Paper laid by chairperson D-C on lands Hon Nyamai, MP on Thursday 7/6/2018 Agada

PARLIAMENT OF KENYA

PARLIAMENT OF KENYA LIBRARY

TABLE OFFICE
S/No:.....
07 JUN 2018
Sign:.....
PAPER LAID

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION – 2018

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON INQUIRY INTO ALLEGED IRREGURALITIES IN THE COMPENSATION FOR PART OF LR NUMBER 7879/4 TO M/S AFRISON IMPORT EXPORT LTD AND HUELANDS LTD BY THE NATIONAL LAND COMMISSION ON BEHALF OF THE MINISTRY OF EDUCATION FOR ACQUISITION OF LAND FOR RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

Approved 7/6

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

JUNE 2018

Table of Contents

1.0 PREFACE 8

1.1 Mandate of the Committee 8

1.2 Committee subjects 8

1.3 Oversight 8

1.4 Committee Membership 9

2.0 INTRODUCTION **10**

3.0 SUBMISSIONS **10**

3.1 Submissions by the management of Ruaraka High School 10

3.2 Submissions by the Head Teacher- Drive Inn Primary School 11

3.3 Submissions by the Chairperson, National Land Commission 12

3.4 Submissions by the Cabinet Secretary, Ministry of Lands and Physical Planning 14

3.5 Submissions by the Attorney General 15

3.6 Submissions by the Managing Director, Afrison Export Import Limited and Huelands Limited 18

3.7 Submissions by the Ethics and Anti - Corruption Commission 20

2.8 Submissions by the Principal Secretary State Department for Early Learning and Basic Education 21

2.9 Submissions by representatives of the Governor, Nairobi City County 22

4.0 COMMITTEE FINDINGS **24**

5.0 RECOMMENDATIONS **30**

ANNEXURES

Annex I - Allotment letter issued to Ruaraka High School

Annex II – Copy of banker's cheque for payment made by Ruaraka High School for allotment letter

Annex III - Submissions by the Chairperson, National Land Commission

Annex IV - High Court Judgement – Petition No. 613 of 2014

Annex V - High Court Judgement – Civil Case No. 617 of 2012

Annex VI - Submissions by the Cabinet Secretary, Ministry of Lands and Physical Planning

Annex VII - Submissions by the Attorney General

Annex VIII - Submissions by the Managing Director, Afrison Import Export Ltd and Huelands Ltd

Annex IX - Submissions by the Ethics and Anti – Corruption Commission

Annex X - Submissions by the Principal Secretary, State Department for Early Learning and Basic Education

Annex XI - Submissions by the Nairobi City County

List of Abbreviations

CS	-	Cabinet Secretary
EACC	-	Ethics and Anti – Corruption Commission
GSU	-	General Service Unit
LR	-	Land Registration Number
NLC	-	National Land Commission

CHAIRPERSON'S FOREWORD

On 30th January 2018 the Departmental Committee on Lands received a complaint from Mr. Harrison Muema through a letter dated 10th January 2018 alleging that irregularities had been committed in the compensation of LR No. 7879/4 – Afrison Import Export Ltd and Huelands Ltd by the National Land Commission on behalf of the Ministry of Education, Science and Technology for acquisition of land for Drive Inn Primary School and Ruaraka High School. The matter was also reported in the print media. It is on this basis that the Committee resolved to conduct an inquiry on the matter.

During the inquiry the Committee undertook a field visit to Ruaraka High School and Drive Inn Primary School on Tuesday 10th April 2018. The Committee also held meetings with the Chairperson, National Land Commission on 29th March and 12th April, 2017, the Cabinet Secretary, Ministry of Lands and Physical Planning on Tuesday 17th April. 2017, the Attorney General and the Managing Director, Afrison Import Export Ltd and Huelands Ltd on Thursday 26th April 2018, a representative of the Ethic and Anti- Corruption Commission on Thursday 3rd May 2018, the Principal Secretary, State Department for Early Learning and Basic Education on Tuesday 15th May 2018 and representatives of the Governor, Nairobi County on Thursday 17th May 2018.

The Committee thereafter proceeded to a report writing retreat on Thursday 17th May 2018 where it analyzed the submissions by the stakeholders, made various findings and recommendations as indicated in this Report.

The Committee appreciates the support accorded to it in undertaking the inquiry by the Speaker, the Clerk and also the participation of the Honourable Members of the Committee. This report contains submissions made by different stakeholders, findings and the recommendations of the Committee on the matter.

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

EXECUTIVE SUMMARY

The Departmental Committee on Lands received a complaint on 30th January 2018 through a letter dated 10th January 2018 signed by Mr. Harrison Muema. In the said letter, Mr. Mr. Harrison Muema alleged that irregularities had been committed in the compensation of LR No. 7879/4 to M/S Afrison Export and Imports Ltd by the National Land Commission on behalf of the Ministry of Education, Science and Technology for acquisition of land for Drive Inn Primary School and Ruaraka High School in Nairobi. He requested the Committee to investigate the matter. The issue was also reported in the print media. Therefore, it is on this basis that the Committee resolved to conduct an inquiry on the matter.

During the inquiry the Committee found out that the process of acquiring the land occupied by the two schools was initiated by the National Land Commission upon receiving a complaint from the Afrison Import Export Ltd and Huelands Ltd on alleged historical injustices. Further, although the Ministry of Education did eventually write to the Commission requesting that it does secure the interests in the land occupied by the two schools, this was done at the behest of the Commission.

The Committee also noted that it was not clear from the valuation report tabled by the Commission on what parameters or criteria other than stamp duty and the pricing of comparable properties was used by the Commission to ensure prudent use of public money as espoused in Article 201 of the Constitution in awarding Afrison Import Export Ltd and Huelands Ltd Kshs 3, 269, 040, 600 as compensation for land.

The Committee further observed that although the Commission presented evidence of the *Gazette* Notice, there was no evidence presented to the Committee to show where and how the inquiry proceedings were conducted. There was also no evidence to show that the Commission did serve the notices to the interested persons.

The Committee did not find any evidence to confirm that a sub-division of the land in question did occur. The evidence presented to the Committee indicated that LR. No. 7879/4 belongs to Afrison Import Export Ltd and Huelands Ltd save for the contradiction that an allotment letter had been issued to Ruaraka High School by the Commissioner of Lands

The Committee further observed that the two schools had occupied the land for an uninterrupted period of at least thirty-three years and there had been no case brought by Afrison Export Import Limited against the schools over the alleged illegal occupation by the two schools.

The Committee also found out that the title for LR. No 7879/4 was jointly held by the official receiver and Messrs Harit Sheth and Co. Advocates, the advocates for the registered owner and that the National Land Commission had not secured the interests of the government in the land compulsorily acquired in terms of the formal taking of possession of the documents of title on the land contrary to section 121 of the Lands Act, 2012.

Further, the Committee observed that the National Land Commission paid Kshs. 1,500,000,000 to Whispering and Company Limited and not to Afrison Import Export Ltd and Huelands Ltd following a request by the directors of latter and that that the payment seemed to have been made in haste raising suspicions on the integrity of the process.

The Committee recommends that the Chairperson, National Land Commission, Commissioners and other officers of the Commission take personal responsibility for acting contrary to section 107(1), section 112, section 121 of the Lands Act, 2012, Articles 201(d) and 201(e) of the Constitution. The Director of Criminal Investigations should also investigate the Chairperson, the Commissioners and other officers of the National Land Commission for the same.

The Committee also recommends that the Director of Criminal Investigations should investigate possible collusion among Afrison Import Export Ltd and Huelands, the National Land Commission, National Treasury and the Ministry of Education to fleece and swindle public funds. Following conclusion of the said investigations by the Director of Criminal Investigations, the Director of Public Prosecutions should prosecute any public officer or person who may be implicated or suspected as having engaged in any corrupt and illegal activities in the compulsory acquisition of the land in question.

The Committee further recommends that the Ethics and Anti-Corruption Commission should take responsibility for loss of public funds amounting to Kshs. 1, 500, 000, 000 as part payment made by the National Land Commission to Afrison Import Export Ltd and Huelands for delay and failure to safeguard against the loss of the funds paid into the accounts belonging to Afrison Import Export Ltd and Huelands by failing to act on time to freeze the accounts holding the funds pending the conclusion of its investigations.

The National Treasury should take responsibility for loss of public funds amounting to Kshs. 1, 500, 000, 000 as part payment made by the National Land Commission to Afrison Import Export Ltd and Huelands for authorizing payment of Kshs. 1, 500, 000, 000 to Afrison Import Export Ltd and Huelands without an express request from the Ministry of Education.

Finally, the National Land Commission should immediately secure the interests of the government on the land compulsorily acquired in portions of LR. No. 7879/4 by the formal taking of possession of the title documents of the said land in accordance with the provisions of section 121 of the Lands Act, 2012.

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 with the following terms of reference:

(i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;

(ii) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;

(iii) study the programmes and policy objectives of Ministries and departments and the effectiveness of the implementation;

(iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;

(v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister.

(vi) study and review all legislation referred to it

1.2 Committee subjects

The Committee is mandated to consider the following subjects:

a) Land Policy,
b) Physical Planning,
c) Land Transactions,
d) Survey and Mapping
e) Land Adjudication
f) Settlement
g) Land registration
h) Land Valuation
i) Administration of Private, community and Public Land
j) Land Information and Management System

1.3 Oversight

The Committee oversights:

i. The Ministry of Lands and Physical Planning; and

ii. The National Land Commission

1.4 Committee Membership

Chairperson	The Hon. Dr. Rachael Nyamai, MP
Vice Chairperson	The Hon. Khatib Mwashetani, MP
	The Hon. Jayne Njeri Wanjiru Kihara, MP
	The Hon. Mishi Mboko, MP
	The Hon. Omar Mwinyi, MP
	The Hon Joshua Kutuny Serem, MP
	The Hon. Kimani Ngunjiri, MP
	The Hon. Ali Mbogo, MP
	The Hon. Babu Owino, MP
	The Hon. Caleb Kipkemei Kositany, MP
	The Hon. Catherine Waruguru, MP
	The Hon George Aladwa, MP
	The Hon George Risa Sunkuyia,MP
	The Hon. Jane Wanjuki Njiru,MP
	The Hon. Josphat Gichunge Mwirabua Kabeabea, MP
	The Hon. Owen Yaa Baya, MP
	The Hon. Samuel Kinuthia Gachobe, MP
	The Hon. Simon Nganga Kingara, MP
	The Hon Teddy Mwambire, MP

Committee Secretariat

Clerk Assistant I	Mr. Leonard Machira
Clerk Assistant III	Mr. Ahmad Guliye
Senior Fiscal Analyst	Mr. Joash Kusiba
Legal Counsel I	Ms. JemimahWaigwa
Research Officer III	Mr. Joseph Tiyan
Audio Recording Officer	Mr. John Mungai
Media Relations Officer	Ms. Winnie Kizziah
Serjeant At Arms	Ms. Peris Kaburi

2.0 INTRODUCTION

The Committee received a complaint, through a letter dated 10th January 2018 signed by Harrison Muema, alleging that irregularities had been committed in the compensation that was made to M/S Afrison Import Export Ltd and Huelands by the National Land Commission on behalf of the Ministry of Education for acquisition of land, LR No. 7879/4, for Drive Inn Primary School and Ruaraka High School in Nairobi. In the said letter Mr. Harrison Muema requested the Committee to investigate the matter. The issue was also reported in the print media. Therefore, it is on this basis that the Committee resolved to conduct an inquiry on the matter.

3.0 SUBMISSIONS

During the inquiry the Committee undertook a field visit to Ruaraka High School and Drive Inn Primary School on Tuesday 10th April 2018. The Committee also held meetings with the Chairperson, National Land Commission on 29th March and 12th April 2017, the Cabinet Secretary, Ministry of Lands and Physical Planning on Tuesday 17th April. 2017, the Attorney General and the Managing Director, Afrison Import Export Ltd and Huelands Ltd on Thursday 26th April 2018, a representative of the Ethic and Anti- Corruption Commission on Thursday 3rd May 2018, the Principal Secretary, State Department for Early Learning and Basic Education on Tuesday 15th May 2018 and a representative of the Governor, Nairobi County on Thursday 17th May 2018.

The field visit and meetings were aimed at collecting evidence with a view to establishing the validity of the allegations that irregularities were committed in the compensation made to M/S Afrison Import Export Ltd and Huelands Ltd by the National Land Commission on behalf of the Ministry of Education for the acquisition of part of Land Registration Number 7879/4 for Ruaraka High School and Drive Inn Primary School.

3.1 Submissions by the management of Ruaraka High School

The Committee undertook a field visit to Ruaraka High School on Tuesday 10th April 2018. During the visit, Ms. Agnes Chege, the Principal of the school, assisted by members of the Board of Management led by Mr. John Thuo, who is also a former Board of Management Chairperson, explained the history of the school and averred the following, that;

i. The school was initially started at Valley Bridge, near its current location, by Mr. De Silva, a business man who was popularly known as Baba Dogo;

ii. The land in which the school is located was acquired in 1981 through the initiative of the then Mayor of Nairobi, Hon. Andrew Gumba; The land was, at the time, unutilized community land;

iii. The Ministry of Education, through the Economic Stimulus Programme, awarded the school Kshs. 30 million in 2007 for the development of infrastructure that included the construction of a perimeter fence;

iv. The school was duly registered by the Ministry of Education and the first registration was done in 1987 and renewed in 1997 and 2009 respectively to cater for increased enrolment;

v. The land belonged to the school and an allotment letter had been issued to the school in 1999 by the Commissioner of Lands after paying the required premiums; The school was also in possession of a mutation map dating back to 1966 and a copy of a banker's cheque for the deposit for the payment of the land premium (Annex I&II);

vi. The land where the school is located is approximately 3.05 hectares and there had been no contestations on its ownership till recently when a compensation claim was featured in the media;

vii. The purported owners of land had not communicated with the school in respect of their claim;

viii. The management of the school only learnt of the compensation made by the National Land Commission for the acquisition of the land through the media and when the school principal was invited by the Ethics and Anti – Corruption to write a statement on the matter;

ix. The National Land Commission and the Ministry of Education had not communicated to the management of the school or the residents of the area regarding the acquisition of the land and that officers from the National Land Commission only visited the school on 29th May 2017 to undertake a survey of the school land without indicating that there was a planned acquisition of land for the institution; the only record of the visit was the signatures they appended on the visitors' book;

x. The Ethics and Anti-Corruption Commission wrote to the principal in February 2018 inviting her for an interview regarding alleged irregular acquisition of land for the school.

3.2 Submissions by the Head Teacher- Drive Inn Primary School

During a field visit held on Tuesday 10th April 2018, Mr. Benjamin Oloo, the Head Teacher, Drive Inn Primary School assisted by members of the school management informed the Committee of the following;

i. The school was started in 1986 on land given out by one. Hon. Andrew Ngumba, the then Mayor of the City Council of Nairobi;
ii. Prior to 2013 the school was administered by the then City Council of Nairobi;
iii. All documentations in respect of the ownership of the land where the school is located were held by the Nairobi County Government;

iv. Officers from the National Land Commission visited the school on 29th May 2017 to undertake a survey of the school land; and

v. The Ethics and Anti-Corruption Commission wrote to the head teacher in February 2018 inviting him for an interview regarding the irregular acquisition of land for the school

3.3 Submissions by the Chairperson, National Land Commission

The Committee held two meetings with the Chairperson, National Land Commission on Thursday 29th March and Thursday 12th April 2018. During the meetings the Committee was informed of the following:

Initiation of the compensation process: The Chairperson, National Land Commission informed the Committee that the process for acquiring land for Ruaraka High School and Drive Inn Primary School was initiated by the Principal Secretary, State Department for Early Learning and Basic Education, Ministry of Education vide a letter Ref MOE/CONF/G5 dated 7th February 2017 (Annex III) requesting the Commission to initiate the compulsory acquisition. Upon receipt of the said letter the Commission advised the Principal Secretary, vide a letter Ref. VAL.1146 dated 16th February 2017, that the process ought to have been initiated through a letter from the Cabinet Secretary, Ministry of Education as provided for in section of the Land Act 2012. Following the advice, the Cabinet Secretary wrote to the Commission vide a letter Ref. MOE.CONF/G5VOL.II/16 dated 17th March 2018 requesting the Commission to commence the process of acquiring the land.

Government acquisition of land within the vicinity of the two schools: The Chairperson stated that apart from the land acquired for Ruaraka High School and Drive Inn Primary School, the government, through the Commission, had previously compulsorily acquired land within the vicinity of the two schools) as follows; land acquired for the Kenya Urban Roads Authority for the Outering Road Improvement project vide gazette notice No.6055 of 29th August 2014; land acquired for the Kenya Urban Roads Authority for access roads and the construction of the Outering road through gazette notice No. 6322 of June,2017, where Kshs. 786,565,500, had been paid as compensation; and land acquired for the Kenya Urban Roads Authority for an access road to the upgraded Outering road where Kshs. 289,317,000 had been paid.

The Committee observed that the stated acquisitions were made to Afrison Import Export Ltd & Huelands Ltd and where for portions of LR. No. 7879/4.

Ownership of land parcel LR No. 7879/24: The Chairperson argued that based on the ruling in Afrison Import Export Ltd & another vs. Continental Credit Finance Ltd and two others, Civil Case No. 617 of 2012 the issue of ownership of the parcel of the land in question had been conclusively determined in favour of Afrison Import Export Ltd and Huelands Ltd. He further stated that the Court had determined that the plaintiffs being Afrison Export Ltd and Huelands were the registered proprietors of the parcel of land known as L.R No. 7879/24 and awarded the firm Ksh. 4,086,683,330/ to be paid by the office of the Attorney General for 37 acres occupied by the General Service Unit (GSU).

He further argued that the court ruling in Patrick Musimba vs. National Land Commission & four others petition No. 613 of 2014 elaborated in detail the process of compulsory acquisition of land for public projects undertaken by the Commission.

The Committee was further informed that the Commission had conducted a search in the Lands Registry on 19th January 2018 which indicated that Afrison Import Export Ltd and Huelands Ltd had bought the land from Joreth Ltd in 1981. The search also showed that the land still belonged to Afrison Import Export Ltd & Huelands Ltd. It was still held under a freehold grant, was all in one parcel and had no encumbrances listed on the title. The Commission had also conducted a due diligence search at the Survey of Kenya and the County Government of Nairobi and did not find any evidence of a subdivision scheme plan to have been completed and registered.

Attorney General's legal opinion: The Chairperson also stated that, in processing the acquisition, the Commission relied on the Attorney General's legal advice that the legal owners of L.R No. 7879/4 be compensated in full in accordance with Article 40(3) on compulsory acquisition for public purpose.

Valuation of the property: On valuation of the property, he stated that it relied on government records of stamp duties paid for similar parcels of land within the locality of the two schools, where the government acquired private land for public use. He also submitted copies of valuation reports for the Outering road upgrade and access roads, Drive inn Primary School and Ruaraka High School. A copy of a valuation report undertaken by Afrison Export Ltd and Huelands Ltd for a Chief's camp and the two schools that was prepared by Camp Valuers was also submitted to the Committee. The Commission's valuation of the land occupied by the two schools stood at Kshs. three billion, two hundred and sixty-nine million and forty (3,269,040,600. While the one by Camp Valuers stood at three, billion three hundred and seventy-five million (Kshs. 3,375,000,000).

Public Participation: The Chairperson, National Land Commission informed the Committee that the Commission notified the public on the intended acquisition of land for the two schools vide a gazette Notice No. 6322 of 30th June 2017. However, he could not provide any information on whether a public hearing on the matter was held and stated that it was the responsibility of the Ministry of Education to inform the management of the two schools of the planned acquisition.

Compensation payments: The Chairperson stated that the payments for the acquisition of part of LR No. 7879 for the two schools were made to Whispering Palms and Estates Ltd as an assignee of Afrison Import Export Ltd and Huelands Ltd. He further explained that this was allowed by the law and that Afrison Import Export Ltd and Huelands Ltd had indemnified the Commission from any claims that would arise on the matter.

Custody of the title for the acquired land: On the issue of custody of the title deed, the Chairperson stated that the Commission had not yet secured the title deed for the portion of land it acquired for the two schools as payments to Afrison Import Export Ltd and Huelands Ltd had not been completed and the title deed would be surrendered to the Commission once the full payments were made.

Allotment letter issued to the Ruaraka High School: Regarding the issuance of an allotment letter to Ruaraka High School by the Commissioner of Lands, the Chairperson stated that the allotment letter had been canceled although he did not provide evidence of the said cancellation.

3.4 Submissions by the Cabinet Secretary, Ministry of Lands and Physical Planning

The committee held a meeting with the Cabinet Secretary, Ministry of Lands and Physical Planning on Tuesday 17th April 2018. During the meeting the Cabinet Secretary informed the Committee of the following:

Background on the ownership of LR.NO.7879/4: The Cabinet Secretary stated that according to records held by the Ministry, Afrison Import Export Ltd and Huelands Ltd were the registered owners of LR No.7879/4, measuring 96 acres,having acquired it from Joreth Limited in 1981. The Committee was further informed that the land in question was registered under the Government Land Act of 1902(repealed) by an instrument of conveyance dated 1905. The crown first allocated a total of 1000 acres to Arthur Edward Atkinson as land No.216 registered as No.333/All/1905. The land went through various hands and mortgages starting with A.E. Atkinson who conveyed the land to Allan Thompson and Harris Temple on 21st February 1906 and then it was passed on to the R.H.T Hancock.

By way of letters of Administration dated 30th November 1921 the land passed on to Wilfred Arthur Randolph Nicholson from the Estate of R.H. T Hancock and on 19th August 1925 the land was conveyed to Gladys Thompson. The land further changed hands by an indenture dated 4th of December 1958 between Gladys Thompson and Joreth Ltd. Finally, Afrison Import Export Ltd and Huelands Ltd bought the land from Joreth Ltd at a price of Ksh.14, 000, 000 in 1981.

The Cabinet Secretary also informed the meeting that as at 16th of April 2018 an official search undertaken by her office indicated that LR 7879/4 was still owned by Afrison Import Export Ltd & Huelands Limited and ownership of the land since 1905 to date had been on a freehold and private basis.

Proposed subdivisions: The Committee was informed that Afrison Import Export Ltd and Huelands Ltd, through their development company, Drive In Estate Developers, applied to the Town Planning Committee on 16th September 1982 seeking approval for a proposed subdivision scheme. The Director of City Planning gave the firm a conditional approval on 28th March 1984. Drive In Estate Developers Limited did not agree with the said conditions and cancelled the planned subdivision on 5th March 1984

In the meantime, in 1983 there were ongoing processes between the developers and the Commissioner of Lands which resulted in the payment of fees to facilitate the approval of the subdivision scheme after the developer paid ksh.21, 500 on 18th November 1983. However, the surrender was not materalise. Further on 12th July 1984, the Commissioner of Lands issued 'a letter of reservation' reserving land for a secondary school to the Permanent Secretary, Ministry of Education. Later, 25th of June 1999, the Commissioner of Lands issued a letter of allotment for the school to the Permanent Secretary for Education.

Whether the subdivision scheme was registered: The Cabinet Secretary stated that upon payment and approval of the subdivision scheme, the onus was on Afrison Export Import Limited and Huelands Limited, to take the next steps to have the subdivision scheme surveyed and registered with the Director of Survey. However, she added that according to the Director of Survey, Afrison Import Export Ltd and Huelands Limited neither applied for the survey and registration nor surrendered the title.

The Cabinet Secretary further elaborated that the proposed subdivision on which public land was to be created and given free of cost to the Nairobi Council was cancelled in 1984. The letter of allotment was therefore incapable of transferring part ownership of LR No.7879/4 that is private land. Therefore, the land held by the schools would not be legally acquired without going through a process of excision and compulsory acquisition. The Cabinet Secretary noted that it ought to have been in the knowledge of the Commissioner of Lands that once the scheme of subdivision had been cancelled in 1984, there was no land to be allocated to the school.

Location and size of LR.No.7879/4: The Cabinet Secretary provided a copy of a map of the land where Drive Inn Primary School and Ruaraka High School are located. She also indicated that the size of the land was approximately 38.8 hectares and was in deed plan No.85744, survey plan FR.No.107.9.

The parcel had been sub divided into two portions as follows:

i. LR NO.7879/24(7879/4/3) with an area of 15.857 Ha (Deed plan No 398228, issued on 18th March 2016).
ii. LR No.7879/25(7879/4/4) with an area of 22.755 Ha (Deed plan 3982229, issued on 18th March 2016.

Custody of the title deed for LR. No. 7879/4: The Cabinet Secretary informed the Committee that the title deed for the land was held by the Attorney General who was the official liquidator of Continental Credit Finance Ltd (under receivership) and that the ministry was not directly involved in the acquisition as this was within the mandate of the National Land Commission.

3.5 Submissions by the Attorney General

The Committee held a meeting with the Attorney General on Thursday 26th April 2018. During the meeting the Attorney General informed the Committee of the following in respect of the matter:

Ownership of LR No. 7879/4: Regarding the ownership of the land in question, the Attorney General informed the Committee that LR No. 7879/4 was originally owned by Joreth Ltd who sold it to Afrison Import Export Ltd and Huelands Ltd on 30th December, 1981. The size of the parcel of land is 96 acres. On the same day of acquiring the land, the developers borrowed Ksh. 21,000,000.00 from Continental Credit Finance Ltd (under receivership) and a mortgage to secure the lending was registered against the title deed. The funds were meant to facilitate the construction of 500 maisonnettes for the defunct Kenya Posts and Telecommunication Corporation.

The Committee was further informed that Continental Credit Finance Ltd experienced financial difficulties and was put under receivership vide winding up case No. 29 of 1986 and an official receiver was appointed by the court as the liquidator.

Following the winding up of Continental Credit Finance Ltd, the Kenya Posts and Telecommunication secured a second mortgage of Kshs. 165,000,000 against the title to complete the stalled housing project. The second mortgage had since been paid in full and a discharge executed. However only 196 houses were completed out of the planned 500 units before the corporation also experienced financial difficulties and sold the houses to the then Ministry of Provincial Administration and Internal Security in 1988 to accommodate General Service Unit (GSU) officers. The Ministry was however never issued with title document for the portion of land where the 196 houses are located even though payments of Kshs. 64.000,000 had been made to the Corporation.

In 2006 the GSU fenced off the housing estate and occupied approximately 30 acres of land more than the area occupied by the 196 houses, to create a buffer zone to control squatters who had started invading the land and for security reasons. Attempts by the Ministry to secure the title for the acquired portion of land were hampered by various court cases and other legal issues surrounding the liquidation of Continental Credit Finance.

The Ministry formed a Technical Committee in 2012 following the recommendations of the Parliamentary Committee on Administration and National Security with a view to negotiate with the owners for the purchase of the extra land occupied and not paid for. The Technical Committee recommended the formation for a technical team to negotiate suitable terms for the purchase of government interest in the parcel of land.

However, before the negotiations were completed the owners filed a case in court seeking various reliefs including compensation for the value of the thirty (30) acres. The court awarded the plaintiff (Afrison Import Export Ltd and Huelands Ltd) Kshs. 4,086,683,330 as the fair value of the suit property. The Attorney General filed a notice of appeal. However, the intended appeal was not heard following a request made by the then Permeant Secretary, Ministry of State for Provincial Administration and Internal Security. Based on the request by the Ministry, the Attorney General sought a proposal on the settlement of the matter from the plaintiff's advocates. Subsequently an agreement was reached during a meeting held on 15th March 2013 in which a sum of Ksh. 2.4 billon was agreed upon as full settlement of the dispute. The negotiated settlement was filed in court following an authorization made by the Principal Secretary, Ministry of State for Provincial Administration and Internal Security vide a letter dated 22ND march, 2013 and Kshs.1.2 billion was paid to the plaintiff's advocates.

However, before the balance of Kshs. 650, 000,000 was paid an audit query was raised by the Auditor General. The Ministry sought legal advice from the Attorney general on whether to proceed to settle the balance. The Attorney General advised the Ministry to proceed to settle the balance in exchange of the ownership documents.

The Attorney General also stated that apart from the acquisition made by the then Ministry Provincial Administration and Internal Security of the portion of LR. No7879/4 occupied by General Service Unit. The office of the Attorney was not directly involved in any other acquisition of portions of the said land

including the acquisition made by the National Land Commission for land for Ruaraka High School and Drive Inn Primary School.

Custody of the title: In response to a question raised by the Members on whether the Attorney General as the liquidator of Continental Credit Finance Ltd was in custody of the title deed for LR. No 7879/4, where Drive Inn Primary School and Ruaraka Secondary School are located. The Attorney General first clarified that his office was not the official receiver rather the receiver had been appointed by the court and was therefore answerable directly to the court. Regarding the custody of the title, he informed the meeting that the title for LR. No 7879/4 was jointly held by the official receiver and Messrs Harit Sheth and Co. Advocates, the advocates for the registered owners of the land. Further the official receiver to facilitate the issuance of a title for the land purchased by the government released the title, through a professional undertaking, to Messrs Harit Sheth and Co. Advocates. The advocates were supposed to facilitate the subdivision of the land and forward a duly executed conveyance and deed plan to the government for the 37.5 acres that had been paid for by the office of the President, which they had done, and the documents were awaiting the payment of stamp duty once the balance of the decretal sum was paid. The sum had not been paid because Afrison Import Export Ltd and Huelands Ltd had secured a conditional clause in the out of court settlement for the land acquired by the GSU made with the Government that stipulated that the sum was to be paid after the money owed to the company had been paid in full.

Encumbrances: On whether the encumbrances on LR. No. 7879/4 had been vacated, the Attorney General informed the Committee that all the encumbrances had been vacated and the land sub-divided as follows;

a. L.R No. 7879/24 measuring 37.5 acres to be registered in favour of the government for the acquisition of land for the General Service Unit.
b. L.R. N.o. 7879/25 measuring 58.5 acres being the remaining portion of the 96 acres after the sale to vest to Afrison Import Export and Huleands Limited.

Involvement of the office of the Attorney General in the process of acquisition of land for Drive Inn Primary School and Ruaraka High School: The Attorney General stated that the involvement of his office in the process of acquiring land for the two schools was limited to an advisory opinion given to the Principal Secretary, Ministry of Education on the import of Article 40 (3) of the Constitution which provides that for compulsory acquisition to be effected the land must be for public use. Therefore, the Attorney General did not participate in the actual acquisition process.

Allotment letter issued to the Ruaraka High School: Regarding the issuance of an allotment letter to Ruaraka High School by the Commissioner of Lands, the Attorney General stated that it was not legally possible to issue an allotment letter on private land. Furthermore, the title of the land in question had an undischarged mortgage and a loan from Continental Credit Finance Ltd.

3.6 Submissions by the Managing Director, Afrison Export Import Limited and Huelands Limited

The Committee held a meeting with Mr. Francis Mburu, the Managing Director, Afrison Import Export Ltd and Huelands Ltd on Thursday 26th April 2018. During the meeting Mr. Francis Mburu. through an affidavit and oral submissions informed the Committee of the following in respect of the matter;

i. Afrison Export Import Ltd and Huelands Ltd were the registered owners of LR. No. 7879/4 having acquired the land from Joreth Ltd in 1981;

ii. That after Afrison Import Export Ltd and Huelands Ltd bought the said land the government expressed interest in acquiring it to develop houses for the General Service Unit. However, this did not happen, but the government went ahead and illegally cordoned off the land for public use;

iii. Afrison Import Export Ltd and Huelands Ltd, through their development company, Drive In Estate Developers, applied to the Town Planning Committee on 16th September 1982 seeking approval for a proposed subdivision scheme. The Director City Planning gave the firm a conditional approval on 15th of April 1984. Drive in Estate Developers Limited did not agree with the said conditions and cancelled the planned subdivision due to fear that the City Council wanted to use the set conditions to grab the land from the owners;

iv. That in or about 1986 the government constructed Drive Inn Primary School and Ruaraka High School on part of the land measuring 13.5364 acres in L.R No. 7879/25 and like in the case of the land occupied by the GSU no payment had been made to the company;

v. The government also constructed an office for the District Officer and Chief within land without any approval from the company;

vi. That Afrison Import Export Ltd and Huelands Ltd filed a case in court, Civil Case Number 617 of 2012, seeking damages for loss of use of the land and orders to compel the government to pay for the 30 acres of land occupied by the GSU; the court granted the prayers sought by the companies and awarded them Kshs. Four billion eighty-six million six hundred and eighty-three thousand three hundred and thirty (Kshs. 4,086,683,330);

vii. The Attorney General negotiated with the companies and the said court award was reduced to Kshs. two billion and four hundred million (2,400,000,000) payable within ninety days; However, six years later, the amount had not been paid in full and the Government had only paid Kshs. 1.8 billion causing a delay in transferring the 37.4 acres to the GSU;

viii. The parcel of land L.R. No. 7879/4 measuring 96 acres had been subdivided into two parcels of land namely; L.R No. 7879/42, the portion occupied by the General Service Unit with an acreage of 37.5 acres and L.R No. 7879/25, the remainder of the portion where the two school are located;

ix. The Government had acquired three portions of LR 7879/4 from Afrison Import Export Ltd and Huelands Ltd as follows:

a. The Kenya Urban Roads Authority (KURA) had acquired 12acres for the construction of the Outering Road and an access road from Outering Road.
b. The State Department for Interior had acquired 37.4 acres for the GSU houses.
c. The Ministry of Education had acquired 13.4 acres that are occupied by Drive Inn Primary School and Ruaraka High School.

x. In 2009 the government, through the City Council of Nairobi, Housing Department illegally issued letters of allotment to various persons and allowed them to occupy/trespass on LR. 7879/4; the said illegal issuance of letters of allotment was done by land grabbers and corrupt government officials;

xi. The said land grabbers had been frustrating the effort of the companies to seek compensation from the government;

xii. The government and other parties that illegally occupy LR7879/4 had ignored court orders even after the court had declared that they illegally occupied the land;

xiii. Known individuals had been blackmailing the directors of Afrison Export Import and Huelands Limited; the said individuals were; Meshack Onyango Dehay, George Onduto and Julius Ngare Nguyu;

xiv. Afrison Export Import and Hueland Ltd wrote to the National Land Commission regarding the illegal occupation on the land and the Commission upon being satisfied that the companies were the owners of the said land wrote to the Ministry of Education requesting the ministry to consider initiating compensation to the company;

xv. The allegation that the portion of land measuring 13.5 acres acquired by the Commission for the two schools was too costly was baseless as the Government paid the companies almost half of the market price value for the said land as a valuation done by Camp valuers indicated that the

land was worth Kshs 5,900,000,000 while the government through the National Land Commission agreed to pay Kshs. 3,200,000,000; and

xvi. Afrison Import Export Ltd and Huelands Ltd instructed the National Land Commission to make payments for the portion of land occupied by the two schools to Whispering Palm Estate Limited, a sister company and that the instructions were procedural and were made on business considerations;

xvii. The Managing Director Afrison Import Export Ltd and Huelands Ltd was ready to refund the money paid by the National Land Commission for the acquisition of the two school if the government would relocate the schools from the land; and

xviii. The title for the land was in the custody of the official receiver and the advocates of the companies.

3.7 Submissions by the Ethics and Anti - Corruption Commission

The Committee held a meeting with Ms. Rose Macharia, a Commissioner at the Ethics and Anti-Corruption Commission, on Thursday 3rd May 2018. She was accompanied by Mr. Abdi Mohamud, the Director, Investigations. She informed the Committee that the Commission was seized of the matter touching on a parcel of land reference No. 7879/4 in which the National Land Commission sought to compensate the purported owners. The said land was occupied by Ruaraka High School and Drive Primary School. She outlined the status of investigations into the matter as follows:

- Documents had been collected from concerned public institutions.
- Statements had been recorded from most of the witnesses.
- on 2nd March,2018, EACC stopped further payments to the owners until conclusion of investigations
- Payments of Kshs.1.5 billion had been made by NLC on 30th January,2018, leaving a balance of 1.7 billion.
- A valuation of the land had been undertaken.
- Investigations on-going.

She also stated that the Commission was also conducting investigations into the acquisition of two other portion of the same land as follows:

- Inquiry into allegations of irregular compensation on the LR No. 7879/4 for acquisition of a road reserve on Outering Road. The Kenya Urban Roads Authority (KURA), through the National Lands Commission (NLC). NLC had so far made a payment of Ksh. 1.4 billion to M/s Afrison Import Export Ltd and Huelands ltd, the proprietors of LR No. 7879/4. The proprietors were currently seeking a further compensation of Ksh.2.182 billion.

- Inquiries into allegations of irregular compensation on the LR No. 7879/4 for acquisition of houses by the ministry of interior and coordination of National Government for use by senior GSU officers. The Committee was informed that in the matter it was further alleged that the survey map was altered so as to overpay the owner. The government had already made payments of Kshs. 2.4 billion for the land but the tittle had not been issued or any entries for the government interest made in the tittle for LR No. 7879/4. It is also alleged that the land on which the two companies were compensated by KURA had already been acquired by the GSU.

However, the representatives of the Ethics and Anti- Corruption Commission were reluctant to provide more information to the Committee regarding the matter stating that it would compromise the integrity of the on- going investigations.

2.8 Submissions by the Principal Secretary State Department for Early Learning and Basic Education

The Committee held a meeting with the Principal Secretary, State Department for Early Learning and Basic Education on Tuesday 17th May 2018. During the meeting the Principal Secretary informed the Committee of the following:

Initiation of the compensation process. The Principal Secretary informed the Committee that the process of compulsorily acquiring land for the two schools was initiated by the National Land Commission through a letter dated 13th September 2016, in which the Commission brought to the attention of the Ministry of Education of a complaint made by Afrison Import Export Ltd and Huelands Ltd over a parcel of land that was currently occupied by Ruaraka High School and Drive Inn Primary School. The complainant alleged that the two schools had been sitting on private land measuring 13.5364 acres for 30 years without compensation.

Subsequently the National Land Commission, in a letter dated 16th March 2017, advised the Cabinet Secretary, Ministry of Education to submit a formal request for acquisition of the land to the Commission as per the provisions of section 107 (1) of the Land Act, 2012. The Cabinet Secretary made the request as advised by the Commission on 17th March 2017 vide a letter Ref No. dated 24th April 2017,

The Principal Secretary further informed the Committee that the Commission informed the Ministry that it had duly undertaken the legal processes and confirmed that the two schools occupy 13.5364 acres valued at Kshs. 3,269,040,600, inclusive of 15% statutory disturbance allowance. In this regard, the Ministry was expected to deposit the funds in the Commission's account to facilitate the acquisition.

Opinion of the Attorney General: He stated that the Ministry of Education sought the opinion of the Attorney General on 29th June 2017 attaching all documents in its possession including assessment reports of the two schools indicating that Ruaraka Secondary School was established in 1984 while Drive Inn Primary School was established in 1987. The advice of the Attorney General was received on 7th July 2017 and subsequently shared with the National Treasury on 18th July 2017.

The documents that were submitted to the Attorney General included:

i. A claim by the school that it had been allocated the land;

ii. A letter dated 3rd August 1984, where the Ministry of Education had written to the Commissioner of Land supporting the Company's bid to erect a private school on the same land; and

iii. A certificate of postal search dated 8th December 2016 indicating that the land reference LR NO. 78798/4 measuring approximately 96 acres under freehold tenure is registered in the name of Afrison Import Export Ltd and Huelands Ltd as tenants in common and equal shares.

Request for funds to facilitate the compensation: The Principal Secretary stated that the Ministry of Education informed the National Treasury of the advice it had received from the National Land Commission regarding the compensation of land occupied by the two schools on 30th June 2017. The Ministry also brought to the attention of the National Treasury that it was waiting for legal advice from the Attorney General in respect of the matter.

The National Treasury authorized the Ministry of Education to spend Ksh. 1,500,000,000 on 13th November 2017 for the compulsory acquisition of the part of LR. 7879/4, pending regularization of the same expenditure in the 2017/2018 Second Supplementary Budget. The balance was to be reviewed in the 2018/2019 Budget Estimates.

Upon receiving the prerequisite documents, the Ministry of Education transferred the funds to the National Land Commission on 19th January 2018 which reflected on the latter's National Bank account on 22nd January 2018.

The National Land Commission confirmed to the Ministry of Education that the funds were disbursed to the land owners on 15th February 2018 and the Ministry requested the Commission to secure the interest of the schools since partial payments were made.

Alternative to the acquisition of the land: On whether there were alternatives to the acquisition of the land, the Principal Secretary stated that the alternative would have been to relocate the students to other schools or build new schools on alternative land. However, he emphasized that the two schools served a highly densely populated area and the right to education of the students had to be secured through acquisition of the land.

2.9 Submissions by representatives of the Governor, Nairobi City County

The Committee held a meeting with the County Executive Committee Member for Lands, Nairobi City County on Thursday 17th May 2018. During the meeting he informed the Committee of the following in respect to the matter:

Subdivision of LR. No 7879/4: He stated that the City Council of Nairobi, through a letter Ref. CPD/0644/7879/4 dated 28th March 1984 gave Ms. Drive In Estate Developers Limited a conditional surrender of 10% of the land for social amenities for subdivision to be undertaken on plot L.R NO. 7879/4. M/S Drive Estate Developers Limited rejected the conditionality of the subdivision through a letter dated 5th April, 1984 and requested for the cancellation of the scheme. This meant that the plot reverted to its position before the sub-division.

He further informed the Committee that the matter of subdivision came up later with correspondences between the office of the President and the Ministry of Lands, Housing and Urban Development requesting for excision of the portion of the plot which accommodates the General Service Unit. The

survey was done without the planning process (subdivision) and plot L.R NO. 7879/24 (G.S.U houses) measuring 15.14 hectares was hived off from the original parcel. The excision was regularized by the Nairobi City County through a subdivision done on 2nd August 2013. He added that it could be deduced that no other subdivision took place of the said plot in accordance with the processes laid down in the Physical Planning Act CAP 286 which states that a development must take place on a planned (subdivided) and surveyed plot with approved plans.

However, he contradicted himself in his oral submissions by stating that the land in question was public land without providing any evidence on the same

Approvals of the scheme for the construction of the maisonnetes on LR. No 7879: The County Executive Committee Member stated that the Nairobi City County Government could not establish approvals of the scheme by the then City Council for the construction of the maisonnetes that were built in 1981. This meant that the developer had no intention of subdividing the parcel of land and the approval for the construction of the houses may not have contained any conditions save for the provisions of internal roads, water supply and street lighting.

Establishment of Drive Inn Primary School and Ruaraka High School: The Committee was informed that the Nairobi City County Government had neither found any evidence of construction approvals for the two schools nor established any subdivision approval for the parcels of land accommodating the two institutions.

Public Participation: The County Executive Committee Member stated that the County Government of Nairobi was not involved in any inquiry proceedings by the National Land Commission during the acquisition of land for the two schools.

.

4.0 COMMITTEE FINDINGS

The Committee made the following findings and observations:

(1) Section 107(1) of the Lands Act No. 6 of 2012 provides that *"whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110, the respective Cabinet Secretary or the County Executive Committee shall submit a request for acquisition of public land to the Commission to acquire the land on its behalf.* Pursuant to the provisions of section 107(1) of the Lands Act, 2012 the Committee observed that the process of acquiring the land occupied by the two schools was initiated by the National Land Commission upon receiving a complaint from the Afrison Import Export Ltd and Huelands Ltd on alleged historical injustices. Further, although the Ministry of Education did eventually write to the Commission requesting that it does secure the interests in the land occupied by the two schools, this was done at the behest of the Commission. (See annexed letters from the National Land Commission and the Ministry of Education – Annexures III & X).

(2) In light of paragraph (1) above, the Committee also observed that there was no evidence in terms of correspondence by the Commission to Afrison Import Export Ltd and Huelands Ltd in response to the complaint on historical injustices. There also existed no evidence of communication between the Ministry of Education and Afrison Export Import Limited either informing the Ministry of the complaint or requesting the Ministry to make a request for compulsory acquisition of land as required by the law.

(3) Further, the Committee observed that the Commission wrote to the Ministry of Education on 13th September 2016 informing the Ministry of the complaint made by Afrison Import Export Ltd and Huelands Ltd. However, the Committee noted that it was not until five months later being on 7th February 2017 that the Ministry of Education responded to the Commission advising the Commission to go ahead and secure their interests on the land by compulsorily acquiring the said land. (See annexed letters - Annexures III & X)

(4) The Committee also observed that it was not clear from the valuation report of the Commission on the land occupied by the two schools on what parameters or criteria other than stamp duty and the pricing of comparable properties was used by the Commission to ensure prudent use of public money as espoused in Article 201 of the Constitution in awarding Afrison Import Export Ltd and Huelands Ltd Kshs 3, 269, 040, 600 as compensation for land. (See annexed valuation report – Annex III).

(5) Article 10 of the Constitution provides that state officers and public officers and all persons whenever any of them makes or implement public policy decisions shall be bound by the national values and principles of governance which include participation of the people. In furtherance of the objectives of public participation, section 112(1) of the Lands Act, 2012 requires the Commission at least thirty days after publishing the notice of intention to acquire land to conduct an inquiry to hear issues of propriety and claims for compensations by persons interested in the land and serve a notice of the notice on every person who appears to the Commission to be interested. The Committee observed that although the Commission presented evidence of the *Gazette* Notice, there is no evidence to show where and how the inquiry proceedings were conducted. Further, the Committee made field visits to the schools which are interested in the matter under inquiry and the schools confirmed that they were never involved or informed of the inquiry proceedings. The Committee observed that there was also no evidence to show that the Commission did serve the afore mentioned notices to the interested persons. The County Government of Nairobi also confirmed that it was not involved in any inquiry proceedings by the Commission.

(6) The Committee also observed that there existed inconsistencies on the actual acreage of land being compulsorily acquired with the Commission submitting that the land acreage was 13.7701 acres while the documents tendered by Afrison Export Limited and the Ministry of Education indicated that the land measured 13.5364 acres revealing a 0.2337 acreage difference amounting to Kshs. 48, 142, 200 (this amount is 0.2337 multiplied by Kshs. 206 million per acre being the rate/price that was used by the Commission) additional money paid to Afrison Export Limited over and above what the Company should have been paid contrary to Article 201(d) of the Constitution which provides that public money shall be used in a prudent and responsible way. (See valuation Report and letters by Afrison Import Export Ltd & Huelands Ltd and Ministry of Education herein attached – Annexures III and X).

(7) Further the Committee made efforts to confirm the correct acreage of the land occupied by the two schools from the acquiring body being the Ministry of Education and the Principal Secretary, State Department for Early Learning and Basic Education in a letter dated 15th May,2018 informed the Committee that the Ministry of Education was waiting for the confirmation of the actual acreage from the Ministry of Lands and Physical Planning.

(8) The Committee also observed that the National Land Commission and the Ministry of Education failed to explore the common law doctrine of adverse possession as a means of acquiring the land noting the two schools have been occupying the land for an uninterrupted period of at least thirty-three years.

(9) The Committee observed that although evidence was tabled to show that there was an allotment letter issued by the Commissioner of Lands supposedly on the land currently being occupied by the two schools, the Committee did not find any evidence to confirm that sub-division of the land did occur. Indeed, the Commission, the Ministry of Lands and the County Government of Nairobi confirmed that there was no sub-division that had occurred relating to the land occupied by the two schools. The Committee however observed that the only correspondences that existed on the alleged subdivision dated back to 1984 being conditional offer letter by the defunct City Council, the rejection thereof of the conditions by Afrison Export Import Limited and a letter dated 7th February 2018 by Afrison Export Import Limited seeking to know whether the cancellation did take effect which is thirty-three years later from the date the alleged cancellation took place. (See annex III)

(10) The Committee observed that the Attorney-General opinion on the two parcels of land was advisory in nature and only to the extent that the Commission could process the acquisition of the said land in accordance with the law. The Attorney-General observed that the question as to whether the due process of law was followed by the Commission in acquiring the land lay under the purview of the Commission and not the Attorney-General. In this regard, the Committee also noted with concern that the opinion was sought by the Ministry of Education and not the Commission and it was made after gazettement of the notice to acquire the land had been done by the Commission.

(11) The Committee also observed with concern that the Principal Secretary Ministry of Education wrote to the Ministry of National Treasury seeking to know the budget implication of the proposed acquisition of the land occupied by the two schools prior to receiving advise from the Attorney-General. (See attached the letters – Annex X).

(12) The Committee observed with concern that the two schools being Ruaraka Secondary School and Drive Inn Primary had occupied the land for an uninterrupted period of at least thirty-three years, infrastructure on the schools had been built up over the years following allocation of funds through the Economic Stimulus Programme, various approvals were sought for the development projects including installation of electricity transmission lines from the various government entities and yet there had been no case opposing such development or continued occupation by the schools brought by Afrison Import Export Ltd and Huelands against the schools, the Ministry of Education , the County Government or any other government entity.

(13) Further, the Committee observed that the Physical Planning Act Cap 286 requires that whenever land is being proposed to be developed a person is required to surrender land for public utility and purpose. The Committee noted with concern that even though the

land had been subject to various development projects including the 196 Houses acquired by GSU, the Ministry of Lands and Physical Planning, Ministry of Education and the County Government failed to follow up on the surrender of the land occupied for the two public schools in furtherance of the provisions of the Act.

(14) The Committee also observed that Afrison Import Export Ltd and Huelands failed to comply with the Physical Planning Act No. 6 of 1996 which requires a person to surrender land for public utility and purpose during development of the land in question including the 196 Houses acquired by GSU.

(15) The Committee observed that the title for LR. No 7879/4 was jointly held by the official receiver and Messrs Harit Sheth and Co. Advocates, the advocates for the registered owner. Further, the official receiver to facilitate the issuance of a title for the land purchased by the government for the General Service Unit released the title, through a professional undertaking, to Messrs Harit Sheth and Co. Advocates. The advocates were supposed to facilitate the subdivision of the land and forward a duly executed conveyance and deed plan to the government for the 37.5 acres that had been paid for by the office of the President, which they had done, and the documents were awaiting the payment of stamp duty once the balance of the decretal sum was paid. The Committee further observed that the sum of Kshs. 150 million owed to the official receiver of Continental Credit Finance Ltd by Afrison Import Export Ltd and Huelands Ltd had not been paid despite the fact that the company had received Kshs. 4.37 billon from the government. This was mainly because the company had secured a conditional clause in the out of court settlement made with the government that stipulated that the sum was to be paid after the money owed to the company had been paid in full. Therefore, although the out of court agreement led to the reduction of award made by the court to Afrison Export Import Ltd and Huelands Ltd it disadvantaged the government in accessing ownership documents for the land it had already acquired from the company.

(16) The Committee also observed that Afrison Import Export Ltd and Huelands had in the past been beneficiaries of compensation over acquisition of GSU land and other pieces of land portraying lack of planning and management in compulsorily acquisition of land by the government evidenced by piecemeal, incomplete and staggered acquisition of portions of LR. No. 7879/4 land for public purpose. The Committee also noted with concern that the staggered acquisition of land was evident noting the National Land Commission had during a committee meeting inadvertently tabled a valuation report by Camps Valuers indicating another pending and possible acquisition of the Chief's Camp that is within the said land. (Annex III)

(17) In light of paragraph (14) above, the Committee also observed that although the government had paid Afrison Import Export Ltd and Huelands Ltd approximately Kshs.

4.37 billon for portions of LR. No 7879/4, no transfer of ownership has been made to the government and in particular the Ministry of Interior and Coordination of National Government has never acquired the title document for the portion of land where the 196 General Service Unit houses are located even though payments of Kshs. 64.000,000 were made to the defunct the Kenya Posts and Telecommunication.

(18) The Committee further observed in relation to the land in question, that the National Land Commission failed to secure the interests of the government in the land compulsorily acquired in terms of the formal taking of possession of the documents of title on the land contrary to section 121 of the Lands Act, 2012. Indeed, the title documents of the 96 acres being the land where the two schools occupy, were never presented to the Committee by the National Land Commission yet the Commission had approved the payment of a total of Kshs 3, 269, 040, 600 as compensation for land and had already paid and disbursed Kshs 1, 500, 000, 000 without any title document.

(19) The Committee also observed that although the Ethics and Anti-Corruption Commission appeared before the Committee and did make submissions, the report submitted by the EACC on the issue under investigation was not comprehensive. The Committee also did observe that the EACC had not expedited in concluding on the investigations on the alleged irregular acquisition of the land which EACC became seized of in January 2018. Additionally, the Committee also observed that EACC had been uncooperative evidenced by its failure to avail the confidential report on the matter on time as agreed. The Committee observed that the confidential report was also not comprehensive. The Committee also observed that the EACC only moved to freeze further payments to Afrison Import Export Ltd and Huelands Ltd after the money had already been diverted to other accounts by Afrison Import Export Ltd and Huelands Ltd. The Committee therefore noted that EACC failed to safeguard against loss of public funds pending the conclusion of the investigations.

(20) Further, the Committee also observed that the Commission paid Kshs. 1, 500, 000, 000 to Whispering Palms and Company Limited and not to Afrison Import Export Ltd and Huelands Ltd following a request by the directors of Afrison Import Export Ltd and Huelands Ltd. The Committee observed with concern that although Whispering Palms and Company Limited is also owned by the directors of Afrison Export Import Limited the change of payment details was suspicious. Indeed, the Committee observed that the Managing Director of Afrison Import Export Ltd and Huelands Ltd Mr. Francis Mburu had confirmed that the change of bank details was necessitated by personal commitments the Companies had with the bank which the Committee noted was would be a decoy applied and used by Afrison Import Export Ltd and Huelands Ltd to avoid paying for liabilities to possible creditors.

(21) The Committee also observed that evidence presented indicated that LR. No. 7879/4 belonged to Afrison Import Export Ltd and Huelands Ltd save for the contradiction that an allotment letter had been issued to Ruaraka High School by the Commissioner of Lands.

(22) The Committee further observed that there was a deliberate lack of consultation and coordination by the National Land Commission, the Ministry of Education, the Nairobi County Government, the National Treasury and the Attorney-General's office with a view to benefit the owner and disadvantage public interest and public good.

(23) Article 201(e) of the Constitution provides that financial management shall be responsible and fiscal reporting shall be clear. The Committee however observed that the National Treasury approved the spending of Kshs.1, 500, 000, 000 being the amount paid to Afrison Export Import Ltd and Huelands Ltd which was not provided for in the Annual Estimates but was in the second Supplementary Estimates for the 2017/18 Financial Year. The Committee observed that expenditure was foreseeable and not urgent, was made in haste and need not to have been paid hence displaying irresponsible financial management by the National Land Commission, the National Treasury and the Ministry of Education.

