

Library

PAPERS LAID No. 121	
Speaker N. A.	Clerk Assis
Deputy Speaker	C. H. Editor
Clerk N. A.	Reporters
Deputy Clerk	Library
P. C. A.	Press

REPUBLIC OF KENYA



PARLIAMENT
OF KENYA
LIBRARY

KENYA NATIONAL ASSEMBLY

NINTH PARLIAMENT-FOURTH SESSION

**DEPARTMENTAL COMMITTEE ON AGRICULTURE, LANDS
AND NATURAL RESOURCES**

**REPORT ON THE TOUR OF LAKE BASIN DEVELOPMENT
AUTHORITY (LBDA) PROJECTS IN KISUMU AND TESO
DISTRICTS**

(5TH AND 6TH AUGUST, 2005)

Clerk's chambers,
National Assembly,
NAIROBI

August, 2005

KENYA NATIONAL ASSEMBLY

Accession: 10013186

Call No: 328.365 KMA



TABLE OF CONTENTS

1.0. Preface.....	1
2.0. The Lake Basin Development Authority (LBDA)..	4
3.0. The Yala Swamp Irrigation Project.....	7
Breach of Memorandum of Understanding.....	8
4.0. Tour of the Kibos Fish Farm.....	12
Introduction.....	12
Current status of the farm.....	12
Projected capacity from the year 2005 to 2010.....	13
5.0 Tour of the Kibos Rice Mill.....	13
Introduction.....	13
Objectives for setting up the Mill.....	13
6.0. Tour of Alupe Livestock Multiplication Centre...	14
Dairy farming.....	15
Tractor hire services.....	15
Crop production.....	15
Alupe fish farm.....	16
7.0. Recommendations.....	17
8.0. Appendix	
Memorandum of Understanding between Lake Basin Development Authority (LBDA) and Dominion Farms Ltd on the development of the Yala Swamp	

REPORT ON THE COMMITTEE'S TOUR OF THE LAKE VICTORIA DEVELOPMENT AUTHORITY (LBDA) PROJECTS IN KISUMU AND TESO DISTRICTS

PREFACE

Hon. Speaker Sir,

1. The Departmental Committee "A" on Agriculture, Lands and Natural Resources was constituted at the commencement of the Ninth Parliament pursuant to provisions of Standing Order 151; whose paragraph (4) mandates the Committee to carry out these functions:-
 - (a) *to investigate, inquire into and report on all matters relating to its 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 for the implementation;*
 - (c) *to study and review all legislation after the First Reading subject to the exemptions under Standing Order 101A(4);*
 - (d) *to study, assess and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;*
 - (e) *to investigate and inquire into all matters relating to the assigned Ministries and departments as it deems necessary and as may be referred to it by the House or a Minister; and*

(f) to make reports and recommendations to the House as often as possible including recommendation of proposed legislation.

2. The subjects falling within the purview of the Committee are:-

- i. Crop and livestock production;
- ii. Marketing;
- iii. Lands and settlement;
- iv. Natural Resources;
- v. Water resources;
- vi. Land reclamation and irrigation; and
- vii. Co-operative development.

3. The membership of the Committee comprises:-

- i. The Hon. Franklin Bett, M.P. - Chairperson
- ii. The Hon. Mwanicha S.N. Okioma, M.P.
- iii. The Hon. (Prof) Patrick A. Olweny, M.P.
- iv. The Hon. Mwangi Waithaka, M.P.
- v. The Hon. Julius Arunga, M.P.
- vi. The Hon. Patrick Muiruri, M.P.
- vii. The Hon. John Serut, M.P.
- viii. The Hon. Philip Rotino, M.P.
- ix. The Hon. P.G. Muriithi, M.P.
- x. The Hon. J.N. Gachagua, M.P; and
- xi. The Hon. Isaack Shaaban, M.P.

4. On 5th and 6th of August, 2005, the Committee toured three key projects of the Lake Basin Development Authority (LBDA) in Kisumu and Teso Districts. The tour was necessitated by the Committee's concern about the performance of the Authority as its projects had failed to improve the livelihoods of people living in the Lake Basin pursuant to the Authority's objectives.

5. The following Members made the tour:-

- i. The Hon. Franklin Bett, M.P. - Chairperson
- ii. The Hon. Prof. Patrick A. Olweny, M.P.
- iii. The Hon. Mwangi Waithaka, M.P.
- iv. The Hon. Philip Rotino, M.P; and
- v. The Hon. Mwanicha S.N. Okioma, M.P.

Mr. George Gazemba was the Secretary to the delegation. The area Member of Parliament for Kisumu town West, Hon. Ken Nyagudi was with the Committee during the tour of projects in Kisumu.

