

DL 8P
2/11/21

PETITION TO SENATE TO FIND OR RECOMMEND THAT, THE KENYA COMMERCIAL BANK IS UNFIT TO PROVIDE FIDUCIARY DUTIES AND COMPEL IT TO COMPLY WITH THE LETTER OF 11TH MAY 2018 FROM THE PS DEPARTMENT OF INTERIOR TO PAY MT.ELGON KIMILILI IDPs.

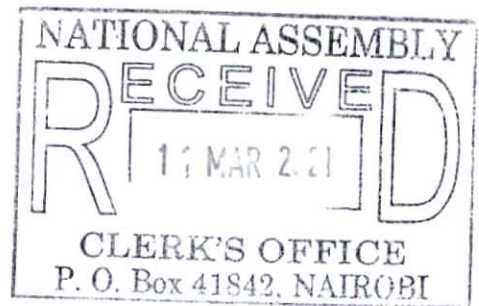
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10th March 2021

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TO THE CLERK OF THE SENATE HOUSE OF KENYA

PETITION



THE HUMBLE PETITION OF RICHARD K. SIBILIBILI,

I, **RICHARD K. SIBILIBI**, an adult Kenyan Citizen of sound mind, born and brought up in Mt. Elgon Sub County of Bungoma County, fighting for the rights of the persons who were forcefully evicted from their habitual Homes in Mt Elgon during the 2007/8 Post Election Violence PURSUANT TO THE SENATE STANDING ORDERS No.226 DRAW the attention of the House to the following Reasons:-

1. SUMMARY OF THE PETITIONER'S CASE:

THAT:-

- a. The Petitioner is constitutionally mandated to seek Parliament's intervention in any matter within its jurisdiction.
- b. The Kenya Commercial Bank providing Fiduciary duties for the Ministry of Interior and Co-ordination of National Government has for a long time been involved in fraudulent payment of money meant to compensate the genuine 2007/8 Post Election Violence to FAKE IDPs through its Branches spread across the Country particularly, in Bungoma County Branch.
- c. During 2007/8 Post-Election Violence, many people lost their lives and others were forcefully evicted from their habitual Homes and became **IDPs. (Internally displaced Persons)**. Most of them went into Camps and were later assisted by the Government to go back to their Land but others were integrated in friendly communities such as those who were ejected from Mt Elgon Sub County of Bungoma were integrated in Kimilili Sub County and became to be known as **Mt. Elgon- Kimilili IDPs**.
- d. On 31st October 2017, the Government of Kenya in an Effort to resettle the Internally Displaced Persons (IDPs) through a letter Ref: OP/PA/NCCC/2/14VOL 1/82, released **Ksh. 476 million Kenya Commercial Bank** to be paid to a total of 9,520 IDPs in 6 Counties namely Bungoma, Isiolo, Kakamega, Kisumu, Migori and Mombasa.



PETITION TO SENATE TO FIND OR RECOMMEND THAT, THE KENYA COMMERCIAL BANK IS UNFIT TO PROVIDE FIDUCIARY DUTIES AND COMPEL IT TO COMPLY WITH THE LETTER OF 11TH MAY 2018 FROM THE PS DEPARTMENT OF INTERIOR TO PAY MT.ELGON KIMILILI IDPs.