(24) The Principal Secretary of the National Treasury authorized payment of public funds for compulsory acquisition of the land occupied by the two schools without request from the National Land Commission. (see annex X)

5.0 RECOMMENDATIONS

Based on the findings, the Committee recommends as follows, that -

(1) **The Chairperson, Commissioners and other officers of the National Land Commission should take personal responsibility for-**

(a) **acting contrary to section 107(1) of the Lands Act, 2012 as the Ministry of Education made a request for compulsory acquisition of the land in question at the behest of the Commission and not on its own motion;**

(b) **acting contrary to section 112 of the Lands Act, 2012 by failing to conduct public participation through inquiry proceedings and failure to serve notices of the proceedings on interested persons including the two schools;**

(c) **acting contrary to section 121 of the Lands Act, 2012 by failing to secure the interests of the government on the land in terms of ensuring that the title documents in respect of the land being acquired were delivered to the Registrar of Lands and registered;**

(d) **acting contrary to Article 201(e) of the Constitution for irresponsible financial management for recommending the payment of Kshs. 1, 500, 000, 000 as part payment for the compulsory acquired land an amount that need not to have been paid noting the Commission had not even secured the interests of government on the land in terms of having the possession of the title documents of the said piece of land; and**

(e) **acting contrary to Article 201(d) of the Constitution for loss of public funds being Kshs. 48, 142, 200 over and above what Afrison Import Export Ltd and Huelands Ltd should have been paid and further allowing the use of public funds being Kshs. 1, 500, 000, 000 without securing the interests of the government in terms of taking possession of the title documents of the land in question.**

(2) **The Director of Criminal Investigations should investigate the Chairperson, Commissioners and other officers of the National Land Commission for -**

(a) **acting contrary to section 107(1) of the Lands Act, 2012 as the Ministry of Education made a request for compulsory acquisition of the land in question at the behest of the Commission and not on its own motion;**

(b) **acting contrary to section 112 of the Lands Act, 2012 by failing to conduct public participation through inquiry proceedings and failure to serve notices of the proceedings on interested persons including the two schools;**

(c) **acting contrary to section 121 of the Lands Act, 2012 by failing to secure the interests of the government on the land in terms of ensuring that the title documents in respect of the land being acquired were delivered to the Registrar and registered;**

(d) **acting contrary to Article 201(e) of the Constitution for irresponsible financial management for recommending the payment of Kshs. 1, 500, 000, 000 as part payment for the compulsorily acquired land an amount that need to have been paid noting the Commission had not even secured the interests of government on the land in terms of having the possession of the title documents of the said piece of land; and**

(e) acting contrary to Article 201(d) of the Constitution for loss of public funds being Kshs. 48, 142, 200 over and above what Afrison Import Export Ltd and Huelands Ltd should have been paid and further allowing the use of public funds being Kshs. 1, 500, 000, 000 without securing the interests of the government in terms of taking possession of the title documents of the land in question.

(3) The Director of Criminal Investigations should investigate possible collusion by Afrison Import Export Ltd and Huelands with the National Land Commission, National Treasury and the Ministry of Education including failure to subdivide the land and protect government interests in the acquisition of various portions of LR. NO. 7879/4 with an intention to fleece and swindle public funds.

(4) The Director of Criminal Investigations should investigate the Directors of Afrison Import Export Ltd and Huelands for failure to comply with the Physical Planning Act No. 6 of 1996 which requires a person to surrender land for public utility and purpose during development of land with an intention to fleece and swindle public funds.

(5) Following conclusion of investigations by the Director of Criminal Investigations, the Director of Public Prosecutions should prosecute any public officer or person who may be implicated or suspected as having engaged in any corrupt and illegal activities in the compulsory acquisition of the land in question.

(6) The Ethics and Anti-Corruption Commission should take responsibility for loss of public funds amounting to Kshs. 1, 500, 000, 000 as part payment made by the National Land Commission to Afrison Import Export Ltd and Huelands for delay and failure to safeguard against the loss of the funds paid into the accounts belonging to Afrison Import Export Ltd and Huelands by failing to recommend on time the freeze the accounts holding the funds pending the conclusion of its investigations.

(7) The National Treasury should take responsibility for loss of public funds amounting to Kshs. 1, 500, 000, 000 as part payment made by the National Land Commission to Afrison Import Export Ltd and Huelands and for authorizing payment of Kshs. 1, 500, 000, 000 to Afrison Import Export Ltd and Huelands without an express request from the Ministry of Education.

(8) The National Land Commission should immediately secure the interests of the government on the land compulsorily acquired in portions of LR. No. 7879/4 by formally taking of possession of the title documents of the said land in accordance with the provisions of section 121 of the Lands Act, 2012.

Signed……Date…5/6/2018……

The Hon. Dr. Rachel Nyamai, MP
Chairperson Departmental Committee on Lands

NATIONAL ASSEMBLY

CLERK'S CHAMBERS

DEPARTMENTAL COMMITTEE ON LANDS

Adoption list of the Report on the Inquiry into Alleged Irregularities in the Compensation for Part of L.R Number 7879/4 to M/S Afrison Import Export Ltd and Huelands Ltd by the National land Commission on behalf of the Ministry of Education for Acquisition of Land for Ruaraka High School and Drive Inn Primary School

DATE: 05/06/2018 **TIME:** 10:00 a.m **VENUE** 2nd Hurr, Continental House

NO	NAME	SIGNATURE
1.	The Hon. Dr. Rachael Nyamai, MP - **Chairperson**	
2.	The Hon. Khatib Mwashetani, MP - **Vice Chairperson**	
3.	The Hon. Jayne Wanjiru Kihara, MP	
4.	The Hon Joshua Kutuny Serem, MP	
5.	The Hon. Kimani Ngunjiri, MP	
6.	The Hon. Mishi Mboko, MP	
7.	The Hon. Omar Mwinyi Shimbwa, MP	
8.	The Hon. Ali Mbogo, MP	
9.	The Hon. Babu Owino, MP	
10.	The Hon. Caleb Kipkemei Kositany, MP	
11.	The Hon. Catherine Waruguru, MP	
12.	The Hon George Aladwa, MP	
13.	The Hon George Risa Sunkuyia,MP	

14.	The Hon. Jane Wanjuki Njiru,MP	
15.	The Hon. Josphat Gichunge Kabeabea, MP	
16.	The Hon. Owen Yaa Baya, MP	
17.	The Hon. Samuel Kinuthia Gachobe, MP	
18.	The Hon. Simon Nganga Kingara, MP	
19.	The Hon Teddy Mwambire, MP	

Minutes

MINUTES OF THE 48TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON TUESDAY 5th MAY 2018, AT COMMITTEE ROOM SECOND FLOOR, CONTINETAL HOUSE PARLIAMNET BUILDINGS, AT 10.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P **- Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Joshua Kutuny, M.P
4. Hon. Kimani Ngunjiri, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Caleb Kositany, M.P
7. Hon. George Risa Sunkuyia, M.P
8. Hon. Jane Wanjuki Njiru, M.P
9. Hon. Samuel Kinuthia Gachobe, M.P
10. Hon. Simon Nganga Kingara, M.P
11. Hon. Owen Yaa Baya, M.P
12. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Khatib Mwashetani, M.P **- Vice Chairperson**
2. Hon. Omar Mwinyi Shimbwa, M.P
3. Hon. Ali Mbogo, M.P
4. Hon. Catherine Waruguru, M.P
5. Hon. Josphat Gichunge Kabeabea, M.P
6. Hon. Babu Owino, M.P
7. Hon. George Aladwa, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY

Hon. Joseph Manje, M.P – Friend of the Committee

RESIDENTS OF KAJIADO NORTH CONSTITUENCY

1. Mr. S. Kimenjo, - Chairperson, Ongata Rongai Residents Association
2. Ms. Raria - V/Chairperson, Ongata Rongai Residents Association

3. Mr. Simon Gatheru - Chairperson, Merisho-Nkoru Residents Association
4. Mr. Moses Kimani - Ol- Keri resident
5. Mr. Francis Ngugi - Ongata Rongai resident
6. Ms. Carolyne Mbuthia - Constituency Office Manager

NATIONAL ASSEMBLY - SECRETARIAT

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Guliye - Clerk Assistant III
3. Ms. Jemimah Waigwa - Legal Counsel I
4. Mr. John Mungai - Audio Officer
5. Ms. Peris Kaburi - Serjeant At Arms

MIN. DCL/171/2018: PRELIMINARIES

The meeting was called to order at eighteen minutes past ten o'clock in the morning and prayers were said.

MIN. DCL/172/2018: CONFIRMATION OF MINUTES

i. The minutes of the 17th sitting held on Thursday 15th March 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Samuel Gachobe, M.P and Hon. Simon Kingara, M.P respectively;
ii. The minutes of the 18th sitting held on Thursday 22nd March 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Jane Njiru, M.P and Hon. George Sunkuyia, M.P respectively;
iii. The minutes of the 19th sitting held on Friday 23rd March 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. George Sunkuyia, M.P and Hon. Samuel Gachobe, M.P respectively;
iv. The minutes of the 20th sitting held on Friday 23rd March 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Simon Kingara, M.P and Hon. George Sunkuyia, M.P respectively;
v. The minutes of the 21st sitting held on Saturday 24th March 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Samuel Gachobe, M.P and Hon. George Sunkuyia, M.P respectively;
vi. The minutes of the 22nd sitting held on Tuesday 27th March 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Mishi Mboko, M.P and Jane Njiru M.P respectively;
vii. The minutes of the 23rd sitting held on Thursday 29th March 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. George Sunkuyia, M.P and Hon. Simon Kingara M.P respectively;

viii. The minutes of the 24th sitting held on Friday 6th April 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Mishi Mboko M.P and Hon. Teddy Mwambirie, M.P respectively;

ix. The minutes of the 25th sitting held on Friday 6th April 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Mishi Mboko M.P and Hon. Owen Baya, M.P respectively;

x. The minutes of the 26th sitting held on Saturday 7th April 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Simon Kingara, M.P and Hon. Teddy Mwambire, M.P respectively;

xi. The minutes of the 27th sitting held on Saturday 7th April 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Mishi Mboko M.P and Hon. Owen Baya, M.P respectively;

xii. The minutes of the 28th sitting held on Tuesday 10th April 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Mishi Mboko M.P and Hon. Owen Baya, M.P respectively;

xiii. The minutes of the 29th sitting held on Thursday 12th April 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Simon Kingara, M.P and Hon. Kimani Ngunjiri, M.P respectively;

xiv. The minutes of the 30th sitting held on Tuesday 17th April 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Mishi Mboko M.P and Hon. George Sunkuyia, M.P respectively;

xv. The minutes of the 31st sitting held on Thursday 19th April 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Owen Baya, M.P and Samuel Gachobe, M.P respectively; and

xvi. The minutes of the 32nd sitting held on Tuesday 24th April 2018 were confirmed as true record of the Committee's deliberations after it was proposed and seconded by Hon. Jane Njiru, M.P and Hon. Owen Baya, M.P respectively.

MIN. DCL/173/2018: MATTERS ARISING

i. Under Min. 074/2018 and Min. 094/2018;

The Committee noted that Ministry of Lands and Physical Planning and the National Land Commission had not reports on petitions by residents of Vipingo and Mt. Kenya squatters to the Committee as agreed in the said minutes.

The Secretariat were tasked to write to the Ministry and request them to submit the agreed upon documents.

ii. Under the 24th to the 27th sittings, Hon. Owen Baya MP was erroneously not recorded under the names of the members present.

MIN. DCL/174/2018: ADOPTION OF THE DRAFT REPORT ON THE INQUIRY INTO THE ALLEGED IRREGULAR COMPENSATION FOR PART OF LR NUMBER 7879/4 TO M/S AFRISON EXPORT IMPORT LTD AND HUELANDS LTD BY THE NATIONAL LAND COMMISSION ON BEHALF OF THE MINISTRY OF EDUCATION FOR ACQUISITION OF LAND FOR RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

The Committee considered and unanimously adopted the report on the inquiry into the alleged irregular compensation for part of L.R 7879/4 to M/S Afrison Export Import Limited and Huelands Limited by the National Land Commission on behalf of the Ministry of Education for acquisition of land for Ruaraka High School and Drive Inn Primary School with the following recommendations after it was proposed and seconded by Hon. Caleb Kositany, M.P and Hon. George Sunkuyia, M.P respectively;

(1) The Chairperson, Commissioners and other officers of the National Land Commission should take personal responsibility for-

(a) acting contrary to section 107(1) of the Lands Act, 2012 as the Ministry of Education made a request for compulsory acquisition of the land in question at the behest of the Commission and not on its own motion;

(b) acting contrary to section 112 of the Lands Act, 2012 by failing to conduct public participation through inquiry proceedings and failure to serve notices of the proceedings on interested persons including the two schools;

(c) acting contrary to section 121 of the Lands Act, 2012 by failing to secure the interests of the government on the land in terms of ensuring that the title documents in respect of the land being acquired were delivered to the Registrar of Lands and registered;

(d) acting contrary to Article 201(e) of the Constitution for irresponsible financial management for recommending the payment of Kshs. 1, 500, 000, 000 as part payment for the compulsory acquired land an amount that need not to have been paid noting the Commission had not even secured the interests of government on the land in terms of having the possession of the title documents of the said piece of land; and

(e) acting contrary to Article 201(d) of the Constitution for loss of public funds being Kshs. 48, 142, 200 over and above what Afrison Import Export Ltd and Huelands Ltd should have been paid and further allowing the use of public funds being Kshs. 1, 500, 000, 000 without securing the interests of the government in terms of taking possession of the title documents of the land in question.

(2) The Director of Criminal Investigations should investigate the Chairperson, Commissioners and other officers of the National Land Commission for -

(a) acting contrary to section 107(1) of the Lands Act, 2012 as the Ministry of Education made a request for compulsory acquisition of the land in question at the behest of the Commission and not on its own motion;

(b) acting contrary to section 112 of the Lands Act, 2012 by failing to conduct public participation through inquiry proceedings and failure to serve notices of the proceedings on interested persons including the two schools;

(c) acting contrary to section 121 of the Lands Act, 2012 by failing to secure the interests of the government on the land in terms of ensuring that the title documents in respect of the land being acquired were delivered to the Registrar and registered;

(d) acting contrary to Article 201(e) of the Constitution for irresponsible financial management for recommending the payment of Kshs. 1, 500, 000, 000 as part payment for the compulsorily acquired land an amount that need to have been paid noting the Commission had not even secured the interests of government on the land in terms of having the possession of the title documents of the said piece of land; and

(e) acting contrary to Article 201(d) of the Constitution for loss of public funds being Kshs. 48, 142, 200 over and above what Afrison Import Export Ltd and Huelands Ltd should have been paid and further allowing the use of public funds being Kshs. 1, 500, 000, 000 without securing the interests of the government in terms of taking possession of the title documents of the land in question.

(3) The Director of Criminal Investigations should investigate possible collusion by Afrison Import Export Ltd and Huelands with the National Land Commission, National Treasury and the Ministry of Education including failure to subdivide the land and protect government interests in the acquisition of various portions of LR. NO. 7879/4 with an intention to fleece and swindle public funds.

(4) The Director of Criminal Investigations should investigate the Directors of Afrison Import Export Ltd and Huelands for failure to comply with the Physical Planning Act No. 6 of 1996 which requires a person to surrender land for public utility and purpose during development of land with an intention to fleece and swindle public funds.

(5) Following conclusion of investigations by the Director of Criminal Investigations, the Director of Public Prosecutions should prosecute any public officer or person who may be implicated or suspected as having engaged in any corrupt and illegal activities in the compulsory acquisition of the land in question.

(6) The Ethics and Anti-Corruption Commission should take responsibility for loss of public funds amounting to Kshs. 1, 500, 000, 000 as part payment made by the National Land Commission to Afrison Import Export Ltd and Huelands for delay and failure to safeguard against the loss of the funds paid into the accounts belonging to Afrison Import Export Ltd and Huelands by failing to recommend on time the freeze the accounts holding the funds pending the conclusion of its investigations.

(7) The National Treasury should take responsibility for loss of public funds amounting to Kshs. 1, 500, 000, 000 as part payment made by the National Land Commission to Afrison Import Export Ltd and Huelands and for authorizing payment of Kshs. 1, 500, 000, 000 to Afrison Import Export Ltd and Huelands without an express request from the Ministry of Education.

(8) The National Land Commission should immediately secure the interests of the government on the land compulsorily acquired in portions of LR. No. 7879/4 by formally taking of possession of the title documents of the said land in accordance with the provisions of section 121 of the Lands Act, 2012.

MIN. DCL/175/2018: CONSIDERATION OF THE PETITION BY RESIDENTS OF KAJIADO REGARDING ALLEGED DISCREPANCY IN COMPENSATION OFFERED TO LAND OWNERS BY THE NATIONAL LAND COMMISSION

The Hon Joseph Manje, MP and the petitioners informed the Committee of the following in respect of the above petition;

i. In March 2018, the Ministry of Lands and Physical Planning provided comparable rates for land transactions on parcels of land acquired by the government for the development of the Standard Gauge Railway citing a Land Value Survey undertaken along the Standard Gauge Railway phase 11 (A) corridor which the National Land Commission was to adhere to;
ii. The comparable rates provided by the Ministry of Lands were inconsistent, given that the rates of the values of land provided for Kandisi area and Ngong area were largely divergent despite the close proximity between the two settlement areas;
iii. The comparable rates provided by the Ministry undervalued the land in Ilmerijo and Olkeri areas;
iv. The comparable rates provided by the Ministry have demonstrated inconsistency with the value of recent land transactions that have been undertaken in certain areas within Kajiado North Constituency; and

v. Efforts to persuade the relevant authorities to review the rates have borne no fruits.

The petitioners prayed that the Committee;

i. Recommends review of the comparable rates provided by the Ministry of Lands with the aim of up-valuing the rates provided for the Rongai Station to equal the value of the Ngong Station.
ii. Recommends that the value of land in Nkoroi and along the Nairobi – Magadi road be scaled up to match the values provided for Ngong' Area.
iii. Recommends scale up of the rates provided for Kandisi, Ilmerijo and Olkeri areas and ensure that the petitioner's plight are addressed.

Committee Observation

The Committee noted the grievances advanced by the petitioners and undertook to take up the matter with the relevant stakeholders.

MIN. DCL/176/2018: ANY OTHER BUSINESS (A.O.B)

The following members were nominated to participate in the forthcoming conference on Sustainable Town Planning in Singapore from 30th July to 3rd August 2018;

1. Hon. Rachael Nyamai, M.P - Chairperson
2. Hon. Kimani Ngunjiri, M.P
3. Hon. Kinuthia Gachobe, M.P
4. Hon. Owen Baya, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Jane Njiru, M.P
7. Hon. George Sunkuyia, M.P

MIN. DCL/177/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at twenty seven minutes past one o'clock in the afternoon.

Signature .....

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

(Chairperson)

Date..... 7/6/2018

MINUTES OF THE 43RD SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON SATURDAY 19TH MAY 2018, AT PRIDE INN RESORT, MOMBASA, AT 9.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Kimani Ngunjiri, M.P
6. Hon. Mishi Mboko, M.P
7. Hon. Omar Mwinyi Shimbwa, M.P
8. Hon. Ali Mbogo, M.P
9. Hon. Babu Owino, M.P
10. Hon. Caleb Kositany, M.P
11. Hon. Catherine Waruguru, M.P
12. Hon. George Risa Sunkuyia, M.P
13. Hon. Owen Yaa Baya, M.P
14. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. George Aladwa, M.P
2. Hon. Jane Wanjuki Njiru, M.P
3. Hon. Josphat Gichunge Kabeabea, M.P
4. Hon. Samuel Kinuthia Gachobe, M.P
5. Hon. Simon Nganga Kingara, M.P

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Leonard Machira	-	Clerk Assistant I
2.	Mr. Ahmad Adan Guliye	-	Clerk Assistant III
3.	Mr. Joash Kosiba	-	Senior Fiscal Analyst
4.	Ms. Jemimah Waigwa	-	Legal Counsel I
5.	Mr. Joseph Tiyan	-	Research Officer III
6.	Ms. Peris Kaburi	-	Serjeant At Arms
7.	Mr. John Mungai	-	Audio Officer

MIN. DCL/156/2018: PRELIMINARIES

The meeting was called to order at twenty-two minutes past nine o'clock in the morning and prayers were said.

MIN. DCL/157/2018: CONSIDERATION OF THE DRAFT REPORT ON THE INQUIRY INTO THE ALLEGED IRREGULAR COMPENSATION FOR PART OF LR NUMBER 7879/4 TO M/S AFRISON EXPORT IMPORT LTD AND HUELANDS LTD BY THE NATIONAL LAND COMMISSION ON BEHALF OF THE MINISTRY OF EDUCATION FOR ACQUISITION OF LAND FOR RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

The Committee considered the draft report on the inquiry into the alleged irregular compensation for part of L.R No. 7879/4 to M/S Afrison Export Import Ltd and Huelands Ltd by the National Land Commission on behalf of the Ministry of Education for acquisition of Land for Ruaraka High School and drive inn primary school and made the following findings;

1. Section 107(1) of the Lands Act No. 6 of 2012 provides that *"whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110, the respective Cabinet Secretary or the County Executive Committee shall submit a request for acquisition of public land to the Commission to acquire the land on its behalf.* Pursuant to the provisions of section 107(1) of the Lands Act, 2012 the Committee observed that the process of acquiring the land occupied by the two schools was initiated by the National Land Commission upon receiving a complaint from the Afrison Import Export Ltd and Huelands Ltd on alleged historical injustices. Further, although the Ministry of Education did eventually write to the Commission requesting that it does secure the interests in the land occupied by the two schools, this was done at the behest of the Commission. (See annexed letters from the National Land Commission and the Ministry of Education).

2. In light of paragraph (1) above, the Committee also did observe that there was no evidence in terms of correspondence by the Commission in response to the complaint on historical injustices by Afrison Import Export Ltd and Huelands Ltd. There also existed no evidence of communication between the Ministry of Education and Afrison Export Import Limited either informing the Ministry of the complaint or requesting the Ministry to make a request for compulsory acquisition of land as required by the law.

3. Further, the Committee observed that the Commission wrote to the Ministry of Education on 13th September, 2016 informing the Ministry on the complaint made by Afrison Import Export Ltd and Huelands Ltd. However, the Committee noted that it was not until five

months later being on 7th February 2017 did the Ministry of Education respond to the Commission advising the Commission to go ahead and secure their interests on the land by compulsorily acquiring the said land.

4. The Committee also observed that it was not clear from the valuation report of the Commission on what parameters or criteria other than stamp duty and the pricing of comparable properties was used by the Commission to ensure prudent use of public money as espoused in Article 201 of the Constitution in awarding Afrison Import Export Ltd and Huelands Ltd Kshs 3, 269, 040, 600 as compensation for land.

5. Article 10 of the Constitution provides that the state officers and public officers and all persons whenever any of them makes or implement public policy decisions shall be bound by the national values and principles of governance which include participation of the people. In furtherance of the objectives of public participation, section 112(1) of the Lands Act, 2012 requires the Commission at least thirty days after publishing the notice of intention to acquire land to conduct an inquiry to hear issues of propriety and claims for compensations by persons interested in the land and serve a notice of the notice on every person who appears to the Commission to be interested. The Committee observed that although the Commission presented evidence of the *Gazette* Notice, there is no evidence to show where and how the inquiry proceedings were conducted. Further, the Committee made filed visits to the schools which are interested in the matter under inquiry and the schools confirmed that they were never involved or informed of the inquiry proceedings. The Committee observed that there was also no evidence to show that the Commission did serve the aforementioned notices to the interested persons. The County Government of Nairobi also confirmed that it was never involved during any inquiry proceedings by the Commission.

6. The Committee also observed that there existed inconsistencies on the actual acreage of land being compulsorily acquired with the Commission submitting that the land acreage was 13.7701 acres while the documents tendered by Afrison Export Limited and the Ministry of Education indicated that the land was measuring 13.5364 acres revealing a 0.2337 acreage difference amounting to Kshs. 46, 082, 220 (this amount is 0.2337 multiplied by Ksh 206 million per acre being the rate/price that was used by the Commission) additional money paid to Afrison Export Limited over and above what the Company should have been paid contrary to Article 201(d) of the Constitution which provides that public money shall be used in a prudent and responsible way. (See valuation Report and Letter by Afrison Import Export Ltd & Huelands Ltd and Ministry of Education.

7. The Committee observed that although evidence was tabled to show that there was an allotment letter issued by the then Commissioner of Lands supposedly on the land currently being occupied by the two schools and a letter cancelling the alleged allocation by Afrison Import Export Ltd and Huelands Ltd, the Committee did not find any evidence to confirm that sub-division of the land did actually occur. Indeed, the Commission, the Ministry of Lands and the County Government of Nairobi confirmed that there was no sub-division that had occurred relating to the land occupied by the two schools. The Committee however observed that the only correspondences that existed on the alleged subdivision dated back to 1984 being conditional offer letter by the County Government, the rejection thereof of the conditions by Afrison Export Import Limited and a letter by Afrison Export Import Limited seeking to know whether the cancellation did take effect which is 33 years later from the date the alleged cancellation took place.

8. The Committee observed that the Attorney-General opinion on the two parcels of land was advisory in nature and only to the extent that the Commission could process the acquisition of the said land in accordance with the law. The Attorney-General observed that the question as to whether the due process of law was followed by the Commission in acquiring the land lay under the purview of the Commission and not the Attorney-General. In this regard, the Committee also noted with concern that the opinion had been sought by the Ministry of Education and not the Commission and it was made after gazettement of the notice to acquire the land had been done by the Commission.

9. The Committee also observed with concern that the Principal Secretary Ministry of Education also wrote to the Ministry of National Treasury seeking funds of the payment to be made to Afrison Import Export Ltd and Huelands Ltd prior to receiving advise from the Attorney-General.

10. The Committee observed that the two schools being Ruaraka Secondary School and Drive Inn Primary had occupied the land for an uninterrupted period of at least thirty-three years and there had been no case brought by Afrison Export Import Limited against the schools over the alleged illegal occupation by the two schools.

11. The Committee observed that the title for LR. No 7879/4 was jointly held by the official receiver and Messrs Harit Sheth and Co. Advocates, the advocates for the registered owner. Further, the official receiver in order to facilitate the issuance of a title for the land purchased by the government for the General Service Unit released the title, through a professional undertaking, to Messrs Harit Sheth and Co. Advocates. The advocates were supposed to facilitate the subdivision of the land and forward a duly executed conveyance and deed plan to the government for the 37.5 acres that had been paid for by the office of

the President, which they had done and the documents were awaiting the payment of stamp duty once the balance of the decretal sum was paid. The Committee further observed that the sum of Kshs. 150 million owed to the official receiver of Continental Credit Finance Ltd by Afrison Import Export Ltd and Huelands Ltd had not been paid despite the fact that the company had received Kshs. 4.37 billon from the government. This was mainly because the company had secured a conditional clause in the out of court settlement made with the government that stipulated that the sum was to be paid after the money owed to the company had been paid in full. Therefore, although the out of court agreement led to the reduction of award made by the court to Afrison Export Import Ltd and Hueland Ltd it disadvantaged the government in accessing ownership documents for the land it had already acquired from the company.

12. Despite paragraph (11) above, the Committee observed that the Commission did not secure the interests of the government in the land compulsorily acquired in terms of the formal taking of possession of the documents of title on the land contrary to section 121 of the Lands Act, 2012.

13. The Committee also observed that although the Ethics and Anti-Corruption Commission appeared before the Committee and did actually make submissions, the report submitted by the EACC on the issue under investigation was not comprehensive. The Committee also did observe that the EACC had not expedited in concluding on the investigations on the alleged irregular acquisition of the land which EACC became seized of in January, 2018.

14. Further, the Committee also observed that the Commission paid Kshs. 1, 500, 000, 000 to Whispering and Company Limited and not to Afrison Import Export Ltd and Huelands Ltd following request by the directors of latter. The Committee observed with concern that although Whispering and Company Limited is also owned by the directors of Afrison Export Import Limited the change of payment details was suspicious.

15. The Committee also observed that evidence presented indicated that LR. No. 7879/4 belonged to Afrison Import Export Ltd and Huelands Ltd save for the contradiction that an allotment letter had been issued to Ruaraka High School by the Commissioner of Lands.

16. The Committee further observed that there is lack of adequate consultation and coordination between various government agencies involved in compulsory acquisition of land in this case being the acquiring bodies, Ministry of Lands and Physical Planning and the Attorney-General's Office.

17. The Committee also observed that Afrison Import Export Ltd and Huelands had in the past been beneficiaries of compensation over acquisition of GSU land and other pieces of land

portraying lack of planning and management in compulsorily acquisition of land by the government evidenced by piecemeal, incomplete and staggered acquisition of portions of LR. No. 7879/4 land for public purpose. Further although the government had paid the company approximately Kshs. 4.37 billon for portions of the other pieces of land no transfer of ownership has been made to the government and in particular the Ministry of Interior and Coordination of National Government has never acquired the title document for the portion of land where the 196 General Service Unit houses are located despite the fact that payments of Kshs. 64.000,000 were made to the defunct the Kenya Posts and Telecommunication which Afrison Import Export Ltd and Huelands Ltd acknowledged to have transferred the houses to the corporation.

18. Article 201(e) of the Constitution provides that financial management shall be responsible and fiscal reporting shall be clear. The Committee however observed that the National Treasury approved the spending of Kshs.1, 500, 000, 000 being the amount paid to Afrison Export Import Ltd and Huelands Ltd which was to be not provided in the Annual Estimates but was in the second Supplementary Estimates for the 2017/18 Finanacial Year. The expenditure was foreseeable and not urgent. Thus displaying poor financial management by the government entities. The Committee further observed that the payment seems to have been made in haste raising suspicions on the integrity of the process.

19. The Committee also observed that the Land Value Index Bill, 2018 once passed into law will guide and provide an elaborate framework for governing compulsory acquisition processes to deal with issues such as unharmonized pricing of property leading to exorbitant compensation of private owners of property.

MIN. DCL/158/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at forty-three minutes past twelve o'clock in the afternoon.

Signature .....

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

(Chairperson)

Date..... 7/6/2018

MINUTES OF THE 40TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON THURSDAY 17TH MAY 2018, AT CPA ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Joshua Kutuny, M.P
3. Hon. Caleb Kositany, M.P
4. Hon. Kimani Ngunjiri, M.P
5. Hon. Owen Yaa Baya, M.P

APOLOGIES

1. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Omar Mwinyi Shimbwa, M.P
4. Hon. Mishi Mboko, M.P
5. Hon. Ali Mbogo, M.P
6. Hon. Babu Owino, M.P
7. Hon. Teddy Mwambire, M.P
8. Hon. Catherine Waruguru, M.P
9. Hon. George Aladwa, M.P
10. Hon. George Risa Sunkuyia, M.P
11. Hon. Jane Wanjuki Njiru, M.P
12. Hon. Samuel Kinuthia Gachobe, M.P
13. Hon. Simon Nganga Kingara, M.P
14. Hon. Josphat Gichunge Kabeabea, M.P

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Adan Guliye - Clerk Assistant III
3. Ms. Jemimah Waigwa - Legal Counsel I
4. Mr. Joseph Tiyan - Research Officer III
5. Ms. Peris Kaburi - Serjeant At Arms
6. Mr. John Mungai - Audio Officer

NAIROBI COUNTY GOVERNMENT

1. Mr. Charles Kerich - Committee Executive Member
2. Mr. Justus Kahtenge - Chief Officer, Urban Planning
3. Mr. Bryan Yongo - Principal Advisor to Governor

MIN. DCL/147/2018: PRELIMINARIES

The meeting was called to order at seventeen minutes past ten o'clock in the morning, prayers were said and thereafter introductions were made.

MIN. DCL/148/2018: PRESENTATION BY THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR LANDS, NAIROBI CITY COUNTY ON ALLEGED IRREGULAR PAYMENTS FOR ACQUISITION OF LAND FOR DRIVE INN PRIMARY AND RUARAKA SECONDARY SCHOOLS IN RUARAKA

The County Executive Committee Member for Lands of the Nairobi City County informed the Committee of the following, that;

i. Through a letter dated 28th March 1984 ref. CPD/0644/7879/4, the then Nairobi City Council communicated its position to Ms. Drive In Estate Developers Limited on a conditional surrender of 10% of the land for social amenities for subdivision to be undertaken on plot L.R NO. 7879/4;
ii. M/S Drive Estate Developers Limited rejected the conditionality of the subdivision through a letter dated April 5th, 1984 and requested for the cancellation of the scheme;
iii. The General Service Unit through the office of the President requested the then Commissioner of lands to process a title deed for part L.R No. 7879/4 that is currently occupied by the General Service Unit Houses through a letter dated 26th May 2000.
iv. The excision was regularized by the Nairobi City County through a subdivision done on 2nd August 2013.
v. The Nairobi City County Government had not found any evidence of approval for the constructions of Drive Inn Primary School and Ruaraka High School nor has it established any Approval subdivision for the parcels of land accommodating the two schools.
vi. According to the Committee Executive Committee Member the parcel of land currently occupied by the two schools was public land.

Committee Observation

The Committee noted that the County Executive Committee Member could not produce documents to support the allegation land currently occupied by the two schools was public land.

vii. The Committee asked the Member to submit to the Committee documents detailing who was paying land rents for the land to occupied by the two school and the neighbouring residences.

MIN. DCL/148/2018: MEETING WITH MR. JACKSON NGARI NGUYU ON ADVERSE MENTION IN AN AFFIDAVIT BY THE MR. FRANCIS MBURU ON 26TH APRIL 2018 IN A SESSION WITH THE COMMITTEE.

The Committee accorded audience to Mr. Jackson Ngari Nguyu, who had requested for a meeting after allegedly been adversely mentioned in an affidavit by Mr. Francis Mburu in a meeting with the Committee on 26th April 2018.

Mr. Ngari Nguyu in a sworn affidavit and through oral submissions, averred the following before the Committee that;

i. He met Mr. Francis Mburu more than 30 years ago to assist him on a private investigation.
ii. He helped Mr. Mburu get custody of his children after his divorce with his wife.
iii. He did several businesses together with Mr. Mburu including matters to do with his property disputes.
iv. He proposed for him Mr. Nicholas Nyamai to act as his advocate.
v. He and Mr. Nyamai had formed a company abbreviated as NIJU (Nichoals and Julius) Limited to act as nominee for Nicholas and Company advocates where all matters legal will be handled by Mr. Nyamai and all matters administrative would be handled by Mr. Julius Nguyu and all monies be deposited in the account of NIJU Limited.
vi. Mr. Mburu ceased making payments to NIJU Limited accounts and instead deposited monies that were to be paid to NIJU directly to the personal accounts of Mr. Nicholas Nyamai.
vii. Upon demanding why monies had been diverted to other accounts, he received threats from Mr. Mburu and reported the same at the Kileleshwa Police Station through OB No. 28/24/03/18.
viii. There was a threat to his life and should anything happen to him and or his family, one Mr. Mburu should be held responsible.
ix. He was not an extortionist and had never extorted money from anyone whatsoever.
x. He requests the Committee to accord him security as his life and that of his family are in imminent danger.

Committee Observation

The Committee noted that the submissions made by Mr. Julius Jackson Ngari Nguyu were not related to the Committee inquiry on acquisition of land for Ruaraka High School and Drive Inn Primary School and advised him to seek assistance from the relevant agencies regarding the threat of his security.

MIN. DCL/149/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at twelve minutes past twelve o'clock in the afternoon.

Signature .....

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

(Chairperson)

Date.....7/6/2018.....

MINUTES OF THE 39TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON TUESDAY 15TH MAY 2018, AT COMMITTEE ROOM 2ND FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 2.30 P.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Joshua Kutuny, M.P
4. Hon. Ali Mbogo, M.P
5. Hon. Owen Yaa Baya, M.P

APOLOGIES

1. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
2. Hon. Omar Mwinyi Shimbwa, M.P
3. Hon. Mishi Mboko, M.P
4. Hon. Babu Owino, M.P
5. Hon. Caleb Kositany, M.P
6. Hon. Teddy Mwambire, M.P
7. Hon. Kimani Ngunjiri, M.P
8. Hon. Catherine Waruguru, M.P
9. Hon. George Aladwa, M.P
10. Hon. George Risa Sunkuyia, M.P
11. Hon. Jane Wanjuki Njiru, M.P
12. Hon. Samuel Kinuthia Gachobe, M.P
13. Hon. Simon Nganga Kingara, M.P
14. Hon. Josphat Gichunge Kabeabea, M.P

NAIROBI CITY COUNTY GOVERNMENT

1. Mr. Charles Kerich - Committee Executive Member, Nairobi City County
2. Mr. Bryan Yongo - Principal Advisor to Governor, Nairobi County

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Adan Guliye - Clerk Assistant III

3.	Mr. Joseph Tiyan	-	Research Officer III
4.	Ms. Peris Kaburi	-	Serjeant At Arms
5.	Mr. John Mungai	-	Audio Officer

MIN. DCL/144/2018: PRELIMINARIES

The meeting was called to order at nine minutes to three o'clock in the afternoon, prayers were said and thereafter introductions were made.

MIN. DCL/145/2018: PRESENTATION BY THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR LANDS, NAIROBI CITY COUNTY ON ALLEGED IRREGULAR PAYMENTS FOR ACQUISITION OF LAND FOR DRIVE INN PRIMARY AND RUARAKA SECONDARY SCHOOLS IN RUARAKA

The County Executive Committee Member for Lands of the Nairobi City County informed the Committee that the Governor was engaged on other activities and requested the Committee to give him another date.

Committee Observation

The Committee registered its dissatisfaction with the manner in which the County Government responded to the Committee's invite and asked the County Executive Committee Member to inform Governor to appear before the Committee on Thursday 17th May 2018 at 10.00 a.m.

MIN. DCL/146/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past three o'clock in the afternoon.

Signature .....

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

(Chairperson)

Date.....7/6/2018.....

MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON TUESDAY 15TH MAY 2018, AT COMMITTEE ROOM 2ND FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Joshua Kutuny, M.P
4. Hon. Mishi Mboko, M.P
5. Hon. Ali Mbogo, M.P
6. Hon. Babu Owino, M.P
7. Hon. Caleb Kositany, M.P
8. Hon. Owen Yaa Baya, M.P
9. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
2. Hon. Omar Mwinyi Shimbwa, M.P
3. Hon. Kimani Ngunjiri, M.P
4. Hon. Catherine Waruguru, M.P
5. Hon. George Aladwa, M.P
6. Hon. George Risa Sunkuyia, M.P
7. Hon. Jane Wanjuki Njiru, M.P
8. Hon. Samuel Kinuthia Gachobe, M.P
9. Hon. Simon Nganga Kingara, M.P
10. Hon. Josphat Gichunge Kabeabea, M.P

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Leonard Machira	-	Clerk Assistant I
2.	Mr. Ahmad Adan Guliye	-	Clerk Assistant III
3.	Ms. Jemimah Waigwa	-	Legal Counsel I
4.	Mr. Joseph Tiyan	-	Research Officer III
5.	Ms. Peris Kaburi	-	Serjeant At Arms
6.	Mr. John Mungai	-	Audio Officer

MINISTRY OF EDUCATION

1. Dr. Belio Kipsang	-Principal Secretary, State Department of Early Learning and Basic Education
2. Mr. Andrew Rukaria	-Director of Administration, Early Learning and Basic Education
3. Ms. Chirchir Faith	-Legal Counsel, State Department of Early Learning and Basic Education

MIN. DCL/141/2018: PRELIMINARIES

The meeting was called to order at seventeen minutes past ten o'clock, prayers were said and thereafter introductions were made.

MIN. DCL/142/2018: MEETING WITH THE PRINCIPAL SECRETARY, STATE DEPARTMENT OF ERALY LEARNING AND BASIC EDUCATION ON ALLEGED IRREGULAR PAYMENTS FOR ACQUISITION OF LAND FOR DRIVE INN PRIMARY AND RUARAKA SECONDARY SCHOOLS IN RUARAKA

The Principal Secretary, State Department of Early Learning and Basic Education informed the Committee of the following in respect of the above matter;

i. The National Land Commission initiated the request for compensation in a letter dated 13th September 2016 in response to an alleged complaint from Afrison Export and Import Limited.
ii. The Commission indicated that they done due diligence and the owners of the compensated as per the provisions of the part VIII of the Land Act, 2012 on compulsory acquisition.
iii. The Commission indicated that the two schools occupy 13.5364 acres valued at Kshs. 3,269,040,600 inclusive of 15% disturbance allowance.
iv. The Ministry of Education sought the advice of the Attorney General on 29th June 2017 as part of ensuring that due process has been followed.
v. On 30th June 2017, the Ministry of Education forwarded to the National Treasury the request for compensation by the National Land Commission and indicated that the Ministry of Education was awaiting the legal opinion of the Attorney General in respect of the matter beforehand. The opinion of the AG dated 7th July 2017 was sent to the National Treasury on 18th July 2018.
vi. On 13th November 2017, the National Treasury authorized the Ministry of Education to spend 1,500,000,000 in the compulsory acquisition of part of LR No. 7879/4 pending

regularization of the expenditure in the 2017/0218 supplementary II estimates. The balance is to be factored from 2018/2019 budget.

vii. The Ministry initiated the process of transferring the funds to the National Land Commission on 11th December 2017 by requesting exchequer from the National Treasury. The exchequer reflected on the Ministry's account on 11th January 2018.

viii. Upon receipt of the requisite documents, the Ministry wired the money to the accounts of the National Land Commission on 19th January 2018.

ix. On 15th February 2018, the National Land Commission confirmed disbursements of the funds to the land owners.

x. The Ministry requested the National Land Commission to secure the interest of the schools since partial payments have been met.

Committee Observations

The Committee observed the following;

i. The National Land Commission initiated the compensation process contrary to an earlier claim by made by the Commission that Ministry of Education initiated the compensation process;

ii. There were conflicting reports on the actual acreage of the two schools with Afrison claiming the schools sit on 13.564 acres of land while the valuation report of the National Land Commission indicating the schools share a parcel of land measuring 13.7701 acres; and

iii. The Committee directed the Principal Secretary to authenticate the actual acreage of the schools' land and report back to the Committee by close of business Wednesday 16th May 2018.

MIN. DCL/143/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past eleven o'clock in the morning.

Signature .....

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

(Chairperson)

Date..... 7/6/2018

MINUTES OF THE 37TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON THURSDAY 3RD MAY 2018, AT COMMITTEE ROOM 2ND FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 11.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Kimani Ngunjiri, M.P
6. Hon. Mishi Mboko, M.P
7. Hon. Ali Mbogo, M.P
8. Hon. Caleb Kositany, M.P
9. Hon. Catherine Waruguru, M.P
10. Hon. George Aladwa, M.P
11. Hon. George Risa Sunkuyia, M.P
12. Hon. Jane Wanjuki Njiru, M.P
13. Hon. Owen Yaa Baya, M.P
14. Hon. Samuel Kinuthia Gachobe, M.P
15. Hon. Simon Nganga Kingara, M.P
16. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Omar Mwinyi Shimbwa, M.P
2. Hon. Babu Owino, M.P
3. Hon. Josphat Gichunge Kabeabea, M.P

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira	-	Clerk Assistant I
2. Mr. Ahmad Adan Guliye	-	Clerk Assistant III
3. Ms. Jemimah Waigwa	-	Legal Counsel I
4. Mr. Joseph Tiyan	-	Research Officer III
5. Ms. Winnie Kizziah	-	Media Relations Officer III
6. Ms. Peris Kaburi	-	Serjeant At Arms
7. Mr. John Mungai	-	Audio Officer

ETHICS AND ANTI-CORRUPTION COMMISSION

1. Ms. Rose Macharia	-	Commissioner
2. Mr. Abdi Mohamud	-	Director, Investigations
3. Mr. Stephen Karuga	-	Legal Officer
4. Mr. Yassin Amaro	-	

MIN. DCL/138/2018: PRELIMINARIES

The meeting was called to order at twenty minutes past eleven o'clock, prayers were said and thereafter introductions were made.

MIN. DCL/139/2018: MEETING WITH THE CHAIRPERSON ETHICS AND ANTI-CORRUPTION COMMISSION ON ALLEGED IRREGULAR PAYMENTS FOR ACQUISITION OF LAND FOR DRIVE INN PRIMARY AND RUARAKA SECONDARY SCHOOLS IN RUARAKA

Ms. Rose Macharia, a Commissioner at the Ethics and Anti- Corruption Commission represented the Chairperson of the Commission during the meeting. She was accompanied by Mr. Abdi Mohamud, the Director, Investigations. They informed the Committee that the Commission was seized of the matter touching on a parcel of land reference No. 7879/4 in which the National Land Commission sought to compensate the purported owners. The said land was occupied by Ruaraka High School and Drive Primary School. She outlined the status of investigations into the matter as follows:

i. Documents had been collected from concerned public institutions;
ii. Valuation of the property had been undertaken and statements recorded from most of the witnesses;
iii. The National Land Commission have so far paid 1.5 billion shillings and payment of the remainder of 1.7 billion have been stopped by the Ethics and Anti-Corruption Commission; and
iv. Investigations were still ongoing, and the Commission will be prejudiced to share classified information.

However, the representatives of the Ethics and Anti- Corruption Commission were reluctant to provide more information to the Committee regarding the matter stating that it would compromise the integrity of the on- going investigations

Committee Observations

i. The Committee observed that the information submitted by the Commission was not satisfactory and directed that the Commission submits to the Committee a confidential report on the matter in its possession by Thursday 10th May 2018;

ii. The Committee reminded the Commission that Parliament and Ethics and Anti-Corruption Commission play complementary roles; and

iii. The Committee resolved to invite the following institutions on Tuesday 15th May 2018 and retreat on Thursday 17th May 2018 to write its report on the matter beforehand.

   a. Ministry of Education at 10.00 a.m.
   b. The County Government of Nairobi at 2.30 p.m.

MIN. DCL/140/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past twelve o'clock in the afternoon.

Signature .....

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

(Chairperson)

Date..... 7/6/2018

MINUTES OF THE 34TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON THURSDAY 26TH APRIL 2018, AT COMMITTEE ROOM 5TH FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Joshua Kutuny, M.P
4. Hon. Kimani Ngunjiri, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Ali Mbogo, M.P
7. Hon. George Risa Sunkuyia, M.P
8. Hon. Jane Wanjuki Njiru, M.P
9. Hon. Owen Yaa Baya, M.P
10. Hon. Samuel Kinuthia Gachobe, M.P
11. Hon. Simon Nganga Kingara, M.P
12. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Jayne Kihara, M.P
2. Hon. Omar Mwinyi Shimbwa, M.P
3. Hon. Caleb Kositany, M.P
4. Hon. Catherine Waruguru, M.P
5. Hon. George Aladwa, M.P
6. Hon. Babu Owino, M.P
7. Hon. Josphat Gichunge Kabeabea, M.P

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Adan Guliye - Clerk Assistant III
3. Ms. Jemimah Waigwa - Legal Counsel I
4. Mr. Joseph Tiyan - Research Officer III
5. Ms. Winnie Kizziah - Media Relations Officer III
6. Mr. John Mungai - Audio Officer

OFFICE OF THE ATTORNEY GENERAL

1.	Hon. Justice(Rtd) Kihara Kariuki	-	Attorney General
2.	Mr. Waigi Kamau	-	Office of the Attorney General
3.	Mr. Oscar Eredi	-	Office of the Attorney General
4.	Mr. Emanuel Bitta	-	Office of the Attorney General

AFRISON IMPORT EXPORT LIMITED

1.	Mr. Francis Mburu,	-	Managing Director
2.	Mr. N.R Nyamai	-	Advocate
3.	Mr. Justus Mutava	-	Legal Assistant
4.	Mr. Hamu Kingoo	-	Legal Assistant
5.	Mr. Ben Matheka	-	Legal Assistant

MIN. DCL/128/2018: PRELIMINARIES

The meeting was called to order at twelve minutes past ten o'clock, prayers were said and thereafter introductions were made.

MIN. DCL/129/2018: MEETING WITH THE ATTORNEY GENERAL ON ALLEGED IRREGULAR PAYMENTS FOR ACQUISITION OF LAND FOR DRIVE INN PRIMARY AND RUARAKA SECONDARY SCHOOLS IN RUARAKA

The Attorney General informed the Committee of the following in respect of the above matter;

i. LR No. 7879/4 was originally owned by Joreth Limited who sold it to Afrsion Import Export Limited and Huelands Limited in equal shares on 30th December 1981. The size of the parcel of land is 96 acres.

ii. On the same day of acquiring the land, the developers borrowed Ksh. 21,000,000.00 from Continental Credit Finance Ltd (under liquidation) and a mortgage to secure the lending was registered against the title.

iii. The title was jointly held by the official receiver and Messrs Harit Sheth and Co. Advocates, the advocates of the registered proprietor.

iv. All the encumbrances on L.R No. 7879/4 were vacated and the land sub-divided as follows;

   a. L.R No. 7879/24 measuring 37.5 acres to be registered in favour of the government for the acquisition of land for the General Service Unit.

   b. L.R. N.o. 7879/25 measuring 58.5 acres being the remaining portion of the 96 acres after the sale to vest to Afrison Import Export and Huleands Limited.

v. The involvement of the office of the Attorney General in the process of acquisition of land for Drive Inn Primary and Ruaraka Secondary was limited to the advisory opinion that was issued on 7th July 2017.

MIN. DCL/130/2018: MEETING WITH THE MANAGING DIRECTOR, AFRISON EXPORT IMPORT AND HUELANDS LIMITED ON ALLEGED IRREGULAR PAYMENTS FOR ACQUISITION OF LAND FOR DRIVE INN PRIMARY AND RUARAKA SECONDARY SCHOOLS IN RUARAKA

The Managing Director, Afriosn Export Import and Huelands Limited informed the Committee of the following in respect of the above matter;

i. Afrison Export Import and Huelands Limted acquired the land L.R No. 7879/4 in 1981 from Joreth Limited;
ii. The parcel of land L.R. No. 7879/4 measuring 96 acres had been subdivided into two parcels of land namely; L.R No. 7878/24, the portion occupied by the General Service Unit with an acreage of 37.5 acres and L.R No. 7879/25, the remainder of the portion after excision of LR. No. 7879/25 which belongs to Afrison Export Import and Huelands Limited;
iii. The land occupied by Drive Inn Primary School and Ruaraka Secondary School measures 13.5364 acres and is part of L.R No. 7879/25;
iv. Known individuals had been blackmailing the Directors of Afrsion Exoport Import and Huelands Limited;
v. The said inidviduals were; Meshack Onyango Dehay, George Onduto and Julius Ngare Nguyu;
vi. The title was in the custody of the official receiver and the advocate of the companies; and
vii. He was ready to refund the money paid by the National Land Commission for the land occupied by the two schools if the government would relocate the schools.

MIN. DCL/131/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at seven minutes past one o'clock.

Signature .....

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

(Chairperson)

Date.....7/6/2018.....

MINUTES OF THE 32ND SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON TUESDAY 24TH APRIL 2018, AT COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, MP - **Chairperson**
2. Hon. Khatib Mwashetani, MP - **Vice Chairperson**
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Kimani Ngunjiri, M.P
6. Hon. Mishi Mboko, M.P
7. Hon. Ali Mbogo, M.P
8. Hon. Caleb Kositany, M.P
9. Hon. Catherine Waruguru, M.P
10. Hon. George Aladwa, M.P
11. Hon. George Risa Sunkuyia, M.P
12. Hon. Jane Wanjuki Njiru, M.P
13. Hon. Owen Yaa Baya, M.P
14. Hon. Samuel Kinuthia Gachobe, M.P
15. Hon. Simon Nganga Kingara, M.P
16. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Omar Mwinyi Shimbwa, M.P
2. Hon. Babu Owino, M.P
3. Hon. Josphat Gichunge Kabeabea, M.P

IN ATTENDANCE

AFRISON EXPORT IMPORT LIMITED

1. Eng. Omari Harrison - General Manager
2. Mr. N. R Nyamai - Advocate
3. Mr. Joe Nzioka - Advocate
4. Mr. Justice Mutava - Legal Assistant
5. Mr. HamsaKingoo - Legal Assistant
6. Mr. Bernard Matheka - Legal Assistant

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira	-	Clerk Assistant I
2. Mr. Ahmad Adan Guliye	-	Clerk Assistant III
3. Ms. JemimahWaigwa	-	Legal Counsel I
4. Mr. Joseph Tiyan	-	Research Officer III
5. Ms. Winnie Kizziah	-	Media Relations Officer III
6. Mr. John Mungai	-	Audio Recording Officer
7.		

MIN. DCL/122/2018: PRELIMINARIES

The meeting was called to order at two minutes past twelve o'clock, prayers were said and thereafter introductions were made.

MIN. DCL/123/2018: MEETING WITH THE MANAGING DIRECTOR AFRISON IMPORT EXPORT LIMITED AND HUELANDS LIMITED ON ALLEGED IRREGULAR PAYMENTS FOR ACQUISITION OF LAND FOR DRIVE INN PRIMARY AND RUARAKA SECONDARY SCHOOLS IN RUARAKA

The representatives of Afrison Import and Export Limited informed the Committee that the Managing Director of Afrison Export and Import Limited and Huelands Limited one Mr. Francis Mburu was indisposed and was not in position to attend the meeting as scheduled and he had conferred a special power of Attorney to Mr. Nicholas Ruben Nyamai to act on his behalf and give representations to the Committee in respect of the matter.

Committee resolution

The Committee noted that the reasons advanced by the representatives of Afrison Limited in respect of the absence of Managing Director were not satisfactory given that the two firms had more than one director and if one was indisposed the others would honour the invitation by the Committee.

The Committee resolved to invite all the four directors of the two firms to appear before the Committee on Thursday 26th April 2018 at 11.00 a.m.

MIN. DCL/124/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at thirteen minutes past one o'clock.

Signature .....

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

(Chairperson)

Date...5/6/2018.....