6. The Committee expresses gratitude to the Speaker and the Liaison Committee for sanctioning the visit and the Clerk for providing technical support. The Committee further appreciates the important role played by the Ministry of Regional Development Authorities in making necessary arrangements without which the tour would not have been possible.

Hon. Speaker Sir,

7. On behalf of the Committee, I now wish to lay on the Table of the House the report of the Committee in respect of the visit, pursuant to provisions of Standing Order 162.

THE HON. FRANKLIN BETT, M.P.
CHAIRMAN, DEPARTMENTAL COMMITTEE ON
AGRICULTURE, LANDS AND NATURAL RESOURCES

Sign _____

Date _____

TOUR OF THE LAKE BASIN DEVELOPMENT AUTHORITY (LBDA) PROJECTS IN KISUMU AND TESO DISTRICTS

The Lake Basin Development Authority (LBDA)

- 8 The Lake Basin Development Authority (LBDA) was established in 1979 by an Act of Parliament. The objective for the establishment was to spearhead economic development in the Lake Victoria Basin by:
- i. initiating development projects for the benefit of inhabitants;
 - ii. initiating studies, carrying out surveys and assessing alternative demands within the basin in terms of natural resources and recommending priorities;
 - iii. effecting a programme of monitoring and evaluating the performance of projects within the basin;
 - iv. causing and effecting the construction of any works deemed necessary for the protection and utilization of water and soils in the basin;
 - v. ensuring that land owners in the basin undertake all measures specified by the Authority to protect the water and soils in the basin;
 - vi. identifying, collecting, collating and correlating all data on or related to the use of water and other resources as may be necessary for the efficient future planning;
 - vii. maintaining a liaison between the government, the private sector and other interested agencies for the purposes of development in the basin with a view

to limiting the duplication of effort and to ensuring the best use of the available technical resources;

- viii. examining the hydrological effects and the subsequent ecological changes on the development programmes and evaluating how they affect the economic activities of the people dependant on river and the lake water environment;
 - ix. considering all aspects of the development of the area and its effects on the inflow and outflow of Lake Victoria; and
 - x. monitoring the operations and providing technical reports on the operations of any agreement or other arrangements between Kenya and other states relating to the use of the Lake Victoria waters.
9. The Authority's area of jurisdiction covers 39,000 square kilometers inhabited by 12 million people. The jurisdiction encompasses 27 districts in Nyanza, Western and parts of Rift Valley Provinces. The basin is endowed with the following resources:
- i. rocks, soils and minerals;
 - ii. water;
 - iii. wetlands;
 - iv. forests;
 - v. fisheries;
 - vi. wildlife; and
 - vii. fertile agricultural land.
10. Since inception, the Authority had undertaken several projects in pursuit of its mandate. These include construction and or establishment of:

- i. new headquarters in Kisumu City. The project had however stalled owing to lack of funds;
- ii. reclamation of Yala Swamp;
- iii. residential houses at Yala, Alupe, Lichota and Kisumu City;
- iv. rice Mill at Kibos;
- v. fingerling production centers at Yala, Alupe, Chwele, Lugari, Kokwanyo, Borabu, Kibos and Rongo;
- vi. agricultural and livestock multiplication centres at Lichota, Kokwanyo, Muhoroni, Yala, Alupe, Sangalo and Lugari;
- vii. brick plants at Koderia, Sironga and Kapsabet;
- viii. honey refineries at Bondo and Ndhiwa;
- ix. edible oil processing unit in Siaya;
- x. poultry unit in Kisumu City;
- xi. paddy transit stores at Alupe, Yala and Lichota;
- xii. residential houses in Yala swamp, Alupe, Lichota and Kisumu City;
- xiii. research and training facilities in Fisheries at Kibos;
- xiv. capacity building in ground water survey and design and construction of wells, springs and boreholes.

- xv. central tree nurseries in Kisumu, Gem, Rae, Kapsabet and Yala Swamp;
 - xvi. afforestation and reforestation activities particularly in Nyakach and Yala Swamp;
 - xvii. laboratory for water quality analysis at the headquarters; and
 - xviii. nerica rice adaptability trials at Alupe and Kokwanyo;
11. Years of corruption and mismanagement by previous managements brought the Authority to its knees with most of the Authority's projects becoming ineffective. The Authority is currently indebted to the tune of 1 billion shillings. Creditors have obtained execution orders against the Authority. Recently, the Authority's Managing Director was subjected to embarrassing moments in Kisumu town when an Auctioneer attempted to attach his official car. Presently, most of the Authority's infrastructure is in a dilapidated state owing to lack of funds to maintain it. The Authority is being under funded making operations increasingly difficult.

