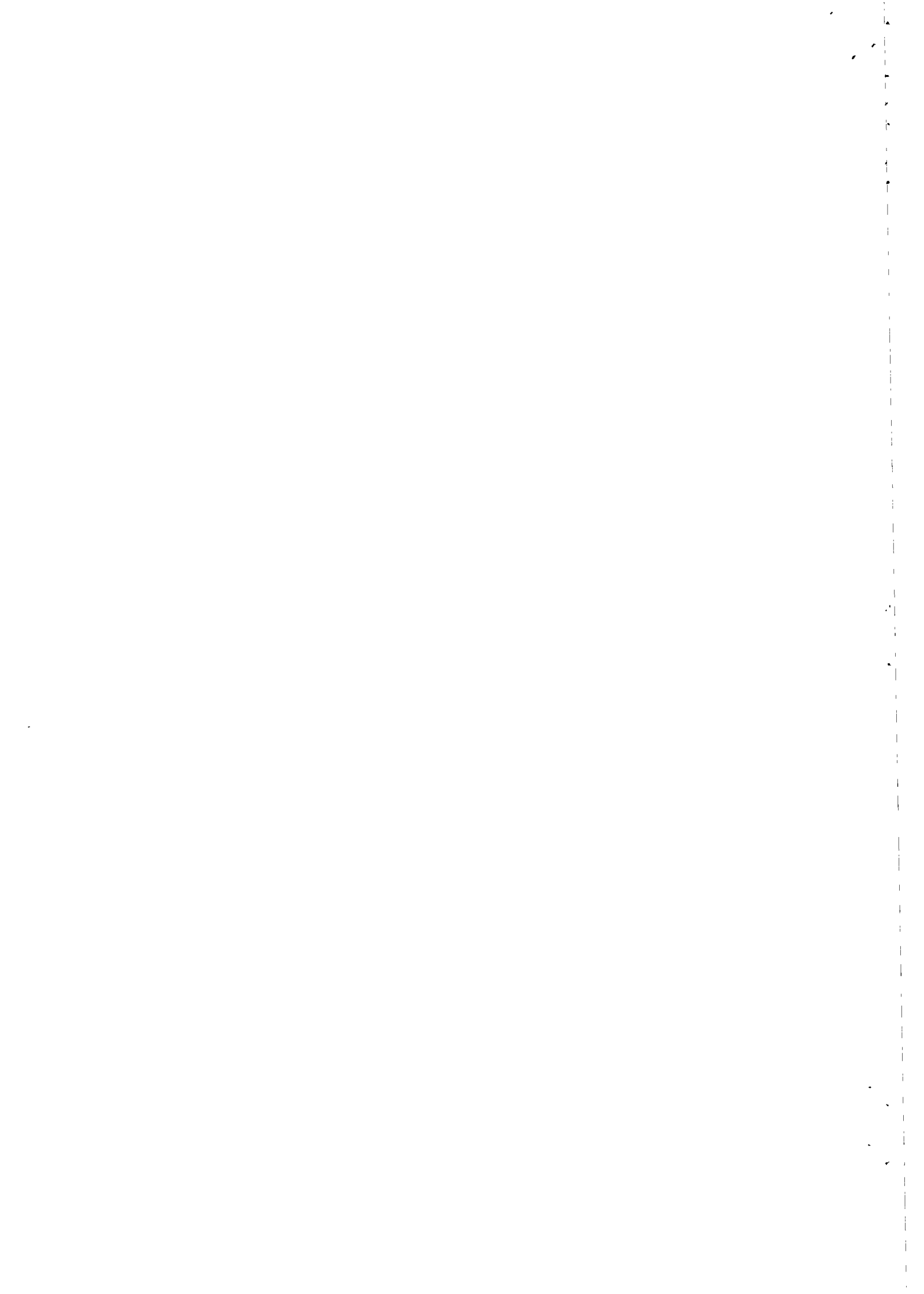
Further to a memo dated January 25, which sought an imprest of Kshs. 150,000, for logistical planning of the aforementioned visit, and a breakdown of which we provided after request for it from the Director, Finance and Accounting, I wish to further request for additional imprest to cater for the park fees at the David Sheldrick Trust which inadvertently had not been accounted for in the last budget ( to be paid strictly through Mpesa or a Credit card), additional park fee to cater for the Animal Orphanage visit (the delegation list has since expanded) to be issued to Mr. Nicholas Matiko, the Protocol Officer managing this visit, and daily subsistence allowances to cater for the security detail facilitating this visit to be issued to Geoffrey Onchiri, the Security Officer in the Committee as per the budget attached here under:

S/No.	Activity	Cost
1.	Excursion Fees at David Sheldrick. @Kshs.500	Kshs. 15,000
2.	Additional Fees at the Nairobi Safari Walk (Animal Orphanage)	Kshs. 12,861/=

@ Imprest  
Please process as  
per approval.  
06/02/19



Ms. CA  
Kinds facilitated  
KES 30,000  
Geoffrey Onchiri  
07/02/19.



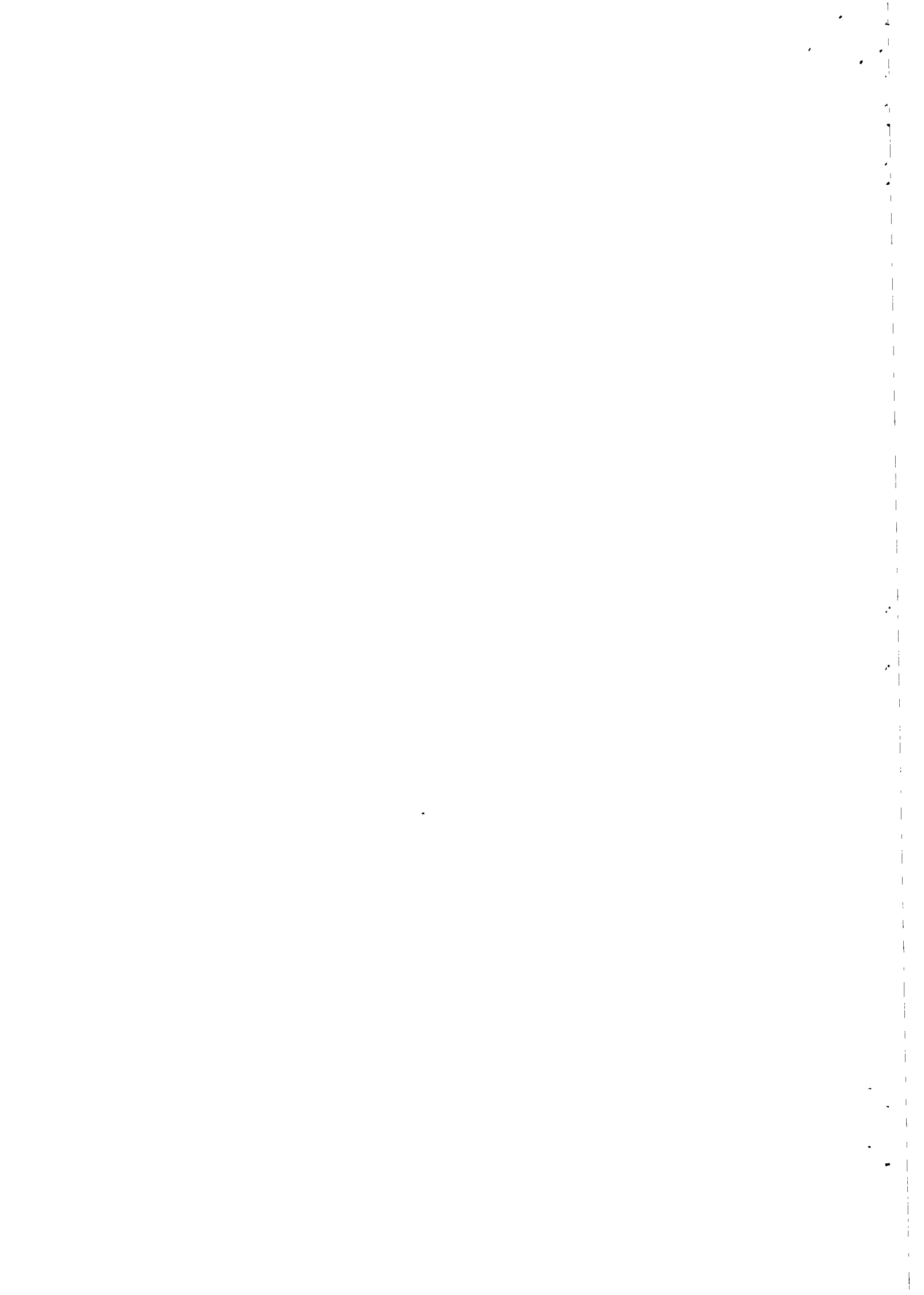
3.	Subsistence allowances for 22 security officers deployed to facilitate the visit	Kshs. 176,000 /=
4.	Airtime Allowances for eight (8) security officers @ 1,000/- coordinating security during the visit	Kshs. 8,000/= ✓
	<b>TOTAL</b>	<b>Kshs. 211,861/=</b>

*provide proof  
of the breakdown  
and evidence  
also justify  
the price*

The purpose of this memo is thus to request for your approval for the same.

*J. Macharia*

**JAMES MAINA MACHARIA**  
**CHAIR, COORDINATING COMMITTEE**



**MINUTES OF THE 10<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY 7<sup>TH</sup> MARCH, 2019 AT 9.30 AM IN THE 4<sup>TH</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS.**

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**PRESENT**

- |   |                  |
|---|------------------|
| 1. The Hon. Kareke Mbiuki, M.P.               | Chairperson      |
| 2. The Hon. Sophia Abdi Noor, M.P.            | Vice Chairperson |
| 3. The Hon. Francis Chachu Ganya, M.P.        |                  |
| 4. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.  |                  |
| 5. The Hon. Charles Ong'ondo Were, M.P.       |                  |
| 6. The Hon. Benjamin Dalu Tayari, MP          |                  |
| 7. The Hon. Benjamin Jomo Washiali, M.P., CBS |                  |
| 8. The Hon. Peter Kimari Kihara, M.P          |                  |
| 9. The Hon. Rehema Hassan, M.P.               |                  |
| 10. The Hon. Said Hiribae, M.P.               |                  |
| 11. The Hon. Ali Wario Guyo, M.P.             |                  |
| 12. The Hon. Charity Kathambi Chepkwony, M.P  |                  |
| 13. The Hon. Hilary Kiplang'at Kosgei, M.P.   |                  |
| 14. The Hon. Rozaah Buyu. M.P.                |                  |
| 15. The Hon. Amin Deddy Mohamed Ali, M.P.     |                  |
| 16. The Hon. Hassan Oda Hulufu, M.P           |                  |

**APOLOGIES**

1. The Hon. Nasri Sahal Ibrahim, M.P.
2. The Hon. Beatrice Cheronu Kones, M.P.
3. The Hon. David Kangogo Bowen, M.P.

**IN ATTENDANCE**

**MINISTRY OF ENVIRONMENT AND FORESTRY AND OTHER STAKEHOLDERS**

- |                           |   |  |
|---------------------------|---|--|
| 1. Mr. Keriako Tobiko     | - | Cabinet Secretary                              |
| 2. Mr. Mohamed Elmi       | - | Chief Administrative Secretary                 |
| 3. Mr. Joel Kitili        | - | Ministry of Environment and Forestry           |
| 4. Prof. Geoffrey Wahungu | - | Director General, NEMA                         |
| 5. Mr. Erick Akotsi       | - | Director, Ministry of Environment and Forestry |
| 6. Ms. Monica Kalenda     | - | Ag. Chief Conservator of Forests               |
| 7. Mr. Moses Nyakiongora  | - | CEO/Secretary, National Buildings Inspectorate |



## **THE NATIONAL ASSEMBLY**

1. Ms. Esther Nginyo	-	Clerk Assistant II
2. Mr. Dennis Mogare	-	Clerk Assistant III
3. Mr. Joseph Okongo	-	Senior Media Relations Officer
4. Mr. Stanley Lagat	-	Serjeant-At-Arms I
5. Ms. Yunis Amran	-	Fiscal Analyst III
6. Mr. Eugene Luteshi	-	Audio Recording Officer

## **AGENDA**

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Meeting with the Cabinet Secretary for Environment and Forestry regarding the following:  
- Status of the proposed demolition of Seefar Apartment. The effectiveness of the ban on forest logging and the rationale for its extension.**
- v) **Meeting with the Principal Secretary for Housing/Joint Secretary, Inter-Agency Steering Committee on the Nairobi Regeneration, regarding the Status of the proposed demolition of the Seefar Apartment and the Status of the Nairobi Dam**
- vi) Any Other Business
- vii) Date of the next Sitting

## **MIN.NO. DC/ENR/050/2019: - PRELIMINARIES**

The meeting was called to order at 10.05 a.m. after which prayers were said. The Chairperson then stated that the main agenda of the meeting was:

- a) Meeting with the Cabinet Secretary for Environment and Forestry regarding the Status of the proposed demolition of Seefar Apartment and the effectiveness of the ban on forest logging and the rationale for its extension.
- b) Meeting with the Principal Secretary for Housing/Joint Secretary, Inter-Agency Steering Committee on the Nairobi Regeneration, regarding the Status of the proposed demolition of the Seefar Apartment and the Status of the Nairobi Dam.

The Members adopted the Agenda of the meeting and the Chairperson then requested all present to introduce themselves.

## **MIN.NO.DC/ENR/051/2019: - CONFIRMATION OF MINUTES**

Confirmation of Minutes of the previous Sittings was deferred to the next sitting.