MINUTES OF THE 31ST SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON THURSDAY 19TH APRIL 2018, AT THE MAIN CHAMBER, PARLIAMENT BUILDINGS AT 10.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P **- Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Joshua Kutuny, M.P
4. Hon. Kimani Ngunjiri, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Omar Mwinyi Shimbwa, M.P
7. Hon. Ali Mbogo, M.P
8. Hon. Catherine Waruguru, M.P
9. Hon. Josphat Gichunge Kabeabea, M.P
10. Hon. George Risa Sunkuyia, M.P
11. Hon. Owen Yaa Baya, M.P
12. Hon. Samuel Kinuthia Gachobe, M.P
13. Hon. Simon Nganga Kingara, M.P
14. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Khatib Mwashetani, M.P **- Vice Chairperson**
2. Hon. Jane Wanjuki Njiru, M.P
3. Hon. Babu Owino, M.P
4. Hon. Caleb Kositany, M.P
5. Hon. George Aladwa, M.P

IN ATTENDANCE

AFRISON EXPORT IMPORT LIMITED

1.	Eng. Omari Harrison	-	General Manager, Afrison Limited
2.	Mr. N. R Nyamai	-	Advocate
3.	Mr. Joe Nzioka	-	Advocate
4.	Mr. Justice Mutava	-	Assistant
5.	Mr. Hamsa Kingoo	-	Assistant
6.	Mr. Bernard Matheka	-	Assistant

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira	-	Clerk Assistant I
2. Mr. Ahmad Adan Guliye	-	Clerk Assistant III
3. Mr. Joash Kosiba	-	Fiscal Analyst I
4. Ms. Jemimah Waigwa	-	Legal Counsel I
5. Mr. Joseph Tiyan	-	Research Officer III
6. Ms. Winnie Kizziah	-	Media Relations Officer III
7. Ms. Peris Kaburi	-	Serjeant At Arms
8. Mr. John Mungai	-	Audio Officer

MIN. DCL/117/2018: PRELIMINARIES

The meeting was called to order at twenty-two minutes to ten o'clock and prayers were said and thereafter introductions were made.

MIN. DCL/118/2018: MEETING WITH THE MANAGING DIRECTOR AFRISON IMPORT EXPORT LIMITED AND HUELANDS LIMITEDION ON ALLEGED IRREGULAR COMPENSATION OF LR 2779/4 FOR ACQUISTION OF LAND FOR DRIVE INN AND RUARAKA SCHOOLS

Mr. N. R Nyamai and Mr. Joe Nzioka informed the Committee that they were advocates representing the Directors of Afrison Import Export Limited and Huelands limited and had been authorized by the firm to make submissions on behalf of the Directors.

The Committee noted that it was imperative for the Managing Director to appear before the Committee in person and hence resolved that the Managing Director of Afrison Import and Export Limited one Mr. Francis Mburu appears in person before the Committee on Tuesday, 24th April 2018 at 11.00 a.m.

MIN. DCL/119/2018: BRIEFING ON THE SECOND 2017/2018 SUPPLEMETNARY ESTIMATES

The Fiscal Analyst briefed the Committee on the second 2017/2018 Supplementary Estimates and highlighted the following;

i. The approved gross expenditure estimates (after supplementary estimates no. 1) for the Ministry of Lands and Physical Planning for the FY 2017/2018 was Ksh. 5.875

billion comprising of Ksh. 2.312 billion for current expenditures and Ksh. 3.563 billion for capital expenditures;

ii. The proposed supplementary expenditure estimates No. 2 of the FY 2017/18 reduced the total gross approved budget for the Ministry to Ksh. 5.126 billion comprising of Ksh. 2.329 billion for current expenditures and Ksh. 2.797 billion for capital expenditures. The gross reduction in the Ministry's total gross expenditure estimates was Ksh. 748,979,266 representing an overall total expenditure estimates reduction of approximately 12.7 percent;

iii. The increase in the total gross current expenditures of Ksh. 16.8 million included an increment of Ksh. 9.2 million to cater for personnel emoluments shortfall, and Ksh. 7.6 million to cater for service gratuity. The total gross reduction in capital expenditure is Ksh. 765.78 million has been occasioned by the budget rationalization;

iv. The approved gross expenditure estimates (after supplementary estimates no. 1) for the National Land Commission (NLC) was Ksh. 1.093 billion for current expenditure;

v. The proposed supplementary expenditure estimates No. 2 of the FY 2017/18 increases the gross total expenditure estimates for the NLC to Ksh. 1.307 billion comprising of Ksh. 1.134 billion for current expenditure estimates and Ksh. 173 million for capital expenditure estimates;

vi. The increase in current expenditure estimates of Ksh. 40.4 million composed of Ksh. 9.2 million to cater for shortfall in salaries; Ksh. 16 million to cater for operations and maintenance; and Ksh. 15. Million to cater for service gratuity. The increase in capital expenditure of Ksh. 173 million is to cater for outstanding commitment and implementation of the National Land Information Management System. The total actual expenditures for the National Land information systems stood at Ksh. 28,088,827 as at 31st March 2018 while commitments on the same stood at Ksh. 59,156, 828;

Committee Observations

The Committee observed the following on the brief

i. The Ministry needed to provide a list of all 12 land registries that were to be digitized including the two that will be affected by the reduction in the budget;

ii. The Ministry and the National Land Commission should harmonize the land information management systems to reduce duplications and work towards a comprehensive unified land information management system for the country;

iii. The Ministry should provide a brief on the status of the Physical Planning handbook;

iv. The target of settling 50 squatters in the Financial Year 2017/18 seemed to be on the lower side. The Ministry should clarify whether this was the actual target and how many squatters

had been settled in the FY 2017/2018 and measures put in place to ensure all squatters in the country are settled;

v. The NLC needed to provide to the committee status reports number of researched and disseminated land reports; and the number of advocacy programmes developed and disseminated by the commission;

vi. The NLC should provide to the Committee a status report on the status of the draft guidelines for sustainable development and the regulations on natural resources;

vii. The NLC should appraise the Committee on the state of land use planning reports in Kenya.

viii. The NLC should provide to the committee status reports on the number of applications so far received from acquiring bodies (under compulsory acquisition), and the status of development of the Rules and regulations to guide compulsory acquisitions;

ix. The NLC should provide to the committee status reports on the adjudicated sections in Mweke, and No. of adjudicated sections 20 25 25 Simakeni, Kitengwani in Kilifi, Karare and Hulahula in Marsabit; and the status of settlement of squatters in Teita 12,000 15,000 15,000 Settlement Scheme, Manda and Mkokoni in Lamu County, Chakama Phase II, Bureni Phase I & II and Gongoni in Kilifi County (The target was to ensure 12,000 squatters settled in 2017/201);

x. The NLC should provide to the committee status reports on the number and location of schools that have benefited from the school titling programme; and

xi. The Committee resolved to invite the Cabinet Secretary, Ministry of Lands and Physical Planning and the Chairperson, National Land Commission for a meeting on Wednesday 26th April 2018 at 10.00 a.m to e on the second 2017/2018 Supplementary Estimates.

MIN. DCL/120/2018: ANY OTHER BUSINESS (A.O.B)

The Committee nominated the following members to undertake a trip to Turkey with the Institute of Surveyors of Kenya to attend the International Surveyors Federation (FIG) Congress from 6th to 11th May 2018.

1. Hon. Jayne Kihara, M.P
2. Hon. Ali Mbogo, M.P
3. Hon. Simon Kingara, M.P

MIN. DCL/121/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at three minutes to twelve noon.

Signature .....

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

(Chairperson)

Date..... 6/5/2018

MINUTES OF THE 30TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON TUESDAY 17TH APRIL 2018, AT THE MINI CHAMBER, PARLIAMENT BUILDINGS AT 10.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Kimani Ngunjiri, M.P
6. Hon. Mishi Mboko, M.P
7. Hon. Omar Mwinyi Shimbwa, M.P
8. Hon. Ali Mbogo, M.P
9. Hon. Jane Wanjuki Njiru, M.P
10. Hon. Owen Yaa Baya, M.P
11. Hon. George Risa Sunkuyia, M.P
12. Hon. Josphat Gichunge Kabeabea, M.P
13. Hon. Samuel Kinuthia Gachobe, M.P
14. Hon. Simon Nganga Kingara, M.P
15. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Babu Owino, M.P
2. Hon. Caleb Kositany, M.P
3. Hon. Catherine Waruguru, M.P
4. Hon. George Aladwa, M.P

IN ATTENDANCE

MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Ms. Farida Karoney - Cabinet Secretary, Ministry of Lands and Physical Planning
2. Dr. Nicholas Muraguri - Principal Secretary, State Department of Lands and Physical Planning.
3. Amb. Julius Kandie - Director, Adminstration

KENYA NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira	-	Clerk Assistant I
2. Ms. Jemimah Waigwa	-	Legal Counsel I
3. Ms. Winnie Kizziah	-	Media Relations Officer
4. Ms. Peris Kaburi	-	Serjeant At Arms
5. Mr. John Mungai	-	Audio Recording Officer

MIN. DCL/113/2018: PRELIMINARIES

The meeting was called to order at nine minutes past ten o'clock in the morning and prayers were said. Thereafter, introductions were made.

MIN. DCL/114/2018: RESPONSE TO QUESTION NO. BY HON. OLAGO ALOUCH MP ON

The response to the question by Hon Olago Alouch MP was deferred as the member had indicated that he was out of the country on official Parliamentary business.

MIN. DCL/115/2018: MEETING WITH THE CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING ON THE COMPENSATION OF L/R NO.7879/4 TO M/S AFRISON IMPORT EXPORT LTD AND HUELANDS LTD

The Cabinet Secretary, Ministry of Lands and Physical Planning informed the Committee of the following, that:

i. According to records held by the Ministry, Afrison Import Export Ltd and Huelands Ltd were the registered owners of LR No.7879/4 having acquired it from Joreth Limited in 1981. The land measured a total of 96 Acres. The Committee was further informed that the land in question was registered under the Government Land Act of 1902(repealed) by an instrument of conveyance dated 1905. The land went through various hands and mortgages starting with A.E. Atkinson to Joreth Ltd. Afrison Import Export Ltd and Huelands Ltd bought the land from Joreth Ltd at a price of Ksh.14, 000, 000 in 1981;

ii. An official search done on 16th of April, 2018 indicated that LR 7879/4 was still owned by Afrison Import Export Ltd and Huelands Limited and ownership of the land since 1905 to date has been on a freehold and private basis;

iii. Afrison Import Export Ltd and Huelands Ltd, through their development company, Drive In Estate Developers, applied to the Town Planning Committee on 16th September 1982 seeking approval for a proposed subdivision scheme. The Director City Planning gave the firm a conditional approval on 8th March 1984. Drive in Estate Developers Limited did not agree with the said conditions and cancelled the planned subdivision;

- In 1983 there were ongoing processes between the developers and the Commissioner of Lands which resulted in the payment of fees to facilitate the approval of the subdivision scheme after the developer paid ksh.21, 500 on 18th November 1983. However, the surrender was not effected. Further on 12th July 1984, the commissioner of Lands issued 'a letter of reservation' reserving land for secondary school to the Permanent Secretary, Ministry of Education. Later on, 25th of June 1999, the commissioner of land issued a letter of allotment to the Permanent Secretary for Education;

iv. upon payment and approval of the subdivision scheme, the onus was on Afrison Export Import Limited and Huelands Limited, to take the next steps to have the subdivision scheme surveyed and registered with the Director of Survey. However, the Cabinet Secretary added that according to the Director of Survey, Afrison Import Export Ltd and Huelands Limited neither applied for the survey and registration nor surrendered the title;

v. The letter of allotment was therefore incapable of transferring part ownership of LR No.7879/4 that is private land. Therefore, the land held by the schools would not be legally acquired without going through a process of excision and compulsory acquisition;

vi. The parcel was sub divided into two portions as follows:

- LR NO.7879/24(7879/4/3) with an area of 15.857 Ha (Deed plan No 398228, issued on 18th March 2016).
- LR No.7879/25(7879/4/4) with an area of 22.755 Ha (Deed plan 3982229, issued on 18th March 2016.

vii. The title deed for the land was held by the Attorney General who was the official liquidator of Continental Credit Finance Ltd (under receivership) and that the ministry was not directly involved in the acquisition as the acquisition of public land was within the mandate of the National Land Commission.

MIN. DCL/116/2018: ADJOURNMENT

The meeting was adjourned at five minutes past one o'clock in the afternoon.

Signature .....

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

(Chairperson)

Date.....5/6/2018.....

MINUTES OF THE 29TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON THURSDAY 12TH APRIL 2018, AT THE MAIN CHAMBER, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Joshua Kutuny, M.P
4. Hon. Kimani Ngunjiri, M.P
5. Hon. MishiMboko, M.P
6. Hon. Omar Mwinyi Shimbwa, M.P
7. Hon. Caleb Kositany, M.P
8. Hon. Catherine Waruguru, M.P
9. Hon. George Aladwa, M.P
10. Hon. Jane Wanjuki Njiru, M.P
11. Hon. Owen Yaa Baya, M.P
12. Hon. Samuel Kinuthia Gachobe, M.P
13. Hon. Simon Nganga Kingara, M.P
14. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
2. Hon. Ali Mbogo, M.P
3. Hon. Babu Owino, M.P
4. Hon. George Risa Sunkuyia, M.P
5. Hon. Josphat Gichunge Kabeabea, M.P

IN ATTENDANCE

NATIONAL LAND COMMISSION

1. Prof. Muhammad Swazuri, - Chairperson,
2. Ms. Abigael Mbagaya Mukolwe - Vice Chairperson
3. Mr. Chavangi Aziz Tom, - Chief Executive Officer
4. Dr. Salome L Munubi, - Director, Valuation and Taxation
5. Mr. Francis.KMugo, - Directorate of Finance and Accounting

6. Mr. Joash Oindo, Taxation,	-	Deputy Director, Valuation and
7. Mr. F.C Bor,	-	Deputy Director
8. Mr. Daniel Mwakio,	-	Principal Finance Officer
9. Mr. WahomeNdirangu	-	Legal Officer
10. Mr. Paddy Odera	-	Surveyor
11. Mr. Charles Kagema	-	Coordinator
12. Ms. Eva Kinoti	-	Accounts Clerk
13. Ms. Agnetta Gichana	-	Accounts Clerk

KENYA NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira	-	Clerk Assistant I
2. Mr. Ahmad Adan Guliye	-	Clerk Assistant III
3. Ms. Jemimah Waigwa	-	Legal Counsel I
4. Ms. Winnie Kizziah	-	Media Relations Officer
5. Ms. PerisKaburi	-	Serjeant At Arms
6. Mr. John Mungai	-	Audio Recording Officer

MIN. DCL/109/2018: PRELIMINARIES

The meeting was called to order at nine minutes past ten o'clock in the morning and prayers were said. Thereafter, introductions were made. The Chairperson highlighted the agenda of the meeting and invited the National Land Commission Chairperson to make his presentation.

MIN. DCL/110/2018: MEETING WITH THE CHAIRPERSON, NATIONAL LAND COMMISSION ON THE COMPENSATION OF L/R NO.7879/4 TO M/S AFRISON IMPORT EXPORT LTD AND HUELANDS LTD BY THE NATIONAL LAND COMMISSION

The Chairperson, National Land Commission made the following submissions;

i. In processing the acquisition of land for Drive Inn Primary School and Ruaraka High School, the Commission relied on the High Court ruling on Patrick Musimba vs. National Land Commission and four others petition No. 613 of 2014 and Afrison Import Export Ltd & another vs. Continental Credit Finance Ltd;

ii. The Commission also relied on a Court judgement in Afrison Import Export Ltd and another vs. Continental Credit Finance Ltd and two others in the High Court of Kenya at Nairobi Milimani Commercial Courts, Civil Case No. 617 of 2012. In the said suit, the Court determined that the plaintiffs being Afrison Import Export Ltd and Huelands Ltd were the registered proprietors of the parcel of land known as L.R No. 7879/24 and it awarded the firm Ksh. 4,086,683,330/ to be paid the office of the Attorney General for 37 acres;

iii. The Commission also relied on the Attorney General's legal advice that the legal owners of L.R No. 7879/4 be compensated in full in accordance with Article 40(3) on compulsory acquisition for public purpose;

iv. On valuation of the property, the Commission relied on government records of stamp duties paid for similar parcels of land within the locality where the government acquired private land for public use;

v. The Commission notified the public on the intended acquisition of land for the two schools vide a gazette Notice No. 6322 of 30th June, 2017. However, he could not provide any information on whether a public hearing on the matter was held and stated that it was the responsibility of the Ministry of Education to inform the management of the schools of the planned acquisition;

vi. The payments for the acquisition of part of LR No. 7879 for the two schools was made to Whispering Palms and Estates Limited as an assignee of Afrison Import Export Limited and Huelands Limited. He further explained that this was allowed by the law and that Afrison Import Export Ltd and Huelands Ltd had indemnified the Commission from claims that would arise on the matter;

vii. On the issue of custody of the title deed, the Chairperson stated that the Commission had not yet acquired the title deed for the portion of land it acquired for the two schools as payments to Afrison Import Export Ltd and Huelands Ltd had not been completed and the title deed would be surrendered to the Commission once the full payments were made; AND

viii. Regarding the issuance of an allotment letter to Ruaraka High School by the Commissioner of Lands, the Chairperson stated that the allotment letter had been canceled although he did not provide evidence of the said cancellation.

MIN. DCL/111/2018: RESPONSE BY THE COMMISSION TO ALLEGATIONS OF IRREGULARIITES IN THE PAYMENT OF COMPENSATION FOR THE ACQUISITION OF LAND FOR RUIRU/JUJA SEWERAGE PLANT IN RUIRU COANSTITUENCY

The Chairperson informed the Committee as follows:

i. The County Government of Kiambu requested the National Land Commission to acquire the above property on its behalf for the development of sewerage plant;
ii. The Commission gazetted the intention to acquire the land vide gazette notice no. 673 of 2016 and a notice of inquiry vide gazette no. 2013 of 2nd March 2018.
iii. A public inquiry on the matter was held on 29th March 2018 at the Ruiru Deputy County Commissioner's Office. Two (2) groups of Directors representing various interests namely Githunguri Farmers' Cooperative Union and Githunguri Constituency Ranching Company Limted laid their claims on the land;
iv. It was established from the hearings that the issue of directorship of the firms that own the land was in Court for determination.
v. Both the directors and shareholders wanted to be paid compensation for the land.
vi. The Commission had not valued nor asked for compensation for Kiambu County Government.
vii. The Commission had resolved to await the Court ruling before any compensation was made.

Committee Observations

From the Committee's interactions with the National Land Commission on the above subject, the Committee deduced the following;

i. The Commission did not undertake adequate public participation and involve the school management on the acquisition of the land in question;
ii. The Commission claimed that the school's allotment letter was irregularly acquired and had since been cancelled but could not provide evidence in respect of the alleged cancellation;
iii. The Commission didn't properly advise the Ministry of Education on the best way of acquiring the land for the school in accordance with Article 67-2(c);
iv. The Commission contravened Article 232-1(b) by approving a payment of 3.2 billion for a 13 acre piece of land. The payment did not meet efficient, effective and economic use of resources; and

v. The Committee resolved to meet the Ministry of Education, the Ministry of Lands and Physical Planning, the Ethics and Anti-Corruption Commission and the Directors of Afrison Export and Import Limited on the matter.

MIN. DCL/112/2018: ADJOURNMENT

The meeting was adjourned at five minutes past one o'clock in the afternoon.

Signature .....

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

(Chairperson)

Date.....5/6/2018.....

MINUTES OF THE 28TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON TUESDAY 10TH APRIL 2018, AT RUARAKA SECONDARY SCHOOL AND DRIVE INN PRIMARY SCHOOL

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P **- Chairperson**
2. Hon. Joshua Kutuny, M.P
3. Hon. Mishi Mboko, M.P
4. Hon. Omar Mwinyi Shimbwa, M.P
5. Hon. Ali Mbogo, M.P
6. Hon. Caleb Kositany, M.P
7. Hon. George Aladwa, M.P
8. Hon. Jane WanjukiNjiru, M.P
9. Hon. Owen Yaa Baya, M.P
10. Hon. Samuel Kinuthia Gachobe, M.P
11. Hon. Simon Nganga Kingara, M.P

APOLOGIES

1. Hon. Khatib Mwashetani, M.P **- Vice Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Kimani Ngunjiri, M.P
4. Hon. BabuOwino, M.P
5. Hon. Catherine Waruguru, M.P
6. Hon. George Risa Sunkuyia, M.P
7. Hon. Josphat Gichunge Kabeabea, M.P
8. Hon. Teddy Mwambire, M.P

IN ATTENDANCE

1. Mr. John L. Ololtuaa - Regional Coordinator of Education, Nairobi County
2. Ms. Victoria N. Mbwika - Sub-County Director of Education, Nairobi County
3. Prof. Elizabeth Kuria - Board of Management Chairperson, Ruaraka High School
4. Ms. Agnes Chege - Principal, Ruaraka High School
5. Mr. James Nyaga - Board of Management Member, Nairobi County

6. Mr. John Thuo - Board of Management Member
7. Mr. Kariuki Njagi - Deputy Principal, Ruaraka High School
8. Mr. Benjamin Oloo - Head Teacher, Drive Inn Primary School
9. Mr. James Kanua - BOM Chairperson, Drive Inn Primary School
10. Mr. Joseph Ogwokoh - BOM Member, Drive Inn Primary School

KENYA NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Adan Guliye - Clerk Assistant III
3. Mr. Joseph Tiyan - Research Officer III
4. Ms. Peris Kaburi - Serjeant At Arms
5. Mr. John Mungai - Audio Officer

MIN. DCL/105/2018: PRELIMINARIES

The meeting was called to order at fifteen minutes past eleven o'clock in the morning and prayers were said. Thereafter introductions were made.

The Chairperson outlined the purpose of the Committee's visit and invited the Principal, Ruaraka High School to make her remarks.

MIN. DCL/106/2018: SUBMISSIONS BY THE MANAGEMENT OF RUARAKA HIGH SCHOOL ON ALLEGED IRREGULAR COMPENSATION TO M/S AFRISON IMPORT EXPORT AND HUELANDS LTD BY THE NATIONAL LAND COMMISSION ON BEHALF OF THE MINISTRY OF EDUCATION FOR LAND FOR RUARAKA AND DRIVE INN PRIMARY SCHOOL SCHOOLS

The Principal, Ruaraka High School, Ms. Agnes Chege , assisted by Mr. John Thuo, a former Board of Management Chairperson and a current Board Member explained the history of the school. They averred the following;

i. The school was initially started at Valley Bridge by a business man known as De Silva popularly known as Baba Dogo;
ii. The current land was acquired in 1981 through the initiative of the then Mayor Hon. Andrew Gumba. The land was then unutilized bare community land;
iii. The Ministry of Education awarded the school Ksh 30 million for construction of perimeter fence in 2007 through the Economic Stimulus Programme
iv. The first registration was done in 1987 and renewed in 1997 and 2009 respectively to cater for the increasing enrolment.

v. They stated that the land belongs to the school and had been issued with an allotment letter in 1999 after paying the required premiums;
vi. The land was approximately 3.05 hectares and there had never been contestations on its ownership till recently when a compensation claim was featured in the media;
vii. The purported owners had never communicated with the school in respect of their claim neither had the school received any communication from relevant government authorities in that respect;
viii. Officers from the National Land Commission visited the school on 29th May 2017 to undertake a survey of the school land;
ix. The Ethics and Anti-Corruption Commission wrote to the principal of the school in February,2018 inviting her for an interview with regards to the irregular acquisition of its land;
x. The school was in possession of a mutation map dating back to 1966, an allotment letter that was issued in 1999 and a banker's cheque for the deposit of the land premium.

MIN. DCL/107/2018: **PRESENTATION BY THE SCHOOL HEAD TEACHEROF DRIVE INN PRIMARY SCHOOL TO M/S AFRISON IMPORT EXPORT AND HUELANDS LTD BY THE NATIONAL LAND COMMISSION ON BEHALF OF THE MINISTRY OF EDUCATION FOR LAND FOR RUARAKA AND DRIVE INN PRIMARY SCHOOL SCHOOLS**

Mr. Benjamin Oloo, the Head Teacher Drive Inn Primary School informed the Committee of the following;

i. The School was started in 1986 on a land given out by one. Hon. Andrew Ngumba, the then Mayor of the City Council of Nairobi;
ii. The school was administered by the then City Council of Nairobi and Currently the Nairobi County Government;
iii. All documentations in respect of the ownership of the school land were held by the Nairobi County Government;
iv. Officers from the National Land Commission visited the school on 29th May 2017 to undertake a survey of the school;and
v. The Ethics and Anti-Corruption Commission wrote to the School Head Teacher in February for an interview with regards to the irregular acquisition of its land.

Committee resolutions

i. The Committee directed the Nairobi Regional Coordinator of Education to submit a copy of the report on the titling of public schools in the County; and

ii. The Committee resolved to invite the alleged owners of the land, the Ministry of Education, the National Land Commission and the Ethics and Anti-Corruption Commission to give their views on the matter under probe.

MIN. DCL/108/2018: ADJOURNMENT

The meeting was adjourned at five minutes past one o'clock in the afternoon.

Signature .....

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

(Chairperson)

Date....5/6/2018.....

MINUTES OF THE 23RD SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON THURSDAY 29TH MARCH 2018, AT CPA ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, MP - **Chairperson**
2. Hon. Khatib Mwashetani, MP - **Vice Chairperson**
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Omar Mwinyi Shimbwa, MP
6. Hon. Ali Mbogo, M.P
7. Hon. Caleb Kositany, M.P
8. Hon. George Risa Sunkuyia, MP
9. Hon. Simon Nganga Kingara, MP

APOLOGIES

1. Hon. Kimani Ngunjiri, MP
2. Hon. Mishi Mboko, M.P
3. Hon. Babu Owino, M.P
4. Hon. Catherine Waruguru, M.P
5. Hon. George Aladwa, M.P
6. Hon. Jane Wanjuki Njiru, M.P
7. Hon. Josphat Gichunge Kabeabea, M.P
8. Hon. Owen Yaa Baya, M.P
9. Hon. Samuel Kinuthia Gachobe, M.P
10. Hon. Teddy Mwambire, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY

Hon. Mugambi Rindikiri, M.P

NATIONAL LAND COMMISSION

1. Prof. Muhammad Swazuri,	-	Chairperson
2. Mr. Tom Chavangi Aziz	-	Chief Executive Officer
3. Dr. Salome L Munubi	-	Director, Valuation and Taxation
4. Mr. F.K Mugo	-	Directorate of Finance and Accounting
5. Mr. JoashOlindo	-	Deputy Director, Valuation and Taxation
6. Mr. F.C Bor	-	Deputy Director
7. Mr. Daniel Mwakio,	-	Principal Finance Officer

KENYA NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira	-	Clerk Assistant I
2. Mr. Ahmad Adan Guliye	-	Clerk Assistant III
3. Ms. JemimahWaigwa	-	Legal Counsel I
4. Ms. Winnie Kizziah	-	Media Relations Officer
5. Ms. PerisKaburi	-	Serjeant At Arms
6. Mr. John Mungai	-	Audio Officer

MIN. DCL/087/2018: PRELIMINARIES

The meeting was called to order at thirteen minutes past ten o'clock in the morning and prayers were said. Thereafter, introductions were made.

The Chairperson informed the Committee of the presence of Hon. Mugambi Rindikiri MP and asked him to convey his request to the Committee as well as the National Land Commission. Hon. MugambiRindikiri, M.P informed the Committee of a parcel of land been curved from Angine Secondary School in Buuri Constituency and a title deed issued to a private developer. He requested the Committee and the Commission to address the matter with a view of reverting the parcel of land back to the public school. The Hon. Member was asked to document the case and formally present it before the committee for necessary action.

The Vice Chairperson proposed that the media be excluded from the proceedings given that the matter was sensitive. The members agreed to the proposal.

MIN. DCL/088/2018: **MEETING WITH THE CHAIRPERASON, NATIONAL LAND COMMISSION ON ALLEGED IRREGULARITIES IN THE COMPENSATION OF L/R NO.7879/4 TO M/S AFRISON EXPORT & IMPORTS LIMITED AND HUELAND LTD**

The Chairperson, National Land Commission informed the members of the following in respect of the compensation of LR NO 7879/4 Afrison Import Export Ltd and Huelands Ltd by the National Land Commission on behalf of the Ministry of Education for acquisition of land for Ruaraka High School and Drive Inn Primary School;

i. The Chairperson clarified to the Committee that the Commission had not acquired land for Ndururumo School but rather for Drive Inn Primary and Ruaraka High Schools following a request by the Cabinet Secretary, Ministry of Education;
ii. The Commission undertook an initial inquiry under Gazette Notice No 7401 of 17th October 2014. There was no contrary counter claim other than from Afrison Import Export Ltd and Huelands Ltd who are the registered owners of the land;
iii. The Commission made payments to Whispering Palms Estate Ltd on 29th January 2018 amounting kshs 1,500,000,000.00 (Kshs One Billion Five Hundred Million Only).
iv. The payment was done after the Directors of Afrison Import Export Ltd and Huelands Ltd authorized the Commission vide a letter dated 26th January 2018 to its a sister company (Whispering Palms Ltd).
v. The Commission satisfied itself after conducting due diligence that the payments met conditions necessary for compensation to the said company. The two sister companies have the same directors.
vi. The Commission demanded that the land owner to indemnify the government regarding this compensation. This demand was met by the owner.

The Chairperson also tabled a report that contained documents relating to the acquisition that included a valuation report and a copy of a request letter from the Cabinet Secretary, Ministry of Education.

MIN. DCL/089/2018: **COMMITTEE OBSERVATIONS**

i. The Committee observed that the submissions made by the Commission were inconclusive and asked the Chairperson National Land Commission to appear before the Committee on 12th April 2018 to present a comprehensive report on the matter; and
ii. The Committee resolved to undertake a field visit to Drive Inn Primary and Ruaraka High Schools on Tuesday 10th April 2018 to apprise itself on the matter beforehand.

MIN. DCL/090/2018: ADJOURNMENT

The meeting was adjourned at thirteen minutes to twelve noon.

Signature .....

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

(Chairperson)

Date...5/6/2018.....

D Kinitees
Lands Cont to attend to it and respond to the author.
24/1/18

HARRISOM MUEMA

P.O. BOX 5270 – 00200

NAIROBI

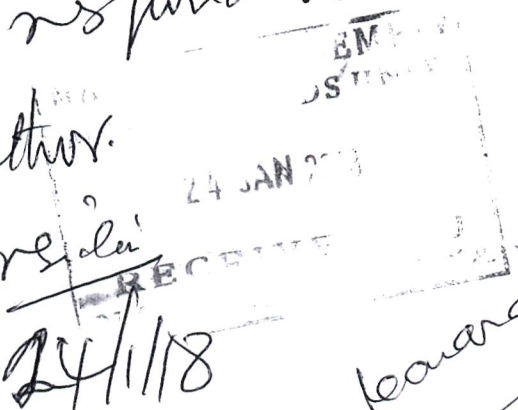
10TH JAN 2018

CLERK

NATIONAL KENYA ASSEMBLY

ATT: LAND COMMITTEE

NAIROBI



24 JAN 2018
RECEIVED

Leonard Machuka
Pls deal
30/1/18

Dear Sir/Madam

RE: COMPENSATION OF LR NO. 7879/4- AFRISON EXPORT AND IMPORTS LTD

It has come to my attention that ministry of education want to compensate the above land, which belongs to AFRISON EXPORTS AND IMPORTS LTD. According to the land act, the ministry is not suppose to compensate the above company, because this parcel of land was as a result of mandatory surrender after sub-division.

The school earmarked for compensation are; NDURURUMO PRIMARY SCHOOL, RUARAKA SECONDARY SCHOOL among others. As resident am requesting the land parliamentary committee to investigate the matter.

I hope you will consider my humble request.

RECEIVED
24 JAN 2018
CLERK'S OFFICE

Your's Faithfully,

Harrison Muema

Annex I - Allotment letter issued to Ruaraka High School

C/F 217905 X079905

REPUBLIC OF KENYA

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

REGISTERED

DEPARTMENT OF LANDS
P.O. Box 30089
NAIROBI

The Permanent Secretary,
Ministry of Education,
P.O. Box 30040, NAIROBI
Ref. No. 108096/57

28th June 99

SIR(S)/MADAM,

RE: UNS. SECONDARY SCHOOL SITE - OFF THIKA ROAD ON A PORTION OF L.R.NO. 7879/4 NAIROBI

LETTER OF ALLOTMENT

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

AREA. 3.05 hectares (approximately).

TERM: 99 years from the 1.7.1999

STAND PREMIUM: Sh. Nil

ANNUAL RENT: Sh. 72/- } Subject to adjustment on survey, but there is no claim for reduction in area on survey.

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

SPECIAL CONDITIONS: *See* attached.

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

	Sh.
Stand Premium	Nil
Rent from 1.7.99 to 31.12.99	36.00
Conveyancing Fees	1,250.00
Registration Fees	250. 00
Rates on demand	--
Stamp Duty	30.00
Survey Fees on demand	--
Road and Road Drains on demand	
Others Allocation fees	2,000.00
Receipt No. ..... *Less* Deposit	
TOTAL Sh.	3,566.00

I

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

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

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

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

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

Authority: Government

File [illegible]

[illegible]

for Commissioner of Lands

ENCL.

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

The Director of Surveys, Nairobi.

The Town Clerk. Nairobi City Council

~~The Clerk to the Council, County Council of~~ .....

~~The District Commissioner.~~

The Director of Physical Planning, Nairobi.

~~District Land Officer.~~ The Board of Governors, [illegible] High School, P.O. Box 57378, NAIROBI

O/C Land Rents.

Rates Assistant.

The Accountant.

O/C Records.

Senior Plan Record Officer.

Plot File.

All to note.

GPK (L)

Annex II – Copy of banker's cheque for payment made by Ruaraka High School for allotment letter

BANKERS CHEQUE

KENYA COMMERCIAL BANK LIMITED

CITY CENTRE BRANCH
P.O. BOX 44252, NAIROBI

Not Negotiable
A/C Payee only

351

KENYA DUTY PAID

Date 10-9-99

01-118

Pay COMMISSIONER OF LANDS — or Order

KSh 3566=

Kenya Shillings THREE THOUSAND FIVE HUNDRED SIXTY SIX ONLY —

For Kenya Commercial Bank Ltd

CHQS ON SELVES-CURRENT ACC.DEPT.

04/08/99

Cheque Number Bank Code Account Number

⑈003051⑆011 ⑈13⑉9731690214⑈

Annex III - Submissions by the Chairperson, National Land Commission

NATIONAL LAND COMMISSION

PRESENTED BY

PROF. MUHAMMAD A. SWAZURI, PHD, OGW

CHAIRMAN

TO

PARLIAMENTARY COMMITTEE ON LANDS

THURSDAY 12TH APRIL 2018

Introduction

Hon. Chairperson, The National Land Commission (NLC) is an independent Constitutional Commission established under Article 67 of the Constitution of Kenya, 2010. It was operationalized through Acts of Parliament that gave effect to Article 67 of the Constitution, namely; the National Land Commission Act, 2012; the Land Act, 2012 and the Land Registration Act, 2012; to carry out its mandate as outlined both in the Constitution and in the aforementioned legislations. The Commission, under Part VIII Section 107 to 133 of the Land Act 2012, is mandated to acquire land on behalf of the National and County Governments for public projects and/or public use.

Submission

Hon. Chairperson, as per your letter Ref. NA/CD/LND/2018/(26) dated 3rd April 2018, the Commission hereby addresses the issues raised therein as follows;

1. **A detailed report on the acquisition of land for Drive Inn Primary School and Ruaraka High School by the National Land Commission on behalf of the Ministry of Education, Science and Technology.(Appendix 1)**

A. Patrick Musimba vs. National Land Commission & 4 others. In the High court of Kenya at Nairobi Constitutional and Human Rights Division, Petition No. 613 of 2014

- In this case the Court elaborated in detail the process of compulsory acquisition that is supposed to be undertaken by the Commission and that is captured from paragraph 85-96 herein enclosed.
- The Commission in implementing the Court Order, it enhanced the Preliminary Requirements that relate to compulsory acquisition. Find attached herewith the document.

B. Afrison Export Limited & Another vs. Continental Credit Finance Limited (In Liquidation) & 2 Others: In the High Court of Kenya at Nairobi Milimani Commercial Courts: Civil Case No. 617 of 2012 (Appendix 2)

- The suit related to all that parcel of land known as **L.R No. 7879/24**. Based on a report dated 17th December 2012 prepared by the Survey Department, the Court noted that L.R no. 7879/24 measuring approximately 37.4 acres is a resultant subdivision of L.R no. 7879/4.

- The suit was initiated by the Plaintiffs being Afrison Export Limited and Huelands Limited as 1st and 2nd Plaintiffs respectively, following the occupation of the suit parcel by the Government through the General Service Unit of the police on or about

the year 1988. The Plaintiffs thus sought compensation against Government for value of the land lost as well loss of use of the suit property.

- In its judgment, the Court found that indeed the Plaintiffs being Afrison Export Limited and Huelands Limited as 1st and 2nd Plaintiffs respectively were the registered proprietors of the suit parcel and further found that based on the evidence on record the GSU had been in physical occupation of the property.

- Based on the above findings, the Court thus entered judgment in favour of the Plaintiffs being Afrison Export Limited and Huelands Limited as 1st and 2nd Plaintiffs respectively and awarded Kshs. 4,086,683,330/- to be paid by the Office of the Attorney General (Afrison Export Import & Huelands Ltd for 37 acres.

- Based on the above Court determination, it is thus clear that the issue of ownership of the suit parcel was conclusively **determined by the Court in favor of Afrison Export Ltd and Huelands Ltd.**

Recommendation:

The Office of the Attorney General to shed light on;

a) The transactions between Kenya Posts & Telecommunications Corporation (KPTC) and Afrison Export Import & Huelands Ltd.

Attorney General's advisory on the Acquisition of L.R. No. 7879/4 (Appendix 3)

Legal Opinion on Compensation for L.R. No. 7879/4 – Ruaraka High School and Drive Inn Primary School dated 7th July 2017, wherein the AG advised as follows;

- Ruaraka High School was constructed in 1984 and Drive Inn Estate Primary School was established in 1987. The schools are all located in part of L.R. No. 7879/4 measuring 13.5364 Acres.

- 28th March 1984, letter from Nairobi City Council to developer on conditional subdivision approval on proposed development otherwise cancellation of the subdivision.**(Appendix 4)**

- Another search was carried out on 19th January 2018 and found that the property had no encumbrances listed on the title.**(Appendix 5)**

- The Commission found no evidence of sub-division of the property L.R. No 7879/4

- AG's articulation of Article 40(3). Compulsory acquisition for public purpose and prompt payment in full and just compensation

- He further emphasized that both schools are public schools and the Constitutional requirement of public purpose or interest as a factor of public compulsory acquisition of public land is fulfilled.

- Upon completion of payment, title documents are to be submitted to the Registrar for recording of the acquisition. Thereafter vesting of the land in the National or County Government

Government Acquisition on L.R. 7879/4 (Appendix 6)

The National Land Commission has acquired land for roads and schools. The details of the compensation is in accordance with the statutory provisions of Land Act 2012 part VIII on compulsory acquisition of interest in land (section 107-163). The details of the compensation are indicated here under and include the statutory 15 % disturbance allowance. Furthermore the land value applied for compensation on the land has been maintained from 2014 to date

- Gazette Notice No. 6055 of 29th August 2014 – 2.726 Hectares (Outering road improvement project) - **Compensation paid by Kenya Urban Roads Authority**
- Inquiry vide Gazette Notice No. 7401 of 17th October 2014 – 2.726 Hectares (Proprietorship and interest claims) - **Compensation paid by Kenya Urban Roads Authority**
- Addendum vide Gazette Notice No. 5885 of 29th July 2016 – 1.319 Hectares (Access roads and outering road) - **Compensation paid by Kenya Urban Roads Authority Kshs. 786,565,500/=**
- Gazette Notice No. 6322 of 30th June 2017 - 1.198 Hectares (Access Road to Upgraded Outering Road) - **Compensation paid by Kenya Urban Roads Authority Kshs. 289, 317,000/=**
- Gazette Notice No. 6322 of 30th June 2017 - 2.8255 Hectares and 2.7472 Hectares (Drive Inn Primary School and Ruaraka High School respectively. The total Acreage is 5.5727 Hectares or 13.7701 Acres) - **Compensation paid by Ministry of Education Kshs. 1,500,000,000/=.** Total Compensation for the School land at Kshs. 206,000,000/= per Acre for the 13.7701 Acres will be 3,269,040,600.00 inclusive of 15% disturbance allowance.
- Gazette Notice No. 5485 of 15th July 2016 which amended Gazette Notice No. 6055 of 29th August 2014.
- The part of the road fronting the GSU land was surveyed before the acquisition by the GSU when the land was still owned by Afrison Export Import Limited and Hu elands Limited.

Attached herewith please find a map of the land area showing the various acquisitions over time.

Proprietorship of the land (Appendix 7)

- According to records from Ministry of lands Registry, there is an Indenture between Joreth Limited (Vendor – expression and context includes successors and assigns) and Afrison Export Import & Huelands Ltd (Purchaser - expression and context includes successors and assigns)

- The transaction was made in 1981, the land Ref. 7879/4 measures approximately 96 acres.

- A search dated 19th January 2018 indicates the land still belongs to Afrison Export Import & Huelands Ltd.

- The payment was made to Whispering Palms and Estates Limited as an assignee of Afrison Import & Export Limited. This is allowed in the indenture that allows for assignment.

- Attached herewith are the CR12 searches **(Appendix 8)** on business registration from the Registrar of Companies in the AGs office indicating the Directorships of:-

    a) Afrison Export Import Limited
    b) Huelands Limited
    c) Equator Brent Limited
    d) Whispering Palms Estate Limited
    e) Drive-Inn Estate Developers Limited

- Afrison Import and Export Limited further indemnified the Commission from claims that may arise in this matter where they assigned the commission to pay Hue land Limited **(Appendix 9).**

Basis of Valuation (Appendix 10 & 11)

Valuation Reports from National Land Commission and Camp Valuers (an Independent Valuation Firm for the Claimant)

Attached here below is the Valuation report from:-

- The National Land Commission for a) the Outering road upgrade and access roads and b) Drive Inn Primary School and Ruaraka High School

- Valuations by Afrison Import & Export Limited and Huelands Limited prepared by Camp Valuers for the road and schools.

- Please note the comparable used by NLC were sought from the Lands Registry records on declaration of stamp duty.

Letters Regarding the Public Schools (Appendix 12)

- Letter from Director of City Planning, Nairobi City Council dated 28th March 1984 to Ms. Drive In Estate Developers Ltd on Subdivision of LR. No. 7879/4 Outering Road Nairobi – letter was advising them to accept or refuse the conditions given in total or cancel the said subdivision scheme (copy attached)

- Letter from Drive In Estate Developers Ltd dated 5th April 1984 to the Director of City Planning on Subdivision of L.R. No. 7879/4 – the registered land owners cancelling the subdivision and the conditional approvals (copy attached)

- Letter from Commissioner of Lands, Ministry of Lands & Settlement dated 18th December 1984 to the Managing Director, Drive In Estate Developers Ltd on Proposed Subdivision for L.R. No. 7879/4 – stating non-conditionality compelling Drive In Estate Developers to have a secondary school included in the subdivision scheme and approval for revision of the subdivision scheme and construction of maisonettes on the site originally reserved for a secondary school.

- Letter from Chief Inspector of Schools to Commissioner of Lands dated 3rd August 1984 citing the Ministry's relinquishment of any interest on the plot and encouraging Drive In Estate Developers Ltd to go ahead as private developers of the secondary school.

- Letter from Afrison Export Import Limited to Director, City Planning Department dated 7th February 2017 on Subdivision of LR. No. 7879/4 along Outering Road – citing whether the conditions appended on their letter dated 28th March 1984 are now cancelled.

- Letter from Director, Development Management & Regularization, Nairobi City Council dated 17th February 2017 on Subdivision of L.R. No. 7879/4 citing that the conditions of approval were waived and the land remained intact.

- Letter from PS, Ministry of Education to Chairman, NLC Ref. No. MOE/CONF/G5 dated 7th February 2017 confirming that Ruaraka High School and Drive Inn Primary School occupy part of the land which is private land, and requesting the Commission to guide in the process of compulsory acquisition.

- Letter from Chairman, NLC to PS, Ministry of Education Ref. Val.1446 dated 16th February 2017 on acquisition of L.R. No. 7879/4 requesting the CS, Ministry of Education to submit a request for acquisition of public land as per Section 10791) of the Land Act.

- Letter from CS, Ministry of Education to Chairman, NLC Ref. No. MOE.CONF/G5 VOL.II/16 dated 17th March 2017 requesting the Commission to commence the process leading to the acquisition of the said private land and enable the two Government institutions acquire title deeds to the land they currently occupy.

- Copy of letter from PS, Ministry of Education to PS, The National Treasury Ref. MOEST/CON/2/31TY/39 dated 18th July 2017 requesting PS Treasury to release compensation funds directly to NLC and confirmation of the issuance of title deeds for the two schools.

Correspondence between Afrison Export Import Limited and the National Land Commission (Appendix 13)

Attached herewith are correspondences between:

- Afrison Export Import Limited to Chairman, NLC dated 30th July 2015 claiming compensation for uneconomic spaces on the land
- Afrison Export Import Limited to Chairman, NLC dated 27th October 2015 claiming compensation for road access joining Ruaraka High School and Ruaraka primary School
- Huelands Limited to PS, Ministry of Transport and Infrastructure dated 8th December 2015 on a survey of land taken by the upgrade.
- Letter by Afrison Export Import Limited to Chairman, NLC dated 16th August 2016 claiming compensation on access road to the school through their land.
- Letter by Afrison Export Import Limited to Chairman, NLC dated 17th August 2016.

General remarks by the commission

- The Report of the Inter-Ministerial Taskforce on GSU, Drive Inn estate land and attendant agreements between Kenya Posts and Telecommunications Authority should be interpreted by the said Task Force and the Attorney General.
- The Nairobi City Council should shed more light on the acquisition of schools and whether the NCC had hived off the school land from L.R. No. 7879/4 and what was the subsequent title.
- LR. No.7879/4 is private land held on a freehold grant.
- The Commission has done due diligence at the Survey of Kenya and County Government of Nairobi, and has not found any evidence of a subdivision scheme plan having been completed and registered.
- A search at the Registry of the Ministry of Lands & Physical and Planning on 19th January 2018 confirmed that the land is a freehold and is all in one parcel and has no encumbrances listed on the title.

2. **A response by the National Land Commission to allegations of irregularities in the payment of compensation for the acquisition of land for Ruiru/Juja Sewerage Plant in Ruiru Constituency raised by Hon. Simon Nganga Kingara, MP on behalf of members of Githunguri Ranching Company Ltd.**

The County Government of Kiambu wrote to the National Land Commission to acquire the above property on their behalf. A sewerage plant as developed on the land.

The Commission gazetted intention to acquire plots vide Gazette Notice No. 673 of 2016.

Notice of Inquiry was gazetted vide Gazette Notice No. 2013 of 2nd March 2018. At the inquiry that was held on 29th March 2018 at the Ruiru Deputy County Commissioner's office, two (2) groups of Directors representing various interests laid their claims. They were namely: Githunguri Farmers Co-operative Union and Githunguri Constituency Ranching Company Limited. Upon hearing both sides it was established that they had taken the issue of directorship to court for determination.

Noted:

- The sewerage plant has already been constructed
- Directors on one hand and shareholders on the other want to be paid compensation
- The Commission has not valued nor asked for compensation from Kiambu County Government.

Resolution:

The Commission resolved to await the court ruling before any compensation is made.

The Commission will require the company to provide a company resolution stating which party should receive compensation funds, whether it is the company as a corporate body or shareholders in their individual capacity.

Thank You.

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics

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

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

NLC.V&T/.GEN.2017

11th April 2018

RE: LAND ACT (NO. 6 OF 2012); LAND ACQUISITION FOR NATIONAL AND COUNTY GOVERNMETS PROJECTS - PRELIMINARY REQUIREMENTS

We refer to your inquiry.

To undertake its mandate for compulsory acquisition under Section 107 of the Land Act 2012, the National Land Commission will require the following preliminary information and documents to be provided by an acquiring body upon request before the land acquisition or easement can be procured.

1. Section 107(1) of the Land Act 2012 requires the acquiring body to obtain prior approval from their respective Cabinet Secretary or the County CEC in charge of Lands before the Commission commences the acquisition process.
2. Cadastral drawings showing how the infrastructure excises each land parcel, the parcel list table detailing land parcel numbers, total area of land parcels and acreage affected by the infrastructure for each parcel. These drawings shall be submitted to the Commission for scrutiny and records.
3. Provide a listing for parcel numbers indicating the plot reference number, registered owner and affected acreage column in acres (for easy appreciation by project affected persons). This should be submitted in both soft and hard copy.
4. Official searches of affected land parcels. The Commission shall assist where necessary.

5. Acknowledgement on availability of funds to allow prompt compensation as provided in the Constitution. The Commission will request the entities to remit compensation money into the Land Compensation Fund (Section 153 of the Land Act 2012) to be administered by the Commission. This is in the purview that in previous acquisitions, the compensation payments were delayed as opposed to the promptness required by the Law.

6. If necessary the applicant will take the Land Acquisition Committee members on a site tour for general appreciation of the project in respective locations that will be affected. This will enable informed decision making.

7. A final survey for vesting of the acquired land to the National or County Government will have to be done by the acquiring authority. The Commission can assist in this exercise at costs borne by the acquiring body.

Kindly adhere to the above stated processes to enable us commence the acquisition.

Yours faithfully,

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics

NAIROBI ... SION

TELEGRAMS: "MUNICIPALITY" NAIROBI
TELEPHONE 24281
EXT: 105/Mr. Wang'ondu

CITY PLANNING DEPARTMENT

CITY HALL
P.O. BOX 3007[illegible]
NAIROBI
KENYA

Ref. No. CPD/0644/7879/4

M/s Drive In Estate Developers Ltd.,
P.O. Box 46817,
NAIROBI.

28th March 1984.

(ATT: MR. FRANCIS MBURU)

Dear Sir,

RE: SUBDIVISION OF L.R. NO. 7879/4, OUTER RING ROAD, NAIROBI.

Your unreferenced letter of 14th March, 1984 in respect of the above mentioned property refers.

This is to advise you that, your proposed development was given conditional subdivision approval and its up to you to either accept them in total or cancel the said subdivision scheme.

Please be informed that, this Commission will not entertain any negotiations on the conditions of approval under reference, and is not, in any way whatsoever, interested in your Valuation Report, copies of which are returned herewith for your safe keeping.

Yours faithfully,

MWANGIH H.C. WANG'ONDU
DIRECTOR OF CITY PLANNING

C.C. Commissioner of Lands,
P.O. Box 30089, NAIROBI.

Director of Surveys,
Survey of Kenya,
P.O. Box 30046, NAIROBI.

B.S. Dogra Associate,
Project Architect,
P.O. Box 42784, NAIROBI.

MHCW/rk

Encls.

Postal Search
dated 19/01/2018

REPUBLIC OF KENYA

THE LAND ACT NO.6 OF 2012

THE LAND REGISTRATION ACT NO.3 OF 2012

GOVERNMENT LAND ACT CAP 280(REPEALED)

CERTIFICATE OF POSTAL SEARCH

AS ON: 19/1/2018

L.R. NUMBER: 7879/4

AREA: 96 Acres

REGISTER N 110 folio 47 file 16178

TENURE FREEHOLD

CURRENT REGISTERED PROPRIETOR: AFRISON EXPORT & IMPORT LIMITED and HUELANDS LIMITED as tenants in common in equal shares

ENCUMBRANCES

-NIL

Signed ----------

G. M. Muyanga 211

REGISTRAR OF GOVERNMENT LANDS

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Director, Value Taxation
Please analyse and advise. MLS
16/7/17

Our Ref: AG/CONF/21/72 VOL 1 July 7, 2017

Dr. Belio Kipsang, CBS
Principal Secretary
Ministry of Education
Jogoo House "B"
P.O. Box 9583-00200
NAIROBI

RE: LEGAL OPINION ON COMPENSATION FOR LR. NO. 7879/4 RUARAKA HIGH SCHOOL AND DRIVE IN PRIMARY SCHOOL

We refer to your letter under Ref. No. MOE.GEN/41/12/ (17) dated 29th June, 2017 in which you requested for our legal opinion on the above compulsory acquisition of LR. No. 7879/4 for purposes of continued establishment of Ruaraka High School and Drive In primary school.

The request is premised on the following background information:-

i. That Ruaraka High School is a public secondary school established in the year 1984, while Drive-In-Estate Primary School was established in 1987.
ii. The schools are located in part of LR. No. 7879/4 Measuring 13.5364 acres. Ruaraka High School occupies 7.6 acres which they claim to have been allocated to them.
iii. The Ministry had constituted a team to investigate the matter and a report was submitted to the Principal Secretary.
iv. In the said report, the team was of the view that the company had surrendered a portion of the land for public utility and therefore no basis for their compensation.
v. In the correspondence availed we note there was a letter of allotment issued to the secondary school.
vi. A letter dated 28th March, 1984 from the Nairobi City Council to the Developer, informed them that their proposed development was given conditional subdivision approval and it's up to them to accept the same or cancel the subdivision.

vii. The developers in their letter dated 3rd April, 1984 declined the condition for the subdivision.

viii. A letter dated 3rd August, 1984 the Ministry of Education wrote to the Commissioner of Lands supporting the Companies bid to erect a private school on the said land.

ix. That a Certificate of Postal Search dated 8th December, 2016, indicates that the Land Reference LR. No. 7879/4 measuring approximately 96 acres under a Freehold tenure is registered in the name of Afrison Export Import Limited and Huelands Limited as tenants in common in equal shares.

Having considered the request in light of the background facts as rationalized against the Constitution and the applicable law, we advise as follows:-

1. The legal basis and the efficacy of the process of compulsory land acquisition in Kenya should be done within the broader constitutional and statutory framework of the right based approach to property protection under Article 40 of the Constitution; Chapter Five of the Constitution on Land and environment; and the Land Act, cap 280 of the Laws of Kenya, which are the primary legislations governing compulsory acquisition process.

2. As a right based approach, Article 40(3) states as follows;
   "(3)The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
   a. results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
   b. is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
   i. requires prompt payment in full, of just compensation to the person; and
   ii. allows any person who has an interest in, or right over, that property a right of access to a court of law."

3. The import of Article 40(3) of the Constitution is that for compulsory acquisition to issue, the land must be acquired for a public purpose or in the public interest and there should be prompt payment in full, of just compensation to the person.

4. We note that the both Ruaraka High School and Drive-In-Estate School are public schools. Accordingly, it is our legal advisory that the Constitutional requirement of public purpose or interest as a factor in compulsory acquisition of private land is fulfilled.

vi. By dint of section 120 of the Land Act, the Commission is required to take possession of the land on the day specified by notice addressed to the registered proprietor of the land and the Registrar and the title shall then be deemed to vest in the national or county governments as the case may be; and

vii. Under section 121 of the Land Act, the Commission is required to demand in writing for the surrender of the title documents to the Registrar in the event that the title documents have not been delivered by the person having possession of the documents of title.

Please be advised accordingly.

GITHU MUIGAI, EGH, SC
ATTORNEY GENERAL

Copy to:

Dr. Muhammad A. Swazuri, PhD, OGW
Chairperson
National Land Commission
NAIROBI.

issued to the said M'Atugi M'Ichunge (deceased), shall be deemed to be cancelled and of no effect.

Dated the 30th June, 2017.

C. M. MAKAU,
Land Registrar, Meru District.

MR/3425459

GAZETTE NOTICE NO. 6321

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Joseph Kajogi M'Rujau (deceased), is registered as proprietor of all that piece of land known as Abogeta/U-Kiungone/1872, situate in the district of Meru, and whereas the High Court in succession cause No. 486 of 2012, has issued grant of letters of administration and certificate of confirmation of grant in favour of Jane Ncoro Kajogi, and whereas the said court has executed an application to be registered as proprietor by transmission R.L 19, and whereas the land title deed in respect of Joseph Kajogi M'Rujau (deceased) is lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with registration of the said application to be registered as proprietor by transmission R.L. 19 in the name of Jane Ncoro Kajogi, and upon such registration the land title deed earlier issued to the said Joseph Kajogi M'Rujau (deceased), shall be deemed to be cancelled and of no effect.

Dated the 30th June, 2017.

C. M. MAKAU,
Land Registrar, Meru District.

MR/3425459

GAZETTE NOTICE NO. 6322

THE LAND ACT

(*No.* 6 *of* 2012)

MINISTRY OF EDUCATION

DRIVE INN PRIMARY SCHOOL AND RUARAKA HIGH SCHOOL

MINISTRY OF TRANSPORT AND INFRASTRUCTURE–ACCESS ROAD TO UPGRADED OUTERING ROAD

INTENTION TO ACQUIRE LAND

IN PURSUANCE of sections 112 and 162 (2) of the Land Act (No. 6 of 2012), the National Land Commission on behalf of Ministry of Education gives notice that the Government intends to acquire the following parcels of land for Ruaraka High School, Drive Inn Primary School and access road to the upgraded Outering Road in Nairobi County.

SCHEDULE

L.R. No.	*Registered Owner*	*Area to be Acquired (Ha)*
L.R. 209/7879/4 Purpose—Drive Inn Primary School	Afrison Import Export Limited and Huelands Limited	2.8255
L.R. 209/7879/4 Purpose—-Ruaraka High School	Afrison Import Export Limited and Huelands Limited	2.7472
L.R. 209/7879/4 Purpose—-Access Road to upgraded Outering Road	Afrison Import Export Limited and Huelands Limited	1.198

Plans of the affected land may be inspected during office hours at the office of the National Land Commission, Ardhi House, 3rd Floor, Room No. 305, 1st Ngong Road, Nairobi. Notice of inquiries will be published in the *Kenya Gazette* as per section 112 (1) of the Land Act (No. 6 of 2012).

Dated the

MUHAMMAD A. SWAZURI,
Chairman, National Land Commission.

MR/3588561

GAZETTE NOTICE NO. 6323

THE CONSTITUTION OF KENYA

TURKANA COUNTY ASSEMBLY STANDING ORDERS

FIRST ASSEMBLY (FIFTHE SESSION)

HOUSE BUSINESS CALENDER (2017)

IT IS NOTIFIED for general information of the members of county Assembly of Turkana and the public that pursuant to the provisions of Standing Order 26 of the Turkana County Assembly Standing, by a resolution made on 19th April, 2017, the County Assembly approved the calendar of the Assembly (Regular Sessions) for 2017 as set out in the Schedule.

SCHEDULE

Period	*Days*
A: Sitting Days Tuesday, 7th February to Thursday, 20th April, 2017 *B: Short Recess* Friday, 21st April, 2017 to Monday, 8th May, 2017	Tuesday, 7th February to Monday, 8th May, 2017 Tuesday (Morning) Wednesday (Morning and Afternoon and Thursdays (Morning)
Fifth Session: second Part *C: Sitting Days* Tuesday, 9th May to Thursday, 15th June, 2017 *D: Sine Die Recess Period* Friday, 16th June, 2017 to Monday, 7th August, 2017	Tuesday, 9th May to Monday, 7th August, 2017 Tuesday (Morning) Wednesday (Morning and Afternoon and Thursdays (Morning) *Sine Die* Recess Period

period, I intend to dispense with the production of the said land title deed and proceed with registration of the said instrument of subdivision and transfer and issue a land title deed to the said (1) Florence Wanjiru Ritho and (2) Robert Githenya Ritho, and upon such registration the land title deed issued earlier to the said David Kiboi Ritho, shall be deemed to be cancelled and of no effect.

Dated the 29th August, 2014.

B. W. MWAI,

MR/5692430 *Land Registrar, Laikipia District.*

GAZETTE NOTICE NO. 6050

THE LAND REGISTRATION ACT

(*No.*3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Samson Ngure Gikandi, is registered as proprietor of all that piece of land known as Daiga/Umande Block 4/754 (Nyariginu), situate in the district of Laikipia, and whereas sufficient evidence adduced proves that the said land title deed was erroneously issued, and whereas all efforts made to compel the registered proprietor to surrender the said land title deed for cancellation have failed, notice is given that after the expiration of thirty (30) days from the date hereof provided no valid objection has been received, I intend to dispense with production of the said land title deed and give a new title deed to the rightful owner, Wamugunda Kabiru, and upon such publication the land title deed issued earlier shall be deemed to have been cancelled and of no effect.

Dated the 29th August, 2014.

B. W. MWAI,

MR/5692422 *Land Registrar, Laikipia District.*

GAZETTE NOTICE NO. 6051

THE LAND REGISTRATION ACT

(*No.*3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Charles Karugu Ndungu, is registered as proprietor of all that piece of land known as Nanyuki/Marura Block 6/3868 (Endana), situate in the district of Laikipia, and whereas sufficient evidence adduced proves that the said land title deed was erroneously issued, and whereas all efforts made to compel the registered proprietor to surrender the said land title deed for cancellation have failed, notice is given that after the expiration of thirty (30) days from the date hereof provided no valid objection has been received, I intend to dispense with production of the said land title deed and give a new title deed to the rightful owner, Felix Mathenge Ndirangu, and upon such publication the land title deed issued earlier shall be deemed to have been cancelled and of no effect.

Dated the 29th August, 2014.

B. W. MWAI,

MR/5748600 *Land Registrar, Laikipia District.*

GAZETTE NOTICE NO. 6052

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Kiptarus Kesio, of P.O. Box 52, Sirwa in the Republic of Kenya, is registered as proprietor of that piece of land known as Nandi/Kapkangani/Kaimosi/375, situate in the district of Nandi, and whereas the principal magistrate's court at Kaspsabet in succession cause No. 36 of 2014 has issued a letter of administration to (1) Esther Jepkorir Belyo and (2) Rosebella Tigoi Belyo, and whereas the land title deed issued to Kiptarus Kesio cannot be traced, notice is given that after the expiration of sixty (60) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed, and upon such registration the land title deed issued earlier to the said Kiptarus Kesio, shall be deemed to be cancelled and of no effect.

Dated the 29th August. 2014.

E. A. ODERO,

MR/5692499 *Land Registrar, Nandi District.*

GAZETTE NOTICE NO. 6053

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Koboit Kimitiva, of P.O. Box 20, Serem in the Republic of Kenya, is registered as proprietor of that piece of land known as Nandi/Kemeloi/614, situate in the district of Nandi, and whereas the principal magistrate's court at Kapsabet in succession cause No. 162 of 2012, has issued grant of letters of administration to Eunice Jelagat Muturi, and whereas the land title deed issued earlier to the said Koboit Kimitiva has been reported missing or lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and upon such registration, the land title deed issued earlier to Koboit Kimitva shall be deemed to be cancelled and of no effect.

Dated the 29th August, 2014.

E. A. ODERO,

MR/5692490 *Land Registrar, Nandi District.*

GAZETTE NOTICE NO. 6054

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS the Gazette Notice No. 3678 dated 30th May, 2014 was published to dispense off production of the land title deed issued to Caleb Omari Mbalanya to the Land Registrar Vihiga in respect of land Kakamega/Lugovo/1775, formerly No. 340 under civil Application No. 19 of 2006 from senior resident magistrate at Vihiga Law Courts, and whereas an appeal No. civil suit No. 32 of 2014 in the High Court of Kenya in the Environment and Land Division is still pending, the said Gazette Notice No. 3678 dated 30th May, 2014 is hereby cancelled and of no effect.

Dated the 29th August, 2014.

K. M. OKWARO,

MR/5692394 *Land Registrar, Vihiga District.*

GAZETTE NOTICE NO. 6055

THE LAND ACT

(No. 6 *of* 2012)

OUTERING ROAD IMPROVEMENT PROJECT

INTENTION TO ACQUIRE LAND

IN PURSUANCE of the transitional provisions contained in section 162(2) of the Land Act 2012 and section 6(2) of the Land Acquisition Act Cap. 295 (repealed). The National Land Commission gives notice that the Government intends to acquire the following parcels of land for Kenya Urban Roads Authority (KURA) for the construction of Outering Road Improvement Project in Nairobi County.

L.R. NO.	*Registered Owner*	*Area to Acquire (Ha)*
7200/12 (21763)	Barclays Pension Services Limited	0.026
7200/10	Rafiki Export Processing Zone Limited	0.095
13407		1.001
13768/135	Daniel Mosoti Osoro and Bathsheba Kerebi Osoro	0.047
13768/136		0.027
13768/137	Jeremiah Ongwenyi Maroko & Imelda Moraa Omariba	0.027
13768/138	Ndanu Musau Mwania	0.027
13768/139	Anastasia Wanjiku Chubi	0.027
13768/140	Zosky Wahu Mwangi	0.027
13768/141		0.027
13768/142	George Kirigi Thogo	0.027
13768/143		0.027
13768/144	Jasper Mokaya Ongaga	0.027

L R NO	*Registered Owner*	*Area to Acquire (Ha)*
13768/145	Philip Aluda Kisia and Kathleen Kagwiria Kisia	0 027
13768/146	Maurice Omai Sumba & Nasonga Sumba	0 027
13768/147	Philip Afred Onancha & Ruth Kendi Onancha	0 027
13768/148	Sarah Wangu Mwaniki	0 027
13768/149	Mohammed Khamis Munyanya & Lily Ikhabi Munyanya	0 042
7879/4	Afrizone Export & Import Limited & Huelands Limited	2 726

Plans for the affected land may be inspected during office hours at the office of the National Land Commission, Ardhi House, 1st Ngong Avenue, Room 305 – Nairobi County Further, let it be known to all persons that the above is not a conclusive list of all parcels to be acquired for the above road project

Notice for the inquiries will be published in the Kenya Gazette as provided in Section 112 (1) of the Land Act 2012

MUHAMMAD SWAZURI,
MR/5748698 *Chairman, National Land Commission*

GAZETTE NOTICE NO 6056

THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT, 2004

APPOINTMENT AND LIMITS OF TRANSIT SHED, CUSTOMS AREAS ETC

PURSUANT to section 12 (1) of the East African Community Customs Management Act 2004, the Commissioner of Customs Services appoints

a) The place specified in the first column of the First Schedule, as a Transit Shed for the purposes of the Act and limits shall be those set out in the second column of the Schedule,

b) The places specified in the first column of the Second Schedule of Customs areas for the purposes set out in the Third column of the Schedule, limits shall be those set out in the second column of that Schedule

FIRST SCHEDULE

*(a)*Appointment and limits of transit shed

Place	*Limits*
Messrs Unifreight Cargo Handling Limited	The area on Plot No LR2488/VI/MN, within the area Transit Shed bounded by perimeter wall marked "A" of the architectural drawing deposited in the office of the Commissioner

SECOND SCHEDULE

(b) Appointment of Entry and Exit to and from Customs Area

Place	*Limits*	*Purpose*
Messrs Unifreight Cargo Handling Limited	The area marked "C" on the Architectural drawing deposited in the Office of the Commissioner	Entry and Exit

(c) Appointment of places for Storage of Loose Cargo

Place	*Limits*	*Purpose*
Messrs Unifreight Cargo Handling Limited	The areas marked "E" on Architectural drawing deposited in the Office of the Commissioner	Storage of Transit Vehicles

(d) Appointment of places for Storage of Overstayed Vehicles

Place	*Limits*	*Purpose*
Messrs Unifreight Cargo Handling Limited	The areas marked "D" on Architectural drawing deposited in the Office of the Commissioner	Storage of Overstayed Vehicles

(e) Appointment of places for Storage of Overstayed Vehicles

Place	*Limits*	*Purpose*
Messrs Unifreight Cargo Handling Limited	The areas marked "B" on Architectural drawing deposited in the Office of the Commissioner	Storage of Local Vehicles

Gazette Notice No 6741, is revoked

Dated the 27th August, 2014

BEATRICE MEMO,
Commissioner, Customs Services Department

GAZETTE NOTICE NO 6057

CUSTOMS SERVICES DEPARTMENT

GOODS TO BE SOLD AT CUSTOMS WAREHOUSE, COMPACT FREIGHT SYSTEMS FREIGHT STATION

PURSUANT to the provisions of section 42 of the East African Community Customs Management Act, notice is given that unless the under – mentioned goods are entered and removed from the Customs Warehouse Compact CFS within thirty (30) days from the date of this notice, they will be sold by public auction on 14th October, 2014

Interested buyers may view the goods at the COMPACT CFS, Mombasa on 10th October, 2014 and on 13th October, 2014 during office hours

Lot No	*Ship's Name And Date*	*Marks and Numbers*	*Consignee Name And Address*	*Location And Description Of Goods*
0107/CCF/14	Delmas Ketar 2-Mar-12	1X20 ECMU1672898	Rural Heart Kpo Box 761152nairobi Kenya	Compact Cfs- Holy Quran 500 Pcs 5 Boxes X100 Pcs Holy Quran 380 Pcs 5 Boxes X76 Pcs Prayers Posters 1000 Pcs 2 Cartons X 500 Pcs School Table 20 Pcs Filing Cabinets 8 Pcs

GAZETTE NOTICE NO. 5882

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Maina Kimani (deceased), is registered as proprietor of that piece of land containing 0.046 hectare or thereabouts, known as Nyandarua/Njabini/2501, situate in the district of Nyandarua, and whereas the High Court at Naivasha in succession cause No. 25 of 2015, has issued grant of letters of administration to (1) Martha Wanjiru Maina and (2) Naomi Waithira Mbari, of the estate of Maina Kimani (deceased) has been reported missing or lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with the registration of the said instrument of R.L. 19 and R.L. 7, and upon such registration the land title deed issued earlier to the said Maina Kimani (deceased), shall be deemed to be cancelled and of no effect.

Dated the 29th July, 2016.

N. G. GATHAIYA,

MR/9650420 *Land Registrar, Nyandarua/Samburu Districts.*

GAZETTE NOTICE NO. 5883

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Mbithi Nzioki Nzia (deceased), is registered as proprietor of that piece of land containing 4.65 hectares or thereabouts, known as Mutonguni/Kauwi/2721, situate in the district of Kitui, and whereas the chief magistrate's court at Kitui in succession cause No. 26 of 2007, has issued grant of letters of administration to James Nyamai Mwova, and whereas the land title deed issued earlier to the said Mbithi Nzioki Nzia (deceased) has been reported missing or lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with registration of the said instrument of administration and succession, and upon such registration the land title deed issued earlier to the said Mbithi Nzioki Nzia (deceased), shall be deemed to be cancelled and of no effect.

Dated the 29th July, 2016.

L. K. MUGUTI,

MR/9650313 *Land Registrar, Kitui District.*

GAZETTE NOTICE NO. 5884

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Ben Kipkirui Chepkwony (deceased), is registered as proprietor of that piece of land containing 5.641 hectares or thereabouts, known as Kericho/Kabartegan/1271, situate in the district of Kericho, and whereas the High Court at Kericho in succession cause No. 88 of 2010, has issued grant of letters of administration to Florence Chelangat Chepkwony, and whereas the land title deed issued earlier is lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed.

Dated the 29th July, 2016.

G. C. KORIR,

MR/9620520 *Land Registrar, Kericho District.*

GAZETTE NOTICE NO. 5885

THE LAND ACT

(*No.* 6 *of* 2012)

OUTERING ROAD PROJECT

ADDEDUM

IN PURSUANCE of Land Act No. 6 of 2012 Part VIII and the transitional provisions contained in section 162 (2) of the same Act and further to Gazette Notice Nos. 6055 of 2014, 7401 of 2014 and 4136 of 2016, the National Land Commission on behalf of Kenya Urban Roads Authority (KURA) makes the following correction.

CORRIGENDUM

Delete Gazette Notice No. 5485 of 2016 and *gazette:*

Plot No.	*Registered Owner*	*Area Affected (Ha)*
7879/4	Afrison Export Import Limited and Hueland Limited	1.319

Plans for the affected area may be inspected during working hours at the office of the National Land Commission, Ardhi House, 3rd Floor, Roo 305, 1st Ngong Avenue, Nairobi.

Dated the 25th July, 2016.

MUHAMMAD A. SWAZURI,

MR/9620603 *Chairman, National Land Commissi*

GAZETTE NOTICE NO. 5886

THE CONSTITUTION OF KEENYA

THE COUNTY GOVERNMENTS ACT

(*No.* 17 *of* 2012)

WEST POKOT COUNTY EXECUTIVE COMMITTEE

APPOINTMENT

IN EXERCISE of the powers conferred by Article 179 (2) (*b*) of the Constitution as read with section 30 (2) (*d*), (*e*) and section 35 of the County Governments Act, 2012, and upon approval by the We Pokot County Assembly in its Fourth Session held on 12th July, 20 the Governor of West Pokot County appoints—

DONATO LONGAL

to be a member of the West Pokot County Executive Comm responsible for matters relating to land, housing and ur development.

Dated the 20th July, 2016.

SIMON KACHAPIN KITALE

MR/9620619 *Governor, West Pokot C*

Indenture

THIS INDENTURE made the [illegible] day of December

Nineteen Hundred and Eighty-One BETWEEN JOMETH LIMITED a li

liability company incorporated in the Republic of Kenya having its

registered office at Nairobi and of Post Office Box Number 47122 N

aforesaid (hereinafter called "the Vendor" which expression shall

the context so admits include its successors and assigns) of the c

and AFRISON EXPORT IMPORT LIMITED a limited liability company inco

in the Republic aforesaid and of Post Office Box Number 40469 Nair

HUELANDS LIMITED a limited liability company incorporated in the Re

aforesaid and of Post Office Box Number 57192 Nairobi (both of whic

hereinafter called "the Purchasers" which expression shall where th

context so admits include their respective successors and assigns)

other part:

WHEREAS by virtue of an Indenture dated the Fourth day of December O

thousand nine hundred and Fifty-eight (registered in the Government

Registry at Nairobi in Volume N 43 Folio 302/1) and made between Gla

Thomson (therein described) of the one part and the Vendor of the oth

part for the consideration therein mentioned ALL THAT piece or parcel

land situate in the City of Nairobi in the Nairobi Area of the Republ

of Kenya containing by measurement One hundred and Sixty-eight decima

168.5
(189.5) acres or thereabouts known as Land Reference Number 7879 (Orig

Number 216/2 & 4922/4) and which said piece of land is more particular

delineated and described on Plan Number 47389 annexed to the Indenture

recital and thereon bordered red was conveyed unto the Purchaser for a

estate in fee simple Subject to the provisions of the Government Lands

Act 1902 and to the Rules for the time being in force thereunder and

WHEREAS the Vendor has caused the said piece of land to be divided into

sub-divisions and has agreed with the Purchasers for the sale to them of

the remainder of the portion known as Land Reference Number 7879/4 at th

price or sum of Shillings Fourteen Million (Sh. 14,000,000/-) NOW THIS

SEALED with the Common Seal

of [illegible] IMPORT LIMITED

in the presence of :-

DIRECTOR

DIRECTOR/SECRETARY

AND

G. K. WABUHIU — ADVOCATE
P.O. Box 47122
NAIROBI

SEALED with the Common Seal

of HUELANDS LIMITED

in the presence of :

DIRECTOR

DIRECTOR/SECRETARY

G. K. WABUHIU — ADVOCATE
P.O. Box 47122
NAIROBI

G. M. Muyanga #211

[illegible]

Date 19th January 20

[illegible]

Registered 11.55 30-12-81

1300 H52 42/ 18178

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

BUSINESS REGISTRATION SERVICE

Ref: CR13.C.23387

5th April 2018

Your Ref: NLC/INV/VOL.1/399

National Land Commission
P. O. Box, 44417-00100
NAIROBI

ATT:Ali Ibrahim

RE: AFRISON EXPORT IMPORT LIMITED

We refer to the above matter and your letter dated 3rd April 2018

This company was registered on 1st December 1981under registration number C. 23387

According to the company's annual returns last dated 31st January 2014, the names of the directors/shareholders are as follows:

Names	Address	Nationality	Share
Francis Mburu	P. O. Box, 46817-00100 Nairobi	Kenyan	1
Mark Mungai Mburu	P. O. Box, 46817-00100 Nairobi	Kenyan	NIL
Justin Mungai Mburu	P. O. Box, 46817-00100 Nairobi	Kenyan	NIL
	Non director shareholder		
Equator Brent Limited	P. O. Box, 46817-00100 Nairobi		99
		Total	**100**

The registered office is situated at; riverside drive apartments b3 P. O. Box, 4681-00100 Nairobi.

Yours faithfully,

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box40112-00100, NAIROBI KENYA TEL: +254 20 2227461 2251355 0711944555 0732529995
E-MAIL: info.statelaw.office@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILE SELLASIE AVENUE P.O. Box 56657-00200, Nairobi-Kenya TEL: Nairobi 2224629 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

BUSINESS REGISTRATION SERVICE

29th March 2018

Our Ref: CR13.C.23261

Your Ref: NLC/INV/VOL.1/1/1027

National Land Commission
P. O. Box, 44417-00100
NAIROBI

ATT:Antipas Nyanjwa

RE: HUELANDS LIMITED

We refer to the above matter and your letter dated 27th March 2018

This company was registered on 6th November 1981 under registration number C. 23261.

According to the company's annual returns last dated 30th August 2017, the names of the directors/shareholders are as follows:

Names	Address	Nationality	Shares
Francis Mburu	P. O. Box, 46817-00100 Nairobi	Kenyan	1
Geoffrey Mutisya	P. O. Box, 46817-00100 Nairobi	Kenyan	1
	Non directorshareholder		
Equator Brent Limited	P. O. Box, 46817-00100 Nairobi		998
		Total	**1000**

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

BUSINESS REGISTRATION SERVICE

Our Ref: CR13 CPR/2009/15903
Your Ref: NLC/INV/VOL.1/400

5th April 2018

National Land Commission
P.O Box 44417-00100
NAIROBI

ATT: Ali Ibrahim

Dear Sir/Madam

RE: EQUATOR BRENT LIMITED

We refer to the above matter and to your letter dated 4th April, 2018.
According to the company records as at incorporation (no annual returns filed), the names of directors of the above Company with their particulars are as follows:

Names	Description	Address	Nationality	Ordinary Shares
FRANCIS MBURU	Director	P.O BOX 46817 00100 NAIROBI	Kenyan	50
MARK MUNGAI MBURU	Director	P.O BOX 46817 00100 NAIROBI	Kenyan	25
JUSTIN MUNGAI MBURU	Director	P.O BOX 46817 00100 NAIROBI	Kenyan	25
			Total Shares	100

This Company was registered on Dec 22 2009 3:15PM. The registered office of the company is situated at LR NO 165/70 ARGWINGS KODHEK ROAD NAIROBI, P. O BOX 46817 00100, NAIROBI
The registration number of this Company is CPR/2009/15903.

Yours faithfully,

JEMIMAH MUNGAI
FOR REGISTRAR OF COMPANIES

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

BUSINESS REGISTRATION SERVICE

Our Ref: C.127827
Your Ref: NLC/INV/VOL.I/402

10th April, 2018

National Land Commission,
P.O Box 44417-00100
NAIROBI.

ATT: Ali Ibrahim

Dear Sir,

RE: WHISPERING PALMS ESTATE LIMITED

We refer to the above matter and to your letter dated 6th April, 2018 whose contents we have duly noted.

The company was registered on 29th August 2006 under registration number **C. 127827** According to the company's records since registration (No annual returns have been filed), the names of directors of the above Company with their particulars are as follows;

Names	Description	Address	Nationality	Ordinary Shares
Francis Mburu	Director	P.O.Box 46817-00100 Nairobi.	Kenyan	50
Mark Mungai Mburu	Director	P.O.Box 46817-00100 Nairobi	Kenyan	25
Justin Mungai Mburu	Director	P.O.Box 46817-00100 Nairobi	Kenyanm	25
Total Shares				100

The registered office of the company is situated **Plot No. 209/656 Moi Avenue Nairobi, P.O Box 46817 Nairobi.**

Yours faithfully,

MOSES MUTHIKE
FOR REGISTRAR OF COMPANIES

NM 10/04/2018 10:23

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/0711945555/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUEP.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

BUSINESS REGISTRATION SERVICE

Our Ref: CR13.C.29352

11th April 2018

Your Ref: NLC/INV/VOL.1/1/1027

National Land Commission
P. O. Box, 44417-00100
NAIROBI

ATT:Antipas Nyanjwa

RE: **DRIVE-INN ESTATE DEVELOPERS LIMITED**

We refer to the above matter and your letter dated 27th March 2018

This company was registered on 3rd April 1985 under registration number C. 29352.

According to the company records as at incorporation (no annual returns filed) , the names of the directors/shareholders are as follows:

Names	Address	Nationality	Shares
Francis Mburu	P. O. Box, 46817 Nairobi	Kenyan	1
Jane Mburu	P. O. Box, 46817 Nairobi	Kenyan	1
Maria Wanjiru	P. O. Box, 46817 Nairobi	Kenyan	NIL
		Total	2

The registered office is situated at; Plot No 209/3847 Moi avenue P. O. Box, 46817 Nairobi.

Yours faithfully,

JEMIMAH MUNGAI
FOR REGISTRAR OF COMPANIES

REPUBLIC OF KENYA
THE LAND ACT NO. 6 OF 2012
THE LAND REGISTRATION ACT NO. 3 OF 2012
GOVERNMENT LAND ACT CAP 280 (REPEALED)

REGISTER N 110 FOLIO 47 FILE 16178

DEED OF INDEMNITY

We, AFRISON EXPORT IMPORT LIMITED & HUELANDS LIMITED both of Post Office Box Number 46817-00100 Nairobi within the Republic of Kenya do hereby confirm that we are registered as the proprietor of the whole of all that Parcel of Land and interest therein comprised and registered as N 110 Folio 47 File 16178 between the Government of Kenya the one part and AFRISON EXPORT IMPORT LIMITED & HUELANDS LIMITED of the other part registered in the Lands Registry at Nairobi comprising 96 Acres or thereabouts known as LAND REFERENCE NUMBER 7879/4 SUBJECT to the provisions of the Registration of Titles Act and the rules for the time being in force there under, Now We, AFRISON EXPORT IMPORT LIMITED & HUELANDS LIMITED do HEREBY UNDERTAKE to indemnify and keep indemnified the National Land Commission for paying us Kshs. 1,500,000,000.00, being part payment on behalf of the Ministry of Education for the two public schools which occupy about 13.5 acres thereof, against all actions, proceedings, claims, demands, costs, damages and expenses which may be brought, levied or made against the National Land Commission as a result of the said part payment for compensation on acquiring the said portion of 13.5 Acres.

In witness whereof this Deed has been duly executed on this 26th day of January, 2018

SEALED with the Common Seal of)
AFRISON EXPORT IMPORT LIMITED)

In the presence of:-)
Director)
Mark Mungai Mburu)
ID32953785)
Signature: .....)

Director)
Justin Sam Mburu)
ID: 27582587)
Signature: .....)

AND

SEALED with the Common Seal of
HUELANDS LIMITED

In the presence of:-
Director
Mark Mungai Mburu
ID: 32953785

Signature: .....

Director
Justin Sam Mburu
ID: 27582587

Signature: .....

I CATHERINE MBURU .....an Advocate of the High Court of Kenya CERTIFY that the Directors of AFRISON EXPORT IMPORT LIMITED and HUELANDS LIMITED , the said MARK MUNGAI MBURU and JUSTIN SAM MBURU appeared before me on the 23rd Day of November .....2018 and being known to me acknowledge that the above signatures or marks are theirs respectively and are correct and that they each freely and voluntarily executed this instrument and understood its content..

.....

Signature and designation of the
Person certifying

Drawn by:
Albert Kamunde & Company
Advocates
Blue Violets Plaza, 4th Floor
PO Box 56936-00200
NAIROBI

NLC/VAL.1446

Mr./Mrs./Ms.....

THE LAND ACT, 2012 (PART VIII)

PROJECT NAME: RUARAKA HIGH SCHOOL & DRIVE INN PRIMARY SCHOOL (MINISTRY OF EDUCATION)

GAZETTE NOTICE NO: 6322 OF 30TH JUNE 2017

PLOT NO: .....209/7879/4..... (PART)

AWARD

IN PURSUANCE OF SECTION 113 (1) of The Land Act, 2012, having concluded the inquiry relating to the acquisition of the land described in Kenya Gazette Notice above, THE COMMISSION HEREBY AWARDS you the sum of Kshs.....
.....
.....
in respect of your interest in the land and permanent improvements acquired for the above project

The Commission hereby gives the following particulars relating to the acquisition:-

a) The area of the land to be acquired is .....Ha approximately.
b) The total value of land is Kshs.....
c) The total value of improvements in my opinion is Kshs.....
d) The total compensation payable for land and improvements inclusive of 15% disturbance allowance and any other applicable statutory additions (if any) is Kshs.....
e) The compensation HEREBY AWARDED is payable to the following persons interested in the land:-
.....
.....
.....

Please complete the Indemnity Clause overleaf, attached Statement and Electronic Funds Transfer Forms and submit to the Commission within 14 days of receipt.

DATED this..... day of 2018

Dr. Salome L. Munubi
Director, Valuation & Taxation
FOR: CHAIRMAN, NATIONAL LAND COMMISSION

NATIONAL LAND COMMISSION
Our Land, Our Wealth, Our Heritage

INDEMNITY CLAUSE

1. The Payee hereby gives unequivocal undertaking to indemnify and hold harmless the National Land Commission and its Directors, officers, employees and agents, from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation advocates' fees and costs) which arise out of, relate to or result from payment in error occasioned by non-disclosure of material facts by the Payee.

2. The Payee hereby covenants that there are no pending legal claims, civil or criminal, in relation to the suit property and gives unequivocal undertaking to indemnify and hold harmless the National Land Commission and its Directors, officers, employees and agents, from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation advocates' fees and costs) which arise out of, relate to or result from payment in error arising from any judgment or decree arising from any civil or criminal proceedings against the Payee.

3. The Payee hereby covenants that there are no other encumbrances against the title other than those as appear in the register, hereby gives unequivocal undertaking to indemnify and hold harmless the National Land Commission and its Directors, officers, employees and agents, from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation advocates' fees and costs) which arise out of, relate to or result from payment in error arising from any encumbrances other than those appearing in the title.

SIGNED by the said Payee:]

AFRICON IMPORT EXPORT LTD & HIGHLANDS]

LTD MARK KUNGAI MBURU]

DIRECTOR

In the Presence of: -]

]

]

]

REPORT AND VALUATION UPON

LR NO.7879/4 (PART),

OUTER RING ROAD

NAIROBI COUNTY

Further to instructions received from Kenya Urban Roads Authority for compulsory acquisition purposes in accordance to the Land Act No.6 of 2012, we hereby append the Report and Valuation of L.R 7879/4(PART) for compulsory acquisition purposes.

SITUATION:	The property is situated along the Outer-Ring road in close proximity to the GSU intersection in the Eastern Part of Nairobi County.
TITLE:	LR NO.7879/4(part)
REGISTERED OWNERS:	Afrison Export Import Limited and Huelands Limited
SERVICES:	All main services: electricity, water and sewer lines are connected to the Property. Access roads are tarmacked to adoptive standards

This is the annexture marked "[illegible]"
referred to in the Affidavit of [illegible]
Sworn / Affirmed before me this [illegible] day of [illegible] 20[illegible]
Signed: [illegible]

DATE OF INSPECTION: 13th October, 2014

AREA TO BE ACQUIRED: Gazetted 2.726 Ha (but compensated 2.626 ha).

DESCRIPTION: A fairly flat land parcel with permanent improvements of administrative offices, warehouses and business centres. However our subject of interest is a strip of land extending from the GSU boundary wall to Mathare river. The plot has mixed soils that has been excavated back filled with hardcore and murrum. The land acquired is on this long strip of land fronting Outer Ring Road.

COMPARABLES: Of similar locality, users and development planning.

1. 1208/43

LR. NO.	User	Location	Acreage	Stamp Duty Declaration	Rate per Acre analysis	Date
1208/43	Residential	Thika Road (Jesus Winner Ministry)	0.1774 Ha 0.438 Acres	60 million	237 m	2011
21762	Industrial	Junction of Thika & Outering Road	1,425 acres	150 million	101 m	2013
Block 98/78	Residential	Along Mombasa Road at Bellevue Junction	0.809 Ha 2.002 acres	520 million 5/9/14	265 m	09/2014
LR 12803/43	Thika Commercial	Thika Road/Kamiti Juction	0.1774 Ha 0.4383 acres	60 million 9/9/2011		

Remarks: NOTE: The Proprietor had undertaken a private valuation by Camp Valuers who advised the valuer per acre to be Kshs. 440,000,000/=. However, valuation undertook by Tyson Limited for the adjoining land had returned Kshs. 200 million per acre. On this basis, the Commission gave a fair value of 190 million per acre. The area being acquired fronts the major Outering Road. The area acquired is large enough to accommodate a shopping mall. The rear of the acquired land is already developed. Different retail investor enterprises that include banks, shopping malls, petrol stations and commercial premises. The title is 99 year lease with the area having a potential of property with a current zoning open to change of users. Change of land values in open areas fronting the road has been at 50% per annum since 2010. Basis of comparable is stamp duty declaration.

Valuation: In our opinion, a fair value to attach to this property for compulsory purchase is Kshs.1.417,812,851 (READ ONE BILLION FOUR HUNDRED AND SEVENTEEN MILLION, EIGHT HUNDRED AND TWELVE THOUSAND EIGHT HUNDRED AND FIFTY ONE ONLY)

For and on behalf of the Chairman, National Land Commission

SALOME L. MUNUBI
B.A. LAND ECON (HONS) M.I.S.K, MBA (UoN)
LICENSED AND PRACTISING VALUER

REPORT AND VALUATION UPON

LR NO.7879/4 (PART),

RUARAKA HIGH SCHOOL

DRIVE INN PRIMARY SCHOOL

NAIROBI COUNTY

The National Land Commission received instructions from Ministry of Education ON 17th March 2017 to compulsory acquire land for Ruaraka High School and Drive Inn Primary School in accordance with the Land Act No.6 of 2012. The Inspection Report and Valuation for compulsory acquisition and compensation purposes is hereby appended.

DATE OF INSPECTION: 14th June 2017

DATE OF GAZETMENT: Gazette Notice No. 6322 of 30th June 2017

SITUATION: The property is situated off the upgraded Mathare –North Road that connects Outer-Ring Highway and Juja road. The Ruaraka High School and Drive Inn Primary School share the same compound and are sandwiched between the General Service Unit (GSU), De La Rue Company and Kenya School of Monetary Studies.

TITLE NUMBER: LR NO. 7879/4(part)

SERVICES: All main services, electricity, water and sewer are connected to the Property. Access roads are tarmacked and social amenities are in the vicinity.

AREA ACQUIRED: Approximately 2.8255Ha or 6.9818 Acres for Drive Inn primary School and 2.7472Ha or 6.7883 Acres for

This is an accessible high potential area that is well served with public infrastructure and social amenities. The surrounding developments being the GSU, De La Rue Company and Kenya School of Monetary Studies forming an exclusive neighbourhood that secures the area giving it prominence compared to the lower parts bordering Mathare area.

The rest of the neighbourhood has different retail investor enterprises that include banks, shopping malls, petrol stations and commercial premises. The current zoning is open to change of users and land values. Unimproved parcels of land in the vicinity have been escalating in a range of 20% to 50% per annum since 2010. The basis of comparable comprises of both stamp duty declaration and comparable sales recorded in the Land office registry.

It is further noted that this is a statutory valuation undertaken underpart VIII of the Land Act 2012 on compulsory acquisition on interest on land. The Ministry of Education has duly noted that the 2 schools were built on private land with no consideration having exchanged hands. Therefore a statutory provision of 15% is duly included in the valuation.

VALUATION:

The Commission is opined that a fair value to attach to this property for compulsory purchase in accordance with above land market analysis is approximately **Kshs.206m per acre.** Therefore total compensation for 13.7701 acres will be **Kshs.3,269,040,600 (READ: THREE BILLION TWO HUNDRED AND SIXTY NINE MILLION AND FORTY THOUSAND, SIX HUNDRED ONLY)** inclusive of statutory 15% disturbance allowance.

For and on behalf of
CHAIRMAN, NATIONAL LAND COMMISSION

DR. SALOME L. MUNUBI
B.A. LAND ECON (HONS) M.I.S.K, MBA (UoN)
LICENSED AND PRACTISING VALUER

Summit House
Fifth Floor Room 1
Moi Avenue
P.O Box 36804-00623
Mob: 0722- 375034
Nairobi-Kenya

CAMP VALUERS
Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON.) HONS. NRB
M.I.S.K. (V.S)
REGISTERED VALUER (R.V.)
PRACTISING VALUER

Our Ref: .....

Date: .....

CV/NBI/08/61/02

02.08.2016

REPORT AND VALUATION

UPON

PORTION UNDER PUBLIC SCHOOLS

(Ruaraka High School &Drive - in Primary School)

LR. NO. 7879/4 (PART OF SUBPLOT NO. 7879/25)

DRIVE-IN ESTATE, KASARANI AREA

NAIROBI COUNTY

Duly instructed by Mr. F.M Mungai of P.O. Box 46817-00100 GPO Nairobi, we inspected the subject property with a view to advising on its current open market value.

Hereunder is the inspection report and value of the same.

1.0 DATE INSPECTED: We inspected the property for appraisal on 25th July 2016..

2.0 SITUATION: The property which include the land for Ruaraka High School and Drive-in School which is adjacent to each other is off Thika Super Highway and off Outer Ring Road in Drive-in Estate of Kasarani Area in Nairobi County.

...mit House
...th Floor Room 1
Moi Avenue
P.O Box 38804-00623
Mob 0722- 375034
Nairobi-Kenya

CAMP VALUERS

Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON.) HONS NRB
M.I.S.K. (V.S)
REGISTERED VALUER (R.V)
PRACTISING VALUER

Our Ref: ..... Date: .....

The property is found near GSU residence and the main spine road linking the schools to Mathare North Estate and Outer Ring Road.

3.0 THE TITLE:

3.1 REGISTERED: **Afrison Export Import Ltd and Huelands Ltd. as tenants in common in equal shares.**

The portion of land subject of this valuation is occupied by **Ruaraka High School and Drive-in primary School** both of which are Public Schools.

3.2 TENURE: Freehold interest.

3.3 SIZE: LR. No. 7879/25 extends over approximately **96.0acres. the holding is subdivided into two subplots: LR No. 7879/24 and 25.**

The subject portion of land is on LR No 7879/25 (part of LR No. 7879/4) and extends as follows;

Drive-in primary School	2.74 ha or 6.773 acres
Ruaraka High School	6.763 acres
Total area	**13.5364 Acres**

3.4 USER: This is a freehold title.

Summit House
Fifth Floor Room 1
Moi Avenue
P O Box 38804-00623
Mob: 0722-375034
Nairobi-Kenya

CAMP VALUERS
Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND E
M.I.S.K. (V.S.)
REGISTERED
PRACTISING

Our Ref: .....

Date: .....

The property is near the City Center and is in the Thika Super Highway fast growing corridor.

6.1 DEVELOPMENT OF THIKA ROAD:

The **mordernisation of Thika Road** into a ten (10) lan super highway has eased traffic jam along Nairobi-Thik corridor. The project is now complete and has had a immediate tremendous effect on property values along th corridor. Outering road is being improved and modernized

7.0 IMPROVEMENTS:

This valuation is for serviced land. Improvements thereor belong to the public schools and are not considered in this valuation.

8.0 COMPARABLE SALES:

The estate is in the same locality as Eastleigh, Pangani, Thome, Donholm, Tasia, Fedha, Nairobi South B, Nairobi South C and Parklands estates among others in relation to the City Centre.

Current comparable sales are as follows.

i. **Pipeline Estate**
Residential (away from tarmac road)
10 x 20m = 200 m^2 or 2156 sq ft
Sold for 3,000,000/= to Mr. Mwangi of Tena (2009)
Analysis: 1,395 p.s.f

Summit House
11th Floor, Room 1
Moi Avenue
P.O.Box 38804-00623
Mob 0722-375034
Nairobi-Kenya

CAMP VALUERS
Property Consultants & Valuers

Githaiga J.T.
B.A (LAND ECON.) HONS. N
M.I.S.K. (V.S)
REGISTERED VALUER (R.V
PRACTISING VALUER

Our Ref: .....

Date: .....

- influx of Somalis from Somalia
- influx of Indians from the East African region
- Easy money from the Arab countries.
- Influx of Kenyans from areas affected by insecurity arising from tribal animosity.
- Scarcity of land of similar size and qualities as the subject land.
- The potential of subject land due to nearness to City Centre and high density neighbourhood.
- Development of major infrastructure such as road, water and sewer among others.

9.0 GENERAL REMARKS:

- This valuation is for a serviced plot situated along a major line of communication. Mains services are connected while access is through tarmac roads. Secondary roads, stormwater drainage and street lighting done.

- The user is open.

10.0 RECOMMENDATION: From the above analysis we recommend a rate of Kshs. 10,000/= per sq ft of land element for the subject property.

Hence:
13.5364 Ac or 589,646 sq ft
@ 10,000/= per sq ft..... 5,896,456,000/=
Call Kshs. 5,900,000,000/=

...mit House
...th Floor, Room 1
Moi Avenue
P.O Box 38804-00623
Mob: 0722-375034
Nairobi-Kenya

CAMP VALUERS
Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON.) HO
M.I.S.K. (V.S)
REGISTERED VALUEF
PRACTISING VALUER

Our Ref. ..... Date: .....

11.0 VALUATION: Having considered the above factors we value the freehold interest in the portions under Public Schools land on **L.R No. 7879/25 (Part of L.R No. 7879/4)** in the sum of **Kshs. 5,900,000,000/= (Read Kenya Shillings Five Point Nine Billion Only).**

DATED THIS 2nd DAY OF AUGUST , 2016.

Yours faithfully,
For: CAMP VALUERS

Valuer: GITHAIGA J.T.
BA (LAND ECON.) HONS; M.I.S.K. (V.S.)
REGISTERED/PRACTISING VALUER.

Summit House
Fifth Floor Room 1
Mol Avenue
P.O.Box 38804-00623
Mob: 0722- 375034
Nairobi-Kenya

CAMP VALUERS
Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON.)
M.I.S.K. (V.S)
REGISTERED VALU
PRACTISING VALUE

Our Ref. .....

Date:.....

ii. **Plot for Continental Development Ltd behind Doonholm Caltex petrol station on Outer Ring Road**
Total area: 800 sq m (8,610 sq ft)
Asking: Kshs. 35,000,000/= (2010)
Analysis: Kshs. 4,065/= per sq ft

iii. **Plots in Eastleigh Garissa Road.**
Measuring 50 x 100 ft = 5,000 sq ft
Selling at 60,000/= to 60,000,000/=.
Analysis 6,000/= to 10,000/= per sq ft.

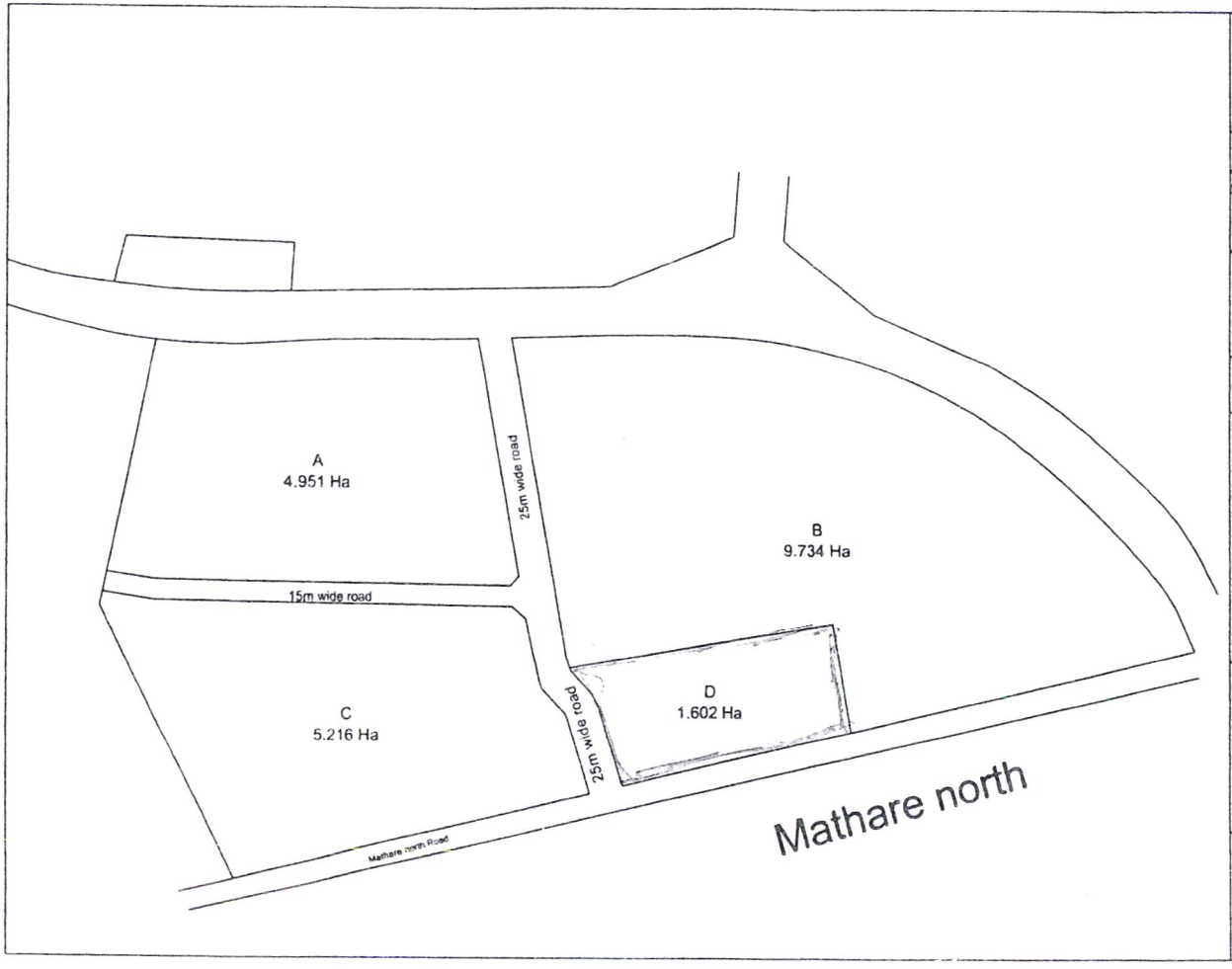
iv. **Jesus Winners Ministry. LR No. 12803/43**
1st row plot at Thika Road/Kamiti Rd junction
Sale: 2011
Measuring 0.25 Ac
Selling price : Kshs. 60,000,000/=.
Analysis Kshs. 5,510/= p.s.f

Vacant properties for development in these areas are in high demand and rare.

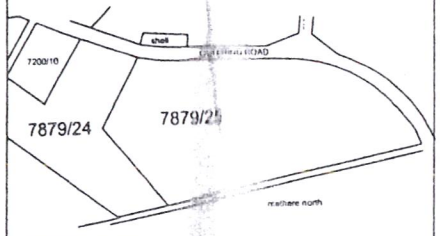
The **subject property** is at the junction of Outer Ring Road and Thika Super Highway. The property should attract a rate in excess of **Kshs. 10,000/= per sq ft.**

8.1 VIBRANT PROPERTY MARKET :

Currently the **Nairobi property market** is very vibrant with abnormal sales noted in Eastleigh (near the subject property), Nairobi South B, Nairobi South C, Nairobi Central Business District, Westlands and Parklands among others. The reason given for such sales are: -



LOCATION PLAN NOT TO SCALE



PROPOSED SUBDIVISION OF LR Nos. 7879/25 - RUARAKA

OWNER(S):
AFRISON EXPORT IMPORT LTD & HUELAND LTD
P.O BOX 46817-00100
NAIROBI

Signature..... Date.....

PLANNER:

Signature..... Date .....

Notes:

1. Areas and distances are approximate and subject to final survey

scale 1:2500

Date:

Summit House
Fifth Floor, Room 1
Moi Avenue
P.O.Box 38804-00623
Mob: 0722- 375034
Nairobi-Kenya

CAMP VALUERS
Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON.) HONS.
M.I.S.K. (V S)
REGISTERED VALUER (R.
PRACTISING VALUER

Our Ref: .....

Date:.....
08.08.2014

REPORT AND VALUATION

UPON

LR .No 7879/4 (PART), OUTER RING RD

DRIVE-IN ESTATE, NAIROBI COUNTY

Duly instructed by Mr. F.M Mungai of P.O Box 46817-00100 GPO Nairobi, we inspected the subject property with a view to advising on its current open market value for land acquisition purposes in accordance with Land Acquisition Act, Cap 295, Laws of Kenya.

Hereunder is the inspection report and value of the same.

1.0 DATE INSPECTED: We inspected the properties for appraisal on 04.08.2014

2.0 SITUATION:

The property is some 7km from City Centre, a few meters off Thika Super Highway with a frontage onto Outer Ring Road in Drive-in Estate of Nairobi County.

The property consists of a narrow long strip running along Outer Ring Road.

3.0 THE TITLE:

Registered Owners
Afrison Export Import Ltd and Huelands Ltd as tenants in common in equal shares.

Tenure
Freehold interest

Size
LR No 7879/4 extends over approximately 96 acres.

The portion subject of acquisition measures approximately **2.726ha (Two Decimal Seven Two Six Hectares) or the equivalent of 6.7359 acres (293,417sq ft)**

Summit House
Fifth Floor, Room 1
Moi Avenue
P.O.Box 38804-00623
Mob: 0722- 375034
Nairobi-Kenya

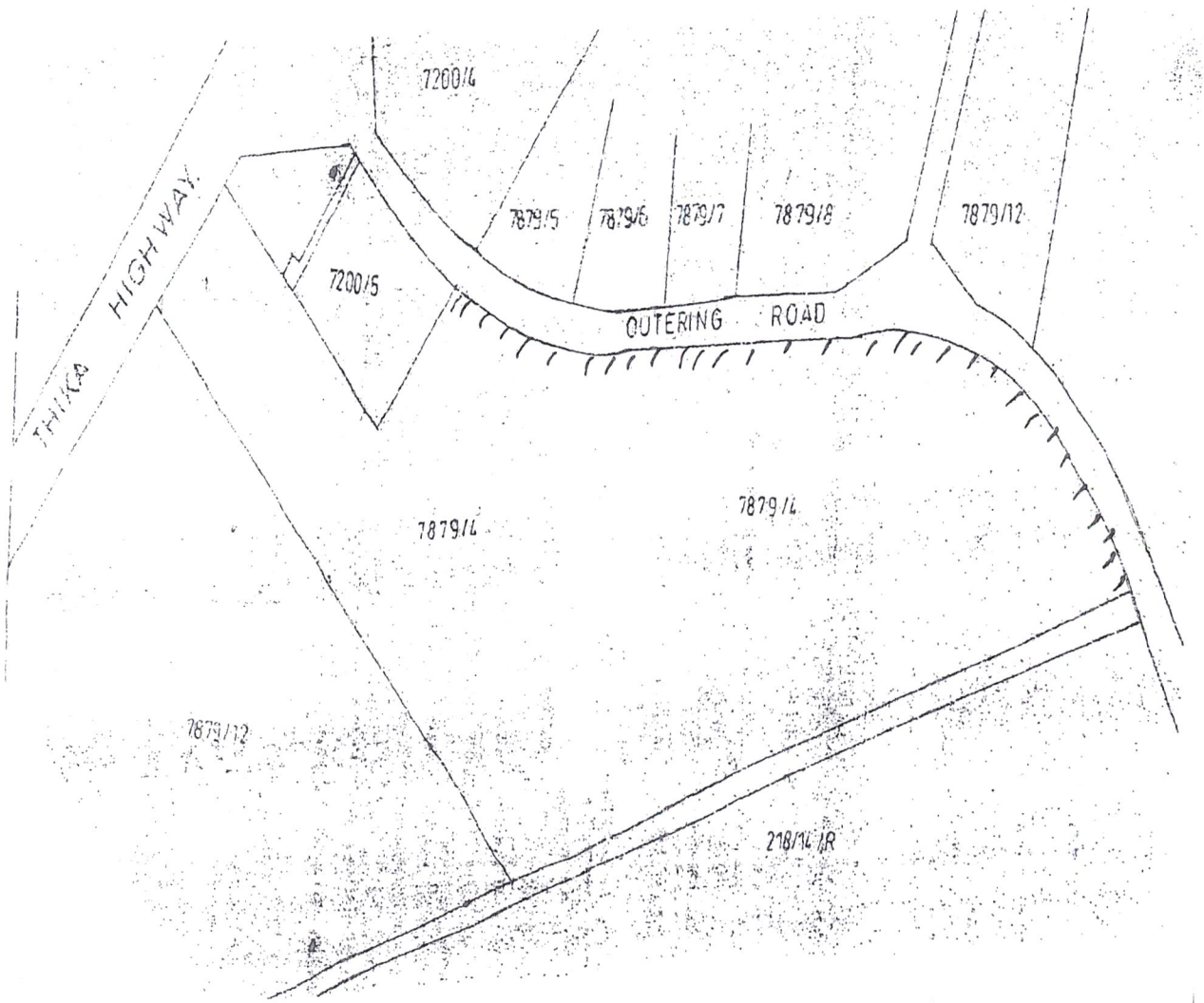
CAMP VALUERS
Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON.) I
M.I.S.K. (V S)
REGISTERED VALU
PRACTISING VALUE

Our Ref: .....

Date:.....

7879/4



Summit House
Fifth Floor, Room 1
Moi Avenue
P.O Box 38804-00623
Mob: 0722- 375034
Nairobi-Kenya

CAMP VALUERS
Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON.) HONS. N
M.I.S.K. (V S)
REGISTERED VALUER (R.V
PRACTISING VALUER

Our Ref: .....

Encumbrances
Nil

Date:.....

4.0 NEIGHBOURHOOD : Institutions in its close neighbourhood includes:-

1. De La Rue
2. School of Monetary Studies
3. KCA University
4. GSU Headquarters
5. National Youth Service
6. Banks / Industries
7. Utalii College
8. Survey of Kenya
9. Thika Road Mall
10. Garden City Complex
11. Kenya Breweries Ltd Complex
12. Safari Park Hotel

5.0 THE PLOT: The plot subject of this valuation is level with shallow blackcotton soils on hard rock. It consists of a long strip of land with a frontage onto Outer Ring Road.

5.1 SERVICES: Tap water is connected.
Electricity is connected.
Trunk sewer connected.
Access is through tarmac roads.

6.0 DEVELOPMENTS: The plot is vacant. Plots with a frontage onto Outer Ring Road are being developed with multi-storey commercial- cum-residential buildings.

7.0 REMARKS: The portion is part of a large holding ripe for immediate development with highrise, high density commercial buildings being a strip of land running along Outer Ring Road.

Mains services such as water, electricity and sewer are connected. Access is through tarmac roads.

The property is only 7km along Thika Super Highway and is on the newly to be developed Outer Ring Highway. Thika Super Highway has huge developments taking place further on.

Summit House
Fifth Floor, Room 1
Moi Avenue
P.O Box 38804-00623
Mob: 0722- 375034
Nairobi-Kenya

CAMP VALUERS
Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON.) HONS.
M.I.S.K. (V S)
REGISTERED VALUER (R.
PRACTISING VALUER

Our Ref: .....

Date: .....

In computing the value of subject property sales of similar vacant plots in the neighborhood were considered. The following comparable sales were taken into account:-

- **Plot no Nairobi/Block 82/3526, of Outer Ring Road in New Doonholm Estate – residential.**
  Area: 0.0225 ha or 2422 sq ft.
  Sold : kshs 8,000,000/= in April 2014
  Analysis : kshs 3,303/= per sq ft
  Note: this is a residential plot away from major road and on an earthroad.

- **Plot no Nairobi/Block 82/1799, fronting the main Doonholm – Jacaranda road in Doonholm Phase 8 Estate (near jacaranda estate) – commercial cum residential**
  Area: 0.0375 ha or 4036 sq ft.
  Sold : kshs 12,000,000/= in mid 2013
  Analysis : kshs 2,973/= per sq ft
  Note: this is a commercial cum residential plot on a major road but about 1km away from Outer Ring Road.

- **Jesus Winners Ministry LR No 12803/43 1st row plot at Thika Road/ Kamiti Road junction**
  Sale: 2011
  Area 0.25 AC
  Sold: Kshs 60,000,000/=
  Analysis Kshs 5,510/= per sq ft
  This is an old sale completed before the construction of Thika Road Mall and the new Garden City at breweries. The current rate for this comparable is in excess of Kshs 10,000/= per sq ft.

The subject portion is a **freehold interest** as opposed to the leasehold interest of the comparables above. It is large in size, ideal for large scale development and hence command a rate higher than the above comparables.

Sales in its vicinity are rare as most plots are already developed and information on the ground indicate that 0.5 acres of first row plots along Thika Road in Thome Estate are selling at Kshs 200,000,000/= analyzing to Kshs 9,183/= per sq ft. The subject property is nearer the city centre and commands a higher rate.

Summit House
Fifth Floor, Room 1
Moi Avenue
P.O.Box 38804-00623
Mob 0722- 375034
Nairobi-Kenya

CAMP VALUERS
Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON.) HONS. NRB
M.I.S.K. (V S)
REGISTERED VALUER (R.V)
PRACTISING VALUER

Our Ref: .....

Date:.....

We recommend a current sales rate of Kshs 10,000/= per sq ft for the subject property hence:-

2.726 ha or 293,417 sq ft @ 10,000/=.....2,934,170,000/=

ii) add 15% statutory .....440,125,500/=
Total Claim..... 3,374,295,500/=

Call..... Kshs 3,375,000,000/=

8.0 VALUATION:

Having considered the above particulars we value the freehold interest in the subject portion of **LR No 7879/4** in the sum of **Kshs 3,375,000,000/= (Read Kenya Shillings Three Point Three Seven Five Billion Only)**

DATED THIS 8TH DAY OF AUGUST, 2014.

Yours faithfully,
For: CAMP VALUERS

Valuer: GITHAIGA J.T.
BA (LAND ECON.) HONS; M.I.S.K. (V.S.)
REGISTERED/PRACTISING VALUER.

Summit House
Fifth Floor, Room 1
Mol Avenue
P.O Box 38804-00623
Mob: 0722- 375034
Nairobi-Kenya

CAMP VALUERS
Property Consultants & Valuers

Githaiga J.I.
B.A. (LAND ECON.) HONS NRB
M.I.S.K. (V.S)
REGISTERED VALUER (R.V.)
PRACTISING VALUER

Our Ref. CV/NBI/08/61/02

Date: 02.08.2016

REPORT AND VALUATION

UPON

PORTION UNDER CHIEF's CAMP

ON LR .No 7879/25 - (PART OF LR NO.7879/4),

OUTER RING RD, DRIVE-IN ESTATE

NAIROBI COUNTY

Duly instructed by Mr. F.M Mungai of P.O. Box 46817-00100 GPO Nairobi, we inspected the subject property with a view to advising on its current open market value.

Hereunder is the inspection report and value of the same.

1.0 DATE INSPECTED: We inspected the property for appraisal on 25th July 2016..

2.0 SITUATION: The property is part of Drive-in Estate located some 7km from City Centre along Thika Super Highway and off Outer Ring Road in Kasarani area of Nairobi County.

The property is found near GSU residence and has a frontage onto the main spine road leading to Mathare North Estate and Outer Ring Road. Other landmarks include Ruaraka High School and Drive- in Primary school nearby.

3.0 GENERAL DETAILS: Registered Owners

Afrison Export Import Ltd and Huelands Ltd as tenants in common in equal shares.

Tenure

Freehold interest

Summit House
Fifth Floor, Room 1
Moi Avenue
P.O.Box 38804-00623
Mob: 0722- 375034
Nairobi-Kenya

CAMP VALUERS
Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON.) HONS. NR
M.I.S.K. (V.S)
REGISTERED VALUER (R.V)
PRACTISING VALUER

Our Ref. .....

Date:.....

Size

The area occupied by the Chiefs Camp, I understand, is estimated to be 4.0 Ac out of Sub plot 7879/25 part of LR No. 7879/4.

4.0 NEIGHBOURHOOD: Institutions in its close neighbourhood include:-

1. De La Rue
2. School of Monetary Studies
3. KCA University
4. GSU Headquarters
5. National Youth Service
6. Banks / Industries
7. Utalii College
8. Survey of Kenya
9. Thika Road Mall
10. Garden City Complex
11. Kenya Breweries Ltd complex
12. Moi sports complex – Kasarani
13. Safari Park Hotel among others.

The property is near the City Center and is in the Thika Super Highway fast growing corridor.

5.0 THE PLOT: The plot is rectangular in shape and is level with shallow black cotton soils on hard rocks

5.1 SERVICES:

Tap water is connected.
Electricity is available.
Sewer connected.
Access is through tarmac roads.

6.0 DEVELOPMENTS: The plot is to be valued vacant.

7.0 GENERAL REMARKS : In computing value for land element the following comparables were considered;-

Summit House
Fifth Floor, Room 1
Moi Avenue
P.O.Box 38804-00623
Mob: 0722- 375034
Nairobi-Kenya

CAMP VALUERS

Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON.) HONS. NRB
M.I.S.K. (V.S)
REGISTERED VALUER (R.V.)
PRACTISING VALUER

Our Ref: .....

i) **Plot for Continental Development Ltd behind Doonholm Caltex petrol station on Outer Ring Road**
Total area: 800 sq m (8,610 sq ft)
Asking: Kshs. 35,000,000/= (2010)
Analysis: Kshs. 4, 065/= per sq ft

ii) **Plots in Eastleigh near Garrisa shopping complex**
Measuring 50 x 100 ft = 5,000 sq ft
Selling at between 30,000,000/= to 60,000,000
Analysis 6,000/= to 12,000/= per sq ft

iii) **Jesus Winners Ministry. LR No 12803/43**
1st row plot at Thika Road/Kamiti Rd junction
Scale: 2011
Measuring 0.25 Ac
Selling price: Kshs. 60,000,000/=
Analysis Kshs, 5,510/=p.s.f

Vacant properties for development in these areas are in high demand and rare.

The subject property is at the junction of Outer Ring Road and Thika Super Highway and should attract a rate in excess of Kshs. 10,000/= per sq ft.

Hence:
Current capital value as discussed above
4 ac or 174, 240 sq ft @ 10,000/= = 1,742,400,000/=
as at year 2016.
Call Kshs. 1,740,000,000/=

8.0 VALUATION: Having considered the above particulars we value the freehold interest in the portion under Chief's Camp on LR .No 7879/25 - (part of LR No.7879/4) in the sum of Kshs 1,740,000,000 /= (Read Kenya Shillings One Point Seven Four Billion Only)

DATED THIS 2ND DAY OF AUGUST, 2016.

Yours faithfully,
For: CAMP VALUERS

Valuer: GITHAIGA J.T.
BA (LAND ECON.) HONS; M.I.S.K. (V.S.)

NAIROBI ... SION

TELEGRAMS: "MUNICIPALITY" NAIROBI
TELEPHONE 24281
EXT. 105/Mr. Wang'ondu

CITY PLANNING DEPARTMENT

CITY HALL
P.O. BOX 30075
NAIROBI
KENYA

Ref. No. CPD/0644/7879/4

M/s Drive In Estate Developers Ltd.,
P.O. Box 46817,
NAIROBI.

28th March 1984.

(ATT: MR. FRANCIS MBURU)

Dear Sir,

RE: SUBDIVISION OF L.R. NO. 7879/4, OUTER RING ROAD, NAIROBI.

Your unreferenced letter of 14th March, 1984 in respect of the above mentioned property refers.

This is to advise you that, your proposed development was given conditional subdivision approval and its up to you to either accept them in total or cancel the said subdivision scheme.

Please be informed that, this Commission will not entertain any negotiations on the conditions of approval under reference, and is not, in any way whatsoever, interested in your Valuation Report, copies of which are returned herewith for your safe keeping.

Yours faithfully,

MWANGIH H.C. WANG'ONDU
DIRECTOR OF CITY PLANNING

C.C. Commissioner of Lands,
P.O. Box 30089, NAIROBI.

Director of Surveys,
Survey of Kenya,
P.O. Box 30046, NAIROBI.

B.S. Dogra Associate,
Project Architect,
P.O. Box 42784, NAIROBI.

MHCW/rk

Encls.

issued to the said M'Atugi M'Ichunge (deceased), shall be deemed to be cancelled and of no effect.

Dated the 30th June, 2017.

C. M. MAKAU,
Land Registrar, Meru District.

MR/3425459

GAZETTE NOTICE NO. 6321

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Joseph Kajogi M'Rujau (deceased), is registered as proprietor of all that piece of land known as Abogeta/U-Kiungone/1872, situate in the district of Meru, and whereas the High Court in succession cause No. 486 of 2012, has issued grant of letters of administration and certificate of confirmation of grant in favour of Jane Ncoro Kajogi, and whereas the said court has executed an application to be registered as proprietor by transmission R.L 19, and whereas the land title deed in respect of Joseph Kajogi M'Rujau (deceased) is lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with registration of the said application to be registered as proprietor by transmission R.L. 19 in the name of Jane Ncoro Kajogi, and upon such registration the land title deed earlier issued to the said Joseph Kajogi M'Rujau (deceased), shall be deemed to be cancelled and of no effect.

Dated the 30th June, 2017.

C. M. MAKAU,
Land Registrar, Meru District.

MR/3425459

GAZETTE NOTICE NO. 6322

THE LAND ACT

(*No.* 6 *of* 2012)

MINISTRY OF EDUCATION

DRIVE INN PRIMARY SCHOOL AND RUARAKA HIGH SCHOOL

MINISTRY OF TRANSPORT AND INFRASTRUCTURE–ACCESS ROAD TO UPGRADED OUTERING ROAD

INTENTION TO ACQUIRE LAND

IN PURSUANCE of sections 112 and 162 (2) of the Land Act (No. 6 of 2012), the National Land Commission on behalf of Ministry of Education gives notice that the Government intends to acquire the following parcels of land for Ruaraka High School, Drive Inn Primary School and access road to the upgraded Outering Road in Nairobi County.

SCHEDULE

L.R. No.	*Registered Owner*	*Area to be Acquired (Ha)*
L.R. 209/7879/4 Purpose—Drive Inn Primary School	Afrison Import Export Limited and Huelands Limited	2.8255
L.R. 209/7879/4 Purpose—Ruaraka High School	Afrison Import Export Limited and Huelands Limited	2.7472
L.R. 209/7879/4 Purpose—Access Road to upgraded Outering Road	Afrison Import Export Limited and Huelands Limited	1.198

Plans of the affected land may be inspected during office hours at the office of the National Land Commission, Ardhi House, 3rd Floor, Room No. 305, 1st Ngong Road, Nairobi. Notice of inquiries will be published in the *Kenya Gazette* as per section 112 (1) of the Land Act (No. 6 of 2012).

Dated the

MUHAMMAD A. SWAZURI,
Chairman, National Land Commission.

MR/3588561

GAZETTE NOTICE NO. 6323

THE CONSTITUTION OF KENYA

TURKANA COUNTY ASSEMBLY STANDING ORDERS

FIRST ASSEMBLY (FIFTHE SESSION)

HOUSE BUSINESS CALENDER (2017)

IT IS NOTIFIED for general information of the members of county Assembly of Turkana and the public that pursuant to the provisions of Standing Order 26 of the Turkana County Assembly Standing, by a resolution made on 19th April, 2017, the County Assembly approved the calendar of the Assembly (Regular Sessions) for 2017 as set out in the Schedule.

SCHEDULE

Period	*Days*
A: Sitting Days Tuesday, 7th February to Thursday, 20th April, 2017 *B: Short Recess* Friday, 21st April, 2017 to Monday, 8th May, 2017	Tuesday, 7th February to Monday, 8th May, 2017 Tuesday (Morning) Wednesday (Morning and Afternoon and Thursdays (Morning)
Fifth Session: second Part *C: Sitting Days* Tuesday, 9th May to Thursday, 15th June, 2017 *D: Sine Die Recess Period* Friday, 16th June, 2017 to Monday, 7th August, 2017	Tuesday, 9th May to Monday, 7th August, 2017 Tuesday (Morning) Wednesday (Morning and Afternoon and Thursdays (Morning) *Sine Die* Recess Period

drive in estate
Developers Ltd.
Offices: Development House 1st Floor
P.O. Box 46817 Nairobi Tel: 340300/1 Telex: 23275 FRANDEVE

5TH April, 1984

The Director of City Planning
Nairobi City Commission
City Hall,
P.O. BOX 30075
NAIROBI.

(Att: Mr. Mwangih H. C. Wang'ondu)

Dear Sir,

RE: SUBDIVISION OF LR 7879/4 OUTERING ROAD, NAIROBI

Reference is made to your letter Ref. CPD/0644/7879/4 dated 28th March 1984 on the matter which should have been addressed to the owners of the property as we are ju contractors of the project.

The subdivission conditions given for the development of the project are not accept the registered land owners of LR No. 7879/4.

We have been instructed by the registered land owners that they are not interested your conditional approval, as a result of your above referenced letter paragraph 2 owners have accepted and cancelled the entire application of subdivision of the land are no longer interested with your conditional approval and you can adopt the cance They have been informed by officers of your Council that your intention is to sell a allocate open spaces to individual after the surrender, as a result your condition a NOT acceptable.

FRANCIS MBURU
DRIVE IN ESTATE DEVELOPERS LTD

CC. Commissioner of Lands
P.O. Box 30089, NAIROBI.

DIrector of Surveys ,
Survey of Kenya,
P.O. Box 30046, NAIROBI.

B.S. Dogra Associates,
Project Architect
P.O. Box 42784, NAIROBI.

MINISTRY OF LANDS AND SETTLEMENT

grams: "LANDS", Nairobi
Phone: Nairobi 27471 Ext. .....
In replying please quote
No. 108096/46
and date

DEPARTMENT OF LANDS
P.O. Box 30089, NAIROBI

.....18th. December, 1984

Managing Director,
Drive-In-Estate Developers Ltd.,
P.O. Box 46817,
NAIROBI.

RE: PROPOSED SUB-DIVISION FOR LR.NO. 7879/4 OUTER RING ROAD NAIROBI

Reference is made to your letter dated 11-12-84 on the above issue.

After a careful study on the Sub-division plans you submitted to this office, it was noted that the open spaces are more than adequate and also there is enough land left for other public purposes such as primary school and nursery school. There is no condition that compels you to have a secondary school site included in the sub-division scheme and you should therefore be free to make any revision or amendment you may like to incorporate in your scheme. You may even reduce the size of shopping centre if you so wish.

This office has therefore approved in principal the construction of maissonettes on the site you had originally reserved for a secondary school site.

Yours faithfully,

A. F. MWANGI
for: COMMISSIONER OF LANDS

c.c. The Town Clerk,
Nairobi City Commission,
NAIROBI.

Director of Physical Planning,
NAIROBI.

Telephone: Nairobi 24344—6, Ext. 1
When replying please quote
Ref. No. M.E.S.T./143/84
and date

CHIEF INSPECTOR OF SCHOOLS
INSPECTORATE
P.O. Box 30426
NAIROBI, KENYA

3rd August, 19 84

Commissioner of Lands,
P.O. Box 30089,
NAIROBI.

NAIROBI SECONDARY SCHOOL SITE OFF THIKA ROAD ON A PORTION OF LR. NO. 7879/4

Reference is made to your letter Ref. 108096/43 dated 14/7/84 on the above subject.

The Director of Drive In Estate Developers Ltd. has contacted this Office with the proposal of erecting a Private Secondary School on the above site. As you could be aware, this Ministry is highly trying to encourage developers of Private Secondary Schools since the existing schools are unable to cater for the many students leaving the Primary Schools. Also the Ministry is quite overburdened with the maintenance of existing secondary schools and therefore there is no finance for new secondary schools at present.

We are convinced beyond any doubt that Drive In Estate Developers Ltd. is financially capable of developing the school site and to provide education facilities essentially needed to cater for the population.

The Director of the Firm submitted to this office some impressive building plans for the site. These plans must have costed the Company great amount of money.

In consideration of the fact that the school site came as a result of sub-division scheme mounted by this Firm on its own land, it would rather be unfair to deter it from undertaking the development on which some money has already been spent.

This Ministry has therefore relinquished any interest on the plot and would appreciate if Drive In Estate Developers Ltd. would go ahead with the proposed development.

Yours faithfully,

D. M. NDUNGU
for: PERMANENT SECRETARY

c.c. Drive In Estate Developers Ltd.,
P.O. Box 46817,
NAIROBI.

The Provincial Commissioner,
NAIROBI.

Afrison Export Import Limited

7th February 2017

The Director
City Planning Department
P. O. Box 30075-00100
NAIROBI

Dear Sir,

RE: SUBDIVISION OF LR. NO. 7879/4 ALONG OUTERING ROAD

Following your letter Ref. No. CPD/0644/7879/4 dated 28th March 1984 addressed to Drive-in-Estate Ltd the contactors of the project then, and their subsequent reply letter dated 5th April 1984 requesting for the cancellation of the proposed subdivision scheme, kindly inform us on the position of the development application and indicate whether the conditions you had appended on the now cancelled subdivision scheme subsidy.

Attached herewith find the mentioned letters for your ease of reference.

Your early response will be highly appreciated.

Yours faithfully

FRANCIS MBURU
MANAGING DIRECTOR
AFRISON EXPORT IMPORT LIMITED & HUELANDS LIMITED

CC.

Drive-in-Estate Limited
NAIROBI.

NAIROBI CITY COUNTY

Telephone: 020 344194
web: www.nairobi.go.ke

City Hall,
P. O. Box 30075-0010
Nairobi,
KENYA.

URBAN PLANNING

UP&H/ADMIN/00326/BNG/jwk

17TH FEBRUARY, 2017

Managing Director
Afrison Export Import Limited & Huelands Limited
P.O. Box 46817 - 00100
NAIROBI

Dear Sir,

RE: SUBDIVISION OF LR NO. 7879/4 ALONG OUTERING ROAD

I refer to your letter dated 7th February 2017 on the above subject.

Please note that subsequent to your letter dated 5th April 1984 the development applicatio for Subdivision of LR No. 7879/4 was halted and no further processing was done.

Further note that the conditions of approval were waived by the fact that the land remaine intact i.e. as was on application.

J. W. GITAU
FOR: DIRECTOR
DEVELOPMENT MANAGEMENT & REGULARIZATION

MINISTRY OF EDUCATION

Office of the Principal Secretary, State Department of Basic Education

Telegrams: "EDUCATION", Nairobi
Telephone: Nairobi 3318581
Fax No.: 254-2-214287
E-mail: **ps@education.go.ke**
When replying please quote

PRINCIPAL SECRETARY
JOGOO HOUSE "B"
HARAMBEE AVENUE
P. O. BOX 30040
NAIROBI

09 FEB 2017

Ref. No..... .....

MOE/CONF/G5 7th February, 2017

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman,
National Land Commission,
Ardhi House
NAIROBI.

Director, Valuation and Taxation
Quickly provide these to
we advise.
MS 09/2/17

Dear

RE: LR NO 7879/4 RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

This is to acknowledge receipt of your letter ref. Val 1446 dated 13th September, 2016 addressed to the Cabinet Secretary in regard to the above subject matter.

The Ministry acknowledges that both Ruaraka High and Drive Inn Primary Schools occupy art of the above LR No which is private land. In the interest of securing public investments in the two schools, it is necessary to have the land on which the schools are developed, acquired through the principle of eminent domain i.e. acquisition in the public interest. As per your constitutional and legal mandate, the National Land Commission is requested to guide us in this process, including the gazetting of the said parcel, for purposes of compulsory acquisition and after gazetting, provide us with acquisition plans.

The Ministry therefore awaits your advisory note to determine the total acreage of the land on which the two schools occupy and the estimated value for the Ministry's further action.

Yours Sincerely

Dr. Belio R. Kipsang, CBS
PRINCIPAL SECRETARY

Copy to: Cabinet Secretary
Ministry of Education

Republic of Kenya

MINISTRY OF EDUCATION

Office of the Cabinet Secretary

Telephone: +254 20 3318581
Facsimile: +254 20 2251991
Email: cs@education.go.ke
Website: www.education.go.ke

Jogoo House "B"
Harambee Avenue
P. O. Box 30040-00
Nairobi, Kenya

When replying please quote:

MOE. CONF/G5 VOL.II/16

17th March 2017

Prof. Mohammed A. Swazuri, PhD, OGW
Chairman
National Land Commission
Ardhi House
P.O. Box 44417
NAIROBI

Dear Prof. Swazuri,

RE: L.R. NO. 7879/4 RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

I refer to your letter dated 16th February 2017 addressed to Dr. Belio Kipsang, Principal Secretary responsible for Basic Education, in response to his letter date February 2017.

As per the provisions of Section 107(1) of the Land Act, the Ministry of Education determined that it is necessary to acquire all that piece of land on which the respective institutions named above, are situated. I therefore formally reques National Land Commission to commence the process leading to the acquisition o said private land.

The procedure for the acquisition is well within your purview and I will urge the address yourself to this matter as soon as practicable to enable the two goverr institutions acquire title deeds to the land they currently occupy.

Thank you for your cooperation.

Yours Sincerely

Fred Matiang'i, PhD, EGH
CABINET SECRETARY

Copy to: **Dr. Belio R. Kipsang, CBS**
Principal Secretary
State Department of Basic Education
Ministry of Education
NAIROBI

NATIONAL LAND COMMISSION
Our Land, Our Wealth, Our Heritage

OFFICE OF THE CHAIRMAN

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

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

16th February 2017

Ref: VAL.1446

Dr. Belio R. Kipsang, CBS
Principal Secretary
Ministry of Education
Jogoo House "B"
NAIROBI

Dear Dr. Kipsang,

L.R. NO. 7879/4 RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

We are in receipt of your letter Ref. MOE/CONF/G5 dated 7th February 2017.

The Commission shall undertake the proposed works under the law. Please note that Section 107(1) of the Land Act prescribes that whenever the National Government is satisfied that it may be necessary to acquire some particular land, the respective Cabinet Secretary shall submit a request for acquisition of public land to the Commission to acquire the land on its behalf.

Kindly make your Cabinet Secretary aware of this requirement so that we proceed with the intended acquisition.

Yours sincerely,

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics

MINISTRY OF EDUCATION SCIENCE & TECHNOLOGY
RECEIVED
17 FEB 2017
PRINCIPAL SECRETARY'S OFFICE
P. O. Box 30040
NAIROBI
THE DEPARTMENT OF TREASURY

Copy to: **Director, Valuation & Taxation, NLC**

MINISTRY OF EDUCATION

Office of the Principal Secretary, State Department of Basic Education

Telegrams: "EDUCATION", Nairobi
Telephone: Nairobi 3318581
Fax No.: 254-2-214287
E-mail: ps@education.go.ke
When replying please quote

PRINCIPAL SECRETARY
JOGOO HOUSE "B"
HARAMBEE AVENUE
P. O. BOX 30040
NAIROBI

MOEST/CON/2/31TY/39

Ref. No.....

18th July,2017

.....
date

Director Valuation and Compensation
Please analyse and act as per laws and procedures
MS
2017/17

Dr. Kamau Thugge,CBS
Principal Secretary
The National Treasury
NAIROBI

Dear PS

RE: LEGAL OPINION ON COMPENSATION FOR LR NO. 7879/4 RUARAKA HIGH SCHOOL AND DRIVE IN PRIMARY SCHOOL

Further to my letter Ref. MOE.GEN/31L/8VOL.X dated 30th June,2017 on the above subject, please find enclosed self explanatory opinion from the Attorney General.

Kindly proceed to process the compensation sum and release directly to the National Land Commission. The Commission will process the acquisition of the land on which the two schools are situated as advised.

The Ministry awaits further updates from the National Land Commission and confirmation of the issuance of title deeds to the two schools.

Yours Sincerely

Dr. Belio R. Kipsang, CBS
PRINCIPAL SECRETARY

NATIONAL LAND COMMISSION
RECEIVED
19 JUL 2017
CHAIRMAN
P.O. Box 44417 - 00100 NAIROBI

Encl.

Copy to: **Prof.Mohammed A. Swazuri, PhD,OGW**
Chair
NATIONAL LAND COMMISSION

Afrison Export Import Limited

The Chairman
National Land Commission
Ardhi House
1st Ngong Avenue, Off Ngong Road
P.O. Box 44417-00100
NAIROBI

30 July 2015

Dear Sir,

Subject: **Acquisition of 9.039 Acres – Part of Property L.R. No. 7879/4**

Afrison Export Import Limited and Huelands Limited, the registered owners of the above property compulsorily acquired by you as per Gazette Notice No. 7401, have the following concerns over social economic injustice provided by the constitution:

i. the acquisition left behind useless space – between the acquired area by KURA and the developed area - which cannot be utilized by ourselves and thus has no commercial value whatsoever. The space runs parallel to the proposed main highway which has made us to lose 5.668 acres of commercially valuable land;

ii. the remaining land will be inhabitable, any development along that part i.e. constructing a wall, a building among other developments at the edge of a Bus Bay, edge of the service road, the bridge, footbridges among other road structures will overshadow our property. The property will, therefore, be rendered useless especially the part abutting the road;

iii. the utility providers, i.e. Nairobi Water, Kenya Power, among other data cables along the road corridor, border with the acquisition line and therefore almost overlapping with the design line;

We raised most of the above issues with the National Land Commission at the inquiry meeting which they promised to address. When we received the award, we accepted subject to these issues being addressed (i.e. the laws of the acquisition being followed).

In this regard, we expect an acquisition of the 7-10 meters wide of the belt of the land measured from the Outering Road upgrade in accordance with Land Act Sections 119:*Whenever the survey provided for in section 118 discloses that the size of the land acquired is greater or less than the size of the land in respect of which the award*

../..

Riverside Drive, Riverside Court, Suite B3
P.O. Box 46817- 00100 G.P.O. Nairobi, Kenya
Telefax: +254 20 444 05 24/5 Email: whispering@africanonline.co.ke

has been made, compensation shall be paid for the excess size in accordance with this Act; and 122(3): *If the Commission is satisfied that the partial compulsory acquisition originally intended will render the remaining land inadequate for its intended use or will severely and disproportionally reduce the value of the remaining land, it will instruct the acquiring authority to acquire the remaining land.* Attached hereto is a map of the area that incorporates the service roads constructed by Kenya Urban Roads Authority (KURA) on the land without due compensation. As you will note from our survey plan, these roads shown on the map join Outering Road with Mathare North Road and accessing Ruaraka High school and Ruaraka Primary school measuring approximately 3.371 acres. Please note that our land user is all commercial with 999 years freehold.

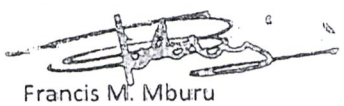
We kindly request you to take serious consideration on the above since further acquisition of the land is necessary in order to improve public road services such as foot-paths, utility providers, space for motorbikes and bicycles as well as access to the motorway. As you will recall, the previous acquisition was accepted by us conditionally.

The minimum current market value is K.Shs.501 million per acre – see attached valuation.

In conclusion, we request you to avail a comprehensive average of all the service roads for purposes of coming up with a compensation package.

Your positive response will be highly appreciated.

Yours faithfully,



Francis M. Mburu
Chairman
Afrison Export Import Limited and Heulands Limited

C.C.

Principal Secretary, Roads
Ministry of Transport and Infrastructure
Transcom House
Ngong Road
P.O. Box 52692 – 00200
Nairobi

Afrison Export Import Limited

The Chairman
National Lands Commission
Arthi House
1st Ngong Road
P.O. Box 44417-00100
Nairobi

27 October 2015

Dear Sir,

Subject: Acquisition of 9.039 Acres – Part of Property LR.No. 7879/4

We would like to follow-up to our letter of 30 July to which your office has not responded, and the issues raised at the inquiry meeting held at the D.O's office, Outering Road, whereof the same issues pertaining and before the first acquisition were raised and to date remain unaddressed upon from your end. We feel that this matter and the issues raised by ourselves are taking rather long to resolve and as much as we wish to have all the issues so far raised resolved mutually, we would like to urge your office to expedite this matter and the issues attendant thereof and reach a decision without further delay.

We are attaching hereto the above letter of 30 July for easy reference as well as a Survey Map of the Layout of the affected area, the Road Design Plan (which in our view, is greatly flawed, as it does not allow for any road reserve and other attendant requirements without gravely adversely affecting our use of the remaining portion of our land.

The aforesaid flawed Road Design which was done without our consultation of our engineers, does not allow for our planned commercially viable utilization of the remaining portion of our Land-in point – we cannot proceed to construct and erect the planned MALL or even do STALLS as per the Architectural plans, copies of which we had availed to you. We are once again re-availing copies of these PLANS for your easy reference.

Therefore, please take note of the issue of the Roads constructed by KURA inside our property - one which is 18 meters joining RUARAKA HIGH SCHOOL and RUARAKA PRIMARY and the 2nd Road is 25 meters wide connecting OUTERING ROAD and MATHARE NORTH ROAD and the chief's camp. Kindly note that we never consented to and neither did we give our approval for these constructions.

Needless to say, these roads have had and still have a gravely adverse effect on our user for which to-date we remain uncompensated for. In other words, the remaining Land portion is totally and completely commercially NON-VIABLE.

Kindly note that we are reiterating that the first acquisition as accepted by ourselves was CONDITIONAL upon all the Laws pertaining to Compulsory Acquisition being complied with by yourselves, and since you agreed at the aforesaid first Inquiry meeting that the above issues would be addressed, we are at a loss to comprehend why it is taking this long for your office to substantially address and resolve the issues that we are hereby calling upon yourselves to address and respond. We believe that the documents that we have annexed hereto are self-explanatory.

In conclusion, please refer to the relevant provisions of the Land Act 2012 (122 Section 5) to which, at this stage, we do not feel we need to resort to as the issues that we are raising had in principle been agreed upon at the first Inquiry meeting.

We thank you in advance for your favorable attention to this matter.

With best regards.

Yours faithfully

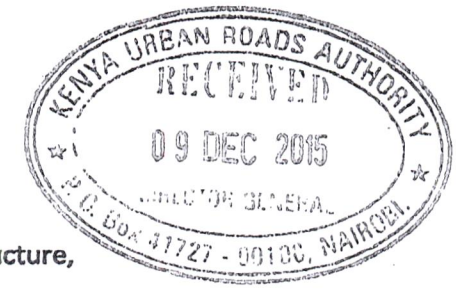
Francis Mburu
Chairman

Afrison Export Import Limited and Huelands Limited

c.c. **Principle Secretary, Roads**

c.c. **Director-General, Kenya Urban Roads Authority**

Huelands Limited



08/12/2015

Principal Secretary
Ministry of Transport and Infrastructure,
P.O. Box 52692 - 00200
Transcom House
Ngong Road
NAIROBI
KENYA

Dear Sir,

REF: ACQUISITION OF L.R NO.7879/4 BY KURA

We refer to the above matter, pertaining with the 2nd phase of your Acquisition of L.R Number 7879/4 along Outer Ring Road, which we have been following up with the National Land Commission.

We wrote to the National Land Commission and they in turn wrote to you on the same subject.

Upon receipt of a response from the National Land Commission, we learnt that the National Land commission invited your Ministry and all the parties involved to do their respective surveys, for purposes of conclusively ascertaining on the Company's claim regarding the issues that our Company has consistently raised pertaining to the exact acreage, and also because the issues we have raised at the 1st Inquiring Meeting before the 1st Acquisition of the aforesaid land had been accepted by the National Land Commission, Ministry of Lands and KURA .

Our concerns are the delay in your representative KURA responding and addressing itself to the pending issue.

Kindly note that in principle our company had after the 1st Inquiry Meeting accepted your offer **"subject to the first observance of the present Laws on compulsory Acquisition being followed to the letter"**

We kindly request that you hasten your response to enable us decide on the next course of action, most appropriate to our Company's interests.

Enclosed herein is a Compact disc showing the area that is to be acquired by KURA. The survey is provided in Auto Card Version for ease of access.

Kindly oblige and let us have your most expedited response.

Thank you in advance.

Yours faithfuliy,

Afrison Export Import Limited

16th August 2016

Chairman,
National Land commission
Ardhi House,
1st Ngong Avenue, Off Ngong Road,
P.O. Box 44417 – 00100,
NAIROBI

Dear Sir,

RE: ACQUISITION OF ROADS BUILT ON LR 7879/4 – OUTERING ROAD BY NATIONAL GOVERNMENT

As a result of the joint survey conducted by the national land commission, KURA and ourselves as the owners of the land on LR 7879/4;

The joint survey report established that there are roads which were built much earlier in the past by the office of the president to give access to the General Service Unit quarters as the officers could not get direct access from the old Thika road to their residents in our land. By so doing, the ministry of education took advantage and gave the parents and pupils access to the school which is built on the thirteen acres in our land by the government.

An additional road which gives access to public and connects Outering road with Mathare North road and services the road that gives access to the school and GSU was tarmacked and developed by metropolitan ministry. These roads measure 1.379 Hectares

These roads belong to the national government as private companies cannot own road and there is no way out that KURA can come at this late moment after it was established its part of the national government road and gazetting the same, this particular section that was established by the joint survey report and later removed the gazette notice of the roads dated 15th July 2011.The removal of the gazette notice via the gazette notice dated 29th July 2016 of these roads measuring 1.379 Hectares was unfair and the circumstances leading to this were not legal this is not acceptable to us since we continue to suffer badly given that the roads are being used by the public. We hope this matter is addressed with a view to settle and conclude with finality.

Attached are documents for ease of perusal

Thank you

FRANCIS MBURU
DIRECTOR

D Director Valuation
Please NLC
I thought the matter had been resolved
16/8/2016.

CC.
Eng. John K. Mosonik, EBS
The Principal Secretary
Ministry of Transport & Infrastructure
P. O. Box 52692-00200

Afrison Export Import Limited

17th August 2016

NATIONAL LAND COMMISSION
VICE-CHAIR
29 AUG 2016
RECEIVED
P.O. Box 44417 NAIROBI

Chairman,
National Land commission
Ardhi House,
1st Ngong Avenue, Off Ngong Road,
P.O. Box 44417 – 00100,
NAIROBI

Dear Sir,

RE: HISTORICAL INJUSTICE; PARTIAL OCCUPATION OF PRIVATE PROPERTY L.R. NO. 7879/4 BY THE MINISTRIES OF EDUCATION AND INTERIOR (CHIEF'S CAMP)

The above matter refers.

We, Afrison Export Limited and Huelands Ltd are the registered owners of the above property (LR No. 7879/4) having acquired the same in 1981. The title of the land is a colonial government title with a freehold ownership of over 900 years lease (Copy attached for ease of reference).

Over time, persons unknown to me invaded the above property and have settled on it. Be as it may, Schools, Government administrative offices, Roads and other support services have been constructed on the land to support the population in the area without my consent.

Currently we have a School and Chief's camp on my property for which I have received no compensation.

The matter has been going on for over 30 Years

The purpose of this letter is to request you to compensate our companies for the taken land and illegal occupation for public utilities namely:

i. Ruaraka Secondary School – 13.5364 acres
ii. Chief's Camp - 4.0 acres

Attached please find copies of my valuation reports for both land value and occupation value from the time of illegal occupation took place for your information and further action

Yours faithfully

FRANCIS MBURU
DIRECTOR
AFRISON EXPORT IMPORT LIMITED & HUELANDS LIMITED

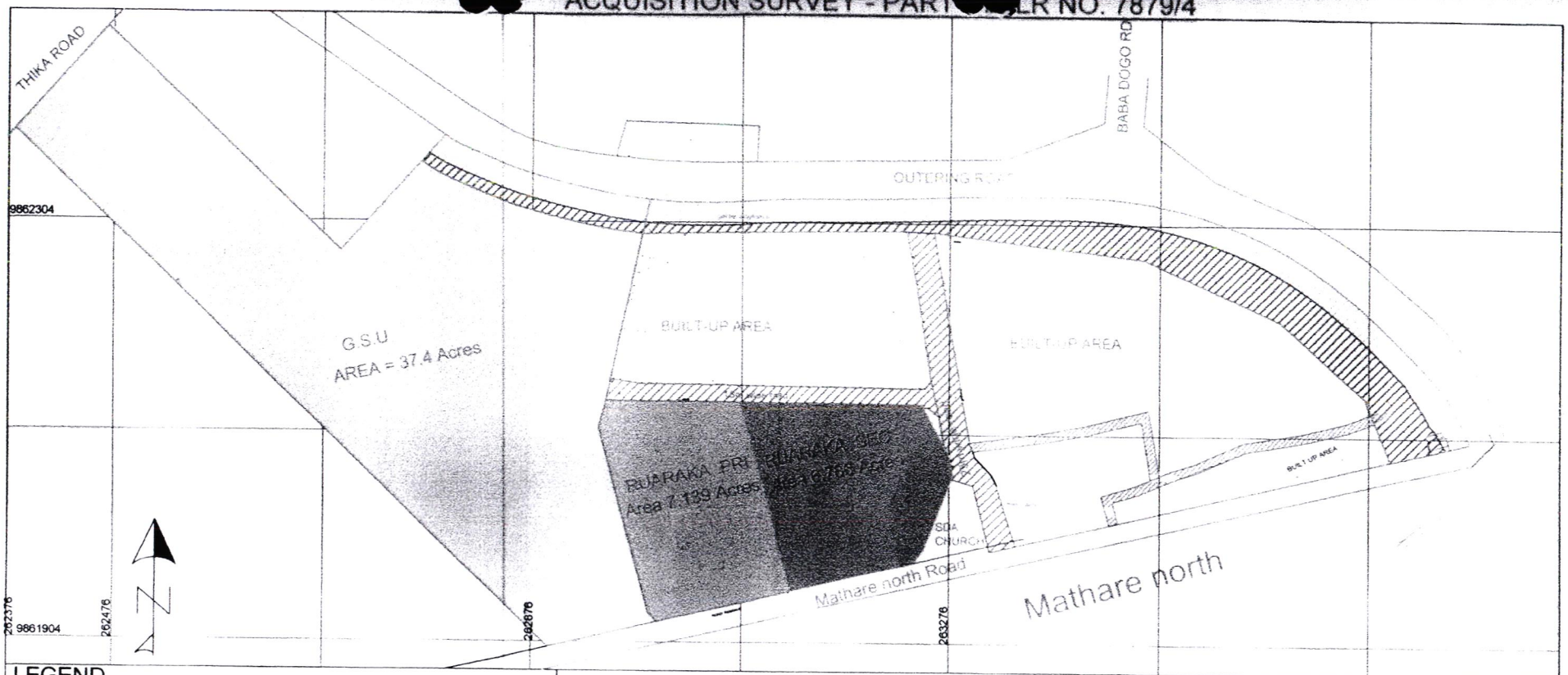
Riverside Drive, Riverside Court, Suite E2
P.O. Box 46817-00100, G.P.O. Nairobi, Kenya

CC.

Cabinet Secretary,
The Ministry of Ministry Of Interior and Coordination of National Government,
Harambee House, Harambee Avenue,
P.O. Box 30510 – 00100,
NAIROBI.

Cabinet Secretary,
The Ministry of Education, Science and Technology
Jogoo House B, Harambee Avenue
P.O Box 30040-00100
NAIROBI, Kenya

ACQUISITION SURVEY - PART [redacted] LR NO. 7879/4



LEGEND

22m strip for acquisation by KURA.....	(6.489 acres)
Strip affected (including the 22m strip acquisation by KURA).....	(1.779 acres)
Existing 25m wide tarmac road.....	(1.964 acres)
Existing 18m wide tarmac road.....	(1.407 acres)
10m strip left after acquisation by KURA.....	(5.668acres)
Last acquisition by KURA.....	(1.18 acres)
Property boundary.....	

AQUISITION OF LAND WITHIN LR NO 7879/4FOR VARIOUS GOVERNMENT USE

SCALE 1: 2500

Reference survey Plan: FR 379/60

Coordinate system: UTM , Datum Arc Datum 1960

NATIONAL LAND COMMISSION

P.O BOX 44417-00100

NAIROBI

Date April 2018

Postal Search
dated 19/01/2018

REPUBLIC OF KENYA

THE LAND ACT NO.6 OF 2012

THE LAND REGISTRATION ACT NO.3 OF 2012

GOVERNMENT LAND ACT CAP 280(REPEALED)

CERTIFICATE OF POSTAL SEARCH

AS ON: 19/1/2018

L.R. NUMBER: 7879/4

AREA: 96 Acres

REGISTER N 110 folio 47 file 16178

TENURE FREEHOLD

CURRENT REGISTERED PROPRIETOR: AFRISON EXPORT & IMPORT LIMITED and HUELANDS LIMITED as tenants in common in equal shares

ENCUMBRANCES

REGISTRAR OF GOVERNMENT LANDS

-NIL

Signed ----------

G. M. Muyanga *211

REGISTRAR OF GOVERNMENT LANDS

Annex IV - High Court Judgement – Petition No. 613 of 2014

KENYA LAW
Where Legal Information is Public Knowledge

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO. 613 OF 2014

PATRICK MUSIMBA.....PETITIONER

VERSUS

THE NATIONAL LAND COMMISSION.....1ST RESPONDENT

THE KENYA RAILWAYS CORPORATION.....2ND RESPONDENT

THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY.....3RD RESPONDENT

THE ATTORNEY GENERAL.....4TH RESPONDENT

AND

CHINA BRIDGE AND CONSTRUCTION COMPANY.....INTERESTED PARTY

JUDGMENT

Introduction

1. Human endeavour whether through mutual or unilateral physical development often leads to conflict. There is always therefore a need for provision to ensure that disputes and conflicts do not evolve out of any individual or national endeavors. National endeavors geared towards development will naturally touch on public as well as private property and with it an obligation to protect any proprietary rights.

2. With a view to enhancing its transportation system and connectivity, the Kenya Government through the 2nd Respondent embarked on a multi-billion shilling development in the form of a standard gauge railway track. The standard gauge railway is to run from the coastal town of Mombasa through the hinterland and to the shores of Lake Victoria. In the course of such connectivity, the standard gauge railway ("SGR") is bound to affect both land and the environment. The land , most of it privately owned, has to be acquired. It is the effect of the SGR

IV

on both land and environment that triggered this Petition.

3. The Petition seeks to highlight the alleged systematic failures by the respondents in implementing and undertaking the SGR project. It seeks to highlight alleged denials of and breaches of fundamental freedoms and rights under the Constitution.
4. The Petition is essentially about the protection and enforcement of the basic, fundamental and human right to property. The Petition focuses on the rather inalienable right to just compensation when the State has to deprive a person of his property. The other right which the Petition calls to scrutiny is the right to a clean and healthy environment.

The Parties

5. The Petitioner is the elected member of Parliament for Kibwezi West Constituency. He is also a landowner within his constituency. He pleads having brought the Petition on behalf of both himself and his constituents whom he represents in the National Assembly.
6. The 1st Respondent, the National Land Commission, is a constitutional commission. It is constituted under Article 67 (2) of the Constitution as read together with the National Land Commission Act, Act No. 5 of 2012. The 1st Respondent's role in the SGR project includes the compulsory acquisition of land, including land within Kibwezi West Constituency, where the SGR rail-line is to be laid.
7. The 2nd Respondent, the Kenya Railways Corporation, is a state corporation. Together with the Government of the Republic of Kenya, the SGR project is being undertaken under the 2nd Respondent's care.
8. The 3rd Respondent the National Environment Management Authority is statutory body enjoined with the responsibility of integrating the environment. The 3rd Respondent as the chief inspector of the Environment is expected to undertake an Environmental Impact Assessment (EIA), approve of and authorize the SGR project.
9. The 4th Respondent , the Attorney General of the Republic of Kenya has been impleaded pursuant to Article 156 of the Constitution.
10. The Interested Party is the main contractor for the Standard gauge Railway Project. The Interested Party also undertook the feasibility study of the project and presumably the first environmental impact assessment of the project.

Brief Litigation history

11. The Petition was originally filed at the Environment and Land Court Machakos. The Petitioner then sought no less than twenty substantive reliefs.
12. On 12 November 2014,following the parties' representations, Justice C. M. Kariuki certified the Petition as raising a substantial question of law pursuant to the provisions of Article 165(4) of the Constitution. The petition was then referred to the Chief Justice for the empanelment of an uneven bench of judges. The bench was constituted in December 2014 but had first to deal with the issue of jurisdiction. The jurisdictional issue was finalized in June 2015.
13. All the parties subsequently filed written submissions and on two separate days the Parties highlighted the submissions.

The Petitioner's case

14. The Petitioner's case is that the 1st, 3rd and 4th Respondents have abdicated their responsibilities.
15. The 1st and 2nd Respondents according to the Petitioner are duty bound to compensate the Petitioner and all other parties whose parcels of land have been acquired or are to be acquired for purposes of construction of the Standard Gauge Railway. This duty, the Petitioner says, has

not been observed as dictated by both the Constitution and the law.

16. The 3rd Respondent on the other hand is accused by the Petitioner of failing to undertake or ensure that an appropriate environmental and social impact study of the Standard Gauge Railway project is undertaken in accordance with the Constitution and the law.
17. With regard to the process of compulsory acquisition the Petitioner contends that Articles 40, 60 and 47 of the Constitution have been violated. The Petitioner also claims that the procedures provided for under the Land Act, No 6 of 2012 have not been observed.
18. The Petitioner also contends that the Respondents have not acted with a view to protecting the environment. That the Respondents, it is stated, have not observed Articles 42, 69 and 70 of the Constitution as well as Sections 58 and 59 of the Environment Management and Coordination Act. The latter sections dictate that physical development projects be undertaken only after an Environmental Impact Assessment Study(EIAS) has been undertaken and the report given to any affected person.
19. The Petitioner further contends that if an EIAS was undertaken, the Petitioner as well as all the other affected parties on whose behalf the Petition has been filed did not participate in the process contrary to the provisions of the Constitution and other relevant law, in particular the Environmental (Impact Assessment and Audit) Regulations.

The Respondents' case

The 1st Respondent's case

20. The 1st Respondent's case is contained in the Replying Affidavit of Margaret K Cheboiwo filed in court on the 12th day of August 2015.
21. The 1st Respondent was and is mainly concerned with the process of compulsory acquisition of parcels of land required for purposes of the Standard Gauge Railway's construction.
22. The 1st Respondent contends that it has fully complied with the law and observed the relevant requirements of the Constitution. The 1st Respondent states further that most if not all of the persons on whose behalf the Petition has been filed have been fully compensated. Finally, the 1st Respondent states that it is the Petitioner who has been the hurdle in the entire process.
23. The 1st Respondent further states that much wherewithal and time have been invested in the process of compulsory acquisition and the wider public interest now dictates that the Standard Gauge Railway project is left to be finalized unhindered. The 1st Respondent also contends that the Petition does not raise any constitutional issue of merit and that in any event none has been demonstrated or proven by the Petitioner. In particular, the 1st Respondent states that all concerns which have been raised by the Petitioner had been fully addressed.

The 2nd Respondent's case

24. The 2nd Respondent's case is contained in the three affidavits sworn on behalf of the 2nd Respondent on 30th October 2014, 16th July 2015 and 27th August 2015.
25. It is the 2nd Respondent's case that the Petitioner has not demonstrated that he is entitled to the reliefs sought either on his own behalf or on behalf of his constituents. The 2nd Respondent contends that all the requisite preliminaries in conducting an environmental and social impact study and assessment were conducted properly through the 3rd Respondent. That the process was open and all relevant parties participated. The 2nd Respondent also contends that the process of compulsory acquisition has been undertaken smoothly and that within the Petitioner's constituency of Kibwezi West, most of the affected residents have surrendered their respective parcels of land to the 2nd Respondent following proper compensation by or through the 1st Respondent. The 2nd Respondent contends that the fact that over 80% of the persons on whose

dismissal of the Petition.

Rejoinder by the Petitioner

66. In a pithy rejoinder on behalf of the Petitioner, Ms. Kilonzo submitted that the case of **Okiya Omtata Okoiti & 2 Others –v- Attorney General(supra)** could be distinguished from the instant Petition as the court never had the benefit of an Environmental Impact and Assessment Study report. Secondly, Ms. Kilonzo also stated that the instant Petition was also inviting the court to determine what "just compensation" under Article 40 (3) (b) meant.
67. Finally, Ms. Kilonzo stated that the existence of two Environmental Impact and Assessment licences raised doubt as to whether the project was environmentally compliant.

Discussion and Determinations

68. We have carefully analysed the pleadings, the written submissions and legal authorities as well as all the other documents filed in court. We have also considered the oral arguments advanced by the respective counsel in support of and in opposition to the Petition.
69. In arriving at our decision below we have been guided by the deep recognition of the fact that the constitutional provisions at the core of this Petition must be reviewed and understood within the context of the Constitution and its values as a whole. We are also conscious of the rather emotive approach placed by the ordinary citizens to matters concerning land. We are called to determine the controversy before us by considering Articles 30,35,40,47,60 and 69 of the Constitution.
70. Before settling and resolving the main issues in this Petition, we would wish to also point out that the principles of constitutional interpretation are with time becoming neater and clearer. A brief précis is as follows.
71. Foremost, the Constitution has itself set out at Article 259 a guide on how it should be construed. Simply put, the Constitution must be construed in a manner that promotes its purposes, values and principles, advances the rule of law, human rights and fundamental freedoms and permits not only the development of the law but also contributes to good governance.
72. Next, we are conscious of the fact that while we must give a liberal interpretation and consideration to any provisions of the Constitution: see **Karua -v- Radio Africa Ltd & 2 Others [2006] 2 EA 117,** we must have due regard to the language and wording of the Constitution and where there is no ambiguity attempts to depart from the straight texts of the Constitution must be avoided: see **Republic –v- El Mann [1969] E A 357** and **Joseph Mbalu Mutava –v- Attorney General & Another [2014]eKLR.**
73. Finally, we are also conscious of the principle that as "a living instrument having a soul and consciousness of its own" (see **Ndyanabo –v- Attorney General [2001] 2 EA 485),** the Constitution must always be interpreted and considered as a whole with all the provisions sustaining and coordinating each other and not destroying the other: see **Olum –v- AG [2002] 2 EA 508** and **Tinyefunza –v- Attorney General UCCA No. 1 of 1997.**
74. These principles could not have been laid out better than was done in the case of **Advocates Coalition for Development and Environment & Others –v- Attorney General & Another [2014] 3 E.A 9,** where the Ugandan Constitutional Court held that the :

"The principles which govern..... the construction of constitutional provisions... include the following:

a. *The widest construction possible in its context should be given according to the ordinary meaning of the words used, and each general word should be held to extend to all*

ancillary and subsidiary matters. In certain context, a liberal interpretation of the constitutional provision may be called for.

b. *A constitutional provision containing a fundamental right is a permanent provision intended to cater for all times to come and therefore, should be given a dynamic progressive and liberal flexible interpretation, keeping in mind the ideals of the people and their social, economic and political-cultural values so as to extend fully the benefit of the right to those it is intended for. (South Dakota –v- North Carolina, 192, US 268 1940 LED 448).*

c. *The entire Constitution has to be read together as an integrated whole and with no one particular provision destroying the other, but rather each sustaining the other. This is the rule of harmony, completeness and exhaustiveness and the rule of paramountcy of the written Constitution.*

d. *No one provision of the Constitution is to be segregated from the others and be considered alone, but all provisions bearing upon a particular subject are to be brought into view and be interpreted as to effectuate the greater purpose of the instrument.*

e. *Judicial power is derived from the people and shall be exercised by courts established under the Constitution in the name of the people and in conformity with the law and with the values, norms and aspirations of the people and courts shall administer substantive justice without undue regard to technicalities.*

f. *The Constitution is the Supreme law of the land and forms the standard upon which all other laws are judged. Any law that is inconsistent or in contravention of the Constitution is null and void to the extent of the inconsistency.*

g. *Fundamental rights and freedoms guaranteed under the Constitution are to be interpreted having general regard to evolving standards of human dignity"*

75. Bearing the above principles in mind we now proceed to consider the issues in this Petition.
76. We start by pointing out that even though the Petitioner's claims were not pleaded with absolute particularity, we were able to painlessly ascertain the Petitioner's complaints and rule out the application of the edict in **Anarita Karimi Njeru v Republic [1980]KLR 154** .In our view, the threshold of reasonable precision in pleadings had been met. It was apparent to us that three core issues stood out for determination.
77. The three main issues raised may be isolated and stated as follows:

a. *Whether or not the compulsory acquisition process of land within the Petitioners constituency was or is inconsistent with and or in contravention of Articles 40 of the Constitution and/or any written law.*

b. *Whether or not the Standard Gauge Railway project is being undertaken in full compliance with the relevant environmental laws and principles both under the Constitution and under the Environmental Management and Coordination Act(Cap 387).*

c. *Whether there has been a breach of the Petitioner's right to information under Article 35 of the Constitution.*

78. In determining the above issues, we would also have answered two other related issues. First, whether there was public participation as demanded by under Article 10 of Constitution and secondly, who should bear the costs of the Petition.