The Yala Swamp Irrigation Project

12. The project was conceived in September 2002 when Mr. Calvin Burgess the Chief Executive Officer of Dominion Farms Ltd visited LBDA and discussed with the then Managing Director, Mr. George Ochieng the possibilities of Dominion Farms Ltd entering into a joint venture with LBDA for the establishment of a large scale rice irrigation scheme at Yala Swamp.
13. On 17th October 2002, a follow up meeting was held between Mr. George Ochieng, Rev. Ken Nyagudi for Dominion and Mr. Nigel Show of Kaplan and Stratton

Advocates. At the meeting, it was agreed that LBDA enters into a joint venture with Dominion for the Development of Yala Swamp with LBDA's role being to provide land, equipment, rice, mill and residential services among others.

14. A project proposal paper was subsequently written which provided that Dominion Farms Ltd would invest in Kenya in collaboration with LBDA and that a workable agreement would be reached between the parties. The agreement also provided that the parties would agree on an equitable deal on the scheme and related facilities like Kibos Rice Mill in Kisumu.
15. In this regard, LBDA formed a sub committee which jointly with Dominion representatives drafted a Memorandum of Understanding. The Memorandum was submitted to the Permanent Secretary, Ministry of Regional Development Authorities who forwarded it to the Attorney General for advice.
16. The Attorney General redrafted the Memorandum and returned it to the parties for execution. On 19th May, 2003, the two parties executed the Memorandum but with alterations detrimental to the Authority. The alterations were in fact acknowledged by the Attorney General vide a letter to LBDA dated 12th January, 2004. The circumstances leading to the alteration could not be ascertained because the officers who acted for LBDA had left the Authority.
17. Under the altered Memorandum which is in force, LBDA's role had been relegated to the periphery and terms and conditions thereof have been grossly breached by Dominion.

Breach of the Memorandum of Understanding

18. Clause AA. 1 provides that:

“LBDA being the Government institution with the mandate to initiate, plan, co-ordinate and implement development activities in the region in which the Yala Swamp lies, will collaborate with Dominion in the development of the Swamp. Under this umbrella, LBDA shall therefore, act as the official advising agent on behalf of the Government”

Clause BB. 2 provides that:

“LBDA will provide guidance and advice to Dominion from time to time on the best construction and land use activities at all times ensuring that such construction and land use activities comply with the Laws of the Republic of Kenya and Government regulations”

Dominion continues to undertake development plans and activities without consulting LBDA. Dominion is currently growing rainfed crops like maize, cotton and sunflower while it continues to develop irrigation infrastructure.

LBDA's presence at Yala Swamp has been severed as there no longer exists collaboration with Dominion. LBDA is not getting any compensation for its infrastructural development notwithstanding the fact that some of the developments were as a result of loans which the Government of Kenya is still servicing.

19. Clause AA. 6 provides that:

“LBDA agrees to enter into an agreement with Dominion for the processing of farm produce (cereals) and use of facilities at LBDA's Mill at Kisumu. The agreement for the Mill and facilities shall be the subject of a separate milling contract and shall be on such terms and conditions as the parties may agree and on commercially viable rates and shall also contain a termination clause of six months notice

to be in writing which may be given by either party to the other”

A draft milling agreement was prepared by LBDA and given to Dominion for perusal, possible amendments and execution but to date, there has been no response from Dominion. In stead, Dominion intends to set up its own rice mill in Yala.

20. Clause AA. 7 provides that:

“LBDA agrees to enter into a into a lease agreement with Dominion to use LBDA’s heavy machines (bulldozer, excavator, tractor, water pump etc) for activities of the project”

In June, 2003, LBDA released two excavators and one water pump in respect of which Dominion paid 11 million shillings. There is a balance which up to date, Dominion has not paid despite demand.

21. Clause CC. 2 provides that:

“Any logos and other identification marks on finished agricultural produce shall advertise the rich diversity of Lake Victoria basin”

Dominion has not complied with this requirement.

22. Clause CC. 4 provides that:

“In consideration of providing technical assistance and expertise and any other assistance that Dominion may require from time to time, Dominion shall pay LBDA the following amounts commencing in 2003:

- | | |
|---------------------|---|
| <i>i. 0-5 years</i> | <i>Three million shillings (Kshs 3,000,000) per year.</i> |
|---------------------|---|

- ii. 5-10 years *Three million shillings (Kshs 3,000,000) per year.*

- iii. 10-15 years *Five million shillings (Kshs 5,000,000) per year.*

- iv. 15-20 years *Six million shillings (Kshs 6,000,000) per year.*

- v. 20-25 years *Seven million shillings (Kshs 7,000,000) per year.*

Dominion made the first payment in the year 2003. Payments for 2004, 2005 are outstanding.