**MIN.NO. DC/ENR/052/2019: - MEETING WITH THE CABINET SECRETARY FOR ENVIRONMENT AND FORESTRY AND THE PRINCIPAL SECRETARY FOR HOUSING/JOINT SECRETARY, INTER-AGENCY STEERING COMMITTEE ON THE NAIROBI REGENERATION REGARDING THE STATUS OF THE PROPOSED DEMOLITION OF SEEFAR APARTMENT.**

The Cabinet Secretary for Environment and Forestry appeared before the Committee and informed it that:

1. On the Status of the Notice issued for the demolition of the Seefar Apartment he stated that:
  - a) Both the Water Resources Authority (WRA) and the National Environment Management Authority (NEMA), extended the period of their respective Orders for a further ninety (90) days. The extension was effective from 13<sup>th</sup> February 2019, the date when the period of previous Orders expired (*he provided the Extension Notices by NEMA and WRA, respectively*).
  - b) The Notices were extended in order to give time to the Multi-Agency Technical Team to carry out a comprehensive study on the safety of the Dam, its potential and the socio-economic implications of rehabilitating or decommissioning it as agreed upon during the meeting held between the Ministry and the Committee on 4<sup>th</sup> December, 2018.
2. On the Multi-Agency Comprehensive report on Safety of Nairobi Dam and the Socio-Economic Implications of Sustaining the Dam he stated that:
  - a) The Committee had given the Ministry a time line of up to end of February to finish the report. However, the report had not been finalized because the Technical Committee resolved to engage a dam expert to carry out the study since two of the key members of the Multi-Agency Technical Team namely WRA and NEMA, were interested parties in the issue. It is therefore prudent to have independent experts to carry out the study to avoid possible conflict of interest.
  - b) The Inter-Agency Technical Team had drawn the Terms of Reference for the study and the process of procuring the dam expert was ongoing. Among the outputs expected from the Study were: -
    - i) Report on Inspection and safety review of the Dam
    - ii) Current built engineering drawings for the Dam infrastructure



- iii) Dam break analysis and inundation maps: - to show the residences and investments that are at risk should the Dam break and recommend the best way of protecting them
- iv) A detailed analysis on the economic value of the Dam and recommendations on its future existence and use.

### **JOINT SECRETARY, INTER-AGENCY STEERING COMMITTEE ON THE NAIROBI REGENERATION.**

Mr. Moses Nyakiongora, CEO/Secretary, National Buildings Inspectorate on behalf of the Principal Secretary for Housing/Joint Secretary Inter-Agency Steering Committee on the Nairobi Regeneration appeared before the Committee and informed it that:

1. The Seefar Apartment was structurally sound and therefore safe for habitation.
2. The process of technical assessment of the status of the Nairobi dam was ongoing in order to determine the next course of action.

### **MEMBERS' OBSERVATIONS**

Members observed that:

1. There was need for definite timelines for conclusion of the report on the status of the dam by the independent expert. Such timelines ought to tally with the timelines in the extended demolition order.
2. The technical team was working on the technical report yet demolition orders had been issued against seefar apartment without any technical report. This smacks of casualness in handling of matters among the state agencies involved.
3. There was need to lift the demolition orders until such a time that the government had come up with a comprehensive technical report to chart the way forward.
4. The government was engaged in erratic demolition of buildings and there was need for a structured, systematic demolition of identified structures. Otherwise the entire exercise risked being viewed as discriminatory.

### **RESOLUTION**

Since the representative of the Inter-Agency Steering Committee on the Nairobi Regeneration had declared that the Seefar Apartment was safe and structurally sound, NEMA and WRA



should vacate their demolition orders until the steering committee concludes its assessment of the dam and charts the way forward.

**MIN.NO. DC/ENR/053/2019:**

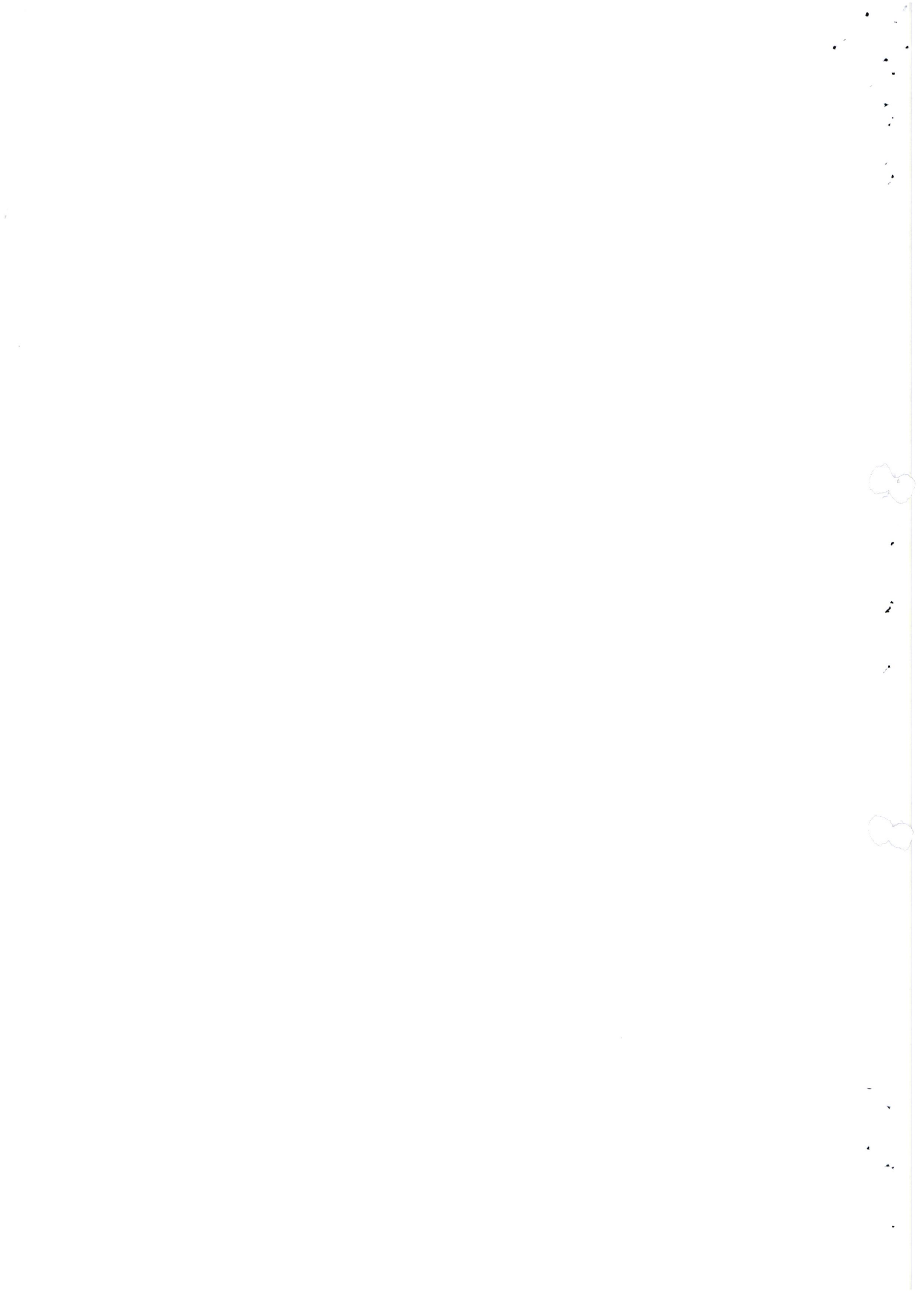
- **MEETING WITH THE CABINET  
SECRETARY FOR ENVIRONMENT  
AND FORESTRY ON THE  
EFFECTIVENESS OF THE BAN ON  
FOREST LOGGING AND THE  
RATIONALE FOR ITS EXTENSION.**

The Cabinet Secretary for Environment and Forestry appeared before the Committee and informed it that:

1. The Moratorium on forest logging (Harvesting) in all public and community forests was imposed on 24<sup>th</sup> February, 2018 in response to widespread forest destruction and land degradation in public, community and private lands. The Moratorium was initially intended for Ninety (90) days beginning 24<sup>th</sup> February, 2018 but it was later extended for six (6) months. The Moratorium was extended for a further one year from 24<sup>th</sup> November, 2018.
2. The purpose of the Moratorium was to:
  - i. Halt widespread forest destruction and allow time to put in place measures to restore degraded forest areas;
  - ii. undertake re-assessment and rationalization of the entire forest sector in the country; and
  - iii. Undertake measures to address unregulated charcoal production and trade.
3. Consequently, the Ministry of Environment and Forestry established a Task Force vide Gazette Notice No. 28 of 26<sup>th</sup> February, 2018. The broad objective of the Task Force was to inquire into forest resources management and illegal logging in the country and submit its report with clear recommendations to the Government.
4. The Ministry, based on the Report, prepared an implementation matrix and budget which was presented to the Presidential Delivery Unit at the Office of the President for adoption.
5. In addition, the Ministry updated the National Treasury on the status of ongoing reforms of Kenya Forest Service and the forest sector and requested for additional budgetary resources to implement the recommendations of the Task Force Report.
6. On effectiveness of the Moratorium he stated that:
  - i) The Moratorium had been effective in reducing widespread forest destruction in the country. In particular, the Moratorium has been fully enforced in public and community forests. In cases where illegal activities have been reported, arrests have been made and culprits arraigned in court.
  - ii) The Moratorium had provided the Ministry the opportunity to re-assess and rationalize operations and systems of the forest sector in the country. Details on the progress of implementation of the Moratorium include that the Ministry had:
    - a) Appointed a Task Force to inquire into forest resources management and illegal logging in the country
    - b) Delivery of the Task Force report with clear recommendations to the Government,
    - c) Development of an Implementation matrix and budget for implementation of Task Force recommendations,

- d) Reconstituted and launched KFS Board,
  - e) Cases of alleged forest related malpractices referred to the Auditor General for forensic audit,
  - f) Specific cases mentioned in Taskforce Report forwarded to Ethics and Anti-Corruption Commission for investigations and further remedial actions,
  - g) Review of large-scale infrastructure developments in forest reserves particularly with regard to large water dam projects under development;
  - h) Financial requirements to bridge the budgetary shortfall arising from implementation of the Moratorium submitted to the National Treasury;
  - i) Extensive National Tree Planting Campaign involving all stakeholders comprising of National and County Governments, civil society, private sector and local communities launched;
  - j) Review of the draft National Forest Policy and amendment of the Forest Conservation and Management Act, 2016 commenced;
  - k) Developed models on terms, conditions and safeguards on sustainable utilization of Prosopis ( Mathenge) and Lamu mangroves;
- iii) Actions undertaken by the Board and Management of Kenya Forest Service include:
- a) Recruitment of new Chief Conservator of Forests almost concluded. Shortlisting and interviews for the post of CCF have been concluded awaiting approval from the Cabinet Secretary,
  - b) Identified hotspots and intensified surveillance and protection of water catchment areas;
    - a. Currently conducting Special and Security Operations in Hotspots areas. Example; Embobut forest, Mau Forest Complex, Boni Forest and Mt Elgon. Extra protection has been intensified through deployment of more officers to these areas.
    - b. Supported the County Government in conducting Operations in Dakatcha woodland in Kilifi County, Nyakweri and Loita community forests in Narok County. Further, conducted operations especially on charcoal production in Kajiado, Kitui, Baringo, Isiolo, Tana River, Garissa, Wajir, Samburu, Homabay, Turkana, Trans Nzoia and West Pokot among others.
    - c. Created eight (8) Rapid Forest Protection Inspection Units (R-FIPU) whose roles include forest inspection, Response to emergencies such as Forest fire out breaks, Conduct Highway patrol's to ensure compliance, conduct special Operations and support field stations.
  - c) Thirty-six (36) Transition Implementation Plans signed with County Governments,
  - d) Major achievements in Law Enforcement and Compliance:
    - i. Arrests made—1877 suspects
    - ii. Cedar posts confiscated—29,592 Cedar posts
    - iii. No of bags of charcoal seized—15,263 Bags
    - iv. Timber confiscated-5,024 pieces and 145tons.
    - v. Repossession of 4,500ha in Maasai Mau forest.
    - vi. Repossession of 256 ha Makunga block in Saboti forest.
  - e) Streamlined water easements and wayleaves processing in the forest in collaboration with Ministry of water.





7. On the Rationale behind the extension of the Moratorium he stated that:
- i) The Moratorium on Logging Activities in Public and Community Forests was extended by the Government for a further one (1) year from 24<sup>th</sup> November 2018 to; -
    - facilitate implementation of the immediate and short-term recommendations of the Taskforce;
    - allow the scaling up of the on-going National Tree Planting Campaigns aimed at achieving the 10% forest cover by 2022 as directed by H.E the President.
    - Allow for the restoration and rehabilitation of the degraded critical Water Catchment areas and replanting of the backlog clear fell plantation areas with indigenous tree species.

**OBSERVATIONS**

1. The moratorium had been lifted in Lamu County and guidelines provided on utilization.
2. Guidelines had been developed on the handling of the *Mathenge* species that was a nuisance and the same would be applied to all other areas with similar species.

**MIN.NO. DC/ENR/054/2019: - ANY OTHER BUSINESS**

The Committee resolved to conduct inspection visits to the following dams form 21<sup>st</sup> March, 2019 in order to verify works undertaken and the payments made so far:

- a) Itaare Dam
- b) Chemsusu Dam
- c) Ruiru II Dam
- d) Karimenu II Dam
- e) Muranga Collector Tunnel
- f) Thwake Dam
- g) Umma Dam

**MIN.NO. DC/ENR/055/2019: - ADJOURNMENT**

There being no other business the meeting was adjourned at 1.57 pm.

SIGNED: .....  
 THE HON. KAREKE MBIUKI, M.P.  
 CHAIRPERSON,  
 DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE: ..... 20/03/2019 .....





3. Mr. Bildad Wanyonyi - WRA

**THE NATIONAL ASSEMBLY**

1.Ms. Esther Nginyo - Clerk Assistant II  
2.Mr. Dennis Mogare - Clerk Assistant III  
3.Mr. Joseph Okongo - Senior Media Relations Officer  
4.Mr. Stanley Lagat - Serjeant-At-Arms I  
5.Mr. Eugene Luteshi - Audio Recording Officer

**AGENDA**

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) Inspection visit to various riparian areas within Nairobi County.
- v) Any Other Business
- vi) Date of the next Sitting

**MIN.NO. DC/ENR/043/2019: - PRELIMINARIES**

The meeting was called to order at 10.55 a.m. after which prayers were said. The Chairperson then stated that the main agenda of the meeting was carrying out inspection visits to various riparian areas within Nairobi County.