Of land, compulsory acquisition and the Constitution

79. In answering the first core issue we have considered the meaning and intent of the Article 40 (3) of the Constitution. Article 40 ,reads in part as follows:

40. (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—

(a) of any description; and

(b) in any part of Kenya.

(2) Parliament shall not enact a law that permits the State or any person—

(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or

(b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).

(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—

(i) requires prompt payment in full, of just compensation to the person; and

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

80. Compulsory acquisition by the State for public purposes is ordinarily a creature of statute. In these respects, the courts have been rather astute in imposing strict construction on statutes allowing the appropriation of private property by the State: see Taggart ***"Expropriation, Public purpose and the Constitution,"*** in **The Golden Metrand and the Crooked Cord: Essays on Public Law in Honour of Sir William Wade, 1998, co-ed Forsyth & Hare, p. 91.**
81. There is also no doubt that no citizen is to be deprived of his land by the State or any public authority against his wish unless expressly "*authorized by law and public interest also decisively demands so*": per **Lord Denning MR in Priest –v- Secretary of State [1982] 81 LGR 193,198.** This universally acceptable principle of constitutional law may be international in origin but is now well grounded locally and duly captured under Article 40(3) of the Constitution.
82. As the taking of a person's property against his will is a serious invasion of his proprietary rights, the application of constitutional or statutory authority for the deprivation of those rights requires to be most carefully scrutinized. In short, in our view, there must always exist a presumption against an intention to interfere with vested property rights as the legislative and constitutional intention is always the protection rather than interference with proprietary rights.
83. The statutory framework for compulsory acquisition is founded under Part VIII of the Land Act, No 6 of 2012.
84. With a view to ensuring that there was a real, rather than a fanciful or remote connection between the compulsory acquisition and the State's developmental needs, Part VIII was drafted in detail. History in the practice of compulsory acquisition prompted such detail. Not only was the State to keep its right to compulsorily acquire but the citizen too was to be protected from wanton

and unnecessary deprivation of his private property.

Process of compulsory acquisition

85. In summary, the process of compulsory acquisition now runs as follows.
86. Under Section 107 of the Land Act, the National Land Commission (the 1st Respondent herein) is ordinarily prompted by the national or county government through the Cabinet Secretary or County Executive member respectively. The land must be acquired for a public purpose or in public interest as dictated by Article 40(3) of the Constitution. In our view, the threshold must be met: the reason for the acquisition must not be remote or fanciful. The National Land Commission needs to be satisfied in these respects and this it can do by undertaking the necessary diligent inquiries including interviewing the body intending to acquire the property.
87. Under Sections 107 and 110 of the Land Act, the National Land Commission must then publish in the gazette a notice of the intention to acquire the land. The notice is also to be delivered to the Registrar as well as every person who appears to have an interest in the land.
88. As part of the National Land Commission's due diligence strategy, the National Land Commission must also ensure that the land to be acquired is authenticated by the survey department for the rather obvious reason that the owner be identified. In the course of such inquiries, the National Land Commission is also to inspect the land and do all things as may be necessary to ascertain whether the land is suitable for the intended purpose: see Section 108 of the Land Act.
89. The foregoing process constitutes the preliminary or pre-inquiry stage of the acquisition.
90. The burden at this stage is then cast upon the National Land Commission and as can be apparent from a methodical reading of Sections 107 through 110 of the Land Act, the landowner's role is limited to that of a distant bystander with substantial interest.
91. Section 112 of the Land Act then involves the landowner directly for purposes of determining proprietary interest and compensation. The section has an elaborate procedure with the National Land Commission enjoined to gazette an intended inquiry and the service of the notice of inquiry on every person attached. The inquiry hearing determines the persons interested and who are to be compensated. The National Land Commission exercises quasi-judicial powers at this stage.
92. On completion of the inquiry the National Land Commission makes a separate award of compensation for every person determined to be interested in the land and then offers compensation. The compensation may take either of the two forms prescribed. It could be a monetary award. It could also be land in lieu of the monetary award, if land of equivalent value, is available. Once the award is accepted, it must be promptly paid by the National Land Commission. Where it is not accepted then the payment is to be made into a special compensation account held by the National Land Commission: see Sections 113- 119 of the Land Act.
93. The process is completed by the possession of the land in question being taken by the National Land Commission once payment is made even though the possession may actually be taken before all the procedures are followed through and no compensation has been made. The property is then deemed to have vested in the National or County Government as the case may be with both the proprietor and the land registrar being duly notified: see Sections 120-122 of the Land Act.
94. If land is so acquired the just compensation is to be paid promptly in full to persons whose interests in land have been determined: See Section 111 of the Land Act. This is in line with the Constitutional requirement under Article 40(3) of the Constitution that no person shall be deprived of his property of any description unless the acquisition is for a public purpose and subjected to prompt payment in full of just compensation.
95. The Constitution dictates that acquisition be in accordance with the provisions of the Constitution

itself and any Act of Parliament. The Constitution itself only provides for just compensation being made promptly.

96. The current procedure for acquisition of land by the State is as outlined above. As can be seen parliament took very seriously its constitutional duty to legislate on the State's powers of deprivation or expropriation. Perhaps conscious of the emotive nature of land issues, the Legislature appeared scrupulous and contemplative.
97. The Petitioner has challenged both the procedure adopted by the 1st Respondent as well as the alleged compensation and compensatory awards offered by the 1st Respondent. Before considering and determining what is a just, full compensation and the promptitude in payment, we would wish to determine whether the compulsory acquisition of various parcels of land belonging to the Petitioner and his constituents were legal.
98. It is common ground that compulsory acquisition of land including the Petitioner's land was necessary for the development of the Standard Gauge Railway. There is also no controversy that the Standard Gauge Railway project is meant to serve and benefit the public at large. The acquisition was certainly for a public purpose. The choice as to whose land to acquire was inevitably to be made by the National Government and this was linked to the Standard Gauge Railway project's blue-print. The Petitioner has however disputed the procedure adopted in the process of acquisition.
99. The affidavits of the Petitioner, Agnes Mbeke Munyao, John Ndambuki, Jonah Fred Mulatya, Jones Mulandi Mbare, Joseph K. Kiema, Stellah Mbelete and Stephen Kimilu all filed on 15th October 2014 in support of the Petition as well as the Petitioner's Further Affidavit filed on 6th August 2015 all list an array of alleged breaches of the provisions of the Land Act.
100. The Petitioner and the other deponents state that no gazette notices were served either of the acquisition or of the award and offer of compensation contrary to the provisions of the Land Act. Secondly, it is alleged that in an acquisition involving a portion of school land (Kiboko Primary School) the school management and parents were not given any opportunity for public participation. Thirdly, it is stated that no notice was given when the 1st and 2nd Respondents' representatives visited the various parcels of land which had been earmarked for acquisition.
101. The Petitioner's counsel Ms. Kethi Kilonzo, having detailed the alleged breaches of process, further submitted that the Respondents invoked an inapplicable and indeed, repealed law as all the Gazette notices in support of the compulsory acquisition process stated that the process was being undertaken pursuant to Section 162 of the Land Act and the repealed Land Acquisition Act. For this the Petitioner contended that in applying a repealed statute the process was consequently not conducted in accordance with the law and the Constitution.
102. The Respondents denied that there was any provision of the Constitution or law contravened in the process of acquisition. In support, the Respondent made reference to the various Gazette Notices as well as to Section 15(1) of the Kenya Railways Corporation Act (Cap 397). The latter section was relied upon to demonstrate that the 2nd Respondent was entitled to take possession of the land compulsorily acquired.
103. The various Gazette Notices exhibited by the Petitioner to his Further Affidavit of 5th August 2015 would confirm that there should exist no controversy that the Petitioner was always aware of the compulsory acquisition of the various parcels of land. The Gazette Notices were specific. They were public notices regarding the acquisition of land. We have no doubt that the Petitioner as well as his constituents were made aware of the intended acquisitions pursuant to Section 107 of the Land Act.
104. We notice that all the notices were stated and titled to have been issued under the Land Act, No. 6 of 2012. In the body of the Gazette Notices too specific references are not only made to the Land Act but also to the Land Acquisition Act (Cap 295) now repealed. On the applicability, if at all of the said Land Acquisition Act we shall shortly revert.
105. The Petitioner also lamented that there was no public participation in the process of acquisition.

This was especially in respect to a basic education institution known as Kiboko Primary School. It is unclear whether this institution is a public or private one. The Petitioner gave no indication on this. The Petitioner needed to establish that the school sat on private land and was indeed private property. The Petitioner did not do so. As compulsory acquisition only applies where the Government is acquiring private property for a specified public purpose, we will refrain from discussing and determining the issue of public participation in relation to compulsory acquisition of the institution.

106. The Petitioner also raised issue with the fact that the Respondents never notified the Petitioner and his constituents before the Respondents descended upon the various parcels of land for purposes of survey or possession. The Respondents contest this allegation. The 2nd Respondent moves a step further and justifies entry on the basis of Section 15 of the Kenya Railways Corporation Act (Cap 397).
107. Once again it is unclear from the Petition when the alleged trespass was committed by the Respondents. Was it before the inquiry as to compensation was made pursuant to Section 112 of the Land Act or after the inquiry" It is to be noted that under Section 120 of the Land Act, possession ought to be taken by the 1st Respondent only after the amount of the first offer has been paid and an appropriate notice given to the land owner specifying the date of possession. Section 120(2) of the Land Act however also allows possession to be taken in cases of urgency or if acquisition by following normal procedure would lead to a delayed acquisition. In such cases, the 1st Respondent may take possession notwithstanding the fact that no compensation has actually been made.
108. The Respondents further contend that in all instances of taking possession, the requisite notices were given. In his second Further Affidavit filed in court on 31st August 2015, A.K. Maina on behalf of the 2nd Respondent has exhibited various letters forwarding the Vesting notices to several of the Petitioner's constituents. There are also exhibited letters and affidavits of service of notices to vacate served upon the Petitioner's constituents. We are satisfied that it was for the Petitioner to demonstrate exactly when the alleged illegal entries or acts of trespass took place. The Petitioner did not and has not. Rather the Respondents have, in the circumstances, been able to satisfy us that necessary notices were served upon the various land owners before possession was taken.
109. Before considering the substance of compulsory acquisition which is the requirement of prompt, just and full compensation, we wish to point out that the Petitioner also contended that there was no inquiry on the payable compensation and hence the process was null and void.
110. Inquiry as to compensation is a mandatory process for the simple reason that compensation is the essence of compulsory acquisition. We have sighted various Gazette Notices exhibited by the Petitioner in his Further Affidavit filed in court on 7th August 2015. The notices severally invite land owners to make representations on the awards or compensation. The Respondents contend that the Petitioner did not participate in any inquiry as to compensation and when he did, the Petitioner only incited the other land owners not to accept any awards. We are satisfied that the 1st Respondent accorded the land owners with the requisite notices on inquiry. Many obliged participated and were paid. Some have not obliged. We do not hold the view that the 1st Respondent failed to let the land owners know of the inquiry process.
111. We now consider the issue as to prompt just and full compensation and whether the constitutional principle in this regard has been violated or is threatened with violation.
112. The Petitioner has alleged and further argued that the Respondents have contravened or threaten to contravene the Petitioner's (and his Constituents) right to just compensation under Article 40(3) of the Constitution. The point raised by the Petitioner is simply not about the quantification of the compensation payable to the Petitioner and the affected residents of Kibwezi West Constituency in respect of the compulsory acquisition of land necessary for development purposes. The Petitioner has also taken issue with the process adopted and applied by the

Respondents towards such compensation.

113. There exists, no doubt, an overarching right to compensation under Article 40 (3) of the Constitution where a person is deprived of his property for a public purpose or in the public interest.
114. The power to expropriate private property as donated to the State by both the Constitution and statute law (the Land Act) leaves the private land owner with no alternative. The power involves the taking of a person's land against his will. It is a serious invasion of his proprietary rights through the use of statutory authority. The private land owner has no alternative but wait for compensation. It is consequently necessary that the court must remain vigilant to see to it that the State or any organ of the state does not abuse the constitutional and statutory authority to expropriate private property. It is on this basis that courts have consistently held that the use of statutory authority to destroy proprietary rights requires to be most carefully scrutinized: see ***Commissioner of Lands v Coastal Aquaculture Limited*** **[1997]1 KLR (L&E) 264**. See also the Australian case of **R & R Fazzolari Pty Ltd –v- Parramatta City Council [2009] HCA 12** where the court held the view that such scrutiny must invite and also involve common law as well as statutory protections. Just compensation is consequently mandatory.
115. It is for the court consequently to ensure that the process is free from any rebuke and in this regard; the statutory provisions must be followed and be adhered to strictly.
116. The law allows compensation to take the form of either an alternative parcel of land or cash in lieu: see Section 114(2) of the Land Act.
117. With regard to the instant case, the compensation was to take the form of monetary payments. We can only point out what the framers of the Constitution had hoped to achieve by making provision for compensation.
118. In our view, a closer reading of Article 40(3) of the Constitution would reveal that the Constitution did not only intend to have the land owner who is divested of his property compensated or restituted for the loss of his property but sought to ensure that the public treasury from which compensation money is drawn is protected against improvidence. Just as the owner must be compensated so too must the public coffers not be looted. It is that line of thought that , under Article 40(3), forms the basis for "prompt payment in full, of just compensation to the person" deprived of his property though compulsory acquisition. As was stated by Scott L.J, in relation to compulsory acquisition, in the case of **Horn-v- Sunderland Corporation [1941] 2 KB 26,40:**

"The word "compensation" almost of itself carries the corollary that the loss to the seller must be completely made up to him, on the ground that unless he receives a price that fully equaled his pecuniary detriment, the compensation would not be equivalent to the compulsory sacrifice".

119. Effectively Lord Scott's statement gave rise to the unabated proposition that the compensation of compulsorily acquired property be quantified in accordance with the principle of equivalence. A person is entitled to compensation for losses fairly attributed to the taking of his land but not to any greater amount as *"fair compensation requires that he should be paid for the value of the land to him, not its value generally or its value to the acquiring authority":* see **Director of Buildings and Lands –v- Shun Fung Wouworks Ltd [1995] AC 111,125.**
120. We see no reason why the same approach should not be adopted locally. The Constitution decrees "just compensation" which must be paid promptly and in full. The Constitution dictates that the compensation be equitable and lawful when the word "just" is applied as according to Black's Law Dictionary 9th Ed page 881 the word "just" means "*legally right; lawful; equitable*". In our view, the only equitable compensation for compulsory acquisition of land should be one which equates restitution. Once the property is acquired and there is direct loss by reason of the acquisition the owner is entitled to be paid the equivalent. One must receive a price equal to his pecuniary detriment: he is not to receive less or more. This can be achieved to the satisfaction of

the owner of land by reference to the market value of the land.

121. Both the Land Act as well as the Constitution have laid a basis for this. The Land Act expects the State and in this respects the National Land Commission to be astute enough and detect any collusive attempts by land owners to manufacture artificially high compensatory prices on compulsory acquisition. The statute consequently provides that the National Land Commission will originally assess the value and make the offer. An inquiry, if there is a dispute on the value is then made.
122. The Respondents have demonstrated that inquiries were held. The Respondents have also demonstrated that payments have been made to some land owners. For others, payment still awaits them. If dissatisfied they will have an avenue to challenge the same.
123. In answer therefore to what "prompt payment in full, of just compensation" means under Article 40(3) of the Constitution, we would agree with Mr. Kuria for the 4th Respondent and hold that prompt full and just compensation does not mean any speculative value of the land but an equivalent value which could be the contract value or market value: see also **Kanini Farm Ltd –v- Commissioner of Lands [1996] KLR 1**. Such equivalent value may be attained when the National Land Commission makes the award for compensation as it is enjoined to and where the land owner is dissatisfied the inquiry provided for under Section 112 of the Land Act is undertaken.
124. With a view to demonstrating that the Petitioner as well as the Petitioner's constituents would not be fully and justly compensated contrary to provisions of the Constitution, the Petitioner's counsel stated that the 1st Respondent was applying outdated laws and regulations. This was in reference to the Land Acquisition Act (Cap 295) (Repealed).
125. The 1st Respondent conceded that it applied various regulations of the repealed statute. It is for that reason too that the notices were issued and intituled both under the Land Acquisition Act and the Land Act.
126. The Land Acquisition Act was repealed on 2 May 2012. In its stead the Land Act was enacted. The provisions of the Land Act running from Section 107 through Section 133 deal with compulsory acquisition. They effectively replaced the provisions of the Land Acquisition Act. As was stated by Mutungi, J in the case of **Virendra Ramji Gudka & 3 Others –v- Attorney General [2014]eKLR.**

"Rights of compulsory acquisition are conferred by specific provisions of the law being Article 40 of the Constitution and Sections 107 to 133 of the Land Act, No. 6 of 2012 which replaced the provisions previously contained in the Land Acquisition Act".(emphasis)

127. We agree entirely with the learned Judge's exposition. The Land Acquisition Act (Cap 295) was repealed in 2012. No interest or liability had accrued to any party herein under the said Act. We are unable to forecast how a repealed statute can be applied to any given circumstances if no rights or obligations had accrued prior to its repeal: see also Section 23(3) of the Interpretation and General Provision Act (Cap 2) Laws of Kenya.
128. Counsel for the Interested Party, Mr. Ondieki made a copious reference to the case of **Five Star Agencies Ltd –v- National Land Commission NBI ELC. Case No. 445 of 2014 [2014]eKLR** to try and demonstrate that the provisions of the Land Acquisition Act were still applicable in compulsory acquisition matters.
129. We have read the decision in **Fivestar Agencies Ltd – Vs National Land Commission (*Supra*)**. In that case, Nyamweya J was faced with a situation where the compulsory acquisition process had commenced and had been finalized save for the compensatory award some six years before the repeal of the Land Acquisition Act. The acquiring authority (the National Land Commission) then gazetted a date for inquiry into the appropriate compensation after the repeal of the Land Acquisition Act. The judge faced with the question as to which law (the Land

Acquisition Act or the Land Act) was applicable at the time of making the award correctly invoked Section 23 of the Interpretation and General Provisions Act (Cap 2). The judge, in our view, correctly held that as the right to compensation in favour of the land owner and the obligation to compensate the land owner had accrued prior to the repeal of the Land Acquisition Act, the applicable law was the repealed statute when she stated as follows:

"The main reason in my view why the repealed Act is applicable is that the law provides for such situations when a lacuna is created by a repealed Act. Section 23 (3) the Interpretation and General Provisions Act (Chapter 2 of the Laws of Kenya) provides as follows with respect to rights and remedies that were previously provided for under a repealed law:

"(3) Where a written law repeals in whole or in part another written law, then, unless a contrary intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of a written law so repealed or anything duly done or suffered under a written law so repealed; or

(c) affect a right, privilege, obligation or liability acquired, accrued or incurred under a written law so repealed; or

(d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against a written law so repealed; or

(e) affect an investigation, legal proceeding or remedy in respect of a right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing written law had not been made."

It is my holding that the investigations or legal proceedings provided in this section include the principles governing assessment of compensation that were provided by the repealed Land Acquisition Act, which are thereby saved as they are not provided for in the repealing law."

130. In so far as the application of the principles governing assessment of just compensation is concerned, the 1st Respondent herein is expected under Section 111(2) of the Land Act to prescribe when to regulate such assessment. The rules or regulations are yet to be prescribed or determined. Under the repealed statute, the regulations were set out in the schedule to the Act. They constituted subsidiary legislation.
131. Section 24 of the Interpretation & General Provisions Act provides that where an Act or part of an Act is repealed, subsidiary legislation issued under or made by virtue thereof shall, unless a contrary intention appears, remain in force, so far as it is not inconsistent with the repealing Act, until it has been revoked or repealed by subsidiary legislation issued or made under the provisions of the repealing Act, and shall be deemed for all purposes to have been made thereunder.
132. As was correctly submitted by Mr. Kuria for the 4th Respondent and by virtue of Section 24 of the Interpretation and General Provisions Act (Cap 2), such subsidiary legislation as read together with Section 7 of the Sixth Schedule to the Constitution would continue to apply until such time as the 1st Respondent prescribes rules to regulate and guide assessment of just compensation.
133. In conclusion, we hold and find that the Schedule to the Land Acquisition Act applies to

compulsory acquisition undertaken by the State through the National Land Commission until such time as the National Land Commission promulgates rules and regulations outlining the principles for the assessment of just and full compensation. We further hold that the procedure for compulsory acquisition since 7th May 2012 is as provided for under the Land Act and in particular Sections 107 to 133 thereof. The repealed Land Acquisition Act (Cap 295) cannot otherwise apply.

134. In the instant case consequently, the Respondents were perfectly entitled to make reference to both the Land Act and the Land Acquisition Act. As the Petitioner has not established or shown to us any substantive section of the Land Acquisition Act that was allegedly applied by the Respondents in the process of compulsory acquisition, we find no fault on the part of the Respondents.
135. We conclude that there was no violation of Article 40.
136. We now come to the question whether the project's Environment Impact Assessment study and the EIA licence comply with the Constitution.
137. Before us, the Petitioner's counsel submitted that the project was contrary to the express nature and spirit of the Constitution with regard to the environment and the principle of sustainable development. We must state that in these respects the Petitioner's submissions, just as the pleadings have been drafted, were rather generalized. We however understood the Petitioner to state that the Standard Gauge Railway project is not fully compliant with the provisions of the Environmental Management and Co-ordination Act (Cap 387).
138. We hold the view that the Petitioner's concerns and allegations were adequately addressed by the Affidavits of A.K. Maina and Prof. Geoffrey Wakhungu.
139. The two affidavits fully addressed the issue of the Standard Gauge Railway projects impact on the environment. The affidavits detail the process of undertaking an Environmental Impact Assessment study. The affidavits also detail how the public was involved in the process.
140. We have no doubt that the State under Article 69 of the Constitution is enjoined to ensure sustainable development: see also the Preamble to the Constitution. The State is also to ensure that every person has a right to a clean and healthy environment. However physical development must also be allowed to foster to ensure that the other guaranteed rights and freedoms are also achieved. Such physical development must however be undertaken within a constitutional and statutory framework to ensure that the environment thrives and survives. It is for such reason that the Constitution provides for public participation in the management, protection and conservation of the environment. It is for the same reason too that the Environmental Management and Coordination Act (" the EMCA")has laid out certain statutory safe guards to be observed when a person or the State initiates any physical development.
141. At the core is the Environmental Impact Assessment and Study which is undertaken under Section 58 of the EMCA and the regulations thereunder. Under Regulation 17, the Environmental Impact Assessment Study must involve the public. The inhabitants of any area affected by a physical development must be given an opportunity to air their views on the effects of any such development. After the Environmental Impact Assessment Study report is compiled, the same report must be circulated to the affected persons.
142. The Petitioner argues that the 3rd Respondent never involved the Petitioner or his constituents either before or during the compilation of the Environmental Impact Assessment Study report. The Petitioner states that the report was only circulated or sent to Mombasa County where the Standard Gauge Railway project origins can be traced. Thirdly, the Petitioner argues that the report itself as well as the attendant licence were faulty as two licences, instead of one, were issued
143. The 3rd Respondent reply is that the petitioner has not demonstrated that any provision of the Constitution or the relevant statute has been violated or breached. The 3rd Respondent contends that all the requisite procedures were followed by the 3rd Respondent and that the Environmental

Impact Assessment was conducted within the law and procedurally for that matter. The 3rd Respondent also states that the public was fully engaged through public hearings and other avenues of public participation.The 3rd Respondent finally argues that all the concerns raised by stakeholders as well as the public including but not limited to the Kenya Forest Service and the Kenya Wildlife Service were fully addressed by the 3rd Respondent and a condition embedded in the EIA licence that the project be undertaken in full liaison with such named stakeholders.

144. We have reviewed the affidavit evidence availed. On the issue of involving the Petitioner and the Petitioner's constituents prior or during the compilation of the Environmental Impact Assessment Study report, we are satisfied that the Respondents met the threshold.

145. For starters, we must point out that contrary to the Petitioner's claims that there was no Environmental Impact Assessment Study report or Environmental Impact Assessment licences, there was indeed an Environmental Impact Assessment Study undertaken and a report generated. Two Environmental Impact Assessment licenses were also apparently issued. This latter fact preoccupied much of the Petitioner's submissions on the issue of the environment. .

146. On whether there was public participation prior to the Environmental Impact Assessment report we are also satisfied from the evidence availed that the 2nd and 3rd Respondents performed their constitutional and statutory compulsions and involved the public.

147. The law with regard to public participation as has been laid out in a series of cases is relatively clear. When an entity or person is enjoined to involve the public in governance or any decision making or legislative process the person so enjoined is under a duty to ensure that adequate facilitation for such public participation is made. The public need not only be invited but must also be given adequate opportunity to participate. As to whether the public participates and their views taken, is truly another sphere . It is however not intended to be a mere cosmetic exercise as the spirit behind the constitutional requirement that the public be involved in governance and decision making as awell as legislative exercise is that the end product be deemed owned by the same public. In **Doctors for Life International vs. Speaker of the National Assembly and Others (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC)** this position was appreciated as follows:

"If legislation is infused with a degree of openness and participation, this will minimise dangers of arbitrariness and irrationality in the formulation of legislation. The objective in involving the public in the law-making process is to ensure that the legislators are aware of the concerns of the public. And if legislators are aware of those concerns, this will promote the legitimacy, and thus the acceptance, of the legislation. This not only improves the quality of the law-making process, but it also serves as an important principle that government should be open, accessible, accountable and responsive. And this enhances our democracy."(emphasis)

148. In the same case, it was also held that

"The phrase "facilitate public involvement" is a broad concept, which relates to the duty to ensure public participation in the law-making process. The key words in this phrase are "facilitate" and "involvement". To "facilitate" means to "make easy or easier", "promote" or "help forward". The phrase "public involvement" is commonly used to describe the process of allowing the public to participate in the decision-making process. The dictionary definition of "involve" includes to "bring a person into a matter" while participation is defined as "[a] taking part with others (in an action or matter); . . . the active involvement of members of a community or organization in decisions which affect them". According to their plain and ordinary meaning, the words public involvement or public participation refer to the process by which the public participates in something. Facilitation of public involvement in the legislative process, therefore, means taking steps to ensure that the public participate in the legislative process. That is the

plain meaning of section 72(1)(a). This construction of section 72(1)(a) is consistent with the participative nature of our democracy. As this Court held in New Clicks, "[t]he Constitution calls for open and transparent government, and requires public participation in the making of laws by Parliament and deliberative legislative assemblies." The democratic government that is contemplated in the Constitution is thus a representative and participatory democracy which is accountable, responsive and transparent and which makes provision for the public to participate in the law-making process."

149. We need say no more on the law on public participation as the above approach as propounded in the South African cases of **Doctors for Life International -v- Speaker of the National Assembly and Others (supra) and Matatiele Municipality and Others -v- President of the Republic of South Africa and Others (2) (CCT73/05A) [2006] ZACC 12; 2007 (1) BCLR 47 (CC)** , has been neatly and positively embraced and followed within our jurisdiction. See the cases of **Robert N. Gakuru & Others vs. Governor Kiambu County & 3 Others [2014] eKLR, Richard Dickson Ogendo & 2 Others –v- Attorney General & 5 Others [2014] eKLR** and **Samuel Thinguri Waruathe & 2 others v Kiambu County Government & 2 others [2015] eKLR.** See also the case of **Nairobi Metropolitan PSV Saccos Union Ltd & 25 Others v County of Nairobi Government & 3 Others Petition No. 486 of 2013** where Lenaola J held that the fact that the views given by the attendees at a public forum are all not taken into consideration does not vitiate the fact that there has been compliance with the requirement for public participation.
150. In the instant case there was facilitation. The public and other relevant stakeholders were involved as the 3rd Respondent undertook its statutory mandate. There is undisputed evidence (see paragraph 5 of the 3rd Respondents affidavit sworn by Zephania Ouma on 27th October 2014) that the Kenya Wildlife Service, the Ministry of State for Planning, the Kenya Forest Service and the National Museums were all involved. These were all stakeholders with different interests.
151. There is also adequate evidence that pursuant to Section 21 of the Environmental Impact Assessment and Audit) Regulations, LN No. 101 of 2003, the 2nd and 3rd Respondents caused to be published in the newspapers of 6th November 2012 and 13th November 2012 notice to the public inviting comments within 60 days from the public on the project. The said notices which were also published in the Kenya Gazette also disclosed the anticipated impacts and proposed mitigation measures. The notices were all published prior to the Environmental Impact Assessment licence being issued and some comments were indeed received, taken into account and acted upon by the 3rd Respondent.
152. In the case of **Okiya Omtata Okoiti & 2 Others –v- Attorney General & 3 Others HCCP. No. 68 of 2014,** the court was faced with an identical issue as to whether the Respondents therein in undertaking the Standard Gauge Railway project had taken into account environmental considerations, Justice Lenaola held, after a full review of the evidence, as follows:

"[106]...In addition, the Government had conducted an autonomous environmental impact assessment on the Standard Gauge Railways project and concluded that the Standard Gauge Railway project should proceed. It is thus my finding with that evidence before me that the contention by the Respondents [sic] that the Standard Gauge Railway is detrimental to the environment lacks merit".

153. We can only affirm the learned Judge's finding by stating that, likewise, on the evidence before us, the Respondents took into account, all environmental considerations including sustainable development.
154. With the finding that there was indeed an Environmental Impact Assessment Study Report and

that the constitutional provisions and requirements were observed by the Respondents in obtaining the Environmental Impact Assessment Study report, two minor issues related to the Standard Gauge Railway and the environment remain for determination.

155. First, the Petitioner attempted to poke holes into the Environmental Impact Assessment Study report and urged that we disregard the same. Secondly, the Petitioner also stated that the existence of two Environmental Impact Assessment licences meant that the Standard Gauge Railway project was not beyond rebuke in so far as protection of the environment was concerned.

156. On these two issues, we are satisfied that the court should not arrogate itself jurisdiction. The Court of Appeal in **Republic –v- N.E.M.A *Ex parte* Sound Equipment Ltd CACA 84 of 2010 [2011] eKLR** made it clear that challenges to Environmental Impact Assessment Study Reports and or Environmental Impact Assessment Licences should be made to the National Environmental Tribunal established for under Section 125 of the EMCA. Rather than come to this court, the tribunal should have been given the first opportunity and option to consider the matter. We agree with Mr. Gitonga for the 3rd Respondent that the tribunal is the specialized body with the capacity to minutely scrutinize the Environmental Impact Assessment Study Report as well as any licenses.

157. Suffice to point out that this court sitting as a Constitutional Division of the High Court was only investigating and interrogating alleged violations of constitutional rights and freedoms and where there is procedure for redress available elsewhere that redress must be pursued within the rubric provided. This Court must exercise restraint and first give an opportunity to the relevant bodies or State organs to deal with the dispute as provided in the relevant statute. Such has been the gist of such cases like **The Speaker of the National Assembly -v- Karume (2008) 1 KLR 426.** In **Narok County Council v Trans Mara County Council and Another, Civil Appeal No. 25 of 2000,** the Court of Appeal expressed itself as follows in that regard;

"Although Section 60 of the Constitution gives the High Court unlimited jurisdiction, it cannot be understood to mean that it can be used to clothe the High Court with jurisdiction to deal with matters which a statute has directed should be done by a Minister as part of his statutory duty; it is where the Statute is silent on what is to be done in the event of a disagreement...Where the Statute provides that in case of a dispute the Minister is to give direction, the jurisdiction of the Court can be invoked only if the Minister refuses to give a direction or in purporting to do so, arrives at a decision which is grossly unfair or perverse. In the latter, his decision can be challenged by an application to the High Court for a writ of certiorari because under the relevant Section the decision is to be made on a fair basis. But if the Minister simply refuses to discharge his statutory duty, his refusal can also be challenged in the High Court by way of mandamus to compel the Minister to perform his statutory duty but not by way of a suit ... If the Court acts without jurisdiction, the proceedings are a nullity ...

158. The Court concluded as follows as regards the jurisdiction of the High Court;

"Where the law provides for procedure to be followed, the parties are bound to follow the procedure provided by the law before the parties can resort to a Court of law as the Court would have no jurisdiction to entertain the dispute."(emphasis)

159. There is then the final issue of whether the Respondents have violated the Petitioner's right of access to information under Article 35 of the Constitution. In these respects, the Petitioner's claim was that the Respondents have failed to provide the Petitioner with information on the standard gauge railway project. There was no specificity on the information held by the Respondents and sought by the Petitioner. The Respondents denied the allegation, simply

terming them as "wild".

160. It is critical for any party alleging a denial of access to information to more specifically plead the nature of the information sought and to then prove that the information is held by the a respondent. Prove can actually be by way of evidence of the specific demand. Both were in the instant case lacking and we must quickly state that there is no merit on this aspect of the Petitioner's claim.

Conclusion and disposal

161. On the basis of the evidence before us we are unable to return the verdict sought by the Petitioner that there are violations or threatened violations of the Constitution. No sufficient evidence has been tendered by the Petitioner, who had the burden, to show that Articles 10,30,35, 40,47,69 and 70 of the Constitution have been violated. The Petitioner failed to discharge the burden to the required standard. On the contrary, the Respondents have availed sufficient evidence to confirm that in matters environment the relevant provisions of the Constitution and other relevant legislation were observed.
162. We answer the reserved issues as follows:

(i)Whether or not the compulsory acquisition process of land within the Petitioner's constituency was or is inconsistent with and or in contravention of Articles 10, 28, 40 and 47 of the Constitution and/or any written law.

The answer is no.

(ii)Whether or not the project is being undertaken in full compliance with the relevant environmental laws and principles both under the Constitution and under the Environmental Management and Coordination Act(Cap 387).

The answer is yes

(iii)Whether there has been a breach of the Petitioner's right to information under Article 35 of the Constitution.

The answer is no

163. The Petition must be dismissed. It is dismissed.

Costs

164. The issue of costs is within our discretion. The Petitioner genuinely believed there were possible violations. We see no reason to condemn him to any cost noting that the Petition was also filed on behalf of persons not in a position to act for themselves.
165. There will be no order as to costs.

Dated and signed at Nairobi this 29th day March, 2016

I. LENAOLA M.NGUGI L.ACHODE G.V. ODUNGA J.L.ONGUTO

JUDGE JUDGE JUDGE JUDGE JUDG

Delivered and dated this 30th day of March 2016

J.L.ONGUTO

JUDGE

creative commons While the design structure and metadata of the Case Search database are licensed by Kenya Law under a Creative Commons Attribution-ShareAlike 4.0 International, the texts of the judicial opinions contained in it are in the public domain and are free from any copyright restrictions
Read our Privacy Policy | Disclaimer

Annex V - High Court Judgement – Civil Case No. 617 of 2012

KENYA LAW
Where Legal Information is Public Knowledge

REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Civil Case 617 of 2012

AFRISON EXPORT LIMITED.....1ST PLAINTIFF

HUELANDS LIMITED .....2ND PLAINTIFF

VERSUS

CONTINENTAL CREDIT FINANCE LIMITED (IN LIQUIDATION).....1ST DEFENDANT

OFFICIAL RECEIVER & INTERIM LIQUIDATOR.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL (SUED ON BEHALF OF THE OFFICE OF THE PRESIDENT).....3RD DEFENDANT

AND

IN THE MATTER OF VALUATION OF LAND (DEED PLAN L.R. NO 7879/24) AND SALE THEREOF TO THE OFFICE OF THE PRESIDENT OF THE REPUBLIC OF KENYA

AND

IN THE MATTER OF VENDORS CLAIM FOR THE SALE PRICE AND ASSESSED RENTAL LOSS/LOSS OF USE ARISING OUT OF ILLEGAL OCCUPATION OF DEED PLAN L.R. NO. 7879/24 BY THE OFFICE OF THE PRESIDENT SINCE SEPTEMER, 1988

JUDGMENT

1. The Plaintiffs, Afrison Export & Import Limited and Huelands Limited, are the registered proprietors of all that parcel of land known as LR No. 7879/24 (hereinafter "the suit property"). From the evidence on record, the suit property was part of a larger property LR No. 7879/4 which the Plaintiffs purchased from one Joreth Limited in 1981. The suit property measurers an area equivalent to 37.4 acres. This is well captured by the report prepared by the Ministry of Lands, Survey Department and dated 17th December, 2012 by one Wilfred Muchai, a Land Surveyor.

2. It would seem that in or about 1988, the Government of Kenya took possession of the suit property for and on behalf of the General Service Unit ("GSU") of the Police Service. The Plaintiffs as the registered owners of the suit property have never been compensated for the loss of use of the suit property.

3. On 24th September, 2012, the Plaintiffs took out an Originating summons against Continental Credit Finance Ltd, the Official Receiver and Interim Liquidator of Continental Credit and the Attorney General on behalf of the Office of the President seeking various prayers for determination. These were to the effect that, Judgment be entered for the Plaintiffs against the 3rd Defendant for Kshs.6,450,000,000/- being the value of the suit property and Kshs.1,670,270,000/- as the rental loss or loss of use of the suit property. The suit as against the 1st and 2nd Defendant seem to have been withdrawn on 24th January, 2012 by a Notice of withdrawal filed on that date. The suit therefore proceeded as against the 3rd Defendant only.

4. By a consent order entered on 5th February, 2013, this court was to enter judgment on the evidence and mean average of valuations on record. Having carefully examined and considered the evidence on record, it is clear that the Plaintiffs are the legal and registered owners of the suit property. The 3rd Defendant has been in occupation of the suit property since 1988 and continue to occupy the same. It is clear that by that occupation, the Plaintiffs have lost the use of the suit property for the period 1988 to date. From the record, it is also crystal clear that the 3rd Defendant has not and cannot legally contest the Plaintiffs claim for compensation.

5. This is so because, in his Replying Affidavit sworn on 5th February, 2014, Victor G. Okioma, a Secretary in the Office of the President has deponed that in or about October, 2011, the then Minister for

Provincial Administration and Internal Security had appointed an inter Ministerial Task Force to inquire in the issue of the delayed acquisition of the suit property, that those represented into that task force were the Ministry of Lands, the Kenya Police, the City Council of Nairobi, the Attorney General, the Public Procurement Oversight Authority, the Office of the President among others. He further deponed that that committee recommended that all suits relating to the suit property be withdrawn, that the Government does pay compensation for 19.5 acres since it had allegedly purchased a portion of 17.8 acres in 1988 for Kshs.64million from the Kenya Ports and Telecommunications Corporation ("KPTC"), and that the negotiation between the Government and the registered owners of the suit property be guided by valuations and survey reports. Further, this matter was the subject of a meeting of the Parliamentary Departmental Committee on Administration and National Security held on 2nd April, 2012. In that meeting, the committee made a similar recommendation that the government does purchase the suit property (19.7 acres) on the basis of the private open market value and do compensate the owners for the rental lost for the 23 years which the government had been in occupation thereof. These are contained in the minutes of the committee dated 18th April, 2012 and signed by the then Chairman of that Committee Hon. Fred Kapondi.

6. Further, from both the Supporting and Further Affidavits of Francis Mburu, it is clear that the issue of the liability of the 3rd Defendant to the Plaintiffs does not arise. The government had agreed as to having wrongly occupied the suit property and the only issue is the amount of compensation payable. Before I delve into the issue of compensation, there are two issues which I need first to dispose off. These are, whether the compensation would be for the property measuring 19.7 acres as contended by the 3rd Defendant or 37.4 acres as contended by the Plaintiffs and whether the Plaintiffs are entitled to the market rental loss for the period the government has been in occupation, that is Kshs.1,670,270,000/- claimed by the Plaintiffs.

7. On the issue of whether the compensation would be on 19.7 acres or 37.4 acres, it is clear from the record that the government appropriated the entire area of the suit property, that is 37.4 acres. From the Replying Affidavit of Victor G. Okioma and the minutes of the Parliamentary Departmental Committee on Administration and National Security, the Government is of the view that it had already purchased 17.8 acres of the suit property from the defunct Kenya Posts and Telecommunications Corporation in 1988. I have seen the subject Sale Agreement. The same is dated 18th August, 1988. It was between KPTC and the Permanent Secretary, the Office of the President. It was for the sale of various sub-plots (between LR Nos.13421/257 and 13421/531). The purchase price was Ksh.64m. Looking at that agreement, the same does not state that the Kenya Posts and Telecommunications Co-operation was the registered owner of those sub-plots. It also does not give the total area being sold. It is also not clear from the record how Kenya Posts and Telecommunications Corporations assumed ownership to purport to sell the said property. There being no evidence of Kenya Posts and Telecommunication's Corporation's ownership of that property, I hold that Kenya Posts and Telecommunications Corporation could not have passed and did not pass on to the 3rd Defendant any title. Accordingly, I hold that the property the subject of the suit is the entire 37.4 acres comprised in the title for the suit property i.e. LR No.7879/24 and the compensation sought shall be on that entire property.

8. The other issue is whether the Plaintiffs should recover a sum of Kshs.1,670,270,000/- as open market rental loss for the period the 3rd Defendant has been in occupation of the suit property. Firstly, I note that there was no evidence on how the Plaintiffs arrived at this value. It is true that the government, through the Parliamentary Departmental Committee on Administration and National Security had agreed to compensate the Plaintiffs on this head. However, this court has considered the fact that this is a claim against the public and for the reason that the court was not told how the figure of Kshs.1,670,270,000/- was arrived at, I am afraid the claim is unsustainable. I decline to grant it.

9. That leaves me with the issue of what is the reasonable compensation for the suit property. On record were three (3) valuation reports. These were by:-

(a) Camp Valuers dated 11th May, 2012 for Kshs.6,450,000,000/-

(b) Clayton Valuers Ltd dated 30th November, 2012 for Kshs.3,109,500,000/-

(c) Llyod Masika Ltd dated 22nd January, 2013 for Kshs.2,700,550,000/-.

I have carefully examined the said valuation reports. They seem to have considered all the relevant material in arriving at the Valuations given. Although, there seems to be a marked disparity between the valuation report of Camp Valuers and the other two, that valuation however seems to be more detailed. In this regard, I agree with the parties that in order to come to a more plausible, fair, equitable and just value of the suit property, the mean value of the three valuations should be considered. This I do as follows:-

(1) Camp Valuers -Kshs.6,450,000,000/-

(2) Clayton Valuers -Kshs.3,109,500,000/-

(3) Llyod Masika -Kshs.2,700,550,000/-

Kshs.12,260,050,000/-

The mean of Kshs.12,260,050,000/- is Kshs.4,086,683,330/- which I will consider to be the fair value of the suit property. Accordingly, I enter Judgment for the Plaintiffs against the 3rd Defendant for the said sum of Kshs.4,086,683,330/-. I also award the costs of the suit to the Plaintiffs.

It is so decreed.

DATED and DELIVERED at Nairobi this 12th day of February, 2012.

.....

A. MABEYA

JUDGE

While the design, structure and metadata of the Case Search database are licensed by Kenya Law under a Creative Commons Attribution-ShareAlike 4.0 International, the texts of the judicial opinions contained in it are in the public domain and are free from any copyright restrictions. Read our Privacy Policy | Disclaimer

Annex VI - Submissions by the Cabinet Secretary, Ministry of Lands and Physical Planning

MINISTRY OF LANDS AND PHYSICAL PLANNING

QUESTIONS BEFORE THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON LANDS

Q. 1 Documents relating to ownership of LR. NO.7879/4 where the two schools are located indicating the ownership history since 1966 and whether there is any encumbrance on the title.

Hon Chair,

I wish to respond as follows;-

1. According to records held by the Ministry of Lands and Physical Planning, Afrison Export Import Limited and Huelands Ltd are the registered owners of the LR No. 7879/4 having acquired it in 1981. The total land measures a total of 96 Acres. The title of the land is a free hold indenture *(copy of the folio of LR 7879/4 is attached as Annex II)*

2. According to the indenture dated 29th of December, 1981, Joreth Limited, a limited liability company incorporated in Kenya of P.O. Box 47122, Nairobi and Afrison Export Import Limited and Huelands Limited of P.O. Box incorporated in the Republic of Kenya, and P.O. Box 57192 Nairobi (jointly referred to as the purchasers) entered into agreement for sale/purchase. *(see the attached copy of indenture attached as annex III)*

VI

Back Ground

3. The land in question is registered under the now repealed Government Land Act of 1902. By an instrument of conveyance dated 1905 the Crown first allocated a total of 1000 acres to Arthur Edward Atkinson as land No. 216 registered as No. 333/AII/1905. *(see Entry No.1 of the attached folio as Annex 1)*

4. Through a conveyance dated 21st February 1906 A.E. Atkinson conveyed the land to Allan Thompson and Harris Temple by the indenture dated 5th October 1905, Reg. No. 38/AII/1906. *(see Entry No.2 of Annex 1)*

5. On 25th of March 1909 A.H. Thompson mortgaged the land to Ms. Gertrude Grogan Regd. No 165/AV/1909. *(see Entry No. 3 of Annex 1)*

6. The Land went through various hands and mortgages up to the late R.H.T Hancock.

7. By way of Letters of Administration dated 30th November 1921 granted by the Supreme Court Nairobi, the land passed onto Wilfred Arthur Randolph Nicholson from the estate of R.H.T Hancock. *(see Entry No.9 of Annex 1)*

8. On 19th of August 1925 the land was conveyed to Gladys Thompson for a consideration of Kshs. 210,000/- *(see entry No.10 of Annex 1)*

Details

9. Changed hands by virtue of an Indenture dated 4th of December, 1958 (registered in the Government Lands Registry at Nairobi Volume N 43 folio 302/1 between Gladys Thomson and Joreth Limited for a consideration. It was then transferred to Joreth Limited *(see Entry No.24 of Annex 1 and annex 111 attached)*

10. The land is delineated and described on Plan Number 47389 as fee simple and subject to the provisions of the Government Lands Act of 1902 *(now repealed and replaced by the Land Act, 2012).*

11. Having bought the entire 168.5 acres from Gladys Thomson, Joreth Limited proceeded to subdivide the land it into four separate pieces.

12. Afrison Export Import Limited and Huelands Limited bought the piece of land Reference No. 7879/4 at the price of Ksh. 14,000,000/= containing by measurement, ninety-six acres (96 acres) *(see Annex II, Entry No. 1 of Volume N50 folio 1/27 of the subdivision).*

Proposed Subdivisions

13. On 6th September 1982 Afrison Export Import and Hueland Limited, through their development company, Drive in Estate developers,

applied to the town planning committee seeking approval for their proposed scheme of subdivision. *(see Annexture IV)*

14. On 28th of March 1984, the then Director of City planning conveyed his conditional approval giving drive in developers no room for negotiation over the conditionalities *(see Annexture V)*

15. On 5th of April 1984 Drive in Estate Developers limited responded rejecting the conditions given and cancelled the entire application of subdivision of their land. They expressed lack of interest in the imposed condition by the city Council *(see Annexture VI)*

16. Part of the conditions were that they surrender road networks, areas reserved for Nursery Schools, Primary and Secondary sites, Social Centers Special Purpose plots to the Commission (as the Council was then called), free of cost (See the annexture VII).

17. In the meantime, in 1983 there were ongoing processes between the developers and the Commissioner of Lands which resulted in the payment of fees to facilitate the approval of the subdivision scheme after the developer paid Ksh. 21,500 on 18th November 1983.(see *Annexture VIII).*

18. The Commissioner of Lands approved the subdivision scheme on 22nd of November, 1983 as well as the surrender of the Nursery, Primary and

secondary sites and the social centers free of cost. However, the **surrender was not effected.**

19. On 12th July, 1984, the Commissioner of Lands issued a "letter of reservation" reserving the school sites planned for secondary school to the Permanent Secretary Ministry of Education.

20. Later on, 25th of June, 1999, the Commissioner of Lands issued a letter of allotment to the Permanent Secretary for Education ***(see Annexture IX).***

Were the subdivision schemes Registered?

21. Upon payment and approval of the subdivision scheme, the onus was Afrison Export Import Limited and Hueland Limited, to take the next steps to have the subdivision scheme surveyed and registered with the Director of Surveys.

22. According to the Directorate of Survey, Afrison Export Import and Hueland Limited **did not apply nor did they ask for survey.** Had they done this it would have resulted in new numbers from the subdivided plots.

23. The owners of the land had as of 1984, declined the conditions imposed. Rather, they cancelled their application. Once this was done, the land remained intact **(See the attached correspondences between then City Commission and Drive in Estate Developers annexed as X)**

Our Position

24. As at 16th of April, 2018 the official Search record shows that LR 7879/4 is owned by Afrison Export Import Limited and Hueland Limited.

25. As per the Government Land Act (now repealed), the folios indicate ownership of the land since 1905 to date as a freehold private land. The only recorded subdivision is that allocated to the GSU Headquarters.

Q.2. A copy of the map of the land where Drive Inn Primary school and Ruaraka High School are located indicating the size and whether the two schools are in one land registration number.

Hon. Chair,

I forward the map for LR NO. 7879/4.

LR NO 7879/4 has an area of 38.8Ha approximately, Deed Plan No. 85744 as shown in Survey Plan FR No. 107/9.

The parcel was subdivided into two portions as shown in FR No. 379/60;

i. LR No.7879/24 (7879/4/3) with an area of 15.857 Ha (Deed Plan No. 398228, issued on 18th March, 2016).
ii. LR No. 7879/25 (7879/4/4) with an area of 22.755Ha (Deed Plan 3982229, issued on 18th March, 2016).

Q. 3 Whether Ruaraka school was issued with an allotment letter for LR No.7879/4.

Hon Chair

1. The copy of the letter of allotment that you have been presented with, emanates from the Ministry of Lands for a portion of LR No. 7879/4. There is evidence to that effect in the correspondence file.
2. As we said earlier, our records in the registry file and the Director of Survey does not confirm the surrender of title nor submission of the Scheme of subdivision by Afrison Export Import and Hueland Limited for registration.
3. The proposed scheme of subdivision on which public land was to be created and given free of cost to the Nairobi Council was cancelled in 1984.

Hon Chair

4. Ours is a case of the left hand not discerning what the right hand was doing between the City Council and the Commissioner of Lands.

5. The letter of allotment is incapable of transferring part ownership of LR No. 7879/4 (private land on free hold basis) to a public land held by the schools without going through a process of excision and compulsory acquisition.

6. It should have been in the knowledge of the Commissioner of Lands, that once the scheme of subdivision had been cancelled in 1984, there was no land to allocate to the school in 1999.

Farida Karoney, OGW
CABINET SECRETARY

17th April, 2018

1024

MINISTRY OF LAND AND PHYSICAL PLANNING
OFFICE OF THE PRINCIPAL SECRETARY

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

ARDHI HOUSE
1st NGONG AVENUE
P.O. Box 30450-00100
NAIROBI, KENYA

19th April, 2018

MOLPP/ADM/1/56

(1) DD/Committees 20/4/18

The Clerk, National Assembly
Parliament Buildings
NAIROBI

Attn: James N. Mwangi, EBS

RESUBMISSION OF REPORT
MEETING WITH DEPARTMENTAL COMMITTEE ON LANDS

The above matter refers,

Following our meeting on the 17th April, 2018 with the Departmental Committee on Lands and the deliberations thereof, we are hereby resubmit the amended report, as we had erroneously quoted the wrong LR NOs. under question 2 when describing the two subdivisions as shown on FR No.379/60.

Kindly find the final response for your necessary action.

(2) MACHIRA
Pls deal
23/4/18

Muraguri

Dr. Nicholas Muraguri
PRINCIPAL SECRETARY

NATIONAL ASSEMBLY
RECEIVED
19 APR 2018
CLERK'S OFFICE
P. O. Box 41842, NAIROBI

MINISTRY OF LANDS AND PHYSICAL PLANNING

QUESTIONS BEFORE THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON LANDS

Q. 1 Documents relating to ownership of LR. NO.7879/4 where the two schools are located indicating the ownership history since 1966 and whether there is any encumbrance on the title.

Hon Chair,

I wish to respond as follows;-

1. According to records held by the Ministry of Lands and Physical Planning, Afrison Export-Import Limited and Hueland Ltd are the registered owners of the LR No. 7879/4 having acquired it in 1981. The land measures a total of 96 Acres. The title of the area is a freehold indenture (copy of the folio of LR 7879/4 attached as Annex II).