23. Clause EE. 2 provides that:

“LBDA and Dominion agree to enter into tenancy agreements for the houses and offices referred to in Clause EE. 1 above for such period, at such rent and on such terms and conditions as the parties may agree provided that LBDA shall at all times when calculating the rental income take into consideration the improvements and renovations that may have been carried out by Dominion. The parties will value the houses and offices in order to determine the monthly rents”

In June, 2003, LBDA staff houses were handed over to Dominion. A draft lease agreement was prepared by LBDA and submitted to Dominion for perusal, possible amendments and execution. To date, the draft agreement has not been acted upon by Dominion and no payment has been made despite being in possession of the houses.

TOUR OF THE KIBOS FISH FARM

Introduction

24. Kibos fish is situated in Kibos, Kisumu District. The farm was established in 1984 and covers a total area of two (2) hectares with a total water surface area of 1.35 hectares. The objectives for establishment of the farm were:
- i. to produce quality tilapia and catfish fingerlings for supply to farmers;
 - ii. to produce table size fish for sale;
 - iii. to act as a research, demonstration and learning centre for fish farmers and institutions; and
 - iv. to ease pressure on the Lake.
25. The farm has fifteen (15) fish ponds categorized into three. These are:
- i. nursery ponds;
 - ii. breeding ponds; and
 - iii. production ponds.

Current status of the farm

26. Since inception, the farm management, operations and maintainance largely depended on donor funding. In the year 2000, donor agencies stopped funding in consequence of which the farm's infrastructure is in a dilapidated state making it impossible to achieve objectives.
27. The ponds' effective lifespan had expired. All ponds were leaking and the drainage system was ineffective.

Supplementary funds to purchase fish food were lacking. The current production of the farm was below capacity and could not meet demand even if it was operating at full capacity.

Projected capacity from the year 2005 to 2010

28. The Authority had put a request to the Government for funding to the tune of 529,508.00 shillings to enable it rehabilitate the ponds and invest in production of:
- i. catfish fingerling and bait production;
 - ii. tilapia fingerling production;
 - iii. table size fish production;
 - iv. integrated poultry production; and
 - v. tree seedling production.

The request was in accordance with the Authority's sustainability strategy from the year 2005 to 2010.

TOUR OF THE KIBOS RICE MILL

Introduction

29. The Rice Mill is situated in Kibos in Kisumu District. The Mill was among the components of the defunct West Kenya Rainfed Rice Development Project (WKRRDP) which was implemented between the years 1989 and 2001 with funds from the African Development Bank (ADB) and the Government of Kenya. The Mill was set up at a cost of 800 million shillings and has capacity to clean 25 tonnes and mill 3.5 tonnes per hour.

Objectives for setting up the Mill

30. The objectives for setting up the Mill were:-
- i. to improve the marketing of rice in the region;

- ii. to process paddy from farmers in the region at reasonable cost; and
 - iii. to create employment opportunities.
31. Since inception, the National Cereals and Produce Board (NCPB) supplied all rice it purchased in the basin to the Authority pursuant to an agreement with the Authority. In mid 1990's when the rice market was liberalized, the Board which had been enjoying monopoly lost the monopoly to other players and it became impossible for it to continue supplying paddy in meaningful quantities to the mill. The mill had no paddy to process and the management resorted to direct purchase of paddy from farmers in order to sustain operations. This was not successful and as the Authority lacked funds to purchase paddy from farmers.
32. Since commissioning in 1996, only 10% of the mill's potential had been utilized. The Authority was however optimistic that with the ongoing revamping and revitalization of the rice industry by the Government, the mill would at one time in future operate at meaningful capacity.

TOUR OF ALUPE LIVESTOCK MULTIPLICATION CENTRE (ALMC)

33. The Alupe Livestock Multiplication Centre is situated in Teso District of Western Province. The Centre was established in the year 1986. The objectives for establishment were:
- i. to provide breeding bull services;
 - ii. to be a demonstration centre for learning institutions and farmers; and

iii. to sell livestock to farmers at reasonable cost.

34. The farm's total acreage is 280 acres out of which 150 acres are water logged. It had been impossible for the Authority to reclaim the 150 acres because of lack of funds.
35. Though the farm was established as a livestock multiplication centre, the Authority saw it prudent to undertake other activities on the farm. These are dairy farming, tractor hire services, crop production and fisheries.

Dairy farming

36. The farm has 53 animals out of which 20 were lactating. The farm produces 160 litres per day. Based on the available productive land of 130 acres, the Authority intends to procure more in-calf heifers to increase the total stock to 100.

Tractor hire services

37. The farm has one operational tractor which serves both the farm and the community. The tractor was overwhelmed by demand and on many occasion farmers had their lands prepared late. The condition of the tractor was also wanting. Many times it had broken down with no funds available for immediate repair. All these had adversely affected production.

Crop production

38. The Authority produces maize and rice on the farm. However much focus at the moment was on rice. The Authority intends to grow rice on 50 acres so that:
- i. part of the water logged land is utilized; and

- ii. there is supply of paddy for processing at the Rice Mill in Kisumu.