The Members adopted the Agenda of the meeting and the Chairperson then requested all present to introduce themselves.

**MIN.NO.DC/ENR/044/2019: - CONFIRMATION OF MINUTES**

Confirmation of Minutes of the previous Sittings was deferred to the next sitting.

**MIN.NO. DC/ENR/045/2019: - INSPECTION VISIT TO NGONG RIVER RIPARIAN AREA, LANGATA.**

A visit was made to the area formerly occupied by the demolished South End Mall. The visit was necessitated by the realization that another building was being constructed next to the demolished mall. The building appeared to be encroaching on the riparian area.

Mr. Joel Kitili, Ministry of Environment and Forestry briefed the Committee on site that:

- 1. The ground where the South End Mall stood had been levelled.
- 2. There were ongoing efforts to rehabilitate the riparian area, fence it and convert it into an eco-tourism site.
- 3. For sustainability, there were efforts to ensure the surrounding community was involved and appreciates the benefit of conserving the riparian area.

4. There were intentions to demarcate the riparian and have permanent beacons on the ground.

#### **MEMBERS' OBSERVATIONS**

Members observed that the building that was coming up next to the former South End Mall was too close to the river and there was need to:

- a) Establish scientifically if indeed it encroached onto the riparian area.
- b) Establish the ownership of the building.
- c) Access the hydrological data to establish with certainty the behavior of the river.

**MIN.NO. DC/ENR/046/2019:**

- **INSPECTION VISIT TO NAIROBI DAM  
RIPARIAN/SEEFAR APARTMENTS**

Mr. Joel Kitili, Ministry of Environment and Forestry briefed the Committee on site that:

1. The Seefar Apartments were sitting on part of the dam embankment hence compromising the integrity of the embankment.
2. There was need to rehabilitate the dam and were plans to have independent engineers to make a technical assessment of the dam before charting the way forward.
3. The dam was initially used for recreational purposes.

#### **MEMBERS' OBSERVATIONS**

After assessing the state of the Nairobi Dam /Seefar Apartments members observed that:

1. The dam was not operational. In fact, it was choked by vegetation and including the water hyacinth.
2. Seeking to have independent consultants to assess the status of the dam was wasteful of public resources when there existed public institutions whose mandate was squarely such.
3. The ministry ought to urgently ensure the technical report on the dam and is provided to the National Assembly as the way forward is charted.

**MIN.NO. DC/ENR/047/2019:**

- **INSPECTION VISIT TO PEONI,  
GITATHURU RIVER RIPARIAN**

The Committee visited an ongoing construction of residential apartments at Peoni along the Gitathuru River Riparian.

Upon making measurements from the start of the riparian area to the structure under construction, it was established that the structure was not encroaching on the riparian area.

The Committee commended the NEMA for ensuring such upcoming buildings adhered to riparian area integrity requirements.

**MIN.NO. DC/ENR/048/2019:** - **INSPECTION VISIT TO THE  
DEMOLISHED UKAY CENTRE,  
PARKLANDS**

The Committee made a visit to the demolished Ukay Centre, Parklands and observed that:

1. The Ukay Centre had been demolished and the ground levelled.
2. The agencies involved were awaiting the revocation of the title deed to the parcel of land before they would return the river to its original course since it had been diverted.

**MIN.NO. DC/ENR/049/2019:** - **ADJOURNMENT**

There being no other business the meeting was adjourned at 1.57 pm.

SIGNED:  .....

**THE HON. KAREKE MBIUKI, M.P.**  
**CHAIRPERSON,**  
**DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES**

DATE: ..... 20/03/2019 .....

**MINUTES OF THE 111<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY 4<sup>TH</sup> DECEMBER, 2018 AT 10.00 AM IN THE 4<sup>TH</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS.**

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**PRESENT**

1. **The Hon. Sophia Abdi Noor, M.P.** Vice Chairperson
2. The Hon. Francis Chachu Ganya, M.P.
3. The Hon. Peter Kimari Kihara, M.P.
4. The Hon. Said Hiribae, M.P.
5. The Hon. Charles Ong'ondo Were, M.P.
6. The Hon. Rehema Hassan, M.P.
7. The Hon. Benjamin Dalu Tayari, MP
8. The Hon. Hilary Kiplang'at Kosgei, M.P.
9. The Hon. Ali Wario Guyo, M.P.

**APOLOGIES**

1. **The Hon. Kareke Mbiuki, M.P.** Chairperson
2. The Hon. Hassan Oda Hulofo, M.P.
3. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.
4. The Hon. Benjamin Jomo Washiali, M.P., CBS
5. The Hon. Beatrice Cheron Kones, M.P.
6. The Hon. Rozaah Buyu. M.P.
7. The Hon. Amin Deddy Mohamed Ali, M.P.
8. The Hon. Charity Kathambi Chepkwony, M.P.
9. The Hon. Nasri Sahal Ibrahim, M.P.
10. The Hon. David Kangogo Bowen, M.P.

**IN ATTENDANCE**

**MINISTRY OF ENVIRONMENT AND FORESTRY**

1. Hon. Mohamed Elmi - Chief Administrative Secretary
2. Mr. Erick Akotsi - Director, Urban Rivers Restoration.

**THE NATIONAL ASSEMBLY**

1. Ms. Esther Nginyo - Clerk Assistant II
2. Mr. Dennis Mogare - Clerk Assistant III
3. Mr. Joseph Okongo - Senior Media Relations Officer
4. Mr. Stanley Lagat - Serjeant-At-Arms II
5. Ms. Winnie Kulei - Research Officer III
6. Mr. Abdikani Kala - Audio Recording Officer



## **AGENDA**

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) Meeting with The Cabinet Secretary for Tourism and Wildlife On Questions by: Hon. George Murugara, MP, Hon. Jonah Mburu, MP, Hon. Maisori Marwa, MP, Hon. Adan Haji Ali, MP and to Respond to a Petition On Human Wildlife Conflict in Kibwezi West Constituency by Hon. Dr. Patrick Musimba, MP.
- v) Consideration and Adoption of a Report On The 14<sup>th</sup> Annual General Meeting (AGM) Of The Intergovernmental Forum On Mining, Minerals, Metals and Sustainable Development (IGF) On Modern Mining Law and Policy: Accountable, Equitable and Innovative Approaches Held at Geneva, Switzerland from 15<sup>th</sup> To 19<sup>th</sup> October 2018.
- vi) Meeting with the Cabinet Secretary, Ministry of Environment and Forestry over the interim report on the safety of the Nairobi dam.
- vii) Any Other Business
- viii) Date of the next Sitting

### **MIN.NO. DC/ENR/594/2018: - PRELIMINARIES**

The meeting was called to order at 10.26 a.m. after which prayers were said. The Chairperson then stated that the main agenda of the meeting was:

- i) Meeting with The Cabinet Secretary for Tourism and Wildlife On Questions by: Hon. George Murugara, MP, Hon. Jonah Mburu, MP, Hon. Maisori Marwa, MP, Hon. Adan Haji Ali, MP and to Respond to a Petition On Human Wildlife Conflict in Kibwezi West Constituency by Hon. Dr. Patrick Musimba, MP.
- ii) Consideration and Adoption of a Report On The 14<sup>th</sup> Annual General Meeting (AGM) Of The Intergovernmental Forum On Mining, Minerals, Metals and Sustainable Development (IGF) On Modern Mining Law and Policy: Accountable, Equitable and Innovative Approaches Held at Geneva, Switzerland from 15<sup>th</sup> To 19<sup>th</sup> October 2018.

The Members adopted the Agenda of the meeting.

### **MIN.NO.DC/ENR/595/2018: - CONFIRMATION OF MINUTES**

Minutes of the 101<sup>st</sup> Sitting held on Thursday 8<sup>th</sup> November, 2018 at 10.00 am were confirmed as a true record of deliberations after being proposed by Hon. Peter Kihara, M.P. and seconded by Hon. Charles Were, M.P.

Minutes of the 102<sup>nd</sup> Sitting held on Tuesday 13<sup>th</sup> November, 2018 at 9.30 am were confirmed as a true record of deliberations after being proposed by Hon. Ali Wario, M.P. and seconded by Hon. Said Hiribae, M.P.

Minutes of the 103<sup>rd</sup> Sitting held on Thursday 15<sup>th</sup> November, 2018 at 11.30 am were confirmed as a true record of deliberations after being proposed by Hon. Rehema Hassan, M.P. and seconded by Hon. Peter Kihara, M.P.

Minutes of the 104<sup>th</sup> Sitting held on Thursday 22<sup>nd</sup> November, 2018 at 9.30 am were confirmed as a true record of deliberations after being proposed by Hon. Charles Were, M.P. and seconded by Hon. Said Hiribae, M.P.

Minutes of the 105<sup>th</sup> Sitting held on Friday 23<sup>rd</sup> November, 2018 at 9.30 am were confirmed as a true record of deliberations after being proposed by Hon. Hilary Kosgei, M.P. and seconded by Hon. Chachu Ganya, M.P.

Minutes of the 106<sup>th</sup> Sitting held on Friday 23<sup>rd</sup> November, 2018 at 2.30 pm were confirmed as a true record of deliberations after being proposed by Hon. Hilary Kosgei, M.P. and seconded by Hon. Chachu Ganya, M.P.

Minutes of the 107<sup>th</sup> Sitting held on Saturday 24<sup>th</sup> November, 2018 at 9.30 am were confirmed as a true record of deliberations after being proposed by Hon. Hilary Kosgei, M.P. and seconded by Hon. Chachu Ganya, M.P.

Minutes of the 108<sup>th</sup> Sitting held on Saturday 24<sup>th</sup> November, 2018 at 2.30 pm were confirmed as a true record of deliberations after being proposed by Hon. Hilary Kosgei, M.P. and seconded by Hon. Chachu Ganya, M.P.

**MIN.NO. DC/ENR/596/2018:**

- **MEETING WITH THE CABINET SECRETARY FOR TOURISM AND WILDLIFE ON QUESTIONS BY: HON. GEORGE MURUGARA, MP, HON. JONAH MBURU, MP, HON. MAISORI MARWA, MP, HON. ADAN HAJI ALI, MP AND TO RESPOND TO A PETITION ON HUMAN WILDLIFE CONFLICT IN KIBWEZI WEST CONSTITUENCY BY HON. DR. PATRICK MUSIMBA, MP.**

It was reported that a letter had been received from the cabinet secretary requesting for a rescheduling of the meeting since he had official engagements out of the country.

## **Resolution**

It was resolved that the meeting be rescheduled by the secretariat to the earliest available opportunity in the calendar of activities of the Committee.

**MIN.NO. DC/ENR/597/2018:** - **CONSIDERATION AND ADOPTION OF A REPORT ON THE 14TH ANNUAL GENERAL MEETING (AGM) OF THE INTERGOVERNMENTAL FORUM ON MINING, MINERALS, METALS AND SUSTAINABLE DEVELOPMENT (IGF) ON MODERN MINING LAW AND POLICY: ACCOUNTABLE, EQUITABLE AND INNOVATIVE APPROACHES HELD AT GENEVA, SWITZERLAND FROM 15TH TO 19TH OCTOBER 2018.**

The Report On The 14th Annual General Meeting (AGM) Of The Intergovernmental Forum On Mining, Minerals, Metals and Sustainable Development (IGF) On Modern Mining Law and Policy: Accountable, Equitable and Innovative Approaches Held at Geneva, Switzerland from 15th To 19th October 2018 was considered and adopted after being proposed and seconded by Hon. Charles Were, MP and Hon. Benjamin Tayari, MP respectively.

**MIN.NO. DC/ENR/598/2018:** - **MEETING WITH THE CABINET SECRETARY, MINISTRY OF ENVIRONMENT AND FORESTRY OVER THE INTERIM REPORT ON THE SAFETY OF THE NAIROBI DAM.**

Hon. Mohamed Elmi, the Chief Administrative Secretary, Ministry of Environment and Forestry appeared before the Committee and informed it that:

1. The meeting on Thursday, 22<sup>nd</sup> November, 2018 to deliberate on the status of Nairobi Dam resolved that the Ministry of Environment and Forestry should furnish the committee with further information as follows:
  - a) To report to the Committee within seven days on whether there was an emergency situation on the dam safety to residents or whether the dam is stable enough to allow time for a comprehensive study to be carried out.
  - b) To carry out a comprehensive assessment of the dam and make a report to parliament within one month on the safety of the dam, its potential and the socio-economic implications of rehabilitating or decommissioning it.
2. On the Immediate Report on Safety of Nairobi dam he stated that:

- a) The Ministry constituted a joint team of experts from various Government agencies who visited the dam on the 27<sup>th</sup> November 2018, to carry out a rapid assessment of the dam and its reservoir to ascertain safety of residents downstream.
  - b) The team observed that the initial dam wall was 15m wide and a slope of 36m but currently the dam wall is 22m wide. This increase was as a result of dumping of soil in the water reservoir by the developer during construction of the Seefar Apartments. The structure of the dam is weak with signs of seepage.
  - c) In the opinion of the joint task team, there was no immediate danger to the residents if the current short rains remain at the current levels. The existing spillway is enough to evacuate excess water safely. This was however with caution that there are no floods during the intervening period.
  - d) The team also recommended that comprehensive studies needed to be urgently done to ascertain the structural integrity of the dam and the safety of the building.
3. On a comprehensive report to the committee within one month on the safety of the dam he stated that:
- a) The team of experts advised that on the issue of providing the report to the committee within one month, it may not be feasible. The report would need at least a period of two months to complete. This was because the studies would require material testing to be carried out in the labs which take some time. They would also need to engage specialized experts which require time.
  - b) In the meantime, NEMA would be asked to extend the demolition notice to give room for the comprehensive evaluation of the dam.

**RESOLUTION**

It was resolved that the main, comprehensive technical report on the safety of the Nairobi dam be prepared and submitted to the committee within two months from the date of the meeting.

**MIN.NO. DC/ENR/599/2018:** - **ADJOURNMENT**

There being no other business the meeting was adjourned at 1.35 pm.

**SIGNED:** ..... 

**THE HON. KAREKE MBIUKI, M.P.**  
**CHAIRPERSON,**  
**DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES**

**DATE:** ..... 20/03/2019 .....

**MINUTES OF THE 104<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY 22<sup>ND</sup> NOVEMBER, 2018 AT 9.30 AM IN THE MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS.**

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**PRESENT**

1. **The Hon. Kareke Mbiuki, M.P.**                      **Chairperson**
2. The Hon. Benjamin Jomo Washiali, M.P., CBS
3. The Hon. Beatrice Cheron Kones, M.P.
4. The Hon. Ali Wario Guyo, M.P.
5. The Hon. Peter Kimari Kihara, M.P
6. The Hon. Rehema Hassan, M.P.
7. The Hon. Hilary Kiplang'at Kosgei, M.P.
8. The Hon. Benjamin Dalu Tayari, MP
9. The Hon. Charity Kathambi Chepkwony, M.P
10. The Hon. Amin Deddy Mohamed Ali, M.P.
11. The Hon. Said Hiribae, M.P.
12. The Hon. Nasri Sahal Ibrahim, M.P.
13. The Hon. Hassan Oda Hulufu, M.P
14. The Hon. Francis Chachu Ganya, M.P.
15. The Hon. Charles Ong'ondo Were, M.P.

**APOLOGIES**

1. **The Hon. Sophia Abdi Noor, M.P.**                      **Vice Chairperson**
2. The Hon. David Kangogo Bowen, M.P.
3. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.
4. The Hon. Rozaah Buyu. M.P.

**IN ATTENDANCE**

**MINISTRY OF ENVIRONMENT AND FORESTRY**

- |                           |   |                                |
|---------------------------|---|--------------------------------|
| 1. Hon. Mohamed Elmi      | - | Chief Administrative Secretary |
| 2. Mr. Ali Noor Ismail    | - | Principal Secretary            |
| 3. Prof. Geoffrey Wahungu | - | Director General, NEMA         |
| 4. Ms. Salome Machua      | - | NEMA                           |
| 5. Mr. Ali Mwanzei        | - | NEMA                           |

**MINISTRY OF WATER AND SANITATION**

- |                       |   |                           |
|-----------------------|---|---------------------------|
| 1. Mr. Joseph Keter   | - | Secretary, Administration |
| 2. Mr. Mohamed Shurie | - | CEO, WRA                  |

- |                          |   |     |
|--------------------------|---|-----|
| 3. Eng. Boniface Mwaniki | - | WRA |
| 4. Ms. Janet Olewe       | - | WRA |

### PETITIONERS

- |                          |   |                              |
|--------------------------|---|------------------------------|
| 1. Hon. Nixon Korir      | - | MP, Langata                  |
| 2. Mr. Otieno Paul Peter | - | Chairman, Seefar Residents   |
| 3. Mr. John Rajwayi      | - | Erdemann Property Limited    |
| 4. Mr. Francis Mwangi    | - | Erdemann Property Limited    |
| 5. Mercy Karimi          | - | Homeowner, Seefar Apartments |
| 6. Mr. Enock Achoki      | - | Homeowner, Seefar Apartments |
| 7. Eng. Michael Muchiri  | - | Homeowner, Seefar Apartments |

### THE NATIONAL ASSEMBLY

- |                      |   |                                |
|----------------------|---|--------------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant II             |
| 2. Mr. Dennis Mogare | - | Clerk Assistant III            |
| 3. Mr. Joseph Okongo | - | Senior Media Relations Officer |
| 4. Mr. Salem Lorot   | - | Legal Counsel II               |
| 5. Mr. Stanley Lagat | - | Serjeant-At-Arms II            |
| 6. Ms. Winnie Kulei  | - | Research Officer III           |
| 7. Mr. Abdikani Kala | - | Audio Recording Officer        |

### AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Meeting with the Following on the Matter Regarding the Nairobi Dam and Seefar Apartments: - (I) Cabinet Secretary for Environment and Forestry (II) Cabinet Secretary for Water and Sanitation.**
- v) Any Other Business
- vi) Date of the next Sitting

### MIN.NO. DC/ENR/557/2018:

### - PRELIMINARIES

The meeting was called to order at 9.55 a.m. after which prayers were said. The Chairperson then asked all those present to introduce themselves. He then stated that the main agenda of the meeting was meeting with the following on the matter regarding the Nairobi Dam and Seefar Apartments: - (I) Cabinet Secretary for Environment and Forestry (II) Cabinet Secretary for Water and Sanitation.

The Members adopted the Agenda of the meeting.

**MIN.NO.DC/ENR/558/2018:**

- **CONFIRMATION OF MINUTES**

Confirmation of minutes of the previous sitting was deferred to the next meeting.

**MIN.NO. DC/ENR/559/2018:**

- **PRESENTATION BY THE CABINET SECRETARY FOR ENVIRONMENT AND FORESTRY ON THE MATTER REGARDING THE NAIROBI DAM AND SEEFAR APARTMENTS.**

The chairperson asked the Hon. Nixon Korir, MP to read out his petition. He then invited the Hon. Mohamed Elmi, Chief Administrative Secretary, Ministry of Environment and Forestry to make his presentation.

The Hon. Mohamed Elmi, Chief Administrative Secretary, Ministry of Environment and Forestry appeared before the Committee and informed it that:

1. The Nairobi Dam is located near Kibra where there is the largest informal settlement in Kenya. The condition in which Nairobi Dam was unhealthy and unsafe. The dam was heavily polluted with human waste discharged into it through waste water and was clogged with sediments brought by runoff. Sedimentation in the dam was so heavy to the extent that it is cultivated for arrow roots in some sections. As a result of pollution, the dam is also heavily infested with the Water hyacinth and other aquatic plants. The Ministry was addressing the pollution problem from upstream by identifying and closing discharge points.
2. The Nairobi dam was an old dam designed in 1946 by the Public Works Department of the British Colonial Government in Kenya in conjunction with the Uganda Railways and Harbours Service. It was commissioned in 1953 as a reservoir for industrial, potable and emergency water supply for Nairobi City. At the time the dam was constructed, there were few settlements in the areas around it. However, with increasing population, many settlements have come up in its neighborhoods.
3. The above scenario raised safety concerns and therefore the need to apply the precautionary principle and warn the residents. The Ministry through NEMA wrote to Water Resources Authority (WRA) as the lead agency responsible for the matter requesting for pegging and determination of the riparian zone of the dam and to guide development decisions. WRA responded indicating that they had requested the Director of Survey of Kenya for assistance in the surveying and marking of the original Ngong River course and the dam area.
4. The Director of Survey had done the preliminary work and on 12th November, 2018, WRA invited the Director of Survey, Chief Officer of Urban Planning - Nairobi City County, the National Environment Management Authority and the Managing Director of Erdermann Properties (who manages the Seefar Apartments constructed near the dam) to a meeting to receive the preliminary findings of the report of the survey. The meeting resolved that the

Director of Survey gives a detailed technical report to WRA to be followed by a site visit to confirm the survey findings.

5. The ministry also wrote to the Water Resources Authority (WRA) requesting it to demarcate the riparian zone for Nairobi Dam. WRA was also requested to undertake an urgent assessment regarding the structural integrity of the dam and any measures to be taken to avert any potential disaster. WRA responded stating that in accordance to Rule No. 59 of Water Resources Management 2007, the dam's safety was the responsibility of the owner, in this case Nairobi City County Government (NCC). Hence the Authority wrote to the NCC to undertake Nairobi Dam Safety analysis and inspection and thereafter produce a report.
6. In accordance to Environmental Impact Assessment and Audit (EIA) Regulations, 2003, the Ministry through NEMA wrote to the Nairobi City County Government on 16<sup>th</sup> November, 2018 asking for an initial audit to be undertaken and submitted to NEMA within 30 days from receipt of the letter. In accordance with the same Regulations, the ministry simultaneously also wrote to Erdmann Property Ltd as the proponent of Seefar Apartments directing that an Environmental Audit be undertaken and a report submitted to NEMA within 30 days from the receipt of the letter.
7. Nairobi Dam in its current state was unsafe on two fronts: as a health hazard and a potential for future disaster. However, the dam could still serve the functions for which it was intended if rehabilitated. There is need to carry out a study to determine the structural integrity of the dam and the feasibility of restoring it.
8. In terms of maintenance, the dam has been neglected for some time. However, in a Gazette Notice No. 2923 dated 2<sup>nd</sup> May 2014, the former Governor of Nairobi City County appointed a Task Force for the restoration of the Dam. The County Government therefore should be in a position to give information on the achievements made by the Taskforce on the restoration and maintenance of the dam.
9. On the findings of the Report by the joint Multi Agency Technical Team commissioned to assess the Dam, he stated that there was no report or information on the findings of the Joint Multi-Agency Technical Team.

**MIN.NO. DC/ENR/560/2018:**

- **PRESENTATION BY THE CABINET  
SECRETARY FOR ENVIRONMENT  
AND FORESTRY ON A PETITION  
REGARDING THE NAIROBI DAM  
AND SEEFAR APARTMENTS.**

The Hon. Mohamed Elmi, Chief Administrative Secretary, Ministry of Environment and Forestry appeared before the committee and informed it that:



1. Edermann Property Limited submitted an Environmental Impact Assessment for the development of 3 blocks of Apartments on Plot L.R. No. 209/12108 in Kibera Highrise, off Mbagathi Way on 18<sup>th</sup> February, 2011.
2. As required by law the report was dispatched to the following lead agencies seeking their comments, recommendations or objections on the proposed project:
  - a) The Director of Housing, Nairobi.
  - b) The Director, Directorate of Occupational Health and Safety Services, Nairobi
  - c) Department of Physical Planning, Ministry of Lands, Nairobi
  - d) The Managing Director, Nairobi City Water and Sewerage Company Limited
  - e) Karen and Lang'ata District Association
  - f) Chief Architect, Ministry of Public Works, Nairobi.
  - g) District Environment Committee/District Environment Officer, Westlands and Lang'ata
  - h) The Town Clerk, City Council of Nairobi,
3. A technical review was undertaken on 23<sup>rd</sup> May, 2011 taking into consideration the public disclosure and use of the decision making principles.
4. Conditions for licensing the project were prepared on 31<sup>st</sup> May, 2011 and the proponent consented to adhere to the conditions of the license on 7<sup>th</sup> June 2011.
5. The project was issued with an EIA license with conditions on 29<sup>th</sup> June 2011 vide License No. 0008382 and given the following conditions amongst others:
  - (a) Condition 2.1 which states that the proponent shall ensure protection of the Nairobi Dam and the Ngong River by maintaining a 30M riparian reserve from the water bodies
  - (b) Condition 1.5 which states that the Authority shall take appropriate action against the proponent in the event of breach of any of the conditions stated herein or any contravention to the Environmental Management and Coordination Act, 1999 and Regulations thereunder.
  - (c) Condition 1.6 which states that the license shall not be taken as a statutory defense against charges of environmental degradation or pollution in respect of any manner of degradation/ pollution not specified herein.
  - (d) Condition 1.9 which states that the proponent shall comply with NEMA's improvement orders throughout the project cycle.
6. On 14<sup>th</sup> January 2013, the developer was issued with an Improvement Notice by NEMA Environmental Inspectors requiring them to stop dumping of excavated materials on the riparian land.

7. During the ongoing Nairobi Regeneration Program, a team of Environment Inspectors, jointly with officers from Water Resources Authority (WRA) undertaking inspections along Ngong River on 12th October, 2018, observed that Edermann Property had encroached into the riparian reserve of the Nairobi Dam as well as Ngong River. The Apartments, as is the case with other structures on riparian reserve, was marked and an Order issued to Erdemann Property Ltd as the proponent in the EIA process. Several structures along Ngong River observed to be within the riparian reserve were also marked and issued with orders for example 6 houses within the Civil Servant Estate in South "C" and Godowns near Mater Hospital. The identification and marking of structures on the riparian reserve was on-going.
8. Further investigations indicated that there was violation of Condition 2.1 of the EIA license and hence the order issued was in accordance with Section 117(3)(g) of the Environmental Management and Coordination Act Cap 387;
9. On 15<sup>th</sup> October 2018, Seefar Homeowners wrote to the Authority challenging the orders by NEMA and WRA. They proposed a joint inspection with NEMA and WRA officers to ascertain their compliance level to condition 2.1. NEMA responded, and informed the home owners on the extension of the order pending consultation with relevant Lead Agencies.
10. On 15<sup>th</sup> October 2018, Erdemann Property Limited also wrote to NEMA asking that the Order issued to them on 12<sup>th</sup> October 2018 be revoked immediately. NEMA responded to Erdemann Limited indicating that NEMA would organize and invite their representatives for the requested joint inspection. Further, the Authority extended the Notice for thirty (30) days upto 15<sup>th</sup> November, 2018 to allow consultation and investigation to guide its decision. However, the Assessment and Technical reports were taking time the ministry had requested the Director General NEMA, to extend the Order from 30 days for a further 90 days upto 15<sup>th</sup> February, 2019 to allow conclusive engagement.

**MIN.NO. DC/ENR/561/2018:**

- **PRESENTATION BY THE WATER  
RESOURCES AUTHORITY ON THE  
SEE-FAR BUILDING  
ENCROACHMENT ON NAIROBI DAM  
AND NGONG RIVER RIPARIAN**

Mr. Mohamed Shurie the CEO, Water Resources Authority appeared before the Committee and informed it that:

1. Between June and August 2011, there were media reports on the impending collapse of Nairobi dam due to excavation done on the Dam embankment during construction works of Seefar Apartments. WRMA responded to this by undertaking an inspection that revealed the following:

- a) It is true while the Seefar Apartments were being constructed, excavations were made into the dam embankment to create space for the building. In accordance with normal practice, excavating a dam wall weakens it. In this regard a stop was issued on 05/March/ 2011.
- b) The building site was located on the immediate downstream of the dam wall which is not advisable in law for safety reasons.

As a result:

- i. WRMA issued Order No 315 on 20th July 2011 stopping excavation on the plot until Nairobi Dam and Ngong River riparian areas were demarcated and pegged;
- ii. In 22nd July, 2011, WRMA pegged and demarcated as well as 22m from the highest water mark from Nairobi dam and 15m from Ngong River as per the attached letter.
- iii. In 2012 WARMA issued another further order in April stopping further backfilling of the reservoir and returning the water flow through original spillway.
- iv. Erdeman Properties wrote to WRMA vide letter Ref. EPL/0172/PRT dated 10th April 2015 requesting for confirmation of the pegging of the riparian land and their compliance with the same. Consequently, WRMA staff visited the site on 13th and 14th April 2015 and inspected both the riparian and dam repair works. The staff confirmed compliance by the developer. However, the request by the developer and the subsequent inspection and confirmation were not tallying with earlier determinations of the riparian area in 2011. Disciplinary action against the concerned staff was being pursued.
- v. On 12th October, 2018 Mr Michael Muturi, a surface water officer with WRA who had earlier inspected on 13th and 14th April 2015 and confirmed compliance by the developer again issued a demolition order. Consequently, a compliance letter was issued by the then Sub-Regional Manager Samson Oiro to the developer.
- vi. WRA has extended the validity of its Order No 30365 for 90 days from 13<sup>th</sup> November 2018 to give room for further consultations, survey work and investigations before the order is executed; However, caution needs to be taken because of the eminent danger posed by the dam.
- vii. Due to the complexity of this matter, the developer and house owners requested for a joint multi agency (NEMA, WRA and Survey of Kenya) inspection of the Nairobi Dam and Ngong River riparian reserve in order to address the issue exhaustively. WRA has already written to survey of Kenya to establish the exact river course of Ngong River.
- viii. On 25th October 2018, WRA wrote to the dam owner (Nairobi City County Government) requesting for a dam safety analysis report within 21 days expiring on 25th November 2018.
- ix. There was need to consider the usefulness of the Nairobi dam considering its current status and propose the next course of action for the dam;
- x. In conclusion he stated that:

- Seefar apartments were within the riparian land as per 2011 determination. However, the original course of Ngong River would be determined by the Survey of Kenya.
- There was eminent threat to lives, environment and property due to the likelihood of Nairobi dam breaching since its bank has been weakened by excavation and construction works as per the 2012 order.

**MIN.NO. DC/ENR/562/2018:**

**- PRESENTATION BY THE CHAIRMAN  
SEEFAR HOMEOWNERS**

Otieno Paul Peter, Chairman Seefar Homeowners appeared before the Committee and stated that:

1. Seefar Apartments comprise a three-joined-blocks of 12 storey building situated on a piece of land L/ R No.209/12108 located right inside Nyayo Highrise F/R No.351/27.
2. The building was developed by Edermann Properties Limited (EPL) between 2011 and 2013, got all the required approvals, and was launched by the then Minister for Housing, the Late, Hon. Soita Shitanda, as part of governments agenda for affordable housing.
3. Seefar Apartments consist of 288 houses (2 bedroom houses - 264 and 3 bedroom houses - 24), having a total population of about 1500, taking an average of 5 people per unit for a total of 288 units, with majority being young women and school going children. These are people whose livelihoods affect directly or indirectly thousands of others across the country and in various work places. Seefar also has about 150 daily casual workers.
4. Seefar community was horrified by the (handwritten) notices that were issued by staff from NEMA and WRA to the developer of this building and writings put on its walls on Friday the 12th of October 2018 afternoon. The notices claimed that this building is on riparian reserve and thus should be removed within 14 days.
5. This building, despite being developed by EPL, is no longer owned by the developer, but rather by ordinary Kenyans who were struggling to make ends meet. Majority of the buyers are first-time home-owners, some of whom have risen from homelessness. Over 60% are serving mortgages with various financial institutions. EPL only owns a single unit, No. 119.
6. The ownership of Seefar comprises 2 Women Groups (with total membership of about 25), a charity home (for orphans and rehabilitated street children), investment groups (mostly comprising youths and women), individual owners (99 of whom are women, mostly single mothers). Only 28 out of the 288 units are co-owned by couples. The majority age of these home owners was between 28 to 35 years.
7. Upon visiting NEMA and WRA (regional) offices in Industrial Area on 15th and 16<sup>th</sup> of October 2018 respectively, to demand explanations and armed with documents of approvals, the Authorities could not confirm or deny the sanctity of the approvals of this

building. Instead, they opted to change the notices to 30 days, from 14 days. They further suggested a joint inspection to establish the facts on the ground, which was to happen within the week, between 16th and 19th of October, before making a decision. This did not happen.

8. In one of the consultative meetings with WRA on 22<sup>nd</sup> October 2018, attended by CEO, Mr. Mohamed Shurie and Engineer Boniface Mwaniki, they suggested the residents could go ahead and do their own survey. They stated that there were "emerging issues" they were looking at and an "imminent danger" posed by the dam. When asked for the technical report on these alarming allegations, they said it was not ready.
9. The Seefar residents commissioned a survey which established that the closest distance from Seefar Apartments, to the highest water mark of the dam (contour 1669, which should be the level of the spillway, scientifically speaking,) is 42m. This is way outside the 6m-30m stated by the Physical Planning Act (Regulations) Section 15 C, the Environmental Management and Co-ordination Act (Regulations) Section 6 and the Survey Act, Regulations 112 of the Laws of Kenya.
10. As a result of the safety concerns raised, Eng. J.K. Rutere, a renowned dam expert in Kenya, was requested, through the developer, to inspect and give a technical and professional opinion on the safety of the said dam. In his report, he stated, based on his evaluation, that the dam was safe.
11. The notices were issued without a technical report. The fact that the Agencies are compiling the report after the Notice is illegal, unprocedural and inconsiderate to the many Kenyans who live in Seefar Apartments.
12. The WRA letter of 2015, ref. WRMA/NRB/RIPARIAN/1(56), clearly gave a clean bill of health to the dam embankment and the riparian distances.

**MIN.NO. DC/ENR/563/2018:**

**- OBSERVATIONS AND RESOLUTIONS**

## **OBSERVATIONS**

It was observed that:

1. The notices for demolition issued by NEMA and WRA were wanting since the same entities gave approvals for the construction of the apartments. The doublespeak was a scare to investors in real estate in the country.
2. There was manifest laxity and lack of diligence among some officers at NEMA and WRA since it had taken too long to establish the alleged encroachment on the said riparian zone. The officers directly involved in the approvals that were now being questioned ought to be disciplined.

3. It was important for the government to establish who ought to compensate the homeowners in case the Seefar Apartments were demolished since the owners were servicing mortgages used to acquire units in the apartments.
4. The dam was upstream while the Seefar Apartments were down stream. This posed a danger in case of collapse of the dam.
5. There was need to consider the usefulness of the Nairobi dam considering its current status and propose the next course of action for the dam;
6. The residents of Seefar Apartment had hired Eng. J.K. Rutere, a dam expert through the developer, to inspect and give a technical and professional opinion on the safety of the said dam. The Engineer gave the dam a clean bill of health. However, the same had not been authenticated by the relevant government agencies.
7. Various laws such as the Water Act, the Environmental Management and Conservation Act, the Survey Act, the Physical Planning Act, the Agriculture Act provided various definition to the riparian land thereby causing confusion in the implementation of law.

## **RESOLUTIONS**

It was resolved that:

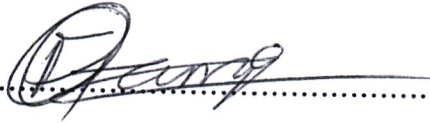
1. Hon. Mohamed Elmi, the Chief Administrative Secretary, Ministry of Environment and Forestry urgently convenes an inter-agency comprising the Ministry of Water and Sanitation and Ministry of Environment and Forestry Officials to assess the immediate safety issues of the Nairobi Dam and its remedy within a week and reports to the Committee by 4<sup>th</sup> December, 2018.
2. Hon. Mohamed Elmi, also ensures that a comprehensive report by a Multi-Agency Technical Team detailing the safety of the Nairobi Dam vis a vis the residents of the Seefar Apartments and the surrounding area be prepared within 1 month from the date of the meeting and a report be filed with the Committee by 22<sup>nd</sup> December, 2018.
3. The Ministry of Environment and Forestry immediately writes to the County Government of Nairobi issuing a notice for the decommissioning of the Nairobi Dam as it was not serving the original intended purpose.

MIN.NO. DC/ENR/565/2018:

- ADJOURNMENT

There being no other business the meeting was adjourned at 1.35 pm.

SIGNED: .....



THE HON. KAREKE MBIUKI, M.P.  
CHAIRPERSON,  
DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE: .....

04/12/2018



Directorate of Legislative & Procedural  
Services (NA)  
The Table Office

# MEMO

**TO: DIRECTOR, COMMITTEE SERVICES**  
**FROM: HEAD OF TABLE OFFICE DEPARTMENT**  
**DATE: APRIL 03, 2019**  
**SUBJECT: PUBLIC PETITIONS**

The following Petitions was conveyed to the House, today, **Wednesday, April 03, 2019** (Afternoon Sitting):-

1. **Public Petition regarding designation of Taita Taveta County as a marginalized area by the Hon. Danson Mwashako, MP (Taita Taveta)** (*referred to the Departmental Committee on Finance and National Planning*); and
2. **Public Petition regarding proposed demolition of Seefar Apartment in Langata Constituency by the Hon. Nixon Korir, MP (Langata)** (*referred to the Departmental Committee on Environment and Natural Resources*).

Enclosed please find the Petitions for your necessary action.

  
**RANA K. TIAMPATI**  
(Encls.)

**Copy to: -**

1. Clerk of the National Assembly
2. Director of Legislative and Procedural Services
3. Chairperson, Departmental Committee on Finance and National Planning
4. Chairperson, Departmental Committee on Environment and Natural Resources
5. Chairperson, Committee on Implementation

(i) 1. LEAH  
2. ESTHER

pls deal  
PA 04/4/19

(ii) AMBER  
pls note  
PA 04/4/19





REPUBLIC OF KENYA  
TWELFTH PARLIAMENT (THIRD SESSION)  
THE NATIONAL ASSEMBLY

(No. 34 of 2019)

PUBLIC PETITION

**REGARDING THE NOTICE FOR DEMOLITION OF SEEFAR APARTMENTS**

I, the **UNDERSIGNED**, on behalf of Home Owners of Seefar Apartments in Nyayo Highrise, Langata Constituency,

**DRAW** the attention of the House to the following: -

1. **THAT**, Seefar Apartments registered under LR. No. 209/12108 consisting of a development that comprises two hundred and eighty-eight residential apartments is located within Nyayo Highrise Estate along Mbagathi Road and was constructed by Edermann Property Limited in 2011;
2. **THAT**, the said apartments have a total population of one thousand (1000) people with approximately 60% of the persons working and residing there, being women and children;
3. **THAT**, 40% of homeowners of Seefar Apartments acquired mortgages with various financial institutions and are still servicing the said loans;
4. **THAT**, the said apartments have been earmarked for demolition by the National Environmental Management Authority (NEMA) under the Improvement Notice (NEMA/5/4/Vol. II) and the Water Resources Management Authority (WARMA) Order Serial Number 30366;
5. **THAT**, the development of the apartments was approved by NEMA vide letters Reference Nos. Appl. Ref. No. PR/8208 dated 29<sup>th</sup> June, 2011 and WARMA's letter Ref. No. WRMA/NRB/RIPARIAN/1(56) dated 17<sup>th</sup> April, 2015 respectively;
6. **THAT**, NEMA and WARMA contrary to the initial approvals now allege that Seefar Apartments have been constructed on the riparian land, that is, along the Nairobi Dam and Ngong River yet the two water bodies are man-made and their management falls squarely within their management;
7. **THAT**, when the matter was taken before the Enforcement Officer to establish the said allegations, Officers from NEMA and WARMA who had conducted the feasibility study failed to verify the allegations as they only conducted a visual inspection tour;

Approved

BNA  
3/4/19

This is a petition.  
The Speaker  
You may refer.  
3/4/19

**REGARDING DEMOLITION NOTICE ISSUED BY NATIONAL ENVIRONMENTAL  
MANAGEMENT AUTHORITY (NEMA) AND WATER RESOURCES MANAGEMENT  
AUTHORITY (WARMA) TO HOME OWNERS OF SEEFAR APARTMENTS**

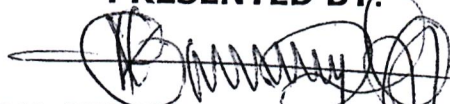
8. **THAT**, on 12<sup>th</sup> October, 2018, Inspectors from NEMA visited the apartment and issued an Improvement Notice requiring Edermann Property Limited to demolish the structure within 14 days contrary to its earlier admission that the same was not on the riparian reserve vide a Stop Order Ref. No. WRMA/NRB/RIPARIAN/1/(55) dated 25<sup>th</sup> July, 2011;
9. **THAT**, the Notice and Order issued did not specify provisions breached either in the Environmental Management and Coordination Authority (EMCA Cap 387) Act or the Water Act;
10. **THAT**, the impending demolition is against the spirit of the Government's 'Big Four Agenda' which aims at ensuring affordable housing for all Kenyans and it will affect the individual home owners who innocently and willfully bought the said houses as investment and never anticipated uncertainties;
11. **THAT**, facts presented indicate that a number of properties are located within close proximity to the dam and the same have not been implicated like Seefar Apartments raising questions on the formula used by the NEMA and WARMA in arriving at the decision to demolish the apartment;
12. **THAT**, efforts to resolve this matter with the relevant bodies have been futile;
13. **THAT**, issues in respect of which this Petition is made are not pending before any Court of Law or Constitutional or Statutory Body.

**THEREFORE**, your humble **Petitioners** pray that the National Assembly, through the Departmental Committee on Environment and Natural Resources:

- re: 10-10-2018 - 2/3/18.*
- (i) Intervenes and causes stay of the earmarked demolition pending conclusive investigations; and
  - (ii) makes any other order or direction that it deems fit in the circumstance of the matter.

And your **PETITIONERS** will ever pray.

**PRESENTED BY:**



**THE HON. NIXON KORIR KIPROTICH, MP  
MEMBER FOR LANGATA CONSTITUENCY**

Date: ..... 2<sup>nd</sup> April 2019

**SIGNATURES IN SUPPORT OF PETITION BY THE HOMEOWNERS OF SEEFAR APARTMENTS, NYAYO HIGHRISE IN RESPECT TO THE DEMOLITION NOTICE ISSUED BY THE NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY (NEMA) IMPROVEMENT NOTICE (NEMA/5/4/VOL.II) AND ORDER FROM WATER RESOURCES MANAGEMENT AUTHORITY (WARMA) ORDER (SERIAL NUMBER 30365)**

NO.	NAME OF HOME OWNER	HOUSE NO.	I.D/PASSPORT NO.	SIGNATURE
1	Abubekkar Hassan	801	22126698	
2	<del>JAMES</del> Marshall Hilligs	815	20920151	
3	PETER ODERA OUNANGA	913	22563941	
4	Suzanne Mutile	317	17455125	
5	WAIRIMU WAIRAKI	112	5693960	
6	VIVIAN BULINDA	020	13580437	
7	Nelly Ochako	005	7229998 02020	
8	Elvis Odoyo	504	20575879	
9	Rahab MUCAI	1103	2089876	
10	<del>Elizabeth Wainana</del>	014	3112970	
11	ROBERT NJEMBAI	901	13704972	
12	Jimmy Titro	419	21771292	
13	WASHINGTON OKUNGU	519	22484824	
14	ISAAC M MBEETE	1121	3339130	
15	Nancy Thairu	604	9788952	
16	MAURICE WAKWA	004	6441205	
17	TOM OWAGA	309	10404048	
18	Fahima Sheikh	503	4603910	
19	Geoffrey Mupamibi	609	9096320	
20	LORETTA GOGI	719	27684243	
21	SHARON MUBUTO	316	25942208	

	NAME	HOUSE NO.	ID NO.	
22	ABDIRIZAK HASSEN	915	21981399	<del>Abdirizak</del>
23	LOYCE AMBASA	720	A1603324	Ambasa
24	ROSE MWASA	702	10420661	Mwasa
25	PAUL WANGOME KANYI	1016	6826089 <del>6826068</del>	Kanyi
26	CHRIS WAMUKWA	224, 513, 910	23293152	<del>Chris</del>
27	Lawrence Mwa	109, 105, 315	10042286	Mwa
28	Lawrence K. Asava	621	22013142	Asava
29	HUMPHRY LUGANGA	008 510 SA	20377970	Ave
30	Kanyal, Ilako	721	26216299	Kanyi
31	FRANCIS NDUNGU	203	10155247	<del>Francis</del>
32	Fiona Mungira	218	36708733	<del>Fiona</del>
33	CHRYSANTHUS AJEVI	409	0388570	<del>Chrysanthus</del>
34	Kifavi B. Davis	223	11704327	<del>Kifavi</del>
35	MBUTHIA ROSEMARY	710	32100260	<del>Mbuthia</del>
36	D.M.O. OMALO	222	0986989	<del>D.M.O.</del>
37	Claire Lusamuka	024	0830245	Lusamuka
38	Susan K. Dyaki	624708, 808908	5747856	<del>Susan</del>
39	SULOMON OSUO	308	11232210	<del>Sulomon</del>
40	SUSAN AKWOLU	1109	3679193	<del>Susan</del>
41	HUMPHREY MUTONYI JEFFI	911	5043958	<del>Humphrey</del>
42	Bukhayo Women	006	1810194	<del>Bukhayo</del>
43	SARAH INBETIE	2149421	20081341	Inbetie
44	ALPHINA BWALEY	324	0439514	Bwaley
45	MICHAEL MUTHIKA	1001	27143004	<del>Michael</del>

	NAME	HSE NO.	ID/PASS PORT	SIGN
46	FRANCIS NGARVIYA	101	2568702	
47	DR Henry Abwaco	107, 108, 610	1680772	
48	HENRY MYAMBOR	22077203	104	
49	Nyaha Inu. G. H.	401	2072048	
50	JOSEPH K. MURITA	100, 101, 102 <sup>1124</sup>	5769950	
51	MICHAEL MURITHI	924	5599642	
52	JOYCE NZOYA	303, 616, 620	11404456	
53	Evelyn Opona	1119	831929	
54	MARY J. KINYANY	211	1812562	
55	CHARLES OFWONA	1119	8033720	
56	Maureen Uryach	261185	26200292	
57	JOEL NDROGE	506	67.46234	07193740
58	Fadhwsid Said	906/905	26928785	
59	Dennis M. Ndambo	1120	22912259	
60	MOSES MUGENI	1110	2724468	
61	VINCENT MUGENI	1111		
62	TITUS M. NDETO	1013	24122481	0122964161
63	DAJOHN ENTERPRISES	1017, 618, 117	22438907	03448022
64	Alice Njogu	402	23424449	
65	E. ATIENO ADEDE	516, 522	10475124	
66	Josephine Kiarri	003	0235840	
67	IRENE A. ONJOGI	1003	10474848	
68	Ngumo Kamau	923	28303150	
69	Patrick Inuo	908	11188599	

	ID NO	Flat NO	SIGNATURE	
70	Evelyn N. Muburi	22367079	1009	0721625431
71	FRANCIS MARTIN DOREEN MURIU	0334652	912	072254087
72	FRANCIS MURIU KANGA	2332741	912	0724411967
73	Joyce Songok	21727337	302	0722440434
74	Janeli Mwikali	21257982	223	072354227
75	Nancy Kago	10747506	707	072384652
76	Millicent Omwani Mupth	9927521	221	07227480
77	Abira Chaudhry	24296117	411	0716611425
78	Ahmed Adnan Kacem	2092056	714	0721777707
79	SUSAN OGWENO OOKU	22328789	821	0722844362
80	JAYCE OWALA	20000739	806	0722611195
81	Evelyn A. Omoro	10976058	713	0722787042
82	Edna Arati	21807037	814	0722294915
83	Rehema M. Osong	23545614	524	0725038080
84	Catherine Judyly Boit	21940953	1115	0721269369
85	GRACE W. MWANGI	8042119	916	0723523117
86	William Kemboi	14438388	818	0725851426
87	GRACE MAINA	22006182	103	0722673549
88	MARGARET OLUKA	4829701	217	0722604216
89	ALLAN MUGENI	26864051	1024	0722453243
90	MARYANNE GITHAE	14022536	601	0722491354
91	Francis Mwanra	4831171	823	0722393237
92	Christina Selina Bwotto Tieng	24876125	1007	0720995601
93	SAMUEL B. KEBENGE	7376579	A10	0722453243

94	W. FIONA MWASIASI	02	0997925	Wor
95	JOHN MUTINDA BAHARU	606	31748985	Muhir
96	Francis Muchoki	605	25527869	<del>Wor</del>
97	LAWRENCE M. KIGONDU	104	2302586	Kigonda.
98	Anne Matubia	018, 312, 207 407, 708, 920	11035074	Mtlati
99	Faith Mwendu	609	11057149	<del>Wor</del>
100	MARY W. WJENGA	321	0998697	<del>Wor</del>
101	DOROTHY OUYANGA	1023		Kingi.
102	LAMU MAUNDU	1008	21691813	Am
103	VINCENT KORIR	709	72692846	<del>Wor</del>
104	VICTOR CHOKAA	017, 1122	7351406	
105	OTIENO PAUL PETER	318	22575517 <del>22575517</del>	<del>Wor</del>
106	SAMUEL RONDO	603	22353288	<del>Wor</del>
107	John Lagat	802	11604418	<del>Wor</del>
108	Allan Wagnid	922	A20141730	Wamuh.
109	MWANGI GARUYA	001/518	0842837	Bukung
110	GRACE OMENDA	022	9122247	Wor
111	Safiya Mohamed	1012	1130327	<del>Wor</del>
112	JOYCE SANG	212	25935007	<del>Wor</del>
113	wessen AKIIM	424		John 072181237
114				
115				
116				
117				



nema

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY  
P.O Box 67839 -00200 Nairobi, Tel 020- 2183718/ 020 -2103696/ 0724 253398/ 0723363010

**IMPROVEMENT NOTICE (EMCA CAP 387 SECTION 117 (3) (g))**

NEMA/5/4/ VOL. II

DATE: 12/10/2018

<b>Facility details</b>	<b>Site Description</b>
Name: <u>EDERMANN PROPERTY</u>	GPS Coordinates
P.O. Box: <u>John Kagwaga</u>	Latitude: <u>-1.3131</u>
Email: <u>0722-778042</u>	Longitude: <u>Ko 80235</u>
Telephone: .....	Physical Address: <u>Nairobi Highways</u>

The Environmental Management and Coordination CAP 387 Part II, Section 3 (1) states that "Every person in Kenya is entitled to a clean and healthy environment and has a duty to safeguard and enhance the environment".

Following an inspection carried out by Environmental Inspectors within your premises at Nairobi Highways on 12 (Day) October (Month), 2018 at 1315 (time). It was observed that:

1. The gate encroached into Nairobi Dam embankment
  2. You have build a permanent structure into Nairobi dam
  3. Reserve Contrary to provision of EMCA CAP 387 laws
  4. of Kenya
  5. present yourself to NEMA office Headquarter on Monday 15<sup>th</sup> October 2018 with your legal adviser to Deputy Director Enforcement (DDE)
- Based upon the findings within your facility you are required to undertake the following:-

1. Within 14 days (from the date of this order)
2. Demolish the permanent structure failure to which
3. the demolitions will be done without further
4. Reference to you
- 5.
4. Liaise with relevant agencies for relevant documents and advise: (Water Resource Authority)

Further note that, EMCA CAP 387, part 111 section 137 States that it is an offense for any person who fails to comply with a lawful order or requirement made by an Environmental Inspector in accordance with this Act or regulations made there under.

You have a right of appeal to the National Environment Tribunal if aggrieved by this order.

**Served by Inspector**

- Name: Catherine J. Kimani  
Signature: [Signature]
- Name: Eric Ngondi  
Signature: [Signature]

**Received By: (Proponent/ Representative)**

- Name: Order kept
- ID NO. 10150 JEPKOR
- Signature: [Signature]



The Chief Executive Officer  
Water Resources Management Authority,  
P.O. Box 45250 00100  
NAIROBI



Form: WRMA 016  
Catchment: \_\_\_\_\_  
WRMA ID: \_\_\_\_\_  
File: \_\_\_\_\_

S/No. **30365**

# Water Resources Management Authority

(The Water Act 2002)

*LOISE JEPKO  
CARETAKER*

**ORIGINAL**

**ORDER**

(Rule 8)

PARTICULARS OF PERSON ISSUED WITH ORDER			
1. Full name of receiving Order (In Block Letters)		E. D. P. MAN PROPERTIES	
Physical Address where water is to be used		Contact Address	
2. L.R Number(s)		3. Box Number	
4. Village(s)/Ward(s)		5. Town	
6. Sub-location(s)	NAIROBI	7. Post Code	
8. Location(s)		9. Telephone Contact (Landline)	
10. Division(s)		11. Telephone Contact (Mobile)	0722-948042
12. District(s)		13. Email Contact	

**WATER RESOURCE DETAILS**

14. Name of Body of Water or Aquifer related to Order	NGONG RIVER
---	-------------

You are hereby required to undertake the following action by the deadline stated below:

Action Required	1. REMOVE BUILDING ON NAIROBI DAM RIPARIAN RESERVE WITHIN FOURTEEN DAYS 2. RESTORE THE RIPARIAN RESERVE TO THE ORIGINAL STATE WITHIN NINETY DAYS
Deadline	AS INDICATED ABOVE

You are required to notify the Authority when you have complied with his Order

Issued by:

Signature of Officer	<i>[Signature]</i>
Name of Officer	MICHAEL MUTURI
Position of Officer	SWO
Date of Signature	12/10/2018

Reference: Rule 8 of WRMA Rules



*With 50 years of  
Experience to work out  
the new designs ASAP*

## WATER RESOURCES MANAGEMENT AUTHORITY

*J.B.*  
*25/7/2011*

Athi River Water Catchment Region  
Nairobi Sub-Region  
P O Box 18150 - 00500  
NAIROBI

Tel./Fax: 020 - 556319 or 0751 213327  
Email: wrmanairobisubregion@yahoo.com  
Ref: WRMA/NRB/RIPARIAN/1/(55)  
Date: 25<sup>th</sup> July, 2011

M/S Edermann Property Ltd  
P.O. Box 42541 00100  
**NAIROBI**

**RE: DEVELOPMENT OF 3 NO. BLOCK OF APARTMENTS ON L.R. NO. 209/12108:  
KIBERA HIGHRISE ESTATE - NAIROBI**

Please refer to WRMA Stop Order No. 315 of 20<sup>th</sup> July, 2011 and the subsequent Site Meeting attended by us, Robert Mgoi of NEMA and yourselves (list of attendants attached).

The stop order had been issued as you were not observing the right distance of the riparian area for the Nairobi Dam to the western part of the plot and the Ngong river to the Southern part of the plot.

Arising from the meeting held today 25<sup>th</sup> July, 2011, It was agreed that you observe the following:-

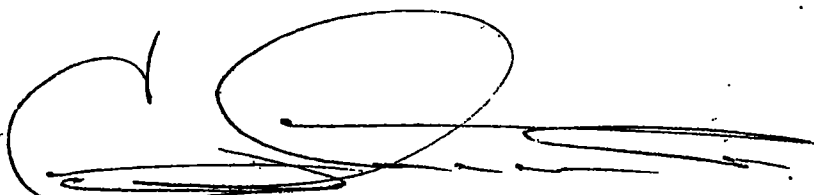
1. Riparian area of the Nairobi Dam be measured at 22 meters from the highest water mark. (WRMA Officers to measure, mark and show you the beacons immediately)
2. Riparian area for the Ngong River on the southern end of the plot be measured at 15m from the highest water mark. ( WRMA Officers to measure, mark and show you the beacons)
3. The damaged part of the dam embankment by you be restored to its original state immediately
4. The above mentioned development be monitored from this office regularly to ensure compliance with above conditions

*Accounting For Every Drop*

Report corruption/water resources destruction anywhere! Hotline: 020-3578853

Please note that as per the Water Act 2002 and Water Resources Management Rules 2007, no activity other than that of conservation nature should be undertaken on the riparian area.

You may seek further guidance from this office if need arises. Once the above is complied with, we have no objection in your continuation with the above development.



**G. K. WACHIRA**  
**SUB REGIONAL MANAGER**

Encl.

c.c.

District Environment Officer  
Langata District  
**NAIROBI**

Provincial Director of Environment  
**NAIROBI+**

Office copy  
16/3



# ERDEMANN PROPERTY LIMITED

Loita Street, Finance House - 6<sup>TH</sup> Floor • P. O. BOX 42541 - 00100 GPO NAIROBI - KENYA  
Telephone: +254 20-351 3306 • Facsimile: +254 20-351 3305 • Mobile: +254 733 209 709, +254 724 209 709  
E-mail: info@erdemann.co.ke • Website: www.erdemann.co.ke

REF: EPL/0172/PRT

DATE: 1<sup>st</sup> March, 2012.

SUB-REGIONAL MANAGER, NAIROBI REGION,  
WATER RESOURCES MANAGEMENT AUTHORITY,  
P. O. BOX 18150-00500  
NAIROBI

Attn: Peter K. Supeyo

Dear Sir.

*Lacks,  
please file it.  
2/3/2012*



**RE: RESTORATION OF THE DAM EMBANKMENT**

In regard to the above and further to our meetings at the site, we would like to confirm our commitment to all stakeholders that the restoration of the Dam embankment is on course.

As a responsible developer, we have undertaken to advance resources to ensure that this reinforcement is done with a lasting warranty.

We have engaged the services of an experienced Dam expert, Eng. J. K. Rutere of Integrated Partnership Consultants who are our lead consultants in regard to the restoration of the dam.

Find attached herewith:

- i) Downstream embankment profile repair works drawing
- ii) Work program for the above mentioned works

We fully appreciate your support as we work cordially to achieve this task successfully

Thank you, in anticipation of your prompt and positive response, we wait.

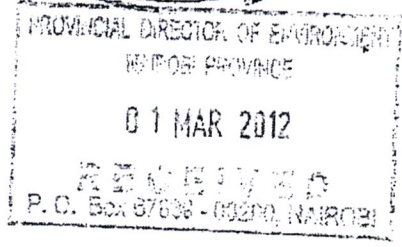
Yours Faithfully,  
ERDEMANN PROPERTY LIMITED

*[Signature]*  
Zeyun Yang  
MANAGING DIRECTOR

Cc:

District Commissioner,  
Attn: Omar Beja

District Environmental Officer, NEMA  
Attn: Mr. Wambua





30  
20

# WATER RESOURCES MANAGEMENT AUTHORITY

Nairobi Sub Region  
Industrial Area; Dunga Road,  
P.O. BOX 18150 – 00500,  
Nairobi - Kenya

Tel: +254 020 2322385/556319  
Email: [inforb@wrma.or.ke](mailto:inforb@wrma.or.ke)  
Website: [www.wrma.or.ke](http://www.wrma.or.ke)

REF: WRMA/NRB/RIPARIAN/1 (56)

Date: 17<sup>th</sup> April, 2015


M/S Erdemann Property Limited  
P.O. Box 42541 - 00100  
**NAIROBI**

## RE: PROPOSED REPAIR WORKS ON THE EMBANKMENTS OF NAIROBI DAM

You had been ordered by the Authority via Stop Order No. 315 and No. 6062 dated 20<sup>th</sup> July 2011 and 05<sup>th</sup> March 2012 respectively, and letter ref WRMA/NRB/RIPARIAN/1/ (55) dated 25<sup>th</sup> July, 2011, to restore the damaged sections of Nairobi Dam Embankments.

On request of your letter REF: EPL/0172/PRT dated 10<sup>th</sup> April 2015; WRMA officers visited the site on 13<sup>th</sup> and 14<sup>th</sup> April 2015 and established that the repairs works were carried out as per the designs earlier submitted to us to a satisfactory level. We recommend that a film (of 50mm) of red soil be overlaid on the rehabilitated section completely covering the gabion boxes and grass be planted to reduce erosion and enhance aesthetic appeal.

The Authority (WRMA) pegged and marked out the riparian land bordering Seefar Apartments in July 2011 at 22 meters from the highest water mark from the dam and 15 meters from the highest water mark from the Ngong River respectively in accordance with the Water Act 2002 and the Water Resources Management Rules 2007. The marked riparian area was observed.

  
**SAMSON OIRO**  
**ASSISTANT TECHNICAL**  
**COORDINATION MANAGER**

*Accounting for every drop*

Report Corruption/Water Resources Destruction anywhere! Hotline: 020-3578853



**PETITION BY THE HOMEOWNERS OF SEEFAR APARTMENTS, NYAYO HIGHRISE  
IN RESPECT TO THE DEMOLITION NOTICE ISSUED BY THE NATIONAL  
ENVIRONMENTAL MANAGEMENT AUTHORITY (NEMA) IMPROVEMENT NOTICE  
(NEMA/5/4/VOL.II) AND ORDER FROM WATER RESOURCES MANAGEMENT  
AUTHORITY (WARMA) ORDER (SERIAL NUMBER 30365**

---

Now **THEREFORE**, your humble petitioners **PRAY**:

- A. **THAT** the National Assembly do urgently consider this petition in view of the urgency and gravity of the issues raised;
- B. **THAT** pursuant to Standing Order 216(5)(a), the relevant Committee of the House does investigate and inquire into all the matters raised in this Petition;
- C. **THAT** pursuant to Standing Order 216(5)(a), the relevant Committee of the House investigate into the conduct of the Authorities named herein namely NEMA and WRMA or WRA and their authorized actions or inactions that have contributed towards the destruction of property, loss of income and financial and emotional loss of lawful investors in the real estate industry such the Petitioners ; and
- D. **THAT** pursuant to Standing Order 216(5)(a), the relevant Committee of the House investigate into the manner in which Authorities named herein namely NEMA and WRMA or WRA issued orders/consents and licences issued before, during and after the construction of Seefar Apartments and make any appropriate recommendations to safeguard the rights of Parties lawfully issued by such licences.
- E. **THAT** the National Assembly through the relevant Committee propose appropriate legislative reforms to the relevant laws to ensure purchasers of investments in good faith such as your humble Petitioners do not suffer untold losses and suffering from the authorized actions or inactions of Authorities named herein when these authorities act in contravention of the powers bestowed upon them by the law.

**And your PETITIONERS will ever pray**

**PRESENTED BY,**



**THE HON. KORIR NIXON KIPROTICH, M.P.,  
MEMBER FOR LANGATA CONSTITUENCY**

# PETITION

BY THE HOMEOWNERS OF SEEFAR APARTMENTS, NYAYO HIGHRISE IN RESPECT TO THE DEMOLITION NOTICE ISSUED BY THE NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY (NEMA) IMPROVEMENT NOTICE (NEMA/5/4/VOL.II) AND ORDER FROM WATER RESOURCES MANAGEMENT AUTHORITY (WARMA) ORDER (SERIAL NUMBER 30365)

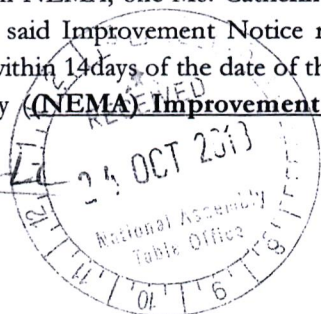
*DLS*  
*Kindly advise on this petition before presentation*  
*24/10/18*

WE, THE UNDERSIGNED, citizens of Kenya who are the Homeowners of Seefar Apartments and Residents in the said Apartments, being a residential building erected on property Land Reference Number No. 209/12108 consisting of a development that comprises of Two Hundred and Eighty Eight (288) Residential Apartments and constructed by Erdemann Property Limited in 2011, located within Nyayo High-Rise Estate along Mbagathi Road;

DRAW the attention of the House to the following:-

- i. **THAT WHEREAS**, Seefar apartments has a total population estimated at over **One Thousand (1000)** people with **60%** of the persons residing and working at Seefar Apartments comprising women and young children;
- ii. **THAT WHEREAS**, over 40% of homeowners of Seefar Apartments which is ear-marked for demolition have acquired mortgages with various financial institutions through which they continue servicing their loans so as to eventually acquire their apartments, with a majority of young families living there knowing Seefar as their only home, will be rendered **homeless** if demolition of the apartments is allowed;
- iii. **THAT WHEREAS**, the notices and order is vague, ambiguous and an afterthought since the said Notice and Order are in respect of matters that have already been determined by the same Authorities that are purporting their breach;
- iv. **THAT WHEREAS**, the impending demolition of the apartments is set against the Government's '**Big 4 agenda**' which has been spearheaded by the President of the Republic of Kenya to provide Kenyans with decent affordable housing;
- v. **THAT WHEREAS**, the Nairobi Dam together with the Ngong River which are the cause of the demolition notice are man-made and the management of the said Dam and River squarely falls on the Authorities referenced above, with the maintenance of the Dam having deteriorated to the point that the Dam no longer serves its primary purpose of being a water reservoir for the City and a recreational Dam. Instead, the Dam's water is now polluted, contaminated and is unsafe for human consumption;
- vi. **THAT WHEREAS**, it is noted that of all the buildings constructed near the Dam it is only Seefar Apartments which has been purported to be within Riparian reserve whereas the other buildings whose proximity to the Dam is far closer have had **no Notice or Order issued**, nor have ourselves as owners of apartments at Seefar been served with demolition Notice's or Order's and that only Erdemann Property Limited have been served;
- vii. **THAT WHEREAS**, on the 12<sup>th</sup> of October 2018, Inspectors from NEMA, one Ms. Catherine Thathi and a Mr. Eric Ngondi visited Seefar Apartments and issued the said Improvement Notice requiring Edermann Property Limited to demolish the permanent structures within 14 days of the date of the Order failing which demolition will be carried out by the said Authority (**(NEMA) Improvement Notice NEMA/5/4/VOL.II**);

*Ms. Lynette Otieno*  
*Kindly note and facilitate*  
*24/10/2018*





- viii. **THAT WHEREAS**, whereas, the said Notice did not specify which provision under the Environmental Management and Coordination Act 1999 was breached, it was only upon visiting the NEMA office headquarters on the 15<sup>th</sup> October 2018 to see the Deputy Director of Enforcement as per the requirements of the notice that we learnt the specific breach was in respect of the Environmental Impact Assessment Licence Registration Number 0008382 dated 29th June 2011, whose Condition 2.1 which reads thus “**The proponent shall ensure protection of Na Environmental Impact Assessment Nairobi Dam and Ngong River by maintaining a 30-metre Riparian reserve from the water bodies.**”;
- ix. **THAT WHEREAS**, to this end we brought to the attention of the Director of Enforcement, Mr. David Ongare and the Deputy Director of Enforcement Ms. Salome Machua that their officers failed to verify the allegations since they only carried out a visual inspection, and therefore subsequently furnished the Authority with Downstream Embankment Profile Drawing Reference Number JKR/EL/ND-TD-01, which said drawing clearly shows the distance from the building line to the existing embankment crest level is 31.182 meters;
- x. **THAT WHEREAS**, in addition to the 31.82 meters, there is a considerable distance from the existing embankment crest level to the high-water mark of the dam and therefore the property is well within the parameters of condition 2.1 of the NEMA Environmental Impact Assessment Licence;
- xi. **THAT WHEREAS**, on the 12th of October 2018 an Officer from WRMA, a Michael Muturi visited Seefar Apartments and issued an Order requiring Edermann Property Limited to remove the building on the riparian reserve within 14 days and restore to the original state within 90 days ((WRMA) Order Serial Number 30365), leaving residents perplexed as to the basis of the Order when the same Authority had pronounced itself on the Riparian reserve;
- xii. **THAT WHEREAS**, whereas on the 25th of July 2011 WRMA vide a letter referenced WRMA/NRB/RIPARIAN/1/(55) following a Stop Order No. 315 of 20th July 2011 and a meeting held on the said 25th of July 2011 identified the riparian area of the Ngong River on the southern end of the plot to be measured at 15m from the highest water mark, which said letter also states that “WRMA Officers to measure mark and show Erdemann Property Limited the beacons” (see the said letter attached);
- xiii. **THAT WHEREAS**, on the 10th of April, 2015 Edermann Property Limited wrote to the Sub Regional Manager of the WRMA vide a letter referenced EPL/0172/PRT and confirmed that a Mr. G.K Wachira and Mr. Thomas Mwaura on 22nd and 25th July 2011 carried out the pegging of the building line from the Nairobi Dam and Ngong River, which said letter goes on to state that Edermann Property Limited went on to not only observe the 3 meter distance from the boundary but extended the same to 6 meters well above the specified requirements (see attached the said letter);
- xiv. **THAT WHEREAS**, in response to the above letter dated 10th of April, 2015 from Edermann Property Limited, WRMA wrote to Edermann on the 17th of April 2015 vide a letter referenced WRMA/NRB/RIPARIAN/1(56) and acknowledge that officers from WRMA visited the property on the 13th and 14th of April 2015 and established that the works were carried out as per the designs earlier submitted and to a satisfactory level;
- xv. **THAT WHEREAS**, furthermore, the said letter goes on to clearly state that “the Authority (WRMA) pegged and marked out the riparian land bordering Seefar Apartments in July 2011 at 22 meters from the highest water mark from the dam and 15 meters from the highest water mark from the Ngong River respectively in accordance with the Water Act 2002 and the Water Resource Management Rules 2007. The marked riparian area was observed” (see the attached letter for your records);

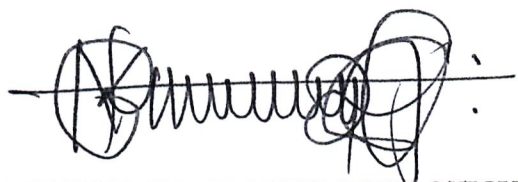
- xvi. **THAT WHEREAS**, it goes without saying that in as far as we are concerned all the conditions put in place by WRMA were met and the said conditions were unequivocally confirmed to have been complied with, therefore, any allegation or purported breach has no basis since the matter was clearly settled;
- xvii. **THAT WHEREAS**, from the facts presented above it is clear that upon carrying out a visual inspection there are a number of properties that are located within close proximity to the Dam, which properties are not considered to be within riparian land, and accordingly either a new form of measurement that has no basis at law has been used in the case of Seefar Apartments or this is a clear case of discrimination;
- xviii. **AND WHEREAS**, in light of the foregoing, it is not fair to determine the fate of over 1000 people on the basis of visual inspections without any verifiable scientific measurement or give orders of demolition and removal of residential buildings within 14 days;

Now **THEREFORE**, your humble petitioners **PRAY**:

- A. **THAT** the National Assembly do urgently consider this petition in view of the urgency and gravity of the issues raised;
- B. **THAT** the Authorities named herein namely NEMA and WRMA or WRA be stopped from taking action in any way that will lead to the destruction of property, loss of income and financial and emotional loss; and
- C. **THAT** the Authorities be compelled to adhere to the clearly agreed and properly issued orders/consents and licences issued before, during and after the construction of Seefar Apartments so as not to move or change positions years after the property has been occupied with Residents.
- D. **THAT** the National Assembly do whatever is possible or take any such appropriate legislative measures within its reach to ensure purchasers of investments in good faith such as your humble Petitioners do not suffer untold losses and suffering from the authorized actions or inactions of Authorities named herein when these authorities act in contravention of the powers bestowed upon them by the law.

**And your PETITIONERS will ever pray**

**PRESENTED BY,**



**THE HON. KORIR NIXON KIPROTICH, M.P.,  
MEMBER FOR LANGATA CONSTITUENCY**

*Ms Lynette Otieno - he  
Kandy Jeevan  
24/10/2012*

② House Table 0311  
Hon. Korir Nixon Kiprotich  
Bill

① DLSP  
for your  
further act-  
J  
5/11

**INTERNAL MEMORANDUM**

**TO: THE SENIOR DEPUTY CLERK, NATIONAL ASSEMBLY**

③ MM  
Deal J  
10/11/18

**THRO': THE DIRECTOR, LEGAL SERVICES, NA**

Forwarded. The petition meets the requirements of the law and may be considered. 1/11/2018

**THRO': PRINCIPAL LEGAL COUNSEL, NA**

Forwarded for tabling, if you approve.  
JMN  
Philip

**FROM: LEGAL COUNSEL II, NA**

**DATE: 30<sup>TH</sup> OCTOBER, 2018**

**RE: PETITION BY THE HOMEOWNERS OF SEEFAR APARTMENTS, NYAYO HIGHRISE IN RESPECT TO THE DEMOLITION NOTICE ISSUED BY THE NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY (NEMA) IMPROVEMENT NOTICE (NEMA/5/4/VOL.II) AND ORDER FROM WATER RESOURCES MANAGEMENT AUTHORITY (WARMA) ORDER (SERIAL NUMBER 30365**

The above matter refers and your instruction to the Legal Directorate to peruse and establish whether the petition by Hon. Korir Nixon Kiprotich, MP on behalf of the homeowners of Seefar Apartment complies with the National Assembly Standing Orders.

**INTERNAL MEMORANDUM**

**TO: THE SENIOR DEPUTY CLERK, NATIONAL ASSEMBLY**

**THRO': THE DIRECTOR, LEGAL SERVICES,NA**

**THRO': PRINCIPAL LEGAL COUNSEL,NA**

*Forwarded. The petition complies with the Standing Orders. JMW*

**FROM: LEGAL COUNSEL II,NA**

*29/10/18*

**DATE: 25<sup>TH</sup> OCTOBER, 2018**

**RE: PETITION BY THE HOMEOWNERS OF SEEFAR APARTMENTS, NYAYO HIGHRISE IN RESPECT TO THE DEMOLITION NOTICE ISSUED BY THE NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY (NEMA) IMPROVEMENT NOTICE (NEMA/5/4/VOL.II) AND ORDER FROM WATER RESOURCES MANAGEMENT AUTHORITY (WARMA) ORDER (SERIAL NUMBER 30365**

---

The above matter refers and your instruction to the Legal Directorate to peruse and establish whether the petition by Hon. Korir Nixon Kiprotich,MP on behalf of the homeowners of Seefar Apartment complies with the National Assembly Standing Orders.

*Ms. Lynette Otiemo*

---

*Kindly discuss this petition with the Honorable members especially Mr. (C) - The fringe prayer is not within the ambit of this House to discharge the*

*29/10/18*

TO THE SPEAKER OF THE NATIONAL ASSEMBLY,  
P.O BOX 41842-00100,  
NAIROBI.

**PETITION BY THE HOMEOWNERS OF SEEFAR APARTMENTS, NYAYO HIGHRISE IN  
RESPECT TO THE DEMOLITION NOTICE ISSUED BY THE NATIONAL  
ENVIRONMENTAL MANAGEMENT AUTHORITY (NEMA) IMPROVEMENT NOTICE  
(NEMA/5/4/VOL.II) AND ORDER FROM WATER RESOURCES MANAGEMENT  
AUTHORITY (WARMA) ORDER (SERIAL NUMBER 30365)**

---

**I, HON. KORIR NIXON KIPROTICH**, Member of Parliament for Langata Constituency make this Petition pursuant to Standing Order 220(1)(b) on behalf of the Homeowners of Seefar Apartment who are citizens of Kenya and Residents in the said Apartments, being a residential building erected on property Land Reference Number No. 209/12108 consisting of a development that comprises of Two Hundred and Eighty Eight (288) Residential Apartments and constructed by Erdemann Property Limited in 2011, located within Nyayo High-Rise Estate along Mbagathi Road;

**DRAW** the attention of the House to the following:-

- i. **THAT WHEREAS**, Seefar apartments has a total population estimated at over **One Thousand (1000)** people with **60%** of the persons residing and working at Seefar Apartments comprising women and young children;
- ii. **THAT WHEREAS**, over 40% of homeowners of Seefar Apartments which is ear-marked for demolition have acquired mortgages with various financial institutions through which they continue servicing their loans so as to eventually acquire their apartments, with a majority of young families living there knowing Seefar as their only home and will be rendered **homeless** if demolition of the apartments is allowed;
- iii. **THAT WHEREAS**, the notices and order is vague, ambiguous and an afterthought since the said Notice and Order are in respect of matters that have already been determined by the same Authorities that are purporting their breach;
- iv. **THAT WHEREAS**, the impending demolition of the apartments is set against the Government's '**Big 4 agenda**' which has been spearheaded by the President of the Republic of Kenya to provide Kenyans with decent affordable housing;
- v. **THAT WHEREAS**, the Nairobi Dam together with the Ngong River which are the cause of the demolition notice are man-made and the management of the said Dam and River squarely falls on the Authorities referenced above, with the maintenance of the Dam having deteriorated to the point that the Dam no longer serves its primary purpose of being a water reservoir for the City and a recreational Dam. Instead, the Dam's water is now polluted, contaminated and is unsafe for human consumption;
- vi. **THAT WHEREAS**, it is noted that of all the buildings constructed near the Dam it is only Seefar Apartments which has been purported to be within Riparian reserve whereas the other buildings whose proximity to the Dam is far closer have had **no Notice or Order issued**, nor have ourselves as owners of apartments at Seefar been served with demolition Notice's or Order's and that only Erdemann Property Limited have been served;

**PETITION BY THE HOMEOWNERS OF SEEFAR APARTMENTS, NYAYO HIGHRISE IN RESPECT TO THE DEMOLITION NOTICE ISSUED BY THE NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY (NEMA) IMPROVEMENT NOTICE (NEMA/5/4/VOL.II) AND ORDER FROM WATER RESOURCES MANAGEMENT AUTHORITY (WARMA) ORDER (SERIAL NUMBER 3036)**

- vii. **THAT WHEREAS**, on the 12<sup>th</sup> of October 2018, Inspectors from NEMA, one Ms. Catherine Thathi and a Mr. Eric Ngondi visited Seefar Apartments and issued the said Improvement Notice requiring Edermann Property Limited to demolish the permanent structures within 14days of the date of the Order failing which demolition will be carried out by the said Authority (**(NEMA) Improvement Notice NEMA/5/4/VOL.II**);
- viii. **THAT WHEREAS**, whereas, the said Notice did not specify which provision under the Environmental Management and Coordination Act 1999 was breached, it was only upon visiting the NEMA office headquarters on the 15th October 2018 to see the Deputy Director of Enforcement as per the requirements of the notice that we learnt the specific breach was in respect of the Environmental Impact Assessment Licence Registration Number 0008382 dated 29th June 2011, whose Condition 2.1 which reads thus **“The proponent shall ensure protection of Na Environmental Impact Assessment Nairobi Dam and Ngong River by maintaining a 30-metre Riparian reserve from the water bodies.”**;
- ix. **THAT WHEREAS**, to this end we brought to the attention of the Director of Enforcement, Mr. David Ongare and the Deputy Director of Enforcement Ms. Salome Machua that their officers failed to verify the allegations since they only carried out a visual inspection, and therefore subsequently furnished the Authority with Downstream Embankment Profile Drawing Reference Number JKR/EL/ND-TD-01, which said drawing clearly shows the distance from the building line to the existing embankment crest level is 31.182 meters;
- x. **THAT WHEREAS**, in addition to the 31.82 meters, there is a considerable distance from the existing embankment crest level to the high-water mark of the dam and therefore the property is well within the parameters of condition 2.1 of the NEMA Environmental Impact Assessment Licence;
- xi. **THAT WHEREAS**, on the 12th of October 2018 an Officer from WRMA, a Michael Muturi visited Seefar Apartments and issued an Order requiring Edermann Property Limited to remove the building on the Nairobi Dam riparian reserve within 14 days and restore to the original state within 90 days ((WRMA) Order Serial Number 30365), leaving residents perplexed as to the basis of the Order when the same Authority had pronounced itself on the Riparian reserve;
- xii. **THAT WHEREAS**, whereas on the 25th of July 2011 WRMA vide a letter referenced WRMA/NRB/RIPARIAN/1/(55) following a Stop Order No. 315 of 20th July 2011 and a meeting held on the said 25th of July 2011 identified the riparian area of the Ngong River on the southern end of the plot to be measured at 15m from the highest water mark, which said letter also states that “WRMA Officers to measure mark and show Erdemann Property Limited the beacons” (see the said letter attached);
- xiii. **THAT WHEREAS**, on the 10th of April, 2015 Edermann Property Limited wrote to the Sub Regional Manager of the WRMA vide a letter referenced EPL/0172/PRT and confirmed that a Mr. G.K Wachira and Mr. Thomas Mwaura on 22nd and 25th July 2011 carried out the pegging of the building line from the Nairobi Dam and Ngong River, which said letter goes on to state that Edermann Property Limited went on to not only observe the 3 meter distance from the boundary but extended the same to 6 meters well above the specified requirements (see attached the said letter);

**PETITION BY THE HOMEOWNERS OF SEEFAR APARTMENTS, NYAYO HIGHRISE  
IN RESPECT TO THE DEMOLITION NOTICE ISSUED BY THE NATIONAL  
ENVIRONMENTAL MANAGEMENT AUTHORITY (NEMA) IMPROVEMENT NOTICE  
(NEMA/5/4/VOL.II) AND ORDER FROM WATER RESOURCES MANAGEMENT  
AUTHORITY (WARMA) ORDER (SERIAL NUMBER 30365**

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- xiv. **THAT WHEREAS**, in response to the above letter dated 10th of April, 2015 from Ederman Property Limited, WRMA wrote to Edermann on the 17th of April 2015 vide a letter referenced WRMA/NRB/RIPARIAN/1(56) and acknowledge that officers from WRMA visited the property on the 13th and 14th of April 2015 and established that the works were carried out as per the designs earlier submitted and to a satisfactory level;
- xv. **THAT WHEREAS**, furthermore, the said letter goes on to clearly state that “the Authority (WRMA) pegged and marked out the riparian land bordering Seefar Apartments in July 2011 at 22 meters from the highest water mark from the dam and 15 meters from the highest water mark from the Ngong River respectively in accordance with the Water Act 2002 and the Water Resource Management Rules 2007. The marked riparian area was observed” (see the attached letter for your records);
- xvi. **THAT WHEREAS**, it goes without saying that in as far as we are concerned all the conditions put in place by WRMA were met and the said conditions were unequivocally confirmed to have been complied with, therefore, any allegation or purported breach has no basis since the matter was clearly settled;
- xvii. **THAT WHEREAS**, from the facts presented above it is clear that upon carrying out a visual inspection there are a number of properties that are located within close proximity to the Dam, which properties are not considered to be within riparian land, and accordingly either a new form of measurement that has no basis at law has been used in the case of Seefar Apartments or this is a clear case of discrimination;
- xviii. **THAT** efforts have been made to have the matters raised in this Petition addressed by a relevant body but the response has been unsatisfactory;
- xix. **THAT** the matters raised in this Petition are not also pending in any court of law in Kenya;
- xx. **AND WHEREAS**, in light of the foregoing, it is not fair to determine the fate of over 1000 people on the basis of visual inspections without any verifiable scientific measurement or give orders or demolition and removal of residential buildings within 14 days;