2. The indenture dated 29th of December, 1981, Joreth Limited, a limited liability company incorporated in Kenya of P.O. Box 47122, Nairobi and Afrison Export-Import Limited and Huelands Limited registered in the Republic of Kenya, (jointly referred to as the purchasers) agreed to sell/purchase. (see the attached copy of indenture attached as annex 111).

Background

3. LR No 7879/4 falls under the now repealed Government Land Act of 1902. By an instrument of conveyance dated 1905 the Crown first allocated a total of

1000 acres to Arthur Edward Atkinson as land No. 216 registered as No. 333/AII/1905.(see Entry No.1 of the attached folio as Annex 1).

4. Through a conveyance dated 21st February 1906 A.E. Atkinson conveyed the land to Allan Thompson and Harris Temple by the indenture dated 5th October 1905, Reg. No. 38/AII/1906. (see Entry No.2 of Annex 1).

5. On 25th of March 1909 A.H. Thompson mortgaged the land to Ms. Gertrude Grogan Regd. No 165/AV/1909 (see entry No. 3 of Annex 1).

6. The Land went through various hands and mortgages up to the late R.H.T Hancock.

7. By way of Letters of Administration dated 30th November 1921 granted by the Supreme Court Nairobi, the land passed onto Wilfred Arthur Randolph Nicholson from the estate of R.H.T Hancock (deceased) as per entry No.9 of Annex 1.

8. On 19th of August 1925, the land ownership passed to Gladys Thompson for consideration of Kshs. 210,000/- (see entry No.10 of Annex 1).

Details

9. Changed hands by an Indenture dated 4th of December, 1958 (registered in the Government Lands Registry at Nairobi Volume N 43 folio 302/1 between Gladys Thomson and Joreth Limited for a consideration. It was then transferred to Joreth Limited (see Entry No.24 of Annex 1 and annex 111 attached).

10. The land is delineated and described on Plan Number 47389 as fee simple and subject to the provisions of the Government Lands Act of 1902 (now repealed and replaced by the Land Act, 2012).

11. Having bought the entire parcel of land measuring 168.5 acres from Gladys Thomson, Joreth Limited proceeded to subdivide the land it into four separate pieces.

12. Afrison Export-Import Limited and Huelands Limited bought the piece of land Reference No. 7879/4 at the price of Ksh. 14,000,000/= measuring ninety-six acres (96 acres) (see Annex II, entry No. 1 of Volume N50 folio 1/27 of the subdivision).

Proposed Subdivisions

13. On 6th September 1982, Afrison Export-Import and Hueland Limited, through their development company, Drive in Estate Developers, applied to the town planning committee seeking approval for their proposed scheme of a subdivision. (see Annexure IV).

14. On 28th of March 1984, the then Director of City planning conveyed his conditional approval giving the developers no room for negotiation (see annexure V).

15. On 5th of April 1984, Drive-in Estate Developers responded rejecting the conditions given and cancelled the entire application of subdivision of their land. They expressed lack of interest in the imposed requirements by the City Council (see Annexure-VI).

16. Part of the conditions was that they surrender road networks, areas reserved for Nursery Schools, Primary and Secondary sites, Social Centers Special Purpose plots to the Commission (as the Council was then called), free of cost (See the Annexure VII).

17. In the meantime, in 1983 there were ongoing processes between the developers and the Commissioner of Lands which resulted in the payment of fees

to facilitate the approval of the subdivision scheme after the developer paid Ksh. 21,500 on 18th November 1983.(see Annexure VIII).

18. The Commissioner of Lands approved the subdivision scheme on 22nd of November, 1983 as well as the surrender of the Nursery, Primary and secondary sites and the social centres free of cost. However, the scheme of the subdivision was not registered.

19. On 12th July 1984, the Commissioner of Lands issued a "letter of reservation" reserving the school sites planned for the secondary school to the Permanent Secretary Ministry of Education.

20. Later on, 25th of June, 1999, the Commissioner of Lands issued a letter of allotment to the Permanent Secretary for Education (see Annexure IX).

Were the subdivision schemes Registered?

21. Upon payment and approval of the subdivision scheme, the onus was on Afrison Export-Import Limited and Hueland Limited, to take the next steps to have the subdivision scheme surveyed and registered with the Director of Surveys.

22. Afrison Export-Import and Hueland Limited did not apply nor did they ask for the survey and subsequent registration of their scheme. Had they done this, it would have resulted in new numbers from the subdivided plots (See the attached correspondences between the City Commission and Drive-in Estate Developers annexed as X).

Our Position

24. As at 16th of April, 2018 the official Search record shows that Afrison Export-Import Limited and Hueland Limited own LR 7879/4.

25. As per the Government Land Act (now repealed), the folios indicate ownership of the land since 1905 to date as private freehold land. The only recorded subdivision is that allocated to the GSU Headquarters.

Q.2. Provide a copy of the map of the land where Drive In Primary School and Ruaraka High School are located indicating the size and whether the two schools are in one land registration number.

Hon. Chair,

I to wish forward to you the map for LR NO. 7879/4.

LR NO 7879/4 has an area of 38.8Ha approximately, Deed Plan No. 85744 as shown in Survey Plan FR No. 107/9.

The parcel was subdivided into two portions as shown in FR No. 379/60;

i. LR No.7879/4 (7879/4/3) with an area of 15.857 Ha (Deed Plan No. 398228, issued on 18th March 2016).

ii. LR No. 7879/4 (7879/4/4) with an area of 22.755Ha (Deed Plan 3982229, released on 18th March 2016).

Q. 3 Whether Ruaraka school was issued with an allotment letter for LR No.7879/4?.

Hon Chair

1. I wish to present to you a copy of a letter of allotment that emanated from the Commissioner of Lands in 1999, allocating a portion of LR No. 7879/4.

2. However, our registry records and records at the Director of Survey do not confirm the surrender of title nor submission of the Scheme of the subdivision by Afrison Export-Import and Hueland Limited for registration.

3. As we have indicated, the proposed scheme of subdivision that could have created public land free of cost to the Nairobi Council did not succeed.

Hon Chair

4. The situation we find ourselves in right now, is a case of the left hand not discerning what the right hand was doing between the City Council and the Commissioner of Lands.

5. The letter of allotment is incapable of transferring part ownership of LR No. 7879/4 (private land on freehold basis) to a public land held by the schools without going through a process of excision and compulsory acquisition.

6. It should have been in the knowledge of the Commissioner of Lands, that once the scheme of the subdivision had failed in 1984, there was no land to allocate to the school in 1999.

Farida Karoney, OGW
CABINET SECRETARY

17th April 2018

PROVISIONAL 30 DEC 1981 £21,000 D 6/- 1113

THIS INDENTURE is made the Twenty-ninth day of December One thousand nine hundred and Eighty-One BETWEEN JORETH LIMITED a limited liability company incorporated in the Republic of Kenya having its registered office at Nairobi and of Post Office Box Number 47122 Nairobi aforesaid (hereinafter called "the Vendor" which expression shall where the context so admits include its successors and assigns) of the one part and AFRISON EXPORT IMPORT LIMITED a limited liability company incorporated in the Republic aforesaid and of Post Office Box Number 40469 Nairobi and HUELANDS LIMITED a limited liability company incorporated in the Republic aforesaid and of Post Office Box Number 57192 Nairobi (both of which are hereinafter called "the Purchasers" which expression shall where the context so admits include their respective successors and assigns) of the other part:

WHEREAS by virtue of an Indenture dated the Fourth day of December One thousand nine hundred and Fifty-eight (registered in the Government Lands Registry at Nairobi in Volume N 43 Folio 302/1) and made between Gladys Thomson (therein described) of the one part and the Vendor of the other part for the consideration therein mentioned ALL THAT piece or parcel of land situate in the City of Nairobi in the Nairobi Area of the Republic of Kenya containing by measurement One hundred and Sixty-eight decimal five 168.5 (~~189.5~~) acres or thereabouts known as Land Reference Number 7879 (Original Number 216/2 & 4922/4) and which said piece of land is more particularly delineated and described on Plan Number 47389 annexed to the Indenture in recital and thereon bordered red was conveyed unto the Purchaser for an estate in fee simple Subject to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder and

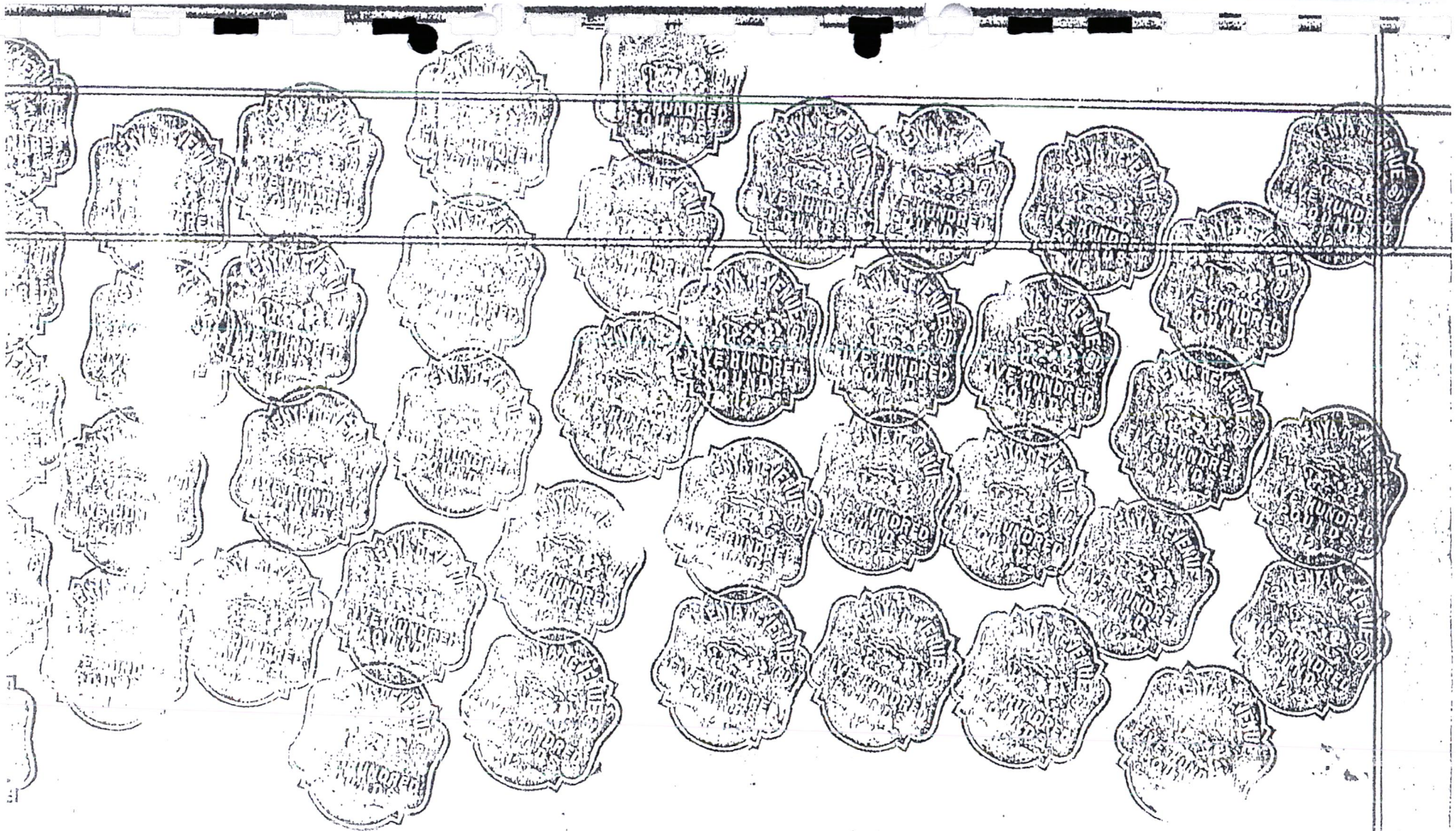
WHEREAS the Vendor has caused the said piece of land to be divided into sub-divisions and has agreed with the Purchasers for the sale to them of the remainder of the portion known as Land Reference Number 7879/4 at the price or sum of Shillings Fourteen Million (Shs. 14,000,000/-) NOW THIS

INDENTURE WITNESSETH that in consideration of the sum of Shillings Fourteen Million (Shs.14,000,000/-) paid by the Purchasers to the Vendor on or before the execution hereof (the receipt whereof is hereby acknowledged by the Vendor) the Vendor being beneficial owner HEREBY CONVEYS unto the Purchasers ALL THAT piece or parcel of land situate in the City of Nairobi in the Nairobi Area of the Republic of Kenya containing by measurement Ninety six acres (96 acres) (approximately) known as Land Reference Number 7879/4 being a remainder portion of the premises comprised in and conveyed by the Indenture dated the Fourth day of December One thousand nine hundred and Fifty-eight (registered as aforesaid in Volume N 43 Folio 302/1) and is more particularly delineated and described on Land Survey Plan Number 85744 annexed hereto and thereon bordered red TO HOLD the same unto the Purchasers as tenants in common in equal shares for an estate in fee simple SUBJECT to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder.

IN WITNESS WHEREOF the Vendor and the Purchasers have caused their respective Common Seals to be hereunto affixed the day and year hereinbefore written.

SEALED with the Common Seal)
)
of JORETH LIMITED)
)
in the presence of :)
)
)
)

SEALED with the Common Seal)
)
of AFRISON EXPORT IMPORT LIMITED)
)
in the presence of :-)
)
)
)



GLA 20
1535

Provincial No. 503

1535

1. Conveyance dated 5th October 1905
Crown to Arthur Edward Atkinson
Of 1000 ac. Karora & Ruaraka Rivers
Consideration Rs 2000/-
LO. No. 216
Regd. No. 333/A II/1905

2. Conveyance dated 21st February 1906
A. E. Atkinson to Alan Hawtin Tompson & Harris Temple.
Of all the premises Conveyed by the Indenture dated 5th October 1905
Consideration £ 1000/-
Regd. No. 38/A II/1906.

3. Mortgage dated 25th March 1909
A. H. Tompson to Mrs Gertrude Edith Grogan
Of all his undivided interest in the premises Conveyed by the Indenture dated 5th October 1905 (with other lands)
Regd. No. 165/AV/1909

4. Equitable Mortgage dated 20th February 1911
R. A. T. Handcock to Thomas Gerald Euckland Moncriffe
Of all his undivided interest in the premises Conveyed by the Indenture dated 5th October 1905 (with other lands)
for the sum of Rs 15,000/-
Regd. No. 27/A VII/1911

5. Reconveyance of Mortgage dated 19th February 1913
Mrs G. E. Grogan to A. H. Tompson.
Cancelling Mortgage dated 25th March 1909
Regd. No. 74/AX/1913

6. Cancellation of Equitable Mortgage dated 25th February 1913
T. G. A. Moncriffe to R. H. T. Handcock.
Cancelling Equitable Mortgage dated 20th February 1911
Regd. No. 77/A IX/1913

7. Memo of Deposit of Title Deeds Nos. 333/A II/1905 & 38/A II/1906
By way of Equitable Mortgage dated 29th October
In favour of National Bank of India Ltd.
DBN 515/1915

8. Discharge of Equitable Mortgage dt 28th September 1917
By National Bank of India Lt Cancelling Equitable Mortgage
Regd in Vol. N VIII folio 300/7
DBN 721/1917

9. Letters of administration dated 30th November 1921
Granted by Supreme Court Nairobi to Wilfred Clare Aurter
Randolf Nicholson In the estate of R. H. T. Handcock (deed)
DBN 691/25 dt 5.9.25

10. Conveyance dated 19th August 1925
W.C. Hunter & R. Nicholson with Crown to Mrs. Gladys Tompson
undivided one half Share in 1000 acres L.O. No. 216 Ruaraka & Kamra Rivers
GEL 21/1535 Consideration Shs. 210,000/-
DBN 669/25 dt 5.9.25

11. Letters of administration dated 21st May 1919
Granted by High Court Nairobi to Wilfred Clare Hunter
In the estate of J.H. Tompson deed
DBN 817/25 dt 26.10.25

12. (Assent to Bequest Conveyance) dated 30th September 1925
W.C. Hunter (Administrator of the Estate of J.H. Tompson (deed)
with Crown to Mrs. G. Tompson
undivided one half Share in 1000 acres L.O No. 216 Ruaraka & Kamra Rivers
DBN 809/25 dt 20.10.25

13 Mortgage dated 30th September 1925
Gladys Tompson to James Hamilton Gailey & Donald Farquarson Sell Smith
1000 acres L.O No. 216 Ruaraka & Kamra Rivers (with other lands)
To Secure the sum of Sh. 200,000/-
DBN 1018/25 dt 14.12.25

14 Reconveyance of Mortgage dated 5th February 1927
J.H. Gailey & D.F. Sell Smith to Mrs Gladys Tompson
1000 acres L.O No. 216 Ruaraka & Kamra Rivers (with other lands)
Cancelling Mortgage dated 30th September 1925 (Colo. 13)
DBN 191/27 dt 9.2.27

15 Memo of Equitable Mortgage dated 12th December 1929
by National Bank of India Ltd Nairobi
DBN 1270/29 dt 13.12.29

16 Wayleave Agreement dated 3rd March 1935
To East African Power & Lighting Co Ltd
Granting consent to Coy & maintain electric line across above land
No 580 dt 18/3/35

17 Memo of Discharge dated 20th March 1935
Discharging No. 15 above so far as related to L.R. No 216/1 - 0.137 acs
No 623 Dt 21-3-1935

18 Conveyance dated 18th March 1935
0.137 acres - L.R No. 216/1 (Now No 7200) - N. of Nairobi Municipality
To Sir Samuel Joyce Thomas
No. 624 Dt 21.3.1935

19

FILE 1535

GLA 22/1535 20. Memo of Equitable Mortgage dated 2nd March, 1945
With the National Bank of India Ltd.
999.863 acs. L.R. No. 216/R (with other lands)
No. 506 dt 2.3.45

21. Memo of Discharge of an Equitable Mortgage dated 12th June, 1947
of No. 20 above (with other lands)
No. 4588 dt 25/10/47

22. Conveyance dated 17th April 1952
92.5 Acres L.R. No. 7878 (ORIG. Nos: 216/3 - 87.86 Acres & 4922/3 - 4.64 acres
(11669) To S. Elliot & Co. Limited (with other lands)
No. 2502 Dt 25.4.52.

23. Wayleave Agreement dated 20th October, 1952
With The East African Power & Lighting Company Limited
Granting an easement to lay and Maintain an electric line across the above remaining piece of land (216/R)
No. 6587 dt 21.10.52.

24 Conveyance dated 4th December, 1958
168.5 acres L.R. No. 7879 (Orig. No. 216/2 6.96 acres & LR No. 4922/4 161.54
900 acres L.R. No. 216/4
To Fourth Limited (with other lands)
No. 11811 dt 23.12.1958

CFCO
A.C. Nianoge * 294

(16178)

16178

Transfered from Volume N50 Folio ~~#/27~~ 1/27

1. Conveyance dated 29th day of December 1981
Toreth Limited ------ The Vendor
To Afrison Export Import Limited and Huelands Limited
as tenants in common in equal shares 96 acres Land Reference
Number 7879/4 City of Nairobi
For Kenya shillings 14,000,000/=
No 1300 dt 30-12-1981.

REGISTRAR OF GOVERNMENT LANDS

2. Mortgage dated 29th day of December 1981
To Continental Credit Finance Limited
For Kenya shillings 21,000,000/=
No 1301 dt 30-12-1981

494/7/86

REGISTRAR OF GOVERNMENT LANDS

3. Second Mortgage dated 11th July 1986
To Kenya Posts and Telecommunications corporation
For Ksh 165,000,000 ~~21,000,000/=~~
No 498

dt 11-7-86

REGISTRAR OF GOVERNMENT LANDS

4. Caveat dated 31st July 1986
By Drive-in Estate Developers Limited Claiming
Mortgagee's interest by virtue of agreement in writing
between the parties Absolutely
No 1320

dt 31-7-1986

REGISTRAR OF GOVERNMENT LANDS

35/9/86

5. Caveat dated 1st September, 1986
By Country Building Society Claiming Mortgagee's interest
by virtue of Agreement dated 29th March, 1982 Absolutely
No 35

dt 1-9-1986

REGISTRAR OF GOVERNMENT LANDS

1067
12/87

6. Withdrawal of Caveat dated 9th February 1987
of No. 5 above
No. 1067 dt. 22-12-87

1249
10/94

7. Prohibitory order dated 11th August 1994
Civil Suit No. 1239 of 1993 in the Hon. Chief
Magistrates Court at Nairobi
No. 1249

dt. [illegible]

723
3/95

REGISTRAR OF GOVERNMENT LANDS

8. Prohibitory order dated 16th February 1994
of Civil Suit No. 4 of 1991
No 723 dt. 14-3-95

Quchelo

REGISTRAR OF GOVT LANDS 2

GLA 16178

9. Prohibitory order dated 24th February 1997
Winding up Cause No 29 of 1986 in the High
Court of Kenya Nairobi
No 557 13-11-1997

557
11/97

REGISTRAR OF GOVT LANDS

9. Notification of Charge dated 10th June 1997 by
the Commissioner of Income Tax
For KSLs. 5,000,000/-
No 418 dt 10-1-1997

Quchelo

REGISTRAR OF GOVT LANDS

10. Prohibitory order dated 24th February 1997
Winding up Cause No 29 of 1986 in the High
Court of Kenya Nairobi
No 557 dt 13-11-1997

Quchelo

REGISTRAR OF GOVT LANDS

11. Court order dated 14th September 2007
Civil Case No. 1239 of 1993 at Milimani
Commercial (City) Courts Nairobi Setting aside
all prohibitory orders registered against this title.
No. 1220 dt. 21-9-2007.

REGISTRAR OF GOVT LANDS

CONTINUED IN VOL. 110
FOLIO 47/12

GLA 161/8 Continued from Vol. N, 52 folio 52/11 | 47

12. Notice of Withdrawal of Caveat dated
of No. 8 above
No. 2950 dt. 24-4-2014

REGISTRAR OF GOVT. LANDS

L.R. No. 7879/4
Area: 96 acres

Owner: Afrision Export Import Limited
and
Huelands Limited
as Tenants in Common in equal shares

13 Cancellation of Charge dated 19th July 2013
of No 9 above.
No. 392 dt 19-5-2014.

REGISTRAR OF GOVT LANDS

2086/6/2014
14 Court Order
(ii) Ruling Order dated 13th August 2004
binding upon Cause. No 29 of 1986 in the High
Court of Kenya at Nairobi of No 10 above
No 2085 dt 17-6-2014

REGISTRAR OF GOVT LANDS

15 Court order dated 7th August 2014 in the Magistrate Court at Nairobi (City Court) CMI Case No 4 of 1991 lifting Prohibitory order dated 16th February 1994 registered as entry No. 6 above.
No. 1568 dt. 12-08-2014

REGISTRAR OF GOVT LANDS

16 ~~Caveat Caveats~~
a Caveat by Registrar of Court lands dated 13th March 2018 claiming an interest ~~under~~ Sec 116(1) (A) of GLA (Cap 280 ~~Repealed under Sec~~ Section 76 of GLA (Cap 280)

16 Caveat by Registrar of Gov't lands dated 1st March 2018 claiming an interest under Sec 116(1) (A) of GLA (Cap 280) ~~Repealed~~ under Sec 76 of the land Registration Act No 3 of 2012

dt 1-3-2018

REGISTRAR OF GOVT LANDS

214

NAIROBI [illegible] COMMISSION

IV

TELEGRAMS: "MUNICIPALITY" NAIROBI
TELEPHONE 24281
Your Ref. No. 105/Mr. Wang'ondu
Our Ref. No. CPD/0644/7879/4

CITY PLANNING DEPARTMENT

CITY HALL
P.O. BOX 30075
NAIROBI
KENYA

M/s Drive In Estate Developers Ltd.,
P.O. Box 46817,
NAIROBI.

28th March 1984.

(ATT: MR. FRANCIS MBURU)

Dear Sir,

RE: SUBDIVISION OF L.R. NO. 7879/4, OUTER RING ROAD, NAIROBI.

Your unreferenced letter of 14th March, 1984 in respect of the above mentioned property refers.

This is to advise you that, your proposed development was given conditional subdivision approval and its up to you to either accept them in total or cancel the said subdivision scheme.

Please be informed that, this Commission will not entertain any negotiations on the conditions of approval under reference, and is not, in any way whatsoever, interested in your Valuation Report, copies of which are returned herewith for your safe keeping.

Yours faithfully,

MWANGIH H.C. WANG'ONDU
DIRECTOR OF CITY PLANNING

C.C. Commissioner of Lands,
P.O. Box 30089, NAIROBI.

Director of Surveys,
Survey of Kenya,
P.O. Box 30046, NAIROBI.

B.S. Dogra Associate,
Project Architect,
P.O. Box 42784, NAIROBI.

MHCW/rk

Encls.

drive in estate
Developers Ltd.
Offices: Development House 1st Floor
P.O. Box 46817 Nairobi Tel: 340300/1 Telex: 23275 FRANDEVE

5TH April, 1984

The Director of City Planning
Nairobi City Commission
City Hall,
P.O. BOX 30075
NAIROBI.

(Att: Mr. Mwangih H. C. Wang'ondu)

Dear Sir,

RE: SUBDIVISION OF LR 7879/4 OUTERING ROAD, NAIROBI

Reference is made to your letter Ref. CPD/0644/7879/4 dated 28th March 1984 on the natter which should have been addressed to the owners of the property as we are jus contractors of the project.

The subdivission conditions given for the development of the project are not accept the registered land owners of LR No. 7879/4.

We have been instructed by the registered land owners that they are not interested your conditional approval, as a result of your above referenced letter paragraph 2 owners have accepted and cancelled the entire application of subdivision of the land are no longer interested with your conditional approval and you can adopt the cance They have been informed by officers of your Council that your intention is to sell ar allocate open spaces to individual after the surrender, as a result your condition a NOT acceptable.

FRANCIS MBURU
DRIVE IN ESTATE DEVELOPERS LTD

CC. Commissioner of Lands
P.O. Box 30089, NAIROBI.

DIrector of Surveys ,
Survey of Kenya,
P.O. Box 30046, NAIROBI.

B.S. Dogra Associates,
Project Architect
P.O. Box 42784, NAIROBI.

VI

VI

108096/27. 22nd November, 83

Drive-In-Estate Development,
P.O Box 46817,
NAIROBI

SUB-DIVISION - L.R. NO. 7879/4 - OUTER RING ROAD
NAIROBI.

Enclosed herewith is a sub-division scheme plan in respect of the above plot duly endorsed with my approval. The approval is, however, subject to the following conditions:-

1. 230mm diameter foul sewer to be extended to serve all sub-plots. Plans and specifications to be approved by Council.

2. All subplots to be connected to sewer.

3. Each subplot to be provided with an adequate supply to wholesome water to the satisfaction of the Medical Officer of Health.

4. A comprehensive surface water drainage scheme to be submitted and implemented to the satisfaction of the City Engineer.

5. The proposed roads serving the scheme including the 20m. road along the Southern boundary to be constructed to adoptive standard including surface water drainage and street lighting. Plans and specification to be approved by Council.

6. Permanent vehicular access to 18m. road reserves will not be permitted.

7. 6 metre wide strip of land along Southern boundaries to be surrendered to Government free of cost for road widening.

8. 15 x 15 metre truncations to be provided at the junction with Outer Ring Road.

9. Area of land coloured blue on the deposited plan to be surrendered to Government free of cost.

10. Nursery, Primary and Secondary School sites, social centres special purpose plot and shopping centres to be surrendered to Government free of cost.

Original taken by hand
J. Ngaya
22/11/83

Cont.../2

11. The scheme to be developed comprehensively and the proposal to conform to plot density for the area. Development to commence when the infrastructural services are available.

12. Previous change of use and subdivision scheme to be cancelled.

13. All development fronting ther power wayleave to be cleared by East African Power and Lighting Company.

14. The power wayleave to be maintained as shown on deposited plan.

15. A building line of 9m. to be maintained along the Outer Ring Road and the 25m. road reserve and 6m. building line for all other internal estate roads.

16. Type plans for buildings to be submitted to Council for approval and construction to be completed before final approval is accorded.

17. A tree planting and landscaping scheme to be submitted to Council for approval and to be implemented by the developer to the satisfaction of the Director of City Planning.

18. Surrender of the freehold tenure for a 99 years leasehold tenure on peppercorn rent.

19. Acceptance in writing of the attached special conditions.

Final approval to the sub-division scheme shall be accorded on recommendation by the Director of City Planning.

J. K. CHEMOIGUT

(J.K. Chemoigut)
for: COMMISSIONER OF LANDS.

JKC/lwm.

c.c. The Director of Surveys,
NAIROBI with a plan.

The Director of City Planning,
P.O. Box 30075,
NAIROBI.

30/12/83

N.O.O. 2 S.P.R.O. 7 - to note please.

NAIROBI CITY COUNTY

VII

elephone: 020 344194
e'' www.nairobi.go.ke

City Hall,
P. O. Box 30075-0010
Nairobi,
KENYA.

URBAN PLANNING

UP&H/ADMIN/00326/BNG/jwk

17TH FEBRUARY, 2017

Managing Director
Afrison Export Import Limited & Huelands Limited
P.O. Box 46817 - 00100
NAIROBI

Dear Sir,

RE: SUBDIVISION OF LR NO. 7879/4 ALONG OUTERING ROAD

I refer to your letter dated 7th February 2017 on the above subject.

Please note that subsequent to your letter dated 5th April 1984 the development applicatio for Subdivision of LR No. 7879/4 was halted and no further processing was done.

Further note that the conditions of approval were waived by the fact that the land remaine intact i.e. as was on application.

J. W. GITAU
)R: DIRECTOR
EVELOPMENT MANAGEMENT & REGULARIZATION

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

2. The Grantee shall within six months of the commencement of the term submit in triplicate to the Local Authority and the Commissioner of Lands plans (including block plans showing the positions of the buildings and a system of drainage for disposing of sewage surface and sullage water) drawings elevations and specifications of the buildings the Grantee proposes to erect on the land and shall within 24 months of the commencement of the term complete the erection of such buildings and the construction of the drainage system in conformity with such plans drawings elevations and specifications as amended (if such be the case) by the Commissioner PROVIDED that notwithstanding anything to the contrary contained in or implied by the Government Lands Act if default shall be made in the performance or observance of any of the requirements of this condition it shall be lawful for the Commissioner of Lands or any person authorized by him on behalf of the President to re-enter into and upon the land or any part thereof in the name of the whole and thereupon the term hereby created shall cease but without prejudice to any right of action or remedy of the President or the Commissioner of Lands in respect of any antecedent breach of any condition herein contained.

3. The Grantee shall maintain in good and substantial repair and condtiion all buildings at any time erected on the land.

4. The land and the buildings shall only be used for educational purposes and the accommodation for the Headmaster/Principal.

5. If the school erected on the land shall cease to function as such under the provisions of the Education Act 1968 or such other Act amending or repealing it or may be in force then the terms hereby created shall ipso facto also be determined and the land shall be deemed automatically to have reverted to the Government as from the date of such cessation without the necessity of any formal surrender thereof.

6. The land shall not be used for any purpose which the Commissioner of Lands considers to be dangerous or offensive.

7. The Grantee shall not subdivide the land, without the prior consent in writing of the Commissioner of Lands.

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

9. The Grantee shall pay to the Commissioner of Lands on demand such sum as the Commissioner of Lands may estimate to be the proportionate cost of constructing all roads and drains and sewers serving or adjoining the land and the proportionate cost for the supply of both the water and the electric power to the land and shall on completion of such construction and the ascertainment of the actual cost either pay (within 7 days of demand) or be refunded the amount by which the actual proportionate cost exceeds or falls short of the amount paid as aforesaid.

10. The Grantee shall from time to time pay the Commissioner of Lands on demand such proportion of the cost of maintaining all roads and drains serving or adjoining the land as the Commissioner may assess.

11. Should the Commissioner of Lands at any time require the said roads to be constructed to a higher standard the Grantee shall pay to the Commissioner on demand such proportion of such construction as the Commissioner may assess.

12. The Grantee shall pay such rates charges duties assessments or outgoings of whatever description as may be imposed charged or assessed by any Government or Local Authority upon the land or the buildings erected thereon including any contribution or other sum paid by the President in lieu thereof.

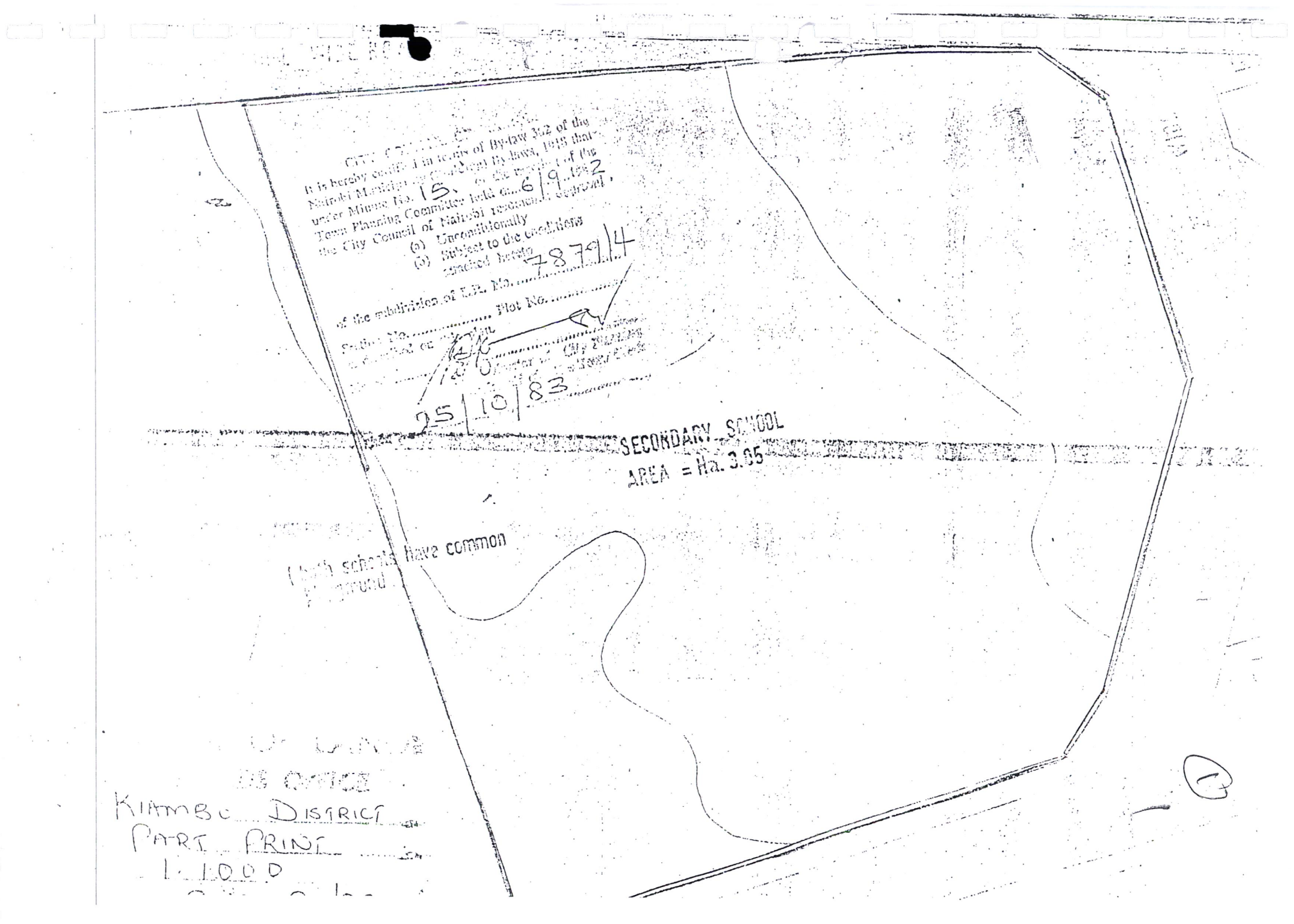
13. The President or such person or authority as may be appointed for the purpose shall have the right to enter upon the land and lay and have access to water mains service pipes and drains telephone or telegraph wires and electric mains of all descriptions whether overhead or underground and the grantee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

14. The Commissioner of Lands reserves the right to revise the annual ground rental payable hereunder after the expiration of the thirty-third and sixty-sixth year of the ~~xxxxx~~ hereby granted. Such rental will be at the rate of 4 per cent of the ~~unimproved~~ freehold value of land as assessed by the Commissioner of Lands.

14. ~~15~~ Notwithstanding anything to the contrary contained herein or implied by the said Government Lands Act (Cap. 280) the Grantee shall on receipt of six months' notice in writing in that behalf surrender all or any part of the land required for public purposes without payment of compensation save in respect of such of the approved buildings as may have to be evacuated or demolished. No compensation shall be payable in respect of surrender of part of the land by reason of such surrender.

15. The Commissioner of Lands reserves the right to revise the annual ground payable hereunder on 31st December, 1998 and thereafter at the expiration every ten years of the term.

GPK 1830—1m—9/75


It is hereby certified in terms of By-law 302 of the
Nairobi Municipal (Consolidation) By-laws, 1948 that
under Minute No. 15. of the meeting of the
Town Planning Committee held on 6/9/82,
the City Council of Nairobi recommended approval,
(a) Unconditionally
(b) Subject to the conditions
attached hereto
of the subdivision of L.R. No. 78791/4
Section No. Plot No.
25/10/83
SECONDARY SCHOOL
AREA = Ha. 3.05
(both schools have common
KIAMBU DISTRICT
PART PRINT
1:1000

IC 8096

Cheque no 000224

TRIPLICATE

DEPARTMENT OF LANDS

FEE RECEIPT A 758827

Station [illegible] Date 18-11-, 19 83

	NATURE OF FEE	Sh.	cts.
RECEIVED FROM Drive-in-Estate [illegible]	Certificate of Title Registration Search Certificate Opening New Register Attestation Inspection Copying A/c. No. 0- -000-600-9		
by cheque / cash the sum of Shillings [illegible]	Conveyancing/Preparation A/c. No. 0- -000-610-6		
Cents as per marginal statement.	Survey Fees A/c. No. 0-610-000-600-9		
(Nature of transaction) [illegible]	Rent A/c. No. 2-150-170-631-4		
[illegible]	Stand Premium A/c. No. 2-150-170-632-2		
[illegible]	Stamp Duty A/c. No. 4-328-110-003-3		
	Land Adjudication Fees A/c. No. 4-328-150-001-5		
	Deposits A/c. No. 4-328-		
Title Number	Approval	[illegible]	
for COMMISSIONER OF LANDS	TOTAL Sh.	[illegible]	

GPK

REPUBLIC OF KENYA

THE LAND ACT NO. 6 OF 2012

THE GOVERNMENT LANDS ACT CAP 280(REPEALED)

CERTIFICATE OF POSTAL SEARCH

AS ON: **16/4/2018**

AREA **96 Acres.**

L.R NUMBER **7879/4**

REGISTER: **N 110 Folio 47 File 16178**

TENURE **Fee Simple**

CURRENT REGISTERED PROPRIETOR: **AFRICAN EXPORT IMPORT LIMITED and HUELANDS LIMITED as tenants in common in equal shares**

ENCUMBRANCES

-Caveat By The Registrar of Government Lands dated 1st March, 2018 claiming an interest under Sec.76 of The Land Registration Act no.3 of 2012

Signed.....

S. C. Njoroge 294

REGISTRAR OF GOVERNMENT LANDS

Is there any point did the ministry come
to communicate to the school

Annex VII - Submissions by the Attorney General

OFFICE OF THE ATTORNEY GENERAL AND

DEPARTMENT OF JUSTICE

RESPONSE OF THE ATTORNEY-GENERAL ON THE MATTER OF ALLEGED IRREGULAR COMPENSATION OF LR. NO. 7879/4 TO M/S AFRISON EXPORT AND IMPORTS LTD BY THE NATIONAL LAND COMMISSION ON BEHALF OF THE MINISTRY OF EDUCATION FOR ACQUISITION OF LAND FOR DRIVE INN PRIMARY SCHOOL AND RUARAKA HIGH SCHOOL IN NAIROBI

Hon. Chairman and Members of the Committee

Pursuant to a letter dated 18th April 2018, under Ref. No. NA/DC/LND/2018/ (31) the Hon. Attorney-General has been requested to appear before the Departmental Committee of Lands, seized of the above subject matter investigations, to respond to the following questions:-

a. Whether the Office of the Attorney-General as the Liquidator of Continental Credit Finance Ltd (under receivership) is in custody of the title deed for LR. No. 7879/4, where Drive Inn Primary School and Ruaraka High School are located.

b. Whether the encumbrances on LR No. 7879/4 have been vacated; and

c. Whether the Office of the Attorney-General was involved in the process of acquisition of land for Drive Inn Primary School and Ruaraka High school.

VII

Background

1. L.R No. 7879/4 was originally registered in the name of JORETH LIMITED who then sold and transferred it to AFRISON EXPORT IMPORT LIMITED and HUELANDS LIMITED as tenants in common in equal shares on 30th December 1981. The size of the land is 96 acres and is situated along Thika-Nairobi Highway and fronts Outering Road on one side, and Kenya School of Monetary Studies and De La Rue on the other.

2. Simultaneously with the transfer, the new owners(the developer) borrowed Kshs. 21,000,000.00 from Continental Credit Finance Ltd (in liquidation) and a mortgage to secure that lending was registered against the title on the same day i.e. 30th December 1981.The funds were to facilitate construction of 500 maisonnetes for the staff of the defunct Kenya Posts and Telecommunications Corporation (the corporation) *(Annex 1; the Mortgage (See Page 1-21 of the annexes).*

3. However before the project was completed, Continental Credit Finance experienced financial problems and was put under receivership vide winding up cause no 29 of 1986, with the Official Receiver being appointed the liquidator (Annex 2; Winding up order (See Page 22 of the annexes).

4. Subsequently, a second mortgage was registered against the title in favour of the Corporation to secure lending which was not to exceed Kshs. 165,000,000.00. This amount was to complete the housing project on L.R No. 7879/4 which had stalled after Continental Credit Finance was placed under receivership. The second mortgage has since been repaid in full and the discharge duly executed by the Kenya Posts and Telecommunication Corporation (now defunct).

5. However the developer only managed to complete 196 units out of the intended 500 units before the Corporation also experienced financial difficulties.

6. The Corporation then pulled out of the transaction and sought a buyer for the project to recover its money.

7. In the year 1988, the Ministry of State for Provincial Administration and Internal Security entered into an agreement with the Corporation for the purchase of 196 completed houses to accommodate General Service unit officers who were guarding De La Rue and Kenya School of Monetary Studies for a sum of Kshs 64,000,000. It is important to point out that KPTC was a fully owned Government Parastatal and therefore the transaction between itself and the Ministry could be termed as a government to government transaction.
(Annex 3: the sale agreement (See pages 23-31 of the annexes).

8. The houses were handed over to the GSU who took possession of the 196 completed units together with 5 additional units that were incomplete at the time. The Ministry of Provincial Administration and Internal Security was however never issued with the title documents.

9. In the year 2006, squatters started invading the land prompting the GSU to fence off the housing estate together with approximately 30 acres in excess of the area occupied by the 196 housing units to provide a buffer zone for security reasons. The GSU also erected an additional fifty six (56) units to house more officers stationed at the Headquarters adjacent to the housing complex.

10. Attempts to have the title documents issued to the Ministry of Internal Security have been undermined and delayed by outstanding legal issues surrounding the liquidation of Continental credit finance as well as the various court proceedings on the subject matter. The cases were as follows;

10.1 Nairobi HCCC No. 1536 of 1995

Afrison Export Import Limited Vs City Council of Nairobi and Rafiki Enterprises Ltd.

10.2 Nairobi HCCC No. 1441 of 1995 (OS)

Official Receiver Vs City Council of Nairobi and Rafiki Enterprises Ltd.

10.3 Nairobi HCCC No. 977 of 2005

Drive-In Estate Developers Ltd. and Others Vs Attorney General and Commissioner of Lands

10.4 Nairobi HC Petition 129/2011

Afrison Export Import Limited Vs City Council of Nairobi and Attorney General

11. The Parliamentary Departmental Committee on Administration and National Security during its sitting held on Monday 2nd April 2012, deliberated on the matter and came up with recommendations that the Government do constitute a Technical Committee to negotiate with the registered owner for the purchase of the extra land occupied and not paid for. *(Annex 4: Minutes of the Departmental Committee(See pages 32-36 of the annexes).*

12. In line with the recommendations, the Ministry of State for Provincial Administration and Internal Security formed a Technical Committee to look into the intricacies surrounding the above transaction and to come up with suitable recommendations on how to secure the government's interest. The Technical Committee which constituted representatives from the Ministry of Lands, Nairobi City Council, Office of the Attorney General, Commissioner of Police among others, recommended the formation of a negotiating team to negotiate suitable terms for the purchase of the government's interest in the parcel of land.
(Annex 5; letter of invitation (see pages 37-38 of the annexes.)

13. While the negotiations were on going the registered owner moved to Court seeking various reliefs including compensation for the value of the thirty (30) acres and mesne profits. The Office of the Attorney General filed a response to the claim and attended court for the hearing.

14. The court in its judgment awarded the Plaintiff (Afrison Export Import Ltd) Kshs. 4,086,683,330 as fair value for the suit property in addition to costs. It however dismissed the claim for *mesne* profits of Kshs 1,670 ,270, 000. *(Annex 6: Judgment of the Court (See pages 39-46 of the annexes)*

Appeal

15. Aggrieved by the said judgment, the Attorney General immediately filed a Notice of Appeal and requested for proceedings. *(Annex 7: Notice of Appeal and letter requesting for proceedings (See Pages 47-49 of the annexes)*

16. However, the intended appeal was never progressed pursuant to a letter dated 25th February 2013, from the Permanent Secretary Ministry of State in charge of Provincial Administration & Internal Security in which he sought our advice on the possibility of an out of court settlement. *(Annex 8: Letter from the then Permanent Secretary-Provincial Administration and Internal Security (See pages 50-51 of the annexes).*

Out of Court Settlement

17. Pursuant to the letter from the client Ministry, vide a letter dated 6th March 2013, my predecessor advised the Ministry on the issues raised vide their letter of 25th February 2013, and under a separate cover, sought a proposal on settlement from the Plaintiff's Advocate on a purely without prejudice basis. *(Annex 8 a & b: Letters dated 6th March 2013, from the Attorney-General to the PS and Harit Sheth-Advocate for the Plaintiff (See pages 52-57 of the annexes).*

18. Consequently a meeting was held on 15th March 2013, attended by a Director of the Plaintiff Company, representatives from the office of the President and the Ag's office in which a sum of Kshs. 2.4 billion was agreed upon as full settlement of the dispute as particularized in Civil Case No. 617 of 2012.

19. Ms. Muthoni Kimani, the Senior Deputy Solicitor General, vide our letter of 18th March 2013, wrote to the Permanent Secretary, Ministry of State in charge of Provincial Administration and Internal Security, informing him of the outcome of the negotiations as well as seeking the approval of the Ministry of the proposed agreement together with the terms and conditions of payment to enable the office of the Attorney-General prepare the necessary consent. *(Annex 9 a & b: letters dated 18th March 2013, from the Attorney-General to the Permanent Secretary Provincial Administration and Internal Security(See pages 58-61 of the annexes).*

20. Vide his letter of 22nd March 2013, Mr. Mutea Iringo, the then Permanent Secretary Provincial Administration and Internal Security, on behalf of the Ministry, authorized our office to file the negotiated settlement in Court. *(Annex 10: letter dated 22nd March, 2013(See pages 62-66 of the annexes).*

21. The office of the Attorney-General subsequently prepared the deed of settlement which was signed by the parties and filed in Court as consent on 25th March 2015.

22. In fulfillment of the consent recorded as a court judgment, the Ministry of Interior and Co-ordination of National Government paid a sum of Kshs. 1.2 billion in part settlement on 28th July 2014, which was forwarded to the plaintiff's advocates.

23. In order to avoid the further accrual of interest at 14% which as at 12th February had reached Kshs. 612 000,000, a further consent dated 25th March 2015, was recorded.

24. However before the balance of the decretal sum was paid, the Auditor-General raised an audit query on the transaction. Vide the Ministry's letter of 17th September 2015, the Principal Secretary sought our advice on whether they should proceed to settle the balance of the decretal sum at the pendency of the audit query. *(Annex 11 (see pages 67-68 of the annexes).*

25. We rendered our legal opinion on 19th October 2015, advising the Ministry to settle the decretal sum in exchange of the ownership documents, which position was adopted by the Public Accounts Committee of 2015. *(Annex 12 (See pages 69-72 of the annexes).*

26. Vide our letter of 7th October 2015, we requested the Director of Survey to re-survey the land and ascertain whether the 37.5 acres being paid for were still intact. *(Annex 13 (see pages 73-74 of the annexes).*

27. The Ministry of Lands, Housing and Urban Development vide their letter of 2nd December 2015, under the hand of Ann W. Mwangi-the Provincial Surveyor, did confirm that the land was still intact. *(Annex 14 (See pages 75-76 of the annexes).*

RESPONSE TO THE QUESTIONS RAISED BY THE PARLIAMENTARY DEPARTMENTAL COMMITTEE ON LAND

A. Whether the office of the Attorney-General as the liquidator of Continental Credit Finance Ltd (under receivership) is in custody of the title deed for LR. No. 7879/4, where Drive Inn Primary School and Ruaraka School are located

(i) The outstanding loan balance owed to Continental Credit Finance by (Afrison Export Import Ltd and Heulands Ltd) is Kshs.100 Million.

(ii) In order to facilitate the issuance of a title for the land purchased by the government, the Official Receiver on a professional undertaking to pay the loan owed to Continental Credit Finance Ltd released the documents of title to Messrs Harit Sheth & Co, Advocates the advocates for the registered proprietor.

(iii) The advocates were supposed to facilitate the sub-division of the land and forward a duly executed conveyance and a deed plan to the government for 37.5 acres that had been paid for by the Office of the President, which they have done and the documents are awaiting stamping at the lands office once the balance of the decretal sum is paid. *(Annex 15a & b: Letter from D. Njogu & Co, Advocates dated 1st October 2013, forwarding documents of title to Messrs Harit Sheth Advocates and the Professional undertaking from Harit Sheth,*

Advocates to D. Njogu & Co, Advocates dated 9th April 2013 (See Pages 77-80 of the annexes).

B. Whether the encumbrance on LR No. 7879/4 has been vacated

All the encumbrances on L.R NO. 7879/4 were vacated and the land sub-divided as follows:-

a) L.R No. 7879/24 measuring 37.5 acres to be registered in favour of the government for the acquisition aforesaid. (Annex 16;duly executed Indenture of conveyance (See pages 81-91 of the annexes).

b) L.R No. 7879/25 measuring 58.5 acres, being the remaining portion of the 96 acres after the sale to vest to Afrison Export Import and Huelands Ltd.

(Annex: 17: Search on L.R No. 7879/4 dated 22nd May 2008 (See pages 92-93 of the annexes).

C. Whether the Office of the Attorney-General was involved in the process of acquisition of land for Drive Inn Primary School and Ruaraka High School

(i) Vide a letter under Ref. No. MOE.GEN/41/12/(17) dated 29th June 2017, the Office of the Attorney General received a request for a legal opinion from the Principal Secretary Ministry of Education, regarding the initiated compulsory acquisition of a portion of LR No. 7879/25 for purposes of continued establishment of Ruaraka High School and Drive Inn Primary School.

(Annex: 18 (See page 94 of the annexes).

(ii) Vide our letter dated 7th July 2017, my predecessor issued an advisory on the legal basis and efficacy of the acquisition. In particular, the office advised on the import of Article 40(3) of the Constitution which provides that for compulsory acquisition to issue the land must be acquired for public purpose or in the public interest and that there should be prompt payment in full, of just compensation to

the person. The office further advised on the import of Section 120 and 121 of Land Act.

Article 120 of the Land Act requires the National Land Commission to take possession of the land on the day specified by Notice addressed to the registered proprietor of the land and the Registrar and the title shall then be deemed to vest in the National or County Government as the case may be.

Under Section 121 of the Land Act, the Commission is required to demand in writing for the surrender of the title documents to the Registrar in the event that the title documents have not been delivered by the person having possession of the title documents. *(Annex 19 (See pages 95-97 of the annexes)*

(iii) Accordingly, the answer to this specific question is that the involvement of the Attorney General's office was limited to its advisory opinion issued on 7th July 2017, as demonstrated above.

P. Kihara Kariuki
ATTORNEY GENERAL

ANNEX 1

1

SL2625
D 4/- each

THIS MORTGAGE is made the Twenty-one day of December One thousand nine hundred and Eighty- one BETWEEN AFRISON EXPORT IMPORT LIMITED a limited liability company incorporated in the Republic of Kenya and of Post Office Box Number 40469 Nairobi and HUELANDS LIMITED a limited liability company incorporated in the said Republic and of Post Office Box Number 57192 Nairobi aforesaid (both of which companies are hereinafter called "the Mortgagors" which expression shall where the context so admits include their respective successors and assigns) of the one part and CONTINENTAL CREDIT FINANCE LIMITED a limited liability company incorporated in the Republic aforesaid and of Post Office Box Number 57192 Nairobi aforesaid (hereinafter called "the Lender" which expression shall where the context so admits include its successors and assigns of the other part:-

WHEREAS:-

(a) The Mortgagors are now entitled to the whole estate and interest in and to the piece of land more particularly described in the Schedule hereto subject as therein mentioned but otherwise free from encumbrances;

(b) The Lender has at the request of the Mortgagors agreed to grant a loan to the Mortgagors in equal portions namely Shillings Ten million five hundred thousand (Shs.10,500,000/-) to AFRISON EXPORT IMPORT LIMITED and Shillings Ten million five hundred thousand (Shs.10,500,000/-) to HUELANDS LIMITED (making an aggregate total of Shillings Twenty-one million (Shs.21,000,000/-) and the Lender has so agreed upon having the same secured in manner hereinafter appearing.