Alupe fish farm

39. The farm was started in the year 1989 to serve farmers in Busia, Siaya, Bungoma, Kakamega and neighbouring districts in Kenya and Uganda.

Objectives for establishment

40. The objectives for establishment of the farm were:
 - i. to produce quality tilapia and catfish for supply to fish farmers;
 - ii. to produce table size fish for sale to the local community; and
 - iii. to act as a research, demonstration and learning centre for fish farmers and institutions.
41. The farm has nine (9) fish ponds with a total water surface of 4,600 cubic square meters. The ponds are categorized into three depending on use and functions. The three categories are nursery, breeding and production ponds.

Current status of the farm

42. Since inception the farm depended on donor funding. In the year 2000 donors stopped funding and this had made it difficult for the farm management to sustain operations. All the ponds had outlived their lifespan and were leaking. The drainage system was not working well and fish food was lacking. The farm's production was as a result much below capacity.

Projected farm capacity

43. The Authority had within its proposal for sustainability strategy for the year 2005 to 2010 requested for 185,369.00 shillings from the Government to rehabilitate the farm and invest in the production of:
- i. catfish fingerlings and bait production;
 - ii. tilapia fingerling production;
 - iii. table size fish production;
 - iv. integrated poultry production; and
 - v. tree seedling production.

RECOMMENDATIONS

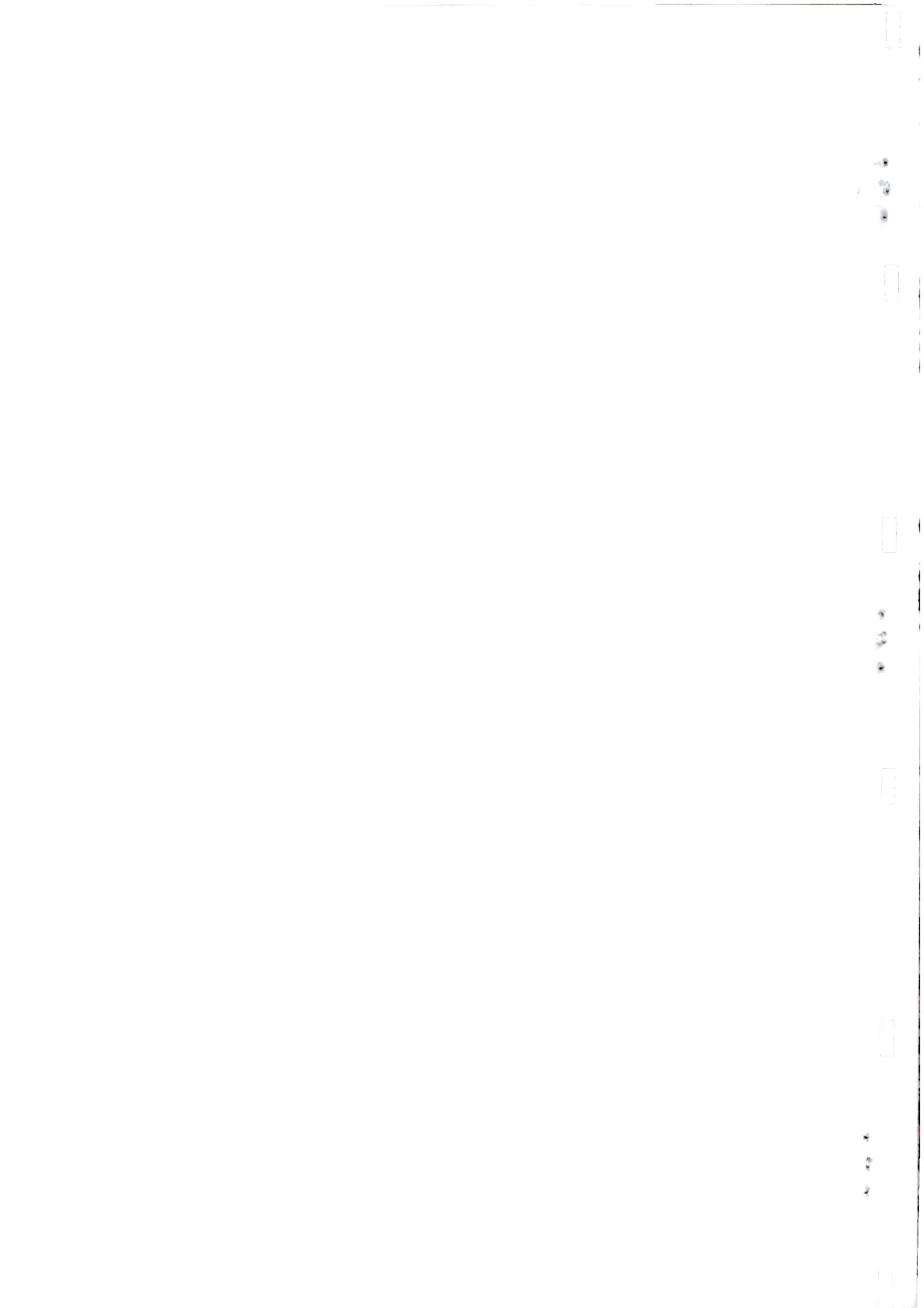
44. Having toured the projects and held deliberations with Authority's management, the Committee recommends as follows:-
- i. In view of the fact that this Authority is vital in the improvement of economic livelihood of people in the Lake basin, the Government should bail out the Authority which is indebted to the tune of 1 billion shillings. As long as these debts are outstanding, no individuals or bodies will be willing to enter into any financial obligations with the Authority and it would be impossible for the Authority to carry on operations.
 - ii. The government should allocate Development Authorities adequate funds to enable them effectively carry out their operations. It is not right for the government to enter into a performance contract with the management of LBDA and then

does not allocate the Authority adequate funds and expects the management to deliver.

- iii. In view of the inadequate allocation of funds to LBDA this financial year, the performance contract between the government and the LBDA management should be reviewed.
- iv. The indebtedness of LBDA is attributable to fraudulent deals and abuse of office by the previous management. The previous management of LBDA should therefore be investigated and brought to book.
- v. The government should appoint professionally qualified and competent people to manage the Authority and let them manage the Authority without any interference. Political appointees, coupled with interference by the appointing authorities are to blame for the Authority's woes.
- vi. The Memorandum of Understanding between Dominion with LBDA on the Yala Swamp Irrigation Project should be revised or nullified in the light of the raw deal the Authority is getting.
- vii. The government should facilitate the co-ordination and harmonization of activities of other organizations or bodies involved in the development activities around the Lake basin.
- viii. The government should find an everlasting solution to floods in the Lake basin as they are an impediment to development of projects.
- ix. Laws like the Water Act, NEMA Act and the Irrigation Act are in conflict with each other and the LBDA Act and should be harmonized.

- x. LBDA should focus on a few activities that will bring optimum results as opposed to too many projects some of which are not generating reasonable income.
- xi. Regional Authorities should turn themselves into commercial enterprises rather than depending on the government for financial support all the time.
- xii. LBDA should start its nucleus estates for rice supply to its Mill. Supply from farmers cannot sustain the Mill because of its huge capacity. The Authority will also get competition from other Millers.





MEMORANDUM OF UNDERSTANDING (MOU)

LAKE BASIN DEVELOPMENT AUTHORITY

AND

DOMINION FARMS LIMITED

FOR

DEVELOPMENT OF YALA SWAMP

KAPLAN & STRATTON

Advocates
P.O. Box 40111
Nairobi



EXEMPT FROM STAMP DUTY

Section 15 Chapter 442

LAWS OF KENYA

[Handwritten signature]
Secretary of Lands, Nairobi

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN LAKE BASIN
DEVELOPMENT AUTHORITY AND DOMINION FARMS LIMITED FOR INVESTMENT
AT THE YALA SWAMP

A: PREAMBLE.

WHEREAS:-

The Lake Basin Development Authority is a Regional Development Authority established under the Act of Parliament Cap 442 of 1979, to spearhead development in the Lake Victoria catchment area. The area covers approximately 39,000Km², with a population of over 10 million people, according to the 1999 census, and comprises Nyanza, Western and part of Rift Valley Provinces.

WHEREAS:-

The mission of LBDA is to sustainably exploit and develop the immense natural resources in the region in collaboration with other development agencies and investors to create wealth and employment and alleviate poverty.

CONSIDERING THAT:-

The vast Yala Swamp measuring a total of 17,500 ha is one such natural resource under jurisdiction of LBDA. Over the years, LBDA has been involved in adaptive research and agricultural activities at the Swamp in an area measuring 2,300 ha, which was reclaimed by the Government of the Republic of Kenya ("the Government") in 1970.

NOTING THAT:-

As part of these activities, LBDA has completed the construction of 17 No. 1-2-3 bed roomed houses, commenced the construction of an irrigation weir, improved the access roads, maintained the protection dykes and diversion and feeder (Lake Kanyaboli) canals, and established an orchard for demonstration and a source of fruit tree seedlings as well as office facilities. Due to limited capitalisation, LBDA has been unable to utilise the farm to full capacity for agricultural production.

ACKNOWLEDGING THAT:-

The Dominion group of companies is an international group of companies based in Edmond, Oklahoma, USA, whose employees have experience in the establishment and management of state of the art of irrigated agricultural projects and now has a subsidiary registered in Kenya under the Companies Act (Cap 486) under the name of DOMINION FARMS LIMITED.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made this *Nineteenth May* 2003
between:

1. **THE LAKE BASIN DEVELOPMENT AUTHORITY** an authority established under the Lake Basin Development Authority Act (Cap. 442 of the Laws of the Republic of Kenya) ("LBDA"); and
2. **DOMINION FARMS LIMITED** a company incorporated in the Republic of Kenya and having an address of P.O. Box 4659, Kisumu ("**Dominion**").

WHEREAS:

- A. Dominion wishes to develop and manage a large scale farm at Yala Swamp ("the **Swamp**") situated in the Nyanza Province with the initial emphasis on rice farming with other varieties of crops grown from time to time as may be necessary and to take a lease of the Swamp jointly from the County Council of Siaya and the County Council of Bondo (together "the **Councils**").
- B. LBDA wishes to provide technical assistance and expertise to Dominion and have one of its members on the technical committee of the advisory board for the project and one of its members on the board of directors of Dominion.
- C. LBDA holds a Letter of Allotment dated 27th November 1989 relating to Uns. Industrial Plot for Rice Mill (the "**Mill**") in Kisumu Municipality.
- D. Dominion wishes to have exclusive use of the Mill in order to process its produce.

NOW IT IS AGREED

- AA. 1. LBDA being the Government institution with the mandate to initiate, plan, co-ordinate and implement development activities in the region in which the Swamp lies, will collaborate with Dominion in the development of the Swamp. Under this umbrella, LBDA shall therefore, act as the official advising agent on behalf of the Government.
2. LBDA undertakes to assist, co-ordinate and facilitate the activities of Dominion with relevant organisations to ensure the smooth and efficient implementation and management of the project.
3. Both parties agree that, as far as possible, professional staff will be seconded by LBDA to the project in areas of specialisation available in LBDA to avoid importation of expertise and allow for technology transfer to Dominion.
4. Both parties agree LBDA will undertake, in collaboration with KARI, adaptive research, extension activities and demonstration to the local communities at the Swamp dependent upon the project activities. An area of land to be agreed upon by LBDA and Dominion shall be set aside for this purpose. The area to be set aside will be commensurate with the level of research activities envisaged and in any event will

not be more than 20 hectares. Adaptive research shall form part of the project development.

5. Both parties agree that Dominion shall use of LBDA's existing infrastructure and facilities as detailed hereunder.
 6. LBDA agrees to enter into an agreement with Dominion for the processing of farm produce (cereals) and use of facilities at LBDA's Mill at Kisumu. The agreement for the use of the Mill and facilities shall be the subject of a separate milling contract and shall be on such terms and conditions as the parties may agree and on commercially viable rates and shall also contain a termination clause of six months notice to be in writing which may be given by either party to the other.
 7. LBDA agrees to enter into a lease agreement with Dominion to use LBDA's heavy machinery (bulldozer, excavator, tractors, water pump etc) for activities of the project.
 8. LBDA agrees to assign and transfer, in accordance with the Water Act (as amended), to Dominion all its water permits that it currently holds that relate to or affect the Swamp.
- BB.
1. LBDA, as the institution with the mandate and technical expertise, will assist Dominion with all engineering and construction designs for irrigation and drainage and facilitate their approval by the relevant authorities. The responsibility for the correct implementation of the designs and construction will, however, remain with the design engineer and contractor of Dominion.
 2. LBDA will provide guidance and advice to Dominion from time to time on the best construction and land use activities at all times ensuring that such construction and land use activities comply with the laws of the Republic of Kenya and Government regulations.
 3. For the sake of prosperity, Dominion will lodge approved copies and design reports and drawings with LBDA, including any other reports deemed of use and benefit to the Government unless Dominion considers such reports and drawings are of a confidential nature or the release of them to LBDA may damage its reputation or hinder its operations in any way whatsoever.
 4. LBDA has undertaken developments at the Swamp which include canals, roads, the weir and houses of which Dominion will take cognisance provided that LBDA shall at no time demand compensation, rent or any other form of re-imburement for such developments from either Dominion or the Councils except as is specifically provided for in this memorandum of understanding.
 5. LBDA shall nominate, by name and not by position, one of its members and Dominion shall appoint such member to the technical committee of the advisory board of the project. LBDA shall nominate, by name and not by position, one of its members and Dominion shall appoint such member to its main board of directors in

order to safeguard the interests of LBDA and of the Government.

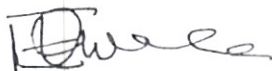
6. LBDA will regularly monitor the environmental impact of the project by carrying out short term 'with Project' assessments in accordance with the Environmental Management and Co-ordination Act. Dominion will avail such records and data as may be necessary for such assessments. Dominion will also put in place remedial measures recommended by the assessments with a view to protecting the environment as may be required from time to time.

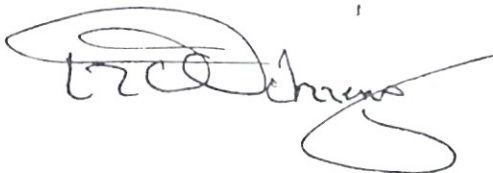
- CC.
1. LBDA will have the responsibility to ensure the protection and conservation of areas of special interest in the Swamp including any areas considered of historical significance by the community. Dominion will co-operate with LBDA in this task.
 2. Any logos and other identification marks on the finished agricultural produce shall advertise the rich diversity of Lake Victoria Basin.
 3. Rice production shall be the main agricultural activity unless determined otherwise by Dominion. Periodic crop rotation with other suitable varieties of crops to maintain soil fertility and pest control shall be undertaken in accordance with good land management and farming practices.
 4. In consideration of providing technical assistance and expertise and any other assistance that Dominion may require from time to time Dominion shall pay LBDA the following amounts commencing in 2003:
 - (i) 0-5 years Three million shillings (Kshs.3,000,000) per year.
 - (ii) 5-10 years Three million shillings (Kshs.3,000,000) per year.
 - (iii) 10-15 years Five million shillings (Kshs.5,000,000) per year.
 - (iv) 15-20 years Six million shillings (Kshs.6,000,000) per year.
 - (v) 20-25 years Seven million shillings (Kshs.7,000,000) per year.

- DD. In consideration for the use of the leased equipment detailed in clause AA 7 above Dominion shall pay LBDA a single lump sum and/or advance amount being the sum of eleven million shillings (Kshs. 11,000,000). Such sum shall only become due and payable within thirty days of the signing of this agreement, the memorandum of understanding with the Councils and the grant of a licence by the National Environmental Management Agency under the Environmental Management and Co-ordination Act. LBDA shall lease the heavy machinery to Dominion at the approved Government hourly rates and the sum of KShs11,000,000 shall be used as a credit against the rental amount. Dominion shall be responsible for maintenance and repair of the equipment but shall be under no obligation at the end of the lease period to return the equipment to LBDA in working order. Equally if the equipment shall have broken down beyond repair or exhausted its useful life before the end of the lease period, LBDA shall be under no obligation to re-imburse Dominion. LBDA undertakes to use the sum of eleven million shillings (Kshs.11,000,000) for payment of rates and extraction of title deed to the Mill and which amount:

- (i) Dominion shall, for and on behalf of LBDA make direct payment to the Municipality of Kisumu for all outstanding rates dues and owing to date being approximately seven million eight hundred and ninety seven thousand eight hundred and forty one shillings and twenty cents (Kshs. 7,897,841/20).
 - (ii) Dominion shall, for and on behalf of LBDA, use the balance of the lump sum being approximately three million one hundred and two thousand one hundred and fifty eight shillings and eight cents (Kshs. 3,102,158/80) for the purpose of paying all outstanding dues and owing to the Government or other authorities for the purpose of extracting a title for the Mill from the Commissioner of Lands.
 - (iii) LBDA shall use its best endeavours to comply with the terms of the Letter of Allotment and extract a registered title in the next twelve months from the date of this agreement.
- EE. 1. LBDA acknowledges that it has built various houses and offices at the Swamp which are located outside the area which Dominion proposes to lease from the Councils and LBDA warrants that it has the capacity and authority to lease them to Dominion.
2. LBDA and Dominion agree to enter into tenancy agreements for the houses and offices referred to in clause EE 1 above for such period, at such rent and on such terms and conditions as the parties may agree provided that LBDA shall at all times when calculating the rental income take into consideration the improvements and renovations that may have been carried out by Dominion. The parties will value the houses and offices in order to determine the monthly rents.
3. This memorandum of understanding will be reviewed (except for clause CC 4 above) based on a time period and/or area of land under use, to be agreed upon by both parties. It is proposed that the time period should be every five (5) years.
4. In case of any dispute, the parties shall resort to a system of mediation that is acceptable to both parties.
5. In the event that one party wishes to terminate this memorandum of understanding, it shall give the other party a notice of six months. Those projects that emanate from this memorandum of understanding and that are in force at the time of termination of this memorandum shall proceed to their determination if at all reasonably possible given the prevailing conditions at the time of termination.
6. The parties to this agreement shall use their best endeavours to ensure that the project is a success.

Signed by the **MANAGING DIRECTOR**)
OF THE LAKE BASIN DEVELOPMENT)
AUTHORITY in the presence of:)





Signed by **CALVIN BURGESS** the duly)
authorised representative of **DOMINION**)
FARMS LIMITED in the presence of:)