- e. Ksh. 178,800,000/= was to be paid to Bungoma IDPs but unfortunately and like in the other five Counties, the Bank as a Fiduciary and in cahoots with the County Commissioners, began paying Fake persons who were masquerading as IDPs
- f. In Bungoma County, a Community Based Organization in the name and style of **Kimilili Ebenezer Welfare Community Based Organization** was hurriedly registered on 23rd 2011 with the aim of being used to present Fake IDPs to the Kenya Commercial Bank for payment of Compensation meant for the deserving and genuine IDPs
- g. The corrupt actions and fraudulent activities surrounding the Compensation of IDPs was **NOT** an isolated Issue to Bungoma County but was a National concern where the Parliamentary select Committee on the resettlement of the Internally Displaced Persons in Kenya (April 2012) found that, in many cases, the registration of IDPs was shrouded in mystery and led to fake IDPs being Compensated.
- h. In the said report at paragraphs 1 and 2 of Chapter five, the Parliament of Kenya recommended that, the Government should re-vet the IDPs and those found to be Fake be arrested and prosecuted.
- i. Likewise, the Auditor General of the Republic of Kenya was equally concerned about the theft of funds meant to compensate the IDPs and in his report for the **National Government for the year 2017/2018** indicated that, the Government of Kenya has lost billions of Shillings through payments to Fake IDPs which was being facilitated by Fiduciary bodies like the Kenya Commercial Bank
- j. The rampant fraud led to the disbandment of the National Consultative and Co-coordinating Committee on the resettlement of IDPs (NCCC) leaving the fate of the genuine IDPs at the mercy of the Fraudsters
- k. The Kimilili court on 7th February 2018, declared as **Fake IDPs** a list of Names known as Kimilili Ebenezer IDPs which Kenya Commercial Bank by virtue of its Fiduciary duty paying through its Bungoma Branch.
- l. Upon the said declaration that, that the Bank was paying Fake IDPs, the Manager of Bungoma Kenya Commercial Bank did not stop the payment until she was cited for contempt of Court and fined Ksh. 200,000/= or six months imprisonment.
- m. On 25th October, the Bank through its Advocate in Court at Kimilili proposed and undertook to pay the genuine IDPs by 8th November 2018 after which, the Advocate vanished and never mentioned the undertaking again.
- n. While defending herself against a possible jail term for contempt of Court, the Kenya Commercial Bank (Branch Manager of Bungoma) in her sworn affidavit dated 22nd may 2018 misled the Kimilili Court by stating that, all the money had been paid out subsequent to the Court Orders issued on 7th January 2018 yet a simple arithmetic of the payment vouchers presented in Court reveal that, only about 900 persons (the alleged fake) IDPs were paid as at the end of January 2018, translating to about 45million with a substantial amount of about 120 million not being mentioned where it is.
- o. Even after swearing an affidavit stating that, all the money had been paid out by 17th December 2018 subsequent to the Court Orders issued on 7th January 2018, the said Bungoma KCB Branch Manager, determined to illegally and fraudulently pay the alleged fake IDPs, through her employees and or Agents, publicized the names of the said fake members of Kimilili –Ebenezer IDPs inviting them for **payment confirming that, there was money for IDPs still pending in the Bank**



- p. The amount of Money meant to compensate the 2007/8 IDPs still being held in the Kenya Commercial Bank at Bungoma ,Isiolo ,Kakamega,Kisumu, Migori and Mombasa Branches is unknown.
- q. The amount of Money meant to compensate the 2007/8 IDPs still being held in the Kenya Commercial Bank at Bungoma Branch is unknown despite the spirited efforts to Compel the Bank manager to disclose and pay the genuine IDPs.
- r. Kenya Commercial Bank has failed in its Duty as a Fiduciary for the Government of Kenya by condoning and defying all orders to pay Persons masquerading IDPs and who have been declared by a court of Law as Fake IDPs
- s. The Kenya Commercial Bank has failed in its duty as a Fiduciary of the Government of Kenya through the Ministry of Interior and Coordination of National Government by disobeying the Court Orders issued on 7th February 2018 and the decree issued on 6th march 2018 more than 3years ago
- t. The Kenya Commercial Bank failed in its fiduciary duty by ignoring a letter written to it by the Ministry of Interior and Coordination of National Government
- u. The zealously with which the Bank Manager, her employees and or Agents are determined to pay the alleged Fake IDPs comes from a deal cut between the said Bank officials and the leadership of the Fake IDPs to share the money during the payment process

2. THE FACTS RELIED UPON

The following have been spirited the efforts by both the petitioner and the Chairman of the Mt.Elgon Kimilili IDPs who were declared by the Court at Kimilili as genuine IDPs THAT;

- a. On 4th January 2018, the Chairman of the (Mt. Elgon –Kimilili IDPs) moved the Court at Kimilili and obtained injunctive Orders against the Manager of the Kenya Commercial Bank Bungoma Branch and the Bungoma County Commissioner from making any payments to a group calling itself by the name - **Kimilili Ebenezer IDPs** alleging that, the said group consists of persons masquerading as IDPs while they NOT genuine IDPs.
- b. Other than the injunctive orders sought, the said too, sought the Court's determination of the genuine IDPs who are and should be entitled to the payment of the Government compensation of the 2007/8 Post-Election violence which determination was arrived at and **a declaration that Kimilili Ebenezer IDPs were Fake whereas the Mt. Elgon- Kimilili IDPs were declared to be the genuine and entitled to the payment of IDPs' Compensation**
- c. On 7th may 2018, the Petitioner herein and the Chairman of Mt.Elgon –Kimilili IDPs, in an effort to enforce compliance of Court Orders issued on 7th January 20218 and the decree issued on 6th March 2018 against the Bank, instituted contempt proceedings in which the Bank Manager and the County Commissioner for Bungoma were both convicted and sentenced to a fine of 2000, 000/= and 50,000/= respectively and in default to serve 6 months in jail.
- d. The Deputy County Commissioner for Kimilili Sub-County and the leadership of the Mt. Elgon-Kimilili IDPs appealed to the Ministry of Interior and Coordination of the National Government to intervene and have the genuine IDPs paid. On 11th may 2018, the representative of the PS (one C.K Nimrod) wrote a letter to the Bank Manager of Kenya Commercial Bank –Bungoma Branch with instructions to pay the genuine IDPs as Ordered by the Court, but still the said Bank Manager ignored the instruction. The said representative of the PS even visited the Mt-Elgon Kimilili IDPs in the Kimilili camp to confirm their status.



PETITION TO SENATE TO FIND OR RECOMMEND THAT, THE KENYA COMMERCIAL BANK IS UNFIT TO PROVIDE FIDUCIARY DUTIES AND COMPEL IT TO COMPLY WITH THE LETTER OF 11th MAY 2018 FROM THE PS DEPARTMENT OF INTERIOR TO PAY MT.ELGON KIMILILI IDPs

- e. On 23rd January 2020, being appalled by the tricks of the Bank Manager and the County Commissioner, to continue paying fake IDPs despite the Court Orders and the instructions from the PS, I, filed a criminal miscellaneous application No. 15 of 2020 seeking inter lia Injunctive Orders to stay any intended payments publicized by the Bank Manager and the County Commissioner to have the same Fake IDPs paid through a disguised list.
- f. After filing the said Criminal miscellaneous Application, I have been on many occasions threatened with death by the leadership of the alleged fake IDPs if I don't abandon the cases which threats, I have reported to the police more than four times two of which, (OB.32/07/09/2020 and OBOB 40/17/02/2021), I have written statements together with my witnesses but unfortunately the local Police are yet to take action
- g. On 2nd February 2021, I suddenly fell sick after eating some food and I nearly died from suspected food poisoning, I was admitted at Agakhan Hospital in Kisumu in critical conditions
- h. On 17th day February 2021 after the hearing of civil Suit No. 3 of 2018, I together with the officials of the alleged genuine IDPs herein called Mt Elgon Kimilili IDPs was attacked at the entrance of the Court by the leadership of the alleged Fake IDPs and who threatened us with dire consequences unless I abandoned the cases.
- i. In the circumstances, it is **NO** longer tenable to meet the ends of justice unless we turn to your good institution for justice.

3. THE FOLLOWING ARE ISSUES IN RESPECT OF WHICH THE PETITION IS MADE AND I HUMBLY CONFIRM THAT, THE SAID ISSUES ARE NOT PENDING BEFORE ANY COURT OF LAW, OR ANY CONSTITUTIONAL BODY OR LEGAL BODY

- a. **The Kenya Commercial Bank as a fiduciary of the Government of Kenya for and on behalf of the Ministry of Interior and Coordination of National Government failed to effectively provide Fiduciary duties leading to the loss billions of Shillings through payments to Fake IDPs**
- b. **The Kenya Commercial Bank being a Fiduciary and discharging Fiduciary duties, the said Bank at the Bungoma Branch, its employees and or Agents ought to have withheld all the monies held in the accounts of the alleged Fake IDPs as soon as the Orders were issued the Court Orders at Kimilili Court were issued.**
- c. **The Kenya Commercial Bank being a Fiduciary and discharging Fiduciary duties of Care, Loyalty and Obedience the Kenya Commercial Bank's Principal officer and Branch Manager at Bungoma Branch ought to have withheld all the monies held in the accounts of the alleged Fake IDPs and opened new accounts for the alleged genuine IDPs as soon as they received the letter dated 11th may 2018 from the PS of the Ministry of Interior and Coordination of National Government with instructions to make such payments to the genuine IDPs.**
- d. **The Kenya Commercial Bank in its Fiduciary duties ought to have obeyed the instructions of the PS in the Ministry of Interior and Coordination of National Government Not to pay Persons masquerading as IDPs in the name Kimilili Ebenezer which the Kimilili Court had declared as Fake.**

4. THEREFORE YOUR HUMBLE PETITIONER PRAYS THAT PARLIAMENT:-

For transparency and accountability, to safeguard the rights of the current and the future IDPs and to help avert future embracing situations like the instant one where a body providing Fiduciary duties involves itself in fraudulent and malicious activities and defying the Orders of its Principal, your humble Petitioner prays:-

I. THAT, the Honourable Senate House FINDS AND OR RECOMMEND that, Kenya Commercial Bank failed in its duty as a Fiduciary for the Government of Kenya by defying the letter dated 11th may 2018 with Instructions from the Permanent Secretary in the Ministry of Interior and Coordination of National Government NOT to pay Persons masquerading as IDPs in the name of Kimilili Ebenezer IDPs who were declared by the Kimilili court as Fake IDPs



II. THAT, the Honourable Senate House FINDS AND OR RECOMMEND that, Kenya Commercial Bank defied the Instructions from its Principal (The Ministry of Interior and Coordination of the National Government) conveyed to it through a letter dated 11th may 2018 and Ref;- OP/PA. 1/34A to pay the genuine IDPs the Mt. Elgon Kimilili IDPs.

III. THAT, the Honourable Senate House FINDS AND OR RECOMMEND that, the Kenya Commercial Bank through its Bungoma Branch do pay the genuine IDPs (Mt.Elgon –Kimilili) IDPs) as instructed by its Principal –the PS for the Department of Interior

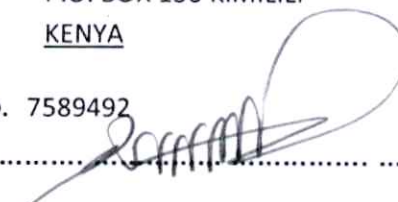
IV., THAT, the Honourable Senate House FINDS AND OR RECOMMEND that, Kenya Commercial Bank is unfit to provide Fiduciary duties to any Department of the Government of Kenya and be removed from future provision of such duties.

V. THAT, the Honourable Senate House FINDS AND OR RECOMMEND that, that, Kenya Commercial Bank is in breach of fiduciary duties involving Fraud and malice particularly in the handling of the case of Mt.Elgon Kimilili IDPs within Bungoma County and therefore should be sued for breach of Fiduciary

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KENYA

NATIONAL ID/ NO. 7589492

SIGNATURE.....

 10/03/21

PURSUANT TO THE SENATE STANDING ORDERS No.226

I. SUMMARY OF THE PETITIONER'S CASE:

THAT:-

- a. This humble Petition is concerned with the fraudulent and malicious manner in which the Kenya Commercial Bank has so far provided Fiduciary duties to the Ministry of Interior and Coordination of National Government in so far the Compensation of the 2007/8 Internally Displaced Persons are concerned
- b. **During 2007/8 Post-Election Violence, many people lost their lives and others were forcefully evicted from their habitual Homes and became IDPs. (Internally displaced Persons). Most of them went into Camps and were later assisted by the Government to go back to their Land but others were integrated in friendly communities such as those who were ejected from Mt Elgon Sub County of Bungoma were integrated in Kimilili Sub County and became to be known as Mt. Elgon- Kimilili IDPs.**
- c. The Kenya Commercial Bank has been involved in fraudulent payment of money meant to compensate the 2007/8 Post Election Violence through its Branches spread across the Country particularly, in Bungoma County Branch.