NOW IN PURSUANCE of the said agreement and in consideration of the premises THIS MORTGAGE WITNESSETH as follows:-

1. Subject to the provisions of paragraph (c) of this Clause hereunder the Mortgagors do hereby severally covenant and agree with the Lender as follows:-

(a) On the Thirtieth day of June One thousand nine hundred and Eighty-two next (hereinafter called "the legal date of redemption") to pay to the Lender such sum not exceeding Kenya Shillings Twenty-one million (KShs.21,000,000/-) as may then be due and owing by the Mortgagors to the Lender whether in respect of moneys advanced or paid to or for the use of the Mortgagors or charges incurred on the account of the Mortgagors or for any moneys whatsoever which may then be due and owing by the Mortgagors to the Lender either as principal or surety and either solely or jointly with any other person or persons in partnership or any company society or corporation or otherwise upon current banking account or upon loans or bills of exchange or promissory notes drafts orders for payment or delivery of money bills of lading or other negotiable or mercantile instruments drawn or accepted or endorsed by or on behalf of the Mortgagors and discounted or paid or held by the Lender either at the request of the Mortgagors or in the course of business or otherwise or in respect of documentary credits opened or bills of exchange accepted by the Lender on the instructions of the Mortgagors or of the authorised agent or agents of the Mortgagors or in respect of moneys which the Mortgagors shall become liable to pay to the Lender either under guarantee given by the Mortgagors to the Lender or for money or any other facility guaranteed by the Lender for and on behalf and at the request of the Mortgagors or in any other manner whatsoever and whether any such moneys or liabilities

shall be paid to or incurred on behalf of the Mortgagors or any other person or persons in partnership or any company society or corporation or otherwise at the request of the Mortgagors or for any other account whatsoever or otherwise howsoever or for an actual or contingent liability together with commission and other usual Bank charges law and other costs charges and expenses and together with interest at such rate or rates (Subject to a minimum of Twelve (12) per cent per annum) as the Lender shall in its sole discretion from time to time decide with full power to the Lender to charge different rates for different accounts such interest to be calculated on daily balances and debited monthly by way of compound interest PROVIDED ALWAYS that the Lender shall not be required to advise the Mortgagors prior to any change in the rate of interest so payable nor shall any failure by the Lender to advise the Mortgagors as aforesaid prejudice in any way howsoever the recovery by the Lender of interest charged subsequent to any such change AND PROVIDED FURTHER that such interest shall in no event be charged at a rate exceeding Eighteen (18) per cent per annum.

(b) At any time after the legal date of redemption ON DEMAND in writing made to the Mortgagors by the Lender to pay to the Lender all moneys which shall or may be for the time being owing as aforesaid by the Mortgagors to the Lender together with interest at the rate for the time being payable hereunder such interest to be calculated on daily balances and computed with monthly rests both before and after demand the interest owing at the end of each calendar month being added to the amount owing so as to form one aggregate sum carrying interest at the rate aforesaid PROVIDED ALWAYS that in case of any such moneys being also secured to the Lender under an agreement

or instrument reserving a higher rate of interest than as aforesaid nothing herein contained shall affect the right of the Lender to recover such higher rate of interest or (as the case may be) the difference between such higher rate and the rate payable hereunder AND PROVIDED ALSO that the total moneys for which this Mortgage constitutes a security (hereinafter called "the mortgage debt") shall not at any one time exceed the sum of Kenya Shillings Twenty-one million (KShs.21,000,000/-) together with interest at the rate aforesaid from the time of the mortgage debt becoming payable until actual payment thereof AND PROVIDED ALSO that the security hereby constituted shall be a continuing security for the payment of the said sum of Kenya Shillings Twenty-one million (KShs.21,000,000/-) or so much thereof as may from time to time be outstanding notwithstanding any settlement of account or other matter or thing whatsoever and shall not prejudice or affect any agreement which may have been made with the Lender prior to the execution hereof relating to any security which the Bank may now or at any time hereafter hold in respect of the Mortgage debt or any part thereof.

(c) The Mortgagors hereby severally agree with the Lender and severally confirm and declare that as the mortgaged property is held by both the Mortgagors as tenants in common in equal shares and as the loan hereof being advanced by the Lender is being advanced to both the Mortgagors in equal portions, in the event of default by either of the Mortgagors, the Lender shall be entitled to proceed against the defaulting Mortgagor and if need be a partition of the tenancy in common shall be effected to enable the Lender to enforce its rights against the defaulting Mortgagor without forcing or compelling the other Mortgagor to forgo its rights as owner. Nothing herein shall

shall however in any way prejudice any of the rights of the Lender as conferred by this Mortgage and the Lender shall otherwise be at liberty to enforce its rights herein as it shall deem fit.

2. The Mortgagors DO HEREBY SEVERALLY AND JOINTLY further covenant and agree with the Lender that during the continuance of this security the Mortgagors will:-

(a) Duly pay all (if any) rents and all rates taxes duties charges impositions and other outgoings whatsoever payable in respect of or charged assessed or imposed on the mortgaged property (hereinafter defined) or on the Mortgagors as or other the owner or occupier thereof or the Lender or a receiver in respect thereof including (without limitation) any charge or imposition in respect of any work in or in connection with the construction repair maintenance or improvement of any private road or street and any other charge or imposition of a capital or non-recurring nature AND WILL on demand produce to the Lender the receipt for any such payment AND WILL perform and observe the covenants conditions and stipulations under and subject to which the mortgaged property is held AND WILL indemnify and keep indemnified the Lender from and against all claims and demands in respect or arising out of any non-payment or breach thereof AND THAT all expenses costs and damages incurred paid or sustained by the Lender by reason of any such non-payment or breach shall be deemed to be expenses properly incurred by the Lender in relation to this security.

(b) Forthwith upon the receipt by the Mortgagors of any notice schedule list claim or demand or other requirement whatsoever from or by any person firm company local or other authority or any other body whatsoever affecting or likely to affect or

which may affect the mortgaged property or any part thereof or the interest of the Mortgagors and the Lender or any of them therein inform the Lender of the receipt thereof and give to the Lender such further and other information and take at the expense of the Mortgagors such action in respect thereof as the Lender shall or may require.

(c) Keep the buildings and improvements forming part of the mortgaged property including all fixtures and additions thereto in good and substantial repair and condition to the satisfaction of the Lender.

(d) Permit the Lender or the agents of the Lender with or without workmen or others at all reasonable times to enter upon the mortgaged property and examine the state and condition thereof AND WILL forthwith repair and make good to the satisfaction of the Lender all defects and wants of reparation in and to the mortgaged property of which notice in writing shall be given to the Mortgagors by or on behalf of the Lender.

(e) Permit the Lender once in every year to instruct a surveyor or valuer to inspect and report on the moregaged property and all moneys paid by the Lender for that purpose shall be deemed to be expenses properly incurred by the Lender in relation to this security.

(f) Not pull down waste destroy or interfere or in any manner or by any means lessen the value of the mortgaged property or any part thereof and will not effect any alterations in and to the mortgaged property without the prior written consent of the Lender.

(g) Not erect place or make nor cause or suffer to be erected placed or made any buildings or other works on the mortgaged property or any part thereof nor make or cause or suffer to be

made any material change in the use of the mortgaged property or any part thereof without the prior written consent of the Lender.

(h) If the mortgaged property is leasehold not surrender or agree to surrender the mortgaged property or any part thereof to any reversioner nor merge nor agree to merge the mortgaged property or any part thereof in any reversion.

(i) Not least agree to lease accept surrenders of lease charge or part with the possession of the mortgaged property or any part thereof without the prior written consent of the Lender AND WILL upon the execution of any lease procure from the lessee a counterpart of such lease duly executed by the lessee AND WILL forthwith have the same duly registered AND WILL deliver the same to the Lender within one month from the registration thereof.

(j) Not sell or agree to sell subject to these presents or otherwise the mortgaged property or any part thereof without the prior written consent of the Lender.

(k) (i) insure and keep insured all buildings being or forming part of the mortgaged property and such other property and effects of an insurable nature (whether affixed to the freehold or not) being or forming part of the mortgaged property as the Lender shall at any time and from time to time require to be insured against loss or damage by fire in the full insurable value thereof (which expression shall include but not be restricted to the full replacement value thereof) as determined by the Lender from time to time;

(ii) effect every such insurance in the joint names of the Mortgagors (as owners) and the Lender (as mortgagee)

or (if required by the Lender) in the sole name of the Lender and place the same with some good and solvent insurance company to be approved of in writing by the lender;

(iii) immediately after any such insurance shall have been effected or upon the execution of these presents if the same shall have been previously effected produce to and deposit with the Lender the original policy relating thereto;

(iv) duly and punctually pay all premiums and other moneys necessary for effecting and keeping on foot any such insurance and forthwith deliver to the Lender the receipt for or other proper evidence of every such payment;

(v) hold any moneys received under any such insurance as trustee for the Lender and apply the same in or towards making good the loss or damage in respect of which they shall have been received PROVIDED ALWAYS that without prejudice to any obligations to the contrary imposed by law or by special contract the Lender may require that all such moneys be applied in or towards the discharge of the mortgage debt interest thereon and all other moneys which under these presents may then be payable by the Mortgagors to the Lender in respect of this security;

(vi) Not effect without the prior written consent of the Lender any insurance of the said buildings property and effects or any of them otherwise than in accordance with the foregoing covenant and agreement and if any insurance shall be effected in breach of this covenant

and agreement then will hold any moneys received thereunder as trustees for the Lender to be applied as if the same arose under a policy effected under the said foregoing covenant and agreement.

(l) Not apply for nor obtain any advance or loan which under or by virtue of any law for the time being in force in Kenya or otherwise howsoever would or might rank in priority to or pari passu with the mortgage debt and the interest thereon as hereinbefore provided.

(m) Procure that the Mortgagors shall furnish to the Lender annually or oftener if required a balance sheet profit and loss account and trading accounts showing the then position of the Mortgagors' affairs at a date not more than one month previous certified by the auditors for the time being of the mortgagors approved by the Lender and also from time to time to give to the Lender or to such person or persons as the Lender shall from time to time appoint such information as it he or they shall require as to all matters relating to the business or any existing or after acquired property or assets of the Mortgages or otherwise relating to the affairs thereof.

(n) Appoint and employ the Lender as the sole banker of the Mortgagors and all sums received by the Mortgagors in the course of their respective business or otherwise howsoever shall be paid by the Mortgagors in an account or accounts of the Mortgagors and the Mortgagors shall make all payments by cheques drafts promissory notes or bills of exchange drawn on the Lender and all costs and expenses incurred by the Lender in acting as such banker of the Mortgagors as aforesaid shall be debited to the Mortgagors and constitute a first charge upon the mortgaged property.

PROVIDED THAT the Lender may withhold its consent in relation to any of the foregoing matters in respect of which such consent is a prerequisite as hereinbefore provided without assigning any or any sufficient reason therefore AND the Lender may give such consent upon and subject to such terms and conditions as the Lender shall in its discretion think fit.

3. If the Mortgagors shall fail to perform any of the foregoing covenants and agreements in Clause 2 hereof it shall be lawful but not obligatory for the Lender to do all or any of the following acts and things that is to say:-

(a) To effect payment of rent (if any) and any rates taxes or other charges and impositions as therein mentioned unpaid by the Mortgagors.

(b) To insure or to keep insured the said buildings property and effects or any of them or any part thereof in any sum not exceeding the full insurable value thereof (which expression shall include but not be restricted to the full replacement value) as determined by the Lender from time to time.

(c) To enter upon the mortgaged property from time to time and repair or keep in repair the said buildings or any part thereof or any fixtures and additions thereto without thereby becoming liable as mortgagee in possession.

AND the expenses of the Lender in so doing shall be deemed to be expenses properly incurred by the Lender in relation to this security PROVIDED THAT nothing done by the Lender hereunder shall be deemed to be or take effect as a waiver of or shall prejudice any right of action which the Lender may have against the Mortgagors in respect of any antecedent breach of the said foregoing covenants and agreements or any of them or otherwise or of any other right of the Lender under these presents or otherwise.

4. (a) All costs charges and expenses incurred by the Lender in Obtaining or attempting to obtain payment of any moneys hereby

secured or properly incurred by the Lender in relation to or under this security including (without limitation) such payments as the Lender may consider expedient from time to time to make and is hereby authorised to make to any person whether the Mortgagors personally or any one acting at the request of the Mortgagors or a receiver or a subsequent mortgagee or to any person acting on the instructions of the Lender in connection with maintaining repairing amending altering or improving the mortgaged property and all such further and other moneys as shall be virtue of the provisions of sub-clause (b) of this present Clause be deemed to be included in the expression "expenses" shall:-

(i) bear interest at the rate for the time being payable hereunder upon the mortgage debt from the time of the same having been expended or incurred until the same shall be repaid;

(ii) be repaid with interest as aforesaid by the Mortgagors to the Bank on demand; and

(iii) until such payment be charged upon the mortgaged property.

(b) AND IT IS HEREBY AGREED AND DECLARED that the expression "expenses" shall be deemed to include all costs charges claims damages expenses and other moneys properly paid or incurred by the Lender under this Mortgage and (without prejudice to the generality of the foregoing) properly paid or incurred by the Lender:-

(i) in any action proceeding or claim brought by or against the Bank for the enforcement protection preservation or improvement of the security hereby created; or

(ii) in any action proceeding claim or demand against or for the recovery of the mortgaged property or any part thereof or any compromise purchase or getting in thereof (which the Lender shall have full Power to effect without the concurrence of the Mortgagors); or

(iii) in connection with the negotiation preparation and completion of any further mortgage charge deed of variation or other instrument or document supplemental to or collateral with this Mortgage or otherwise relating to the mortgaged property (whether or not completed) and any correspondence and attendances relating thereto; or

(iv) in connection with any proposed lease surrender assurance or other transaction concerning the mortgaged property for which the Mortgagors may seek the consent of the Lender (whether such consent be given or withheld) including legal costs incurred in perusing and (if necessary) copying any document (whether engrossed or in draft form) required for carrying out any such proposed transaction and any correspondence and attendances relating thereto; or

(v) in effecting any registration which the Lender may deem necessary or expedient for the proper protection of its security; or

(vi) to the advocates architects surveyors or other professional or technical advisers of the Lender in respect of their costs fees and disbursements for attendances made advice given correspondence written or other work done by such persons or any of them in connection with any of the matters referred to in the

13

preceding paragraphs of this sub-clause or the happening of any of one or more of the events specified in sub-clause (a) of Clause 6 hereof.

AND that legal costs and disbursements paid or incurred by the Lender under this Mortgage and falling within the definition of "expenses" hereinbefore contained shall as against the Mortgagors be deemed to include every sum which would be allowed to the advocates to the Lender in a taxation as between advocate and own client to the intent that the Mortgagors shall afford to the Lender a complete entitlement and unqualified indemnity in respect thereof.

5. (a) The Mortgagors as heneficial owners hereby CONVEY unto the Lender ALL THAT piece or parcel of land descirbed in the Scheduel hereto TOGETHER with the buildings and improvements which now are or may hereafter be erected or be thereon (herein called "the mortgaged property") TO HOLD the same unto and to the use of the Lender for an estate in fee simple SUBJECT to the proviso for redemption hereinafter contained.

(b) PROVIDED ALWAYS that if the Mortgagors shall on the legal date of redemption pay to the Lender or to one of the cashiers for time being of the Lender all moneys hereinbefore covenanted and agreed so to be paid then the Lender shall at any time thereafter at the request and cost of the Mortgagors re-convey and release the mortgaged property unto the Mortgagors or as the Mortgagors shall direct.

6. PROVIDED ALWAYS AND THIS MORTGAGE FURTHER WITNESSETH as follows:-

(a) That the mortgage debt and interest hereby secured shall immediately become payable without demand and the statutory power of sale of the Lender shall forthwith become exercisable without any further or other notice:-

(i) if a distress or execution wither by virtue of any court order decree or process or by appointment of a receiver is levied upon any part of the mortgaged property or against any of the chattels or other property of the Mortgagors situate on about or belonging to the mortgaged property and the debt for which such levy is made or receiver appointed is not paid off within seven days; or

(ii) if the Mortgagors shall become bankrupt or make any assignment for the benefit of their respective creditors or enter into any agreement or make any arrangement with their respective creditors for liquidation of their respective debts by composition or otherwise; or

(iii) if the title of the mortgaged property shall for any reason be terminated; or

(iv) if the Mortgagors shall commit a breach of any of the covenants and agreements (including any covenant and agreement for the payment of the mortgage debt or the interest thereon) on the part of the Mortgagors herein contained implied or referred to;

(v) if the Mortgagors shall stop payment or cease to carry on their business or threaten to cease to carry on the same.

(b) That without prejudice to and notwithstanding the provisions herein contained the provisions of Section 69 to 69 G both inclusive of the Transfer of Property Act 1882 of India as applied to Kenya and as amended by the Indian Transfer of Property Act (Amendment) Act 1959 of Kenya and as varied by these presents shall have full application to this Mortgage

and the security intended to be hereby created.

(c) (i) if at the time of entry into possession of receipt of the rents and profits of the mortgaged property by the Lender or by any receiver appointed by the Lender such property or any part thereof shall be let furnished under a tenancy which is or becomes binding on the Lender then and in any and every such case the Lender or such receiver shall be entitled to receiver and apply the whole of the rent reserved by such tenancy as if it were rent of the mortgaged property and neither the Lender nor any such receiver shall be required or bound to make any apportionment of such rent in respect of any furniture or chattels of the Mortgagors comprised in the tenancy;

(ii) if upon entry by the Lender into possession of the mortgaged property or any part thereof such property shall contain any furniture or chattels of the Mortgagors which the Mortgagors shall refuse or fail to remove within Twenty-eight days of the Mortgagors being required in writing by the Lender so to do then and in any and every such case the Lender shall thereupon become and be the agent of the Mortgagors with full authority at the Mortgagors' expense to remove store preserve sell and otherwise dispose of such furniture and chattels as last aforesaid in such manner in all respects as the Lender shall think fit PROVIDED THAT the Lender shall not sell such furniture or chattels hereunder until after the expiration of One month from the date upon which the Mortgagors were required by the Lender to remove them from the mortgaged property as aforesaid.

(iii) the provisions of paragraphs (i) and (ii) of this sub-clause shall not be construed or operate to confer on the Lender any right in equity to any furniture or chattels of the Mortgagors or any charge or security thereon or otherwise so as to constitute this Mortgage an instrument under the Chattels Transfer Act (Chapter 28).

(d) That the Lender shall be at liberty without thereby affecting its rights hereunder at any time:-

(i) to determine or vary any credit to the Mortgagors;

(ii) to vary exchange or release any other securities held or to be held by the Lender for or on account of the mortgage debt and interest hereby secured or any part thereof;

(iii) to renew bills and promissory notes in any manner and to compound with give time for payment to accept compositions from and make any other arrangements with the Lender or any person or persons liable on bills notes or other securities held or be be held by the Lender for or on behalf of the Mortgagors;

(e) That the security hereby given to the Lender shall be without prejudice and in addition to any other security whether by way of pledge legal or equitable mortgage or charge or otherwise howsoever which the Lender may now or at any time hereafter hold on the property and assets of the Mortgagors or any part thereof for or in respect of all or any part of the indebtedness of the Mortgagors to the Lender howsoever arising or any interest thereon.

(f) That the Lender may at any time and without notice to the

Mortgagors combine or consolidate all or any of the Mortgagors accounts with and liabilities to the Lender and set off or transfer any sum or sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of the Mortgagors' liabilities to the Lender on any other account or in any other respect whether such liabilities be actual or contingent primary or collateral joint or several.

(g) That upon demand being made by the Lender for payment of the mortgage debt and other moneys hereby secured or upon such mortgage debt and other moneys for any other reason becoming immediately payable the Lender shall be under no obligation to make any further advances or grant any further facility to the Mortgagors.

(h) That this security shall be valid and binding for all purposes notwithstanding any change by amalgamation consolidation or otherwise which may be made in the constitution of the company by which the business of the Lender may for the time being be carried on and shall be available to and enforceable by the company carrying on that business for the time being.

(i) That after the security hereby constituted has become enforceable the Mortgagors shall from time to time and at all times execute and do all such acts and things as the Lender may reasonably require for facilitating the realisation of the property and assets hereby mortgaged and charged and for exercising all the powers authorities and discretions hereby and/or by law conferred on the Lender.

(j) That the Mortgagors hereby irrevocably appoint the Lender to be the Attorney of the Mortgagors and in the name and on behalf of the Mortgagors to execute and do any assurances acts and things which the Mortgagors ought to execute and do under

18

the covenants and agreements herein contained and generally to use the name of the Mortgagors in the exercise of all or any of the powers hereby or by law conferred on the Lender or any receiver or manager appointed by the Lender.

(k) (i) that Sections 61 and 67 A of the Transfer of property Act 1882 of India (as applied and as amended as aforesaid) shall not apply to these presents or the security intended to be hereby created;

(ii) that without prejudice to any equitable right of consolidation it is hereby declared that no property of the Mortgagors which at the date hereof is subject to a mortgage or charge in favour of or vested in the Lender shall be redeemed except on payment not only of all moneys thereby secured but also of all moneys hereby secured.

(l) That any notice required or authorised by law or by this Mortgage to be served by the Lender on the Mortgagors shall be sufficiently served if it be sent by post in a stamped envelope addressed to the Mortgagors at their respective last known postal addresses in Kenya or if it be delivered to the place of abode or business of the Mortgagors or to the mortgaged property AND THAT proof of posting shall be proof of service.

IN WITNESS whereof the Mortgagors have respectively hereunto affixed their Common Seals the day and the year first hereinbefore written.

THE SCHEDULE HEREINBEFORE REFERRED TO

ALL THAT piece or parcel of land situate in the City of Nairobi in the Nairobi Area of Kenya containing by measurement Ninety-six (96) acres (approximately) known as Land Reference Number 7879/4 being a remainder portion of the premises comprised in and conveyed by an Indenture dated

the Fourth day of December One thousand nine hundred and Fifty-eight (registered in the Government Lands Registry in Volume N.43 Folio 302/1) and is more particularly delineated and described on Land Survey Plan Number ~~35744~~ 85744 annexed to the Indenture of Conveyance dated the Twenty-ninth day of December One thousand nine hundred and Eighty-one (registered as aforesaid in Volume N. 52 Folio 42/1) and thereon bordered red and which said piece or parcel of land is held by the Mortgagors as tenants in common in equal shares for an estate in fee simple SUBJECT to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder.

SEALED by)
AFRISON EXPORT IMPORT LIMITED)
in the presence of:-)

DIRECTOR)

DIRECTOR/~~SECRETARY~~)

AND

G. K. WARUHIU — ADVOCATE
P.O. Box 47422
NAIROBI

SEALED by
HUELANDS LIMITED
in the presence of:-)

DIRECTOR)

DIRECTOR/~~SECRETARY~~)

AND

G. K. WARUHIU — ADVOCATE

REGISTRY OF COMPANIES
8-2-1982
8-2-1982
Assistant Registrar of Companies

CERTIFICATE

20

I, HEREBY CERTIFY that I have explained to the directors of the Mortgagors who witnessed the affixing of the respective Common Seals hereto the effects of sub-section (1) of Section 69 of the Transfer of Property Act 1882 of India as incorporated therein by the Indian Transfer of Property Act (Amendment) Act 1959 of Kenya and a copy whereof is set out hereunder and that I am satisfied that they understood the same.

SIGNED: .....

ADVOCATE OF THE HIGH COURT OF KENYA

G. K. WARUHIU — ADVOCATE

P.O. Box 47122

NAIROBI

Section 69(1) of the Transfer of Property Act 1882 of India as amended by the Indian Transfer of Property Act (Amendment) Act 1959 reads as follows:-

"69(1). A Mortgagee, or any person acting on his behalf where the mortgage is an English mortgage, to which this section applies, shall by virtue of this Act and without the intervention of the Court, have power when the mortgage-money has become due, subject to the provisions of this section, to sell, or to concur with any other person in selling, the mortgaged property or any part thereof wither subject to prior encumbrances or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as the mortgagee thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to resell, without being answerable for any loss occasioned thereby; the power of sale aforesaid is in this Act referred to as the mortgagee's statutory power of sale and for the purposes of this Act the mortgage-money shall be deemed to become due

whenever either the day fixed for repayment thereof, or part thereof, by the mortgage instrument has passed or some event has occured which, according to the terms of the Mortgage instrument renders the mortgage money, or part thereof, immediately due and payable."

WE, the Directors of the Mortgagors who witnessed the affixing of the Common Seals hereto have read and had explained to us the above Section and confirm that we understood the same.

SIGNED: 1. .....
DIRECTOR AFRISON EXPORT IMPORT LTD.

2. .....
DIRECTOR AFRISON EXPORT IMPORT LTD.

SIGNED: 1. .....
DIRECTOR HUELANDS LIMITED

2. .....
DIRECTOR HUELANDS LIMITED

11-55A 30-12-81

1301 N52 42/16178
12

IN THE HIGH COURT OF KENYA AT NAIROBI

WINDING UP CAUSE NO. 30 OF 1986

IN THE MATTER OF Continental Bank of Kenya Limited

and

IN THE MATTER OF The Companies Act

IN CHAMBERS

on 7th August 1986

Before the Honourable Mr.Justice Shields

ORDER

UPON READING the application of National Bank of Kenya Limited filed on 7th August 1986 and the affidavit of George Joshua Okungu sworn on 7th August 1986 in the support thereof

The Court hereby appoints the Official Receiver to be Interim Liquidator of the above-named Company and orders him to take possession of all the assets of the Company.

And the Court hereby limits and restricts the power of the said Interim Liquidator to the following acts, that is to say, the Interim Liquidator do have all the powers of a Liquidator save the powers of adjudicating on proofs and of declaring and paying dividends, and without prejudice to the generality of the foregoing the Interim Liquidator may appoint advocates and other professionals to assist him, call in deposits and loans, repossess goods, exercise the Company's power of sale as mortgagee, in the name of the Company to sue for and recover debts due to the Company and to present winding up petitions against the company debtors and may take all actions necessary and appropriate for the getting in of the Company's assets.

GIVEN under my hand and the seal of the Court at Nairobi this 7th day of August 1986.

ISSUED this 7th day of August 1986.

BY THE COURT

DEPUTY REGISTRAR
HIGH COURT OF KENYA

CERTIFIED TO BE TRUE COPY OF THE ORIGINAL

Date 7th August 1986

Asst. Deputy Registrar
High Court of Kenya

(88) 3

Appendix 3

DATED 23 1968

A G R E E M E N T F O R S A L E

- B e t w e e n -

THE KENYA POSTS AND TELECOMMUNICATIONS CORPORATION

- A n d -

THE REPUBLIC OF KENYA

DRAWN BY:

KAHGWANA & COMPANY
ADVOCATES
COMMONWEALTH HOUSE
MOI AVENUE
P.O. BOX 53800
NAIROBI.
REF:10/414/1

AGREEMENT FOR SALE

THIS AGREEMENT made this 15th day of August One Thousand Nine Hundred and Eighty Eight BETWEEN THE KENYA POSTS AND TELECOMMUNICATIONS CORPORATION a statutory body established under Section 3 of the Kenya Posts and Telecommunications Corporation Act (Chapter 411) of the Laws of Kenya of Post Office Box Number 30301 Nairobi in the Republic of Kenya (hereinafter called "the Vendor" which expression shall where the context so admits include its successors and assigns) of the one part AND THE PERMANENT SECRETARY, OFFICE OF THE PRESIDENT as the duly constituted Representative of the Government of the Republic of Kenya now representing the General Service Unit which is a Department in the Office of the President in the Government of the Republic of Kenya and of Post Office Box Number Nairobi aforesaid (hereinafter called "the Purchaser" which expression shall where the context so admits include his successors in the office representatives and assigns) of the other part WITNESSETH THAT:

1. The Vendor has agreed to sell and the Purchaser has agreed to buy all the unencumbered properties situate within the City of Nairobi in the Nairobi Area particulars whereof are succinctly specified in the Schedule hereto.

2. The properties are sold free from encumbrances but subject only to the terms conditions and other matters endorsed on the Indentures by which the properties were vested in the Vendor.

3. The purchase price shall be Kenya Shillings Sixty Four Million Six Hundred and Eighty Thousand (K.Shs.64,680,000/-) of which the sum of Kenya Shillings Twenty Million (K.Shs.20,000,000/-) has been paid to the Vendor as part of the purchase price, it having been agreed between the Vendor

and the Purchaser that the balance of the purchase price shall be paid by the Purchaser to the Vendor in instalments before the Completion Date.

4. The Contractual Completion Date is the day of One Thousand Nine Hundred and Eighty Eight. Time shall be of the essence. Completion shall be at the Vendor's Head Office.

5. The property is sold with vacant possession and free from any tenancy or other adverse claim ranking in priority to the Vendor's interest.

6. On execution hereof by the Vendor and the Purchaser and on payment by the Purchaser of the sum of Kenya Shillings Twenty Million (K.Shs.20,000,000/-) the Vendor shall allow the Purchaser to occupy the properties.

7. The Vendor shall at the Purchaser's request procure the Developer and or appointed Surveyor to assist the Purchaser in pointing out the survey boundaries abuttals, boundaries and dimensions of the properties.

8. The Vendor shall be responsible for obtaining a valid Rates Clearance Certificate for the properties but the Purchaser shall assist in every possible way in facilitating the procurement of such Rates Clearance Certificate.

9. The Vendor and the Purchaser shall pay the legal costs charges and fees of their Respective Advocates of and incidental to the preparation and completion of the Contract and of the Conveyance.

10. The Purchaser shall pay all Stamp Duty on the Conveyance and Registration Fees thereon. The Purchaser reserves its right to apply for exemption from Stamp Duty for the Conveyance.

11. This Agreement is subject to the Laws of the Republic of Kenya and shall be interpreted in accordance therewith.

12. The Law Society's Conditions of Sale in so far as the same are not inconsistent herewith shall apply to the present Agreement as though the same were herein reproduced and varied only as by these presents specifically provided.

IN WITNESS WHEREOF the Vendor has caused its Common Seal to be affixed hereunto and the PERMANENT SECRETARY OFFICE OF THE PRESIDENT has hereunto set his hand the day and year first hereinbefore written.

THE SCHEDULE HEREINBEFORE REFERRED TO:

1. Land Reference Number 13421/257.
2. Land Reference Number 13421/258.
3. Land Reference Number 13421/259.
4. Land Reference Number 13421/260.
5. Land Reference Number 13421/261.
6. Land Reference Number 13421/262.
7. Land Reference Number 13421/263.
8. Land Reference Number 13421/264.
9. Land Reference Number 13421/265.
10. Land Reference Number 13421/266.
11. Land Reference Number 13421/267.
12. Land Reference Number 13421/268.
13. Land Reference Number 13421/269.
14. Land Reference Number 13421/270.
15. Land Reference Number 134321/271.
16. Land Reference Number 13421/272.
17. Land Reference Number 13421/273.
18. Land Reference Number 13421/274.
19. Land Reference Number 13421/275.
20. Land Reference Number 13421/276.
21. Land Reference Number 13421/277.
22. Land Reference Number 13421/278.
23. Land Reference Number 13421/279.
24. Land Reference Number 13421/280.
25. Land Reference Number 13421/281.
26. Land Reference Number 13421/282.

27. Land Reference Number 13421/283.
28. Land Reference Number 13421/284.
29. Land Reference Number 13421/285.
30. Land Reference Number 13421/286.
31. Land Reference Number 13421/287.
32. Land Reference Number 13421/288.
33. Land Reference Number 13421/289.
34. Land Reference Number 13421/290.
35. Land Reference Number 13421/291.
36 Land Reference Number 13421/292.
37. Land Reference Number 13421/293.
38. Land Reference Number 13421/294.
39. Land Reference Number 13421/295.
40. Land Reference Number 13421/298.
41. Land Reference Number 13421/299.
42. Land Reference Number 13421/300.
43. Land Reference Number 13421/301.
44. Land Reference Number 13421/306.
45. Land Reference Number 13421/307.
46. Land Reference Number 13421/308.
47. Land Reference Number 13421/309.
48. Land Reference Number 13421/310.
49. Land Reference Number 13421/311.
50. Land Reference Number 13421/312.
51. Land Reference Number 13421/313.
52. Land Reference Number 13421/314.
53. Land Reference Number 13421/315.
54. Land Reference Number 13421/316.
55. Land Reference Number 13421/317.
56. Land Reference Number 13421/318.
57. Land Reference Number 13421/319.
58. Land Reference Number 13421/323.
59. Land Reference Number 13421/324.
60. Land Reference Number 13421/325.
61. Land Reference Number 13421/326.
62. Land Reference Number 13421/327.
63. Land Reference Number 13421/328.
64. Land Reference Number 13421/329.
65. Land Reference Number 13421/330.
66. Land Reference Number 13421/331.
67. Land Reference Number 13421/332.
68. Land Reference Number 13421/333.

28

69. Land Reference Number 13421/334.
70. Land Reference Number 13421/335.
71. Land Reference Number 13421/336.
72. Land Reference Number 13421/337.
73. Land Reference Number 13421/338.
74. Land Reference Number 13421/339.
75. Land Reference Number 13421/340.
76. Land Reference Number 13421/341.
77. Land Reference Number 13421/342.
78. Land Reference Number 13421/343.
79. Land Reference Number 13421/344
80. Land Reference Number 13421/345.
81. Land Reference Number 13421/346.
82. Land Reference Number 13421/347.
83. Land Reference Number 13421/348.
84. Land Reference Number 13421/349.
85. Land Reference Number 13421/352.
86. Land Reference Number 13421/353.
87. Land Reference Number 13421/354.
88. Land Reference Number 13421/355.
89. Land Reference Number 13421/356.
90. Land Reference Number 13421/357.
91. Land Reference Number 13421/358.
92. Land Reference Number 13421/359.
93. Land Reference Number 13421/360.
94. Land Reference Number 13421/361.
95. Land Reference Number 13421/363.
96. Land Reference Number 13421/364.
97. Land Reference Number 13421/365.
98. Land Reference Number 13421/366.
99. Land Reference Number 13421/410.
100. Land Reference Number 13421/411.
101. Land Reference Number 13421/412.
102. Land Reference Number 13421/413.
103. Land Reference Number 13421/414.
104. Land Reference Number 13421/415.
105. Land Reference Number 13421/416.
106. Land Reference Number 13421/419.
107. Land Reference Number 13421/420.
108. Land Reference Number 13421/421.
109. Land Reference Number 13421/422.
110. Land Reference Number 13421/423.

111. Land Reference Number 13421/424.
112. Land Reference Number 13421/425.
113. Land Reference Number 13421/426.
114. Land Reference Number 13421/427.
115. Land Reference Number 13421/428.
116. Land Reference Number 13421/429.
117. Land Reference Number 13421/430.
118. Land Reference Number 13421/431.
119. Land Reference Number 13421/432.
120. Land Reference Number 13421/433.
121. Land Reference Number 13421/434.
122. Land Reference Number 13421/435.
123. Land Reference Number 13421/436.
124. Land Reference Number 13421/440.
125. Land Reference Number 13421/441.
126. Land Reference Number 13421/442.
127. Land Reference Number 13421/443.
128. Land Reference Number 13421/444.
129. Land Reference Number 13421/445.
130. Land Reference Number 13421/446.
131. Land Reference Number 13421/447.
132. Land Reference Number 13421/448.
133. Land Reference Number 13421/449.
134. Land Reference Number 13421/450.
135. Land Reference Number 13421/451.
136. Land Reference Number 13421/452.
137. Land Reference Number 13421/453.
138. Land Reference Number 13421/454.
139. Land Reference Number 13421/455.
140. Land Reference Number 13421/456.
141. Land Reference Number 13421/457.
142. Land Reference Number 13421/458.
143. Land Reference Number 13421/459.
144. Land Reference Number 13421/460.
145. Land Reference Number 13421/461.
146. Land Reference Number 13421/462.
147. Land Reference Number 13421/463.
148. Land Reference Number 13421/464.
149. Land Reference Number 13421/465.
150. Land Reference Number 13421/466.
151. Land Reference Number 13421/467.
152. Land Reference

156. Land Reference Number 13421/472.
157. Land Reference Number 13421/473.
158. Land Reference Number 13421/474.
159. Land Reference Number 13421/475.
160. Land Reference Number 13421/476.
161. Land Reference Number 13421/480.
162. Land Reference Number 13421/484.
163. Land Reference Number 13421/485.
164. Land Reference Number 13421/486.
165. Land Reference Number 13421/487.
166. Land Reference Number 13421/488.
167. Land Reference Number 13421/490.
168. Land Reference Number 13421/491.
169. Land Reference Number 13421/492.
170. Land Reference Number 13421/494.
171. Land Reference Number 13421/495.
172. Land Reference Number 13421/496.
173. Land Reference Number 13421/497.
174. Land Reference Number 13421/498.
175. Land Reference Number 13421/499.
176. Land Reference Number 13421/500.
177. Land Reference Number 14321/501.
178. Land Reference Number 13421/503.
179. Land Reference Number 13421/507.
180. Land Reference Number 13421/510.
181. Land Reference Number 13421/511.
182. Land Reference Number 13421/512.
183. Land Reference Number 13421/513.
184. Land Reference Number 13421/517.
185. Land Reference Number 13421/518.
186. Land Reference Number 13421/519.
187. Land Reference Number 13421/520.
188. Land Reference Number 13421/521.
189. Land Reference Number 13421/522.
190. Land Reference Number 13421/523.
191. Land Reference Number 13421/493.
192. Land Reference Number 13421/528.
193. Land Reference Number 13421/529.
194. Land Reference Number 13421/530.

1st. Land Reference Number 13671/511.
2nd. Land Reference Number 13671/506.

SEALED with the Common Seal of the KENYA POSTS AND TELECOMMUNICATIONS CORPORATION in the presence of:-

CHAIRMAN

MANAGING DIRECTOR

SIGNED by the PERMANENT SECRETARY for and as the duly Constituted Representative of the Government of the Republic of Kenya (General Service Unit, Office of the President) in the presence of:-

DAN AMEYO
PRINCIPAL STATE COUNSEL
OFFICE OF THE
ATTORNEY - GENERAL
BOX 40112
NAIROBI

DRAWN BY:
KANGWANA & COMPANY
ADVOCATES
COMMONWEALTH HOUSE
[illegible] AVENUE
P.O. BOX 53800
[illegible]

COUNTERSIGNED:-

PERMANENT/FINANCIAL SECRETARY
MINISTRY OF FINANCE
in the presence of:-

(64) 4

MINUTES OF THE 16TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD PN MONDAY 2ND APRIL, 2012, IN THE COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 10AM

32

PRESENT

The Hon. Fred Kapondi, MP - Chairman
The Hon. Peter Kiilu, MP - Vice Chairman
The Hon. Cyprian Omollo, MP
The Hon. Mohamed Hussein Ali, MP
The Hon. Pollyins Ochieng', MP

ABSENT WITH APOLOGY

The Hon. Joseph Kiuna, MP
The Hon. Raphael Letimalo, MP
The Hon. Danson Mungatana, MP
The Hon. Maison Leshoomo, MP
The Hon. Nkoidila Ole Lankas, MP

ABSENT

The Hon. Nkoidila Ole Lankas, MP

IN ATTENDANCE NATIONAL ASSEMBLY

The Hon. Joseph Kutuny, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

Mr. Daniel Mutunga - Second Clerk Assistant
Mr. Abdullahi Aden - Third Clerk Assistant

IN ATTENDANCE - MINISTRY OF STATE FOR PROVINCIAL ADMINISTRATION & INTERNAL SECURITY

The Hon. Prof. George Saitoti, EGH, MP - Minister, Provincial Administration
Mr. Mutea Iringo - Acting Permanent Secretary
Mr. Victor Okioma - Secretary, Provincial Administration
Mr. J.M. Kimbi - Director of Administration and Finance
Mr. Ken. M. Kamau - Legal Officer
Mr. Simon Muchiri Karanja - Principal Economist
Mr. Wilberforce Kilonzo - Under Secretary, Provincial Administration

MIN. NO. 68 /2012 - PRELIMINARIES

The Chairman welcomed the Minister and his team to the meeting and informed them that the matter before the committee had been pending a request by the Minister for more time for a compilation of a comprehensive report by an Inter - Ministerial Committee. The committee appreciated the seriousness with which the Ministry had dealt with the matter given that it touched on a legal tussle on property ownership between the Ministry and a private developer.

MIN. NO. 69 /2012 - STATEMENT BY THE MINISTER OF STATE FOR PROVINCIAL ADMINISTRATION & INTERNAL SECURITY ON THE GSU , DRIVE – IN ESTATE LAND MATTER (PART OF L.R. NO. 7879 / 4)

In his statement, the Minister informed the committee that;

In 1981, two companies namely; Afrison Export Import Limited and Huelands Limited, secured a loan from Continental Credit Finance Ltd. (now under receivership) to finance the development of 600 housing units on the land registered as L.R. No. 7879/4, in Drive-in estate situated along T" " road at Ruaraka.

The land (approximately 96 acres) was jointly owned by the two companies as tenants in common and the 600 housing units were being developed for the Kenya Posts & Telecommunications who intended to utilize them as staff houses.

The construction was undertaken by the Drive-in Estate Developers Limited (a sister Company to the aforementioned two companies).

In 1986, Continental Credit Finance ran into financial problems and was unable to sustain the finance agreement. It was declared insolvent and put under receivership. The official receiver of Kenya was appointed interim liquidator of Continental Credit Finance Limitedin winding up case No. 29 of 1986.

Consequently, Kenya Posts and Telecommunication Corporation who were intended purchasers the 600 housing units advanced the developers some money as part payment for the houses to facilitate their completion upon which they would take possession.

In 1988, KPTC also got into financial problems and was unable to complete financing of the development. As at then, 196 units in addition to two demonstration houses had been completed while others were still under construction. Following the financial crisis at KPTC, the corporation withdrew from the project and opted to sell all its interests in the development.

It is at this stage in 1988, that the government entered into an agreement with the KPTC to purchase the already completed 196 housing units. The government interest in purchasing the units was driven by the need to beef up security in the area for the protection of very sensitive security

installations such as De La Rue, EPZ, and the School of Monetary Studies as well as provide accommodation to GSU staff. 34

The agreement for the sale transaction was entered between KPTC and the Government represented by the Ministry at a price of Kshs. 64 million. Messrs. Kagwana Advocates acted for KPTC. The transaction was witnessed by the Attorney General. The government paid the purchase price of Kshs. 64 million to the KPTC through Kagwana and Company Advocates.

Despite payment of the purchase price, the Ministry did not finalize the transfer process of the title for the land on which the said houses stood. To date, KPTC has not discharged the charge of the title.

Following the signing of the sale agreement GSU immediately took possession of the 196 houses which stand approximately 17.8 acres of the subject land and continue to occupy them to date.

Due to legal issues surrounding the piece of land that GSU occupies, the Ministry of State for Provincial Administration was unable to carry out any further developments on the plot until the case was settled. However, the Ministry continued paying land rates on the land for the twenty year occupation, as required by Council laws.

Due to public interest that the matter of Drive-in land had generated, the Ministry thought it wise to set up a task force to settle the matter once and for all. In December 2011, the Minister set up an Inter-Ministerial Committee to carry out investigations and report its findings to the Minister.

The following were the terms of reference for the inter-Ministerial Committee:

- To study and recommend appropriate action in respect of all the cases pending.
- To advise and facilitate negotiations with the official receiver for the transfer of the 196 maisonettes and others which were subsequently completed and taken over by GSU.
- To recommend to the Ministry the action to be taken in respect of the additional 19.5 acres fenced off and occupied by GSU and which were not paid for.
- To advise government on the offer by the land owner to sell the balance of the parcel under reference (approximately 57 acres).
- To make any other recommendations that would lead to amicable settlement of the matter under reference

MIN. NO. 70 /2012 - FINDINGS AND RECCOMENDATIONS OF THE REPORT

- That finalization of the transfer of the 196 maisonettes which were purchased in 1988 is still pending owning to a series of court cases filed by various parties. Among those cases are three pending suits which upon determination may negatively affect the interest of government in the subject land. Although these cases do not challenge the transfer of 196

maisonettes to the Government, they have either a direct or indirect bearing on the ownership of L.R. No. 7879 / 4 which is a block title wherein GSU has an unregistered interest. 35

- The government has subsequently taken possession of an additional 19.5 acres, 17 empty or partially demonstration houses for which no payment has been made.
- The owners have made an offer to negotiate the transfer of the area occupied by the GSU and are willing to enter into negotiations for the purchase of the unpaid part and have already subdivided the subject land in to two for this purpose.
- The area under GSU is properly secured by a perimeter wall.
- The land beyond the area under occupation of the GSU is extensively developed by private developers following alleged allocations by the City Council of Nairobi but which the council has since refuted.

The Government is advised:

- To pursue the transfer of the 196 maisonettes in liaison with the official receiver and the registered owners.
- To urgently constitute a committee and ask it to negotiate with the official receiver and the registered owners for the purchase of 19.5 acres vacant portion, the 17 plots and the two show houses, sizes to be confirmed by seller surveyor.
- To institute investigations to establish whether the allotments to private developers are genuine and thereby take appropriate action where the allotments were as a result of fraud or corrupt practices.
- The government is also advised to decline the offer for the purchase of the area beyond the GSU camp as it is subsequently developed by private developers.

Clarifications sought by the Committee

The Committee sought the following clarifications from the Minister;

i. What the government planned to do given the series of court cases filed by various parties concerning the land in reference.
ii. Whether the government was willing to pay for the 19.5 acres, the empty or partially developed plots as well as two demonstration houses it is sitting on.
iii. Whether the government would compensate the land owners for occupying the 19.5 acres for over twenty years.
iv. If the government would use its own valuation or the prevailing open market price of the 19.5 acres.

Response by the Minister

In response to the clarifications sought by the Committee Members, the Minister told the Committee that;

He would immediately set up another Inter-Ministerial Committee to look into, among others;

I. Negotiations with the registered land owners and the official receiver on purchase by the government of the 19.5 acres hived off by the GSU;

II. Negotiate on how best the land owners could be compensated on rent based on private valuation from time the government occupied the said 19.5 acres ie, for 23 years;

III. Negotiate purchase by the government of the 19.5 acres based on the private open market value.

MIN. NO. 71 /2012 - ADJOURNMENT

There being no other business for discussion, the chairman adjourned the meeting at fifteen minutes past eleven o'clock.

Signed:

Chairman..... Hon Fred Kapondi, MP

Date..... 18/04/2012.....

(140) E

OFFICE OF THE PRESIDENT

Telegraphic address: "Rais"
Telephone: 227411
When replying please quote
Ref. No.

PERMANENT SECRETARY
PROVINCIAL ADMINISTRATION
AND
INTERNAL SECURITY

P.O. Box 30510-00100
Nairobi

and date
209/015/NB/521

....., 20.....

24th October, 2011

Hon. Prof. Githu Muigai, FCIA, rb., MP
Attorney General
Attorney General's Chambers
NAIROBI

Dear Hon AG

RE: TECHNICAL COMMITTEE ON GSU LAND

In 1988 this Ministry entered into an agreement with Kenya Posts and Telecommunication Corporation for the purchase of 196 completed Maisonettes at Drive-in Estate, along Thika Road.

The houses were partially developed through a loan advanced to Afrison Export Import Limited and Huelands Limited by Continental Credit Finance which was subsequently placed under receivership.

Afrison Export Import Limited and Huelands Limited later entered into an agreement wherein Kenya Posts and Telecommunication Corporation (KP&TC) provided finance to complete the said housing units for their staff, but later sold off their interest in the housing scheme to this Ministry. The houses were handed to the General Service Unit (GSU) who took possession of the houses and fenced off about 20 acres, in excess of the area occupied by the houses under reference.

Attempts to have the 196 units transferred to this Ministry have been undermined by the outstanding issues relating to the liquidation of Continental Credit Finance and the many pending cases in respect of Plot No. 7879/4 in which the houses stand

In view of the aforesaid, this Ministry wishes to have this long standing matter resolved and the Government interests in the plot secured by finalizing any outstanding issues on this trasanction and processing the necessary transfer documents.

In this connection, the Ministry in the process of putting together a technical committee to study all the issues relating to the transaction and advise through appropriate recommendations on the way forward.

The Committee's Terms of Reference are to:

1. study and recommend appropriate action in respect of all the cases pending in court.
2. advise and facilitate negotiations with the Official Receiver for the transfer of 196 Maisonettes and the 5 which were subsequently completed and taken over by GSU.
3. recommend to the Ministry the action to be taken in respect of the additional 20 acres fenced off and occupied by GSU and which no and not paid for.
4. advise Government on the offer by the land owner to sell the balance of the land on the plot under reference (approximately 64 acres)
5. make any other recommendation that would lead to amicable settlement of the matter under reference

The purpose of this letter is to request you to identify a suitable senior officer with the relevant experience and competence to serve in the proposed committee and advise on the legal aspects of the said transaction.

The committee will be expected to submit its report in 15 days

Your support will be appreciated.

Yours Sincerely

F. T. KIMEMIA, CBS
PERMANENT SECRETARY

C.C.

Hon. Prof. George Saitoti, EGH, MP
Minister of State for Provincial
Administration & Internal Security
Office of the President
NAIROBI

THE STATE LAW OFFICE

DEPARTMENT OF CIVIL LITIGATION

20 FEB 2013
CIVIL SIDE
NAIROBI

Date: 20th February, 2013

Your Ref:

Our Ref: AG/CPT/OP/327/12

The Deputy Registrar
High Court of Kenya
NAIROBI

RE: NRB HCCC 617 OF 2012(O.S)
AFRISON EXPORT & IMPORT LTD AND HUELANDS LIMITED –VS-
CONTINENTAL CREDIT FINANCE LTD (IN LIQUIDITION) AND TWO OTHERS

Above matter refers.

Kindly note that Hon Attorney General the third defendant herein being dissatisfied with the judgment of honorable Justice E Mabeya delivered on 12th February 2013 wishes to appeal against the entire judgment.

We shall be obliged if you urgently provide us with certified copies of the judgment and un-certified copies of the proceedings to enable us appeal.

Thanking you in advance.

Waigi Kamau
Principal Litigation Counsel
FOR: ATTORNEY GENERAL

Cc Nzioka & Co Advocates
Boffar Court Apt 6
Tinderset Avenue off Kandara Road
Kileleshwa
P o Box 52001-00100
NAIROBI

Date 25/2/2013

D Njogu & Co Advocates
707 Muchai Drive
Off Ngong Road
P O Box 607-00200
NAIROBI

50

26 FEB 2013

OFFICE OF THE PRESIDENT

Telegraphic address: "Rais"
Telephone: 227411
When replying please quote
Ref. No. 209/015/NB/521
and date

PERMANENT SECRETARY
PROVINCIAL ADMINISTRATION
AND
INTERNAL SECURITY

P.O. Box 30510-00100
Nairobi

25th February, 2013

Hon. Prof. Githu Muigai, EGH, FCIArb., MP
Attorney General
State Law Office
NAIROBI

Dear AG

CIVIL CASE NO. 617 OF 2012

We acknowledge receipt of the Judgement entered on 12th February 2013 against the Office of the President in the captioned matter.

As you are aware, the Office of the President had initiated negotiations with the registered owners of the subject land in which the registered owners had made an offer to the Ministry for Kshs. 3.15 Billion being the average of four valuations tabled in support of their offer for the suit property.

Prior to the Negotiation Committee making a counter offer of Kshs. 487 Million for the subject land as valued by the Chief Government Valuer, the claimant served the said Judgement in which the court awarded him Kshs. 4.08 Billion, which is way above the claimant's said offer of Kshs. 3.15Billion during the negotiations.

The subject land is a GSU camp on which the Government has invested heavily since 1988. The need for proper housing for our National Police

Service cannot be overemphasized until the subject land provides suitable room for expansion of GSU quarters.

The purpose of this letter therefore, is to seek your advice on the effect of the Judgement to the negotiation process and the way forward. We are anxious to have this matter brought to a logical conclusion and therefore mitigate the risk of losing the land and protect Government interest.

The Ministry would appreciate a settlement that will bring to an amicable end the litany of court cases on the property spanning many years and guarantee the National Police Service suitable land for expansion.

Your prompt guidance on this matter will be appreciated

Yours Sincerely

E. MUTEA IRINGO, CBS
PERMANENT SECRETARY

THE STATE LAW OFFICE

OFFICE OF THE ATTORNEY-GENERAL

Your Ref: 209/015/NB/521

Date: 6th March 2013

Our Ref: AG/CONF/14/12/2 VOL. I

Mr. Mutea Iringo , CBS
Permanent Secretary
Provincial Administration &
Internal Security
Harambee House
NAIROBI

Dear

RE: CIVIL CASE NO 617 OF 2012: AFRISON EXPORT IMPORT LTD. VS THE AG;

NEGOTIATIONS FOR THE PURCHASE OF GSU DRIVE IN ESTATE LAND- RUARAKA

I acknowledge receipt of your letter dated 25th February 2013 on the above captioned matter, contents of which have been duly noted.

Background:

In 1988, the Ministry of State for Provincial Administration and Internal Security entered into an agreement with the Kenya Posts and Telecommunications Corporation (KPTC) for the purchase of 196 completed housing units at Drive-In Estate, along Thika Road.

The houses were partially developed through a loan advanced to Afrison Export Import Limited and Huelands Limited by the Continental Credit Finance (CCF), which was subsequently placed under receivership.

Afrison Export Import Limited and Huelands Limited later entered into an agreement with the KPTC wherein KPTC would provide financing to complete the houses and the houses would then be transferred to them on completion. KPTC later on entered into an agreement with the Ministry of Provincial Administration and Internal Security for sale of its interest in the housing units. The houses were handed over to the GSU who took possession of the 196 units together with 5 additional units that were incomplete at the time. The Ministry of Provincial Administration and Internal Security was however never issued with the title documents.

In the year 2009/2010, the GSU, due to among others security reasons fenced off the housing estate together with approximately 20 acres in excess of the area occupied by the 196 housing units.

Attempts to have the title documents issued to the Ministry of Provincial Administration and Internal Security have been undermined by outstanding legal issues surrounding the liquidation of CCF as well as the many cases pending in court in regard to the parcel of land.

The Ministry of Provincial Administration and Internal Security, to address these issues formed a Technical Committee to look into the intricacies surrounding the above transaction and to come up with suitable recommendations on how to secure the governments interest.

The Technical Committee did recommend the formation of a negotiating team to negotiate suitable terms for the purchase of the governments' interest on this parcel of land.

In October 2012, while the negotiations were ongoing, the registered owner filed the suit Civil Case No. 617 of 2012: Afrison Export Import Ltd. Vs the AG & 2 Others, which suit sought;

a) A declaration that the Office of the President has trespassed and been illegal occupation of Deed Plan L.R No.7879124 since September 1988.

b) A declaration that the sale negotