

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

TWELFTH PARLIAMENT

THIRD SESSION

SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND
NATURAL RESOURCES

REPORT ON THE PETITION CONCERNING UNLAWFUL DEPRIVATION OF
A PARCEL OF LAND IN KAPUTEI NORTH, KAJIADO COUNTY

Clerk's Chambers,
Parliament Buildings,
P. O. Box 41842-00100,

NAIROBI.

OCTOBER 2019

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PREFACE

The Senate Standing Committee on Land, Environment and Natural Resources is established under standing order 218(3) of the Senate Standing Orders and is mandated to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development. Pursuant to standing order 232 of the Senate Standing Orders, the Committee is mandated to consider and report on any petition committed to it by the House.

The Petitioner submitted his prayers pursuant to Articles 37 and 119 of the Constitution and in line with the provisions of the Petition to Parliament (Procedure) Act, 2012 and the Senate Standing Orders. The prayers of the petitioner, Mr. David Muigai Ng'ang'a, were based on the alleged unlawful deprivation of a parcel of land in Kaputei North, Kajiado County.

The Petitioner prayed that the Senate, through the relevant Committee, investigates the matter, with a view to ensuring that his alleged parcel of land, namely Plot No. KJD/KAJIADO/KAPUTIEI NORTH/28126, is properly identified and reinstated back to him.

The Committee conducted three (3) sittings concerning the aforementioned Petition. The first meeting was held on 19th September, 2018 in which the Committee considered and deliberated on the Petition and further resolved on the stakeholders to be invited.

The Committee met the Petitioner on 16th October, 2018 and received submissions. After interrogation of the submissions made, the Committee resolved to invite the Ministry of Lands and Physical Planning for a meeting.

The Committee met with Ministry of Lands and Physical Planning on 13th February, 2019 and a resolution was made that the Registrar should ensure the Petitioner is assisted to identify his parcel of land.

Committee Membership

The Committee is comprised of the following members;

- | | | |
|----|------------------------------------|---------------------------|
| 1. | Sen. Mwangi Paul Githiomi, M.P. | - Chairperson |
| 2. | Sen. Prengei Victor, M.P. | - Vice Chairperson |
| 3. | Sen. George Khaniri, MGH, M.P. | - Member |
| 4. | Sen. (Eng.) Godana Hargura, M.P. | - Member |
| 5. | Sen. Ndwiga Peter Njeru, EGH, M.P. | - Member |
| 6. | Sen. Boy Issa Juma, M.P. | - Member |
| 7. | Sen. Halake Abshiro, M.P. | - Member |
| 8. | Sen. Mwaruma Johnes, M.P. | - Member |
| 9. | Sen. (Arch.) Sylvia Kasanga, M.P. | - Member |

The Petition

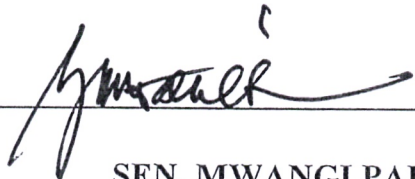
On 7th August, 2018, the Speaker of the Senate reported to the House that a petition had been submitted through the Clerk of the Senate by Mr. David Muigai Ng'ang'a pursuant to standing order 226(1)(a) of the Senate Standing Orders. Thereafter the Petition stood Committed to the Committee pursuant to standing order 232(1).

The Committee considered the prayer of the Petitioner that his parcel of land, namely Plot No. KJD/KAJIADO/KAPUTIEI NORTH/28126, is reinstated back to him. The Committee obtained evidence from the Petitioner, reviewed all documentation and invited the Ministry of Lands and Physical Planning to respond to all matters that were raised by the Petitioner. The evidence obtained from this process informed the Committee in determination of the prayer of the Petitioner by the Committee.

Acknowledgement

- The Committee acknowledges the time and considerable effort made by all parties who volunteered information to help determine the prayers of the Petitioner. I also express my gratitude to the members of the Committee for their thoughtful and engaged contribution to the matter. Further the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating the work of the Committee in undertaking its constitutional mandate. I also recognize the commitment and dedication of the staff of the Committee that made the work of the Committee and the production of this report possible.

It is now my pleasant duty to table the report of the Standing Committee on Land, Environment and Natural Resources, in relation to the petition pursuant to the Senate Standing Order 232(2).

Signed:  Date 23-10-2019

SEN. MWANGI PAUL GITHIOMI, MP

CHAIRMAN, STANDING COMMITTEE ON LAND, ENVIRONMENT AND
NATURAL RESOURCES

LIST OF ABBREVIATIONS/ SYNONYMS

1. CS – Cabinet Secretary
2. CAS – Chief Administrative Secretary
3. KJD – Kajiado

CHAPTER 1

INTRODUCTION

1.0 Background to the petition

1. The Standing Committee on Land, Environment and Natural Resources is mandated under the standing order 232 of the Senate Standing Orders to consider and report on any petition committed to it by the House.
2. On 7th August, 2018 pursuant to standing order 226(1)(a) of the Senate Standing Orders, the Speaker of the Senate reported to the House that a petition had been submitted through the office of the Clerk of the Senate by Mr. David Muigai Ng'ang'a

1.1 The Petition

3. The Petitioner was essentially petitioning the Senate to assist him in acquiring back his parcel of land.
4. The Petition drew the attention of the Senate to the following-
 - i) In September 2011, the petitioner negotiated for and purchased a 5-acre parcel of land, namely Plot No. KJD/KAJIADO/KAPUT1E1 NORTH/28126, for the sum of Kshs. 1,750,000/=;
 - ii) All the legal formalities for the transfer were completed, and the Title Deed for the said parcel of land issued thereon in the Petitioner's wife's name. The Petitioner thereafter proceeded to affix steel pipe poles at the four corners of the said parcel, duly demarcating its boundaries;
 - iii) Thereafter, in early 2018, the petitioner visited the property with the intention of developing the same, only to find that the poles he had affixed, as well as the beacons to the parcel of land, were no longer in place. The Petitioner

approached a neighbour to the property, who stated that the whole property belonged to their family and they had neither subdivided nor sold it;

iv) The Petitioner sought the assistance of the Chief Land Registrar at Ardhi House, the Director of Surveys, the District Surveyor in Kajiado, the Senior Land Registrar and various other offices, both at the county and national level, to have the matter resolved. All these offices were unable to resolve the matter.

5. The Petitioner therefore prayed that the Senate urgently investigates the matter, with a view, of having his rights to property upheld, as guaranteed in the Constitution, and for assistance in having ownership of the said parcel of land reinstated back to him.

1.2 The right to petition

6. The right of Kenyan citizens to petition public authorities and Parliament is a right guaranteed under Articles 37 and 119 of Constitution. This right is governed by the Petition to Parliament (Procedure) Act 2012 as well as the Standing Orders of the Senate. The right to petition is an essential citizen participatory tool, as it provides an avenue for Members of Parliament and citizens to interact on the issues that concern citizens and also demonstrates that Parliament is prepared to directly intervene on issues of concern in order to promote and protect the rights of citizens.

The basis of the petition

7. Article 40 of the Constitution of Kenya, 2010 provides that every person has the right, either individually or in association with others, to acquire and own property including land in which the Petitioner is petitioning.

8. The Petitioner in this case is a Kenyan citizen with a right to own the particular parcel of land if the acquisition was properly done in accordance with the law and without any contravention of any law.

9. The Petitioner claims that the property was transferred to him upon a purchase agreement between himself and the previous owner of the property. Section 7(g) of

the Land Act, 2012 identifies land transfer as one of the ways of acquisition of land in Kenya.

10. Section 43(2) of the Land Act and section 37 of the Land Registration Act, 2012 provides that any owner of land can transfer it to another person by an instrument prescribed by regulations. The Committee had therefore to confirm whether a proper transfer was effected in accordance with the two Acts.
11. Upon confirmation of the transfer, it was prudent to note that section 44 of the Land Act and section 40 of the Land Registration Act provide that the transfer takes effect immediately. This will therefore mean that in the event that a proper transfer was effected in 2011, the transfer of the Property was effectively done in 2011 and owned the Property since then.
12. Section 24(a) of the Land Registration Act provides that registration as owner of a property confers on such registered owner rights over the property and section 26 thereon goes on to state that a title deed is sufficient evidence of ownership of property in Kenya unless an illegality was involved in the acquisition or registration.
13. Sections 25 and 36(1) of the Land Registration Act, on the other hand, protects the rights over land in Kenya, stating that no transfer or loss of those rights can be effected unless in compliance with the Act.
14. Section 6(i) of the Land Act mandates the Cabinet Secretary for Land and Physical Planning to administer and undertake all dealings including registration of private land interests. Section 4(2)(b) of the Land Act, on the other hand, states that in the discharge of their functions and exercise of their powers under the Act, state officers shall be guided by the values and principles of security of land rights.
15. It is therefore the duty of the Cabinet Secretary for Land and Physical Planning to ensure that any rights over the property in question are protected and the true owner identified and given possession of the same.

CHAPTER 2

COMMITTEE APPROACH

2.0 The approach

The Committee analyzed the Petition committed to it by the House and purposed to respond to the prayers of the Petitioner. The Committee invited the Petitioner and the Cabinet Secretary, Ministry of Lands and Physical Planning. The sole objective of the Committee was to respond to the prayers of the Petitioner conclusively.

2.1 Issues for determination from the prayers of the Petitioner

To respond to the Petitioner's prayers, the Committee analysed the Petition and resolved to determine whether: -

1. The Petitioner is the owner of the aforementioned parcel of land and if it is registered in his wife's name as alleged; and
2. If the Petitioner and his spouse are the true owners of the parcel of land, all documents including the title deed belongs to the Petitioner, then the Ministry of Lands and Physical Planning should be able to locate the parcel of land and ensure the parcel of land is reinstated back to the Petitioner.

2.2 Committee Proceedings

The committee held deliberative sessions and reviewed documents centrally to the prayers of the Petitioner to determine the issues raised.

i. Deliberative sessions

In the exercise of its mandate the Committee held deliberative sessions to closely examine and hear presentations from Petitioner and the Ministry of Lands and Physical Planning. The Minutes of these sessions as well as the documents and evidence presented to the Committee are annexed to the report.

ii. Documents review

The Committee reviewed documents presented by different parties. The documents tabled by the parties have been annexed to this report. Among the documents reviewed were Title deeds and Maps submitted by both the Petitioner and Ministry of Lands and Physical Planning.

CHAPTER 3

SUBMISSIONS RECEIVED BY THE COMMITTEE

3.1 Submissions from the Petitioner, Mr. David Muigai Ng'ang'a

The Petitioner tabled his evidence & petition before the Committee and he informed the Committee that his fear was losing his parcel of Land (Plot No. KJD/KAJIADO/KAPUTEI NORTH/28126) that he had purchased in 2011 at a price of Kshs. 1,750,000 from Ms. Mary Wambui Kipanyan.

The Petitioner then informed the Committee that 7 years later (Early 2018) the boundaries had been removed and he couldn't trace his parcel of land. He informed the Committee that efforts to try and get the Police and land registrar to offer assistance were not successful.

3.2 Submissions from the Chief Administrative Secretary (CAS), Ministry of Lands and Physical Planning, Hon. Gideon M. Mungaro

The CAS, who was accompanied by various officers from the Ministry of Lands and Physical Planning, informed the Committee as follows:

That according to the records, the above parcel is registered to JECINTA NJERI NGANGA of ID 3243898 and title deed issued. (*Annex 1 of Ministry's submissions*)

There is no ownership dispute as the land in question belongs to JECINTA NJERI NGANGA. It is therefore clear that the petition touches on a boundary dispute. In terms of section 18 (2) of the Land Registration Act, a proprietor of registered land with a boundary dispute is obliged to first seek redress or resolution from the land registrar.

The petitioner should thus, lodge a formal boundary dispute at the Kajiado lands office for the same to be resolved.

CHAPTER 4

COMMITTEE OBSERVATIONS

1. The Committee observed that the Petitioner raised valid concerns and instructed the Ministry of Lands and Physical Planning at its meeting held on 13th February, 2019 to ensure that the Land Registrar intervenes on the matter and ensures that the matter is resolved and the parcel of land is located and reinstated back to its rightful owner.
2. The Committee notes that following the receipt of a letter dated 25th June, 2019, the Petitioner, Mr. David Muigai Ng'ang'a wrote a letter to the Committee informing the Committee that the Ministry of Lands and Physical Planning worked on his request and prayer, and that a fresh survey was done and new beacons placed to identify his parcel of land. The Committee further noted that in his letter he has requested that the Director of Survey ensures that a plan with the mathematical coordinates of the new extract plan indicating his parcel of land is filed at the Lands Registry for future reference.

CHAPTER 5

COMMITTEE RECOMMENDATIONS

The Committee recommends that since the matter has since been dealt with by the Ministry of Lands and Physical Planning, the prayers of the Petitioner have therefore been answered. The Committee therefore urges the Ministry to ensure that the records are updated as per the request of the Petitioner.

MINUTES OF THE 27TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 23RD OCTOBER, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Godana Hargura, M.P.
4. Sen. Ndwiga Peter Njeru, EGH, M.P.
5. Sen. George Khaniri, MGH, M.P.
6. Sen. Boy Issa Juma, M.P.
7. Sen. Halake Abshiro, M.P.

PRESENT

- Chairperson
- Vice Chairperson
- Member
- Member
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Mwaruma Johnes, M.P. - Member
2. Sen. Sylvia Kasanga, M.P. - Member

IN ATTENDANCE

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Caroline Cheruiyot - Legal Counsel
3. Mr. Abdalla Mbore - Sergeant at arms
4. Mr. Eugene Luteshi - Audio Recording

MINUTE SEN/SCLN/157/2019: PRELIMINARIES

The meeting was called to order at 11.30am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLN/158/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Halake Abshiro, M.P. and seconded by Sen. Godana Hargura, M.P as follows.

1. Preliminaries;
 - *Prayer*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Adoption of Committee Reports;
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLNDR/159/2019: CONFIRMATION OF MINUTES

The Minutes of the 24th sitting held on 25th September, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and seconded by Sen. Godana Hargura, M.P. respectively.

The Minutes of the 20th sitting held on 12th August, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Boy Issa Juma, M.P. respectively.

The Minutes of the 11th sitting held on 4th April, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and seconded by Sen. Boy Issa Juma, M.P. respectively.

The Minutes of the 5th sitting held on 20th February, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Prengei Victor, M.P. and seconded by Sen. Halake Abshiro, M.P. respectively.

MINUTE SEN/SCLNDR/160/2019: MATTERS ARISING

There were no matters arising.

MINUTE SEN/SCLNDR/161/2019: ADOPTION OF COMMITTEE REPORTS

The following reports were adopted by the Committee:

- (a) Report on the Petition regarding Adverse environmental and social effects arising from the construction of Phase 2A of the Standard Gauge Railway (Nairobi – Naivasha Section);

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (b) Report on the Petition regarding Budgetary support to Wildlife Conservancies for sustainable conservation and community development;

The report was adopted after having been proposed and seconded by Sen. Prengei Victor, M.P. and Sen. Boy Issa Juma, M.P. respectively.

- (c) Report on the Petition regarding Alleged unlawful deprivation of a parcel of land situated in Kaputiei North, Kajiado County;

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Ndwiga Peter Njeru, M.P. respectively.

- (d) Report on the Petition regarding Ownership of Mgeno Land Reserve;

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Prengei Victor, M.P. respectively.

- (e) Report on the Petition regarding Non-payment of compensation for land compulsorily acquired to construct Mwatate-Taveta-Holili Road;

The report was adopted after having been proposed and seconded by Sen. Boy Issa Juma, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (f) Report on the Petition regarding the Alleged grabbing of the part of the land allocated for settlement of the Petitioners at Kiang'ombe Squatters Settlement Scheme in Thika sub-County, Kiambu County

The report was adopted after having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (g) Report on the Petition regarding the effects of iron ore mining at Kishushe in Taita Taveta County.

The report was adopted after having been proposed and seconded by Sen. Prengei Victor, M.P. and Sen. Ndwiga Peter Njeru, M.P. respectively.

- (h) Report regarding the Committee's participation in the 8th World Water Conference held in Brasilia, Brazil from 18th – 23rd March, 2018;

The report was adopted after having been proposed and seconded by Sen. George Khaniri, M.P. and Sen. Boy Issa Juma, M.P. respectively.

- (i) Report regarding the Committee's participation in the 14th Annual General Meeting (AGM) of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) on Modern Mining Law and Policy 16th – 18th October, 2018.

The report was adopted after having been proposed and seconded by Sen. George Khaniri, M.P. and Sen. Prengei Victor, M.P. respectively.

- (j) Report regarding the Committee's participation in the 18th meeting of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Conference of the Parties (CoP 18) that was held in Geneva, Switzerland from 17th – 28th August, 2019.

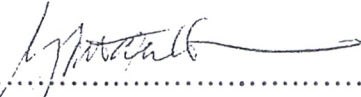
The report was adopted after having been proposed and seconded by Sen. Boy Issa Juma, M.P. and Sen. Prengei Victor, M.P. respectively.

MINUTE SEN/SCLN/162/2019: ANY OTHER BUSINESS;

There were no other matters discussed during the meeting.

MINUTE SEN/SCLNR/163/2019: DATE OF NEXT MEETING;

The meeting was adjourned at 10.29 am and the next meeting was to follow thereafter.

SIGNATURE  DATE 23-10-2019

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

MINUTES OF THE 17TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY 3RD JULY, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 11.00AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Mwaruma Johnes, M.P.
4. Sen. Halake Abshiro, M.P.
5. Sen. Godana Hargura, M.P.
6. Sen. Boy Issa Juma, M.P.

PRESENT

- Chairperson
- Vice Chairperson
- Member
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Sylvia Kasanga, M.P. - Member
2. Sen. George Khaniri, MGH, M.P. - Member
3. Sen. Ndwiga Peter Njeru, EGH. M.P. - Member

IN ATTENDANCE

A. SENATORS

1. Sen. Charles Kibiru, MP – Senator, Kirinyaga County
2. Sen. Anuar Loitiptip, MP – Senator, Lamu County

B. MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Hon. Gideon M. Mungaro - CAS
2. Mr. Daniel Kithuuka - D/DLAO
3. Dr. Eustace N. Kithumbi – SADLAS
4. Mr. Owino Jacob Cattwright - SLRO
5. Mr. Charles Githenya - D/Director Land Administration
6. Ms. Juliana Mutua - D/Director Physical Planning
7. Ms Gertrude K. Rapong’o - Asst. Director Physical Planning
8. Mr. A. A. Ombima - Liaison Officer
9. Mr. Geoffrey Kibowen - Snr. Land Surveyor
10. Mr. Paul Ndung’u - Snr. Land Surveyor

C. NATIONAL LAND COMMISSION

1. Ms. Kabale Tache - Ag. CEO/ Sec. NLC
2. Mr. Francis Bor - DCS NLC
3. Mr. Dennis Mutungi - Co-ordinator NLC
4. Mr. Benard Cherutich - D/D Finance and Accounting
5. Ms. Judy Kirior - PA Ag. CEO

D. SENATE SECRETARIAT

1. Mr. Yussuf Shimoy - Clerk Assistant
2. Mr. Jeremy Chabari - Legal Counsel
3. Ms. Joyce Chelang'at - Audio Recording

MINUTE SEN/SCLNDR/097/2019: PRELIMINARIES

The meeting was called to order at 11.06 am by the Chairperson followed by a word of Prayer.

MINUTE SEN/SCLNDR/098/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Prengei Victor, MP and seconded by Sen. Godana Hargura, MP as follows;

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. Meeting with the Cabinet Secretary Ministry of Lands and Physical Planning and CEO National Land Commission on Statements and Petitions before the Committee;
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNDR/099/2019: CONFIRMATION OF MINUTES

The confirmation of Minutes was deferred to the next housekeeping meeting.

MINUTE SEN/SCLNDR/100/2019:

MEETING WITH THE CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING AND CEO NATIONAL LAND COMMISSION ON STATEMENTS AND PETITIONS BEFORE THE COMMITTEE;

The Committee was informed that the Cabinet Secretary for the Ministry was not available and that the Chief Administrative Secretary, Hon. Gideon Mung'aro, was to represent her during the deliberations.

The Committee noted that most of the matters under consideration required policy directions hence the presence of the Cabinet Secretary in person and resolved to schedule another meeting to give the Cabinet Secretary an opportunity to attend.

The Committee directed the Ministry to submit comprehensive responses on all the matters (petitions and statements) it sought through its earlier communications within three (3) weeks.

Further, the Committee requested the following additional information within the same duration-

1. The Ministry's position and policy, if any, on demolitions and way leaves;
2. Update on the whether the Ministry has identified parcel of land to resettle the persons evicted from Marmanet Forest in 1988 in Laikipia;
3. The process, status and progress of titling of colonial villages in the Country particularly the 30 villages in Nyandarua County; and
4. Information on actions the Ministry has taken on all the titles recommended for revocation by the National Land Commission in regard to Lamu County.

Consequently, the meeting was adjourned without any further discussions.

MINUTE/ SEN/SCLNR/101/2019: ANY OTHER BUSINESS

Sen. Johnson Sakaja was requested to write a letter to the Committee indicating all issues he has on matters land to enable the Committee to deal with them conclusively.

MINUTES/SEN/SCLNR/102/2019: ADJOURNMENT

The meeting was adjourned at 12.02 pm. The date of the next meeting was to be called on notice.

SIGNATURE.....  DATE. 25-07-2019

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

MINUTES OF THE 3RD MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 13TH FEBRUARY, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Mwaruma Johnes, M.P.
3. Sen. Halake Abshiro, M.P.
4. Sen. Godana Hargura, M.P.

PRESENT

- Chairperson
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Prengei Victor, M.P.
2. Sen. George Khaniri, MGH, M.P.
3. Sen. Ndwiga Peter Njeru, EGH. M.P.
4. Sen. Slyvia Kasanga, M.P.
5. Sen. Boy Issa Juma, M.P.

- Vice Chairperson
- Member
- Member
- Member
- Member

IN ATTENDANCE

SENATOR

1. Sen. Charles Kibiru - Senator, Kirinyaga County

NATIONAL ASSEMBLY MEMBERS

1. Hon. Kabinga Wachira - MP (Mwea Constituency)

MINISTRY OF LANDS

1. Hon. Gideon M. Mungaro - CAS
2. Mr. Michael Nyamai - Snr. Ass. Dir. Land Adj.
3. Mr. Peter K. Waithaka - Ag. Dep. Adj
4. Mr. Charles Muemi - D/Director Valuation
5. Mr. Edward Kosgei - Dir. Land Admin.
6. Mr. Charles Githenya - D/Director Land Administration
7. Mr. Owino Jacob Cattwright - SLRO
8. Mr. Paul Ndung'u - Ag. Ass. Director
9. Mr. Kamau J.H.M - CLAO
10. Mr. A. A. Ombima - Liaison Officer
11. Ms. Juliana Mutua - D/Director Physical Planning

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Mr. Ahmed Odhowa - Principal Researcher
3. Mr. Mitchell Otoro - Legal Counsel
4. Ms. Hawa Abdi - Seargent at Arms
5. Mr. Nimrod Ochieng' - Audio Recording
6. Ms. Sharon Eleman - Intern

MINUTE SEN/SCLNR/012/2019: PRELIMINARIES

The meeting was called to order at 9.30am by the Chairperson followed by a word of prayer. Thereafter introductions followed.

MINUTE SEN/SCLNR/013/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Godana Hargura, M.P. and seconded by Sen. Mwaruma Johnes, M.P as follows.

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. Meeting with the CS Lands & Physical Planning and the NLC on Statements and Petitions before the Committee;
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNR/014/2019:

MEETING WITH THE CS LANDS & PHYSICAL PLANNING AND THE NLC ON STATEMENTS AND PETITIONS BEFORE THE COMMITTEE

Ministry of Lands and Physical Planning

The Chief Administrative Secretary made his presentation as follows:

A. Response to Statement as requested in the Senate by Sen. Kiburu Charles, MP

STATUS OF ISSUANCE OF TITLE DEEDS FOR MWEA RICE FARMERS IN KIRINYAGA COUNTY

- **The actual acreage of Mwea Irrigation Scheme land in Kirinyaga County.**

The Committee was informed that Mwea Irrigation Scheme was set apart vide *Gazette Notice Nos 3097 and 3099 dated 5th July 1960*. The *Gazette Notice No. 3097* set apart acreage of 8,480 acres while the *Gazette Notice No. 3099* set apart 7,120 acres for irrigation scheme.

Other *Gazette Notices* relating to the Irrigation Scheme are as tabulated below:

Gazette Notice	Date	Size (Acres approx.)	Purpose
3098	05.07.1960	22	Mwea/Tebere Scheme Canal
3100	05.07.1960	27	Draining of Nguka swamp
3102	05.07.1960	9.6	Dam to protect Nguka Irrigation Beds

3101	05.07.1960	25	Kiruara Drainage way
3103	05.07.1960	0.8	Drainage furrows protecting Nguka Dam
3090	26.07.1960	60	Main Thiba Water Canal Serving Mwea/Tebere Scheme
3096	26.07.1960	125	Mwea Tebere Scheme Village and Agricultural officer's house and staff lines
3093	26.07.1960	10	Protection of Head works
3095	26.07.1960	54	Mwea/Tebere scheme village and tree plantation

The total area of Mwea Irrigation scheme is therefore 15,933 Acres approximately.

- **Status of surveying, beaconing and mapping of the Mwea Irrigation Scheme.**
The Committee was informed that the area in question is covered by Topographical Map Sheet SK 135/2-Embu (see Annex 2). Besides this, the Ministry has no records to indicate that the land has ever been surveyed.

- **Status of preparation of title deeds for the parcels of land owned by Mwea rice farmers.**

The Committee was informed that by virtue of Gazette Notices Nos. 3090, 3093, 3095, 3096, 3097, 3098, 3100, 3101, 3102, 3103 of 1960; the area known as Mwea/Tebere Irrigation Area in the Kirinyaga District of the Central Province was designated as a national irrigation scheme. Pursuant to Section 14 (2) of the Irrigation Act, Cap 347, the title or interest in such land is vested in the National Irrigation Board.

The Committee is not in agreement with most of the issues as presented by the Ministry, terming them as inaccurate and that a visit to the ground would possibly shed more light. A view that was also shared by the Senator, Kirinyaga County and the MP Mwea whose constituency Mwea Irrigation Scheme is in.

The Committee therefore made the following resolutions:

- i.) **Invite the Ministry of Agriculture, National Irrigation Board and Ministry of Lands and Planning.**
- ii.) **Visit the Mwea Irrigation Scheme**

B. Response to Petitions

1. PETITION BY THE RESIDENTS OF GILGIL TOWNSHIP CONCERNING ALLEGED GRABBING OF PUBLIC UTILITY AND PRIVATE LAND AT LELESHWA, GILGIL TOWNSHIP, IN NAKURU COUNTY.

The Committee was informed that the claim by the petitioners that the Anti-Stock Theft Unit (ASTU) officers invaded and occupied approximately 40 acres of land, part

of which included residential plots that had already been allocated to individuals is not true and that 118 acres were zoned off for the ASTU from the land set aside for public purpose. It is therefore proper for the ASTU to occupy the land.

Further the CAS informed the Committee that the Petitioners in their Petition want the original Approved Development Plan to be upheld, including safeguarding of the public utility land as well as the allotted residential plots in which the CAS responded by informing the Committee that Gilgil Development Plan No. 91 (the Plan) zoned the land into 8 broad approved development uses as follows:

USE	APPROXIMATE ACRES
Residential	379892.2
Industrial	123.5
Educational	6707.4
Recreational	28.6
Public purpose	4029.5
Commercial	152.9
Public utilities	17
Transportation	299
Total Acreage	391,250.1

The Committee therefore made the following resolutions:

- i.) To conduct a site visit with the Ministry of Lands and Planning and the County Government of Nakuru to the meeting at a date to be communicated.

2. PETITION ON THE RESETTLEMENT OF THE MINORITY NGEREK COMMUNITY FOLLOWING THEIR PROPOSED EVICTION FROM SOUTH NANDI FOREST, IN NANDI COUNTY.

The Committee was informed by the CAS that the resettlement exercise was undertaken by the Office of the President and involved Ngerok and Koiben communities who settled in Ngerok and Koiben villages in South Nandi.

Since the settled area was rocky, hilly and served as a water catchment, the Government decided to resettle the two communities in Kapkangani and New Koiben areas, respectively. The Koiben community would be resettled on 266.8 Ha and the Ngerok Community on 455.4 Ha. This was in exchange of land previously held by the two communities in South Nandi Forest.

The resettlement programme was to be carried out in two phases:

- a.) Phase one involved resettlement of the Koiben Community at New Koiben/Chepkuma area and this was successfully completed.

- b.) Phase two would involve resettlement of the Ngerek Community but was accompanied by the following challenges:
- i). political interference;
 - ii). some original allottees sold their plots;
 - iii). The Ngerek community attempted to forcefully occupy the parcels allocated to them but this led to clashes in 2002;
 - iv). The Ngerek are still occupying their original land (Ngerek Hill) as they did not surrender their title deeds to the Kenya Forest Services as earlier agreed.

The Ministry therefore informed the Committee that; in these circumstances, there is need for engagement between the local leadership and relevant government agencies to resolve the issue.

The Committee therefore made the following resolutions:

The Ministry of Lands and Physical Planning should organise a team, visit the area and spearhead the engagement between the Local Leadership and the relevant Government agencies and report back to the Committee within 3 months.

3. PETITION BY RESIDENTS OF KIANG'OMBE SQUATTERS SETTLEMENT SCHEME IN THIKA SUB-LOCATION, KIAMBU COUNTY, CONCERNING ALLEGED GRABBING OF LAND ALLOCATED FOR THEIR SETTLEMENT.

The Committee was informed that the Ministry has a part development plan (PDP) for Kiang'ombe village departmental reference No.TKA/4/03/2A prepared on 30/10/2009, certified by the Director of Physical Planning on 4/12/2013 and approved on 4/12/2013 as approved Development Plan No. 365.

There are 585 plots allocated in total in the PDP out of which 13 are set aside for public utilities as shown in the table below:-

USE	NO. OF PLOTS	AREA IN HA
Residential and Commercial	574	17.277
Transport	1	6.226
Churches	2	0.189
Conservation area	1	1.775
Garbage collection plant	1	0.028
Dispensary	1	0.179
Nursery schools	3	0.399
Police post	1	0.105
Proposed primary school	1	1.176
	585	27.304

The approved part Development Plan was prepared and published as per the requirements of the Physical Planning Act Cap 286 and superseded PDF NO. KBU/93/22 of 19.10.1993 and TKA/4/03/2 of 21.11.2003.

However the CAS seeked leave for two weeks to furnish the committee with a ground report as to who is in occupation of the parcels set aside for public utilities.

The Committee therefore made the following resolutions:

- i.) To invite the Petitioners
- ii.) The Ministry of Lands and Physical Planning to forward the actual map indicating the allocations;
- iii.) The Ministry of Lands and Physical Planning to visit the area together with the Committee to ascertain facts on the Parcels of Land.

4. PETITION FROM EVICTEES OF MARMANET FOREST IN LAIKIPIA COUNTY CONCERNING THEIR COMPENSATION AND RESETTLEMENT.

The Committee was informed that the matter is currently before the National Land Commission for resolution. They committed to follow up with the National Land Commission and were seeking more time to also consult with other relevant government agencies.

The Committee however had the following concerns:

- How comes that the forest has not been degazetted but titles are there?
- Who exactly was allocated the parcels of land?
- What was the basis of issuing out the titles?

The Committee therefore made the following resolutions:

- i.) To invite the Petitioners
- ii.) The Ministry of Lands and Physical Planning to follow up with NLC and report back to the Committee on the Status;
- iii.) The Committee would also engage the National Land Commission & the Kenya Forest Service.
- iv.) The Committee to visit the area to ascertain facts in the alleged forest.

5. PETITION TO THE SENATE CONCERNING UNLAWFUL DEPRIVATION OF A PARCEL OF LAND IN KAPUTEI NORTH KAJIADO (KJD/KAJIADO/KAPUTIEI NORTH/28126).

Mr. DAVID MUNGAI NG'ANG'A, the petitioner claims the parcel belongs to his wife JECINTA NJERI NGANGA, while his neighbor claims to be the owner of the property. The petitioner wants the ownership of the land to be reinstated.

The Committee was informed that according to the records, the above parcel is registered to JECINTA NJERI NGANGA of ID 3243898 and title deed issued. (Annex 1)

There is no ownership dispute as the land in question belongs to JECINTA NJERI NGANGA. It is therefore clear that the petition touches on a boundary dispute. In terms of section 18 (2) of the Land Registration Act, a proprietor of registered land with a boundary dispute is obliged to first seek redress or resolution from the land registrar.

The petitioner should thus lodge a formal boundary dispute at the Kajiado lands office for the same to be resolved.

The Committee therefore made the following resolutions:

In view of the Petition being at the Senate, that Committee directs that the Registrar goes to the site and assist the Petitioner.

6. PETITION TO THE SENATE CONCERNING MGENO RESERVE LAND REGISTRATION NUMBER 3880/3

The Petitioner is a resident of Mwatate Constituency, in Taita Taveta County. The Petitioner's prayers are:

- To have members of Mgeno committee gazetted;
- The Government to survey and register Mgeno community land and issue title deeds and
- Revoke titles illegally issued.

The Committee was informed that all parcels subdivided from LR. No. 3880 including LR. No. 3880/3 was surrendered to the Government for Community Settlement. LR. No. 3880/3 was allocated except some 6000 acres (south of the Railway line). Titles were issued to the community or beneficiaries under the MODAMBOGHO ADJUDICATION SECTION.

The un-alienated part of LR. No. 3880/3 (approx. 6000 acres), was sparsely inhabited until recently when people started moving in. The National Youth Service (NYS) is currently occupying approximately 300 acres of the un-alienated land. LR. No. 3880/3 borders Community Land measuring approximately 7300 acres-popularly known as "Mgeno Grazers". It also borders Mugeno Ranch LR. No. 12178 measuring 20,920 Ha.

Further, the Committee was informed that the Ministry has embarked on a Rapid Response Initiative (RRI) to ensure titles are issued for the remaining 6000 acres in LR 3880/3. (Attached is a sketch showing the referenced parcels).

The Committee therefore made the following resolutions:

- i.) To invite the Petitioners;**
- ii.) The Ministry of Lands and Physical Planning to visit the area together with the Committee to ascertain facts on the disputed Parcels of Land.**

National Land Commission

The Committee did not receive any apologies from the NLC and resolved to re-invite them again once new commissioners are sworn to office.

MINUTE SEN/SCLNLR/015/2019: ANY OTHER BUSINESS;

There was no other business discussed.

MINUTE SEN/SCLNLR/016/2019: DATE OF NEXT MEETING;

The meeting was adjourned at 11.35 am and the next meeting was to be held thereafter.

SIGNATURE..... DATE.....

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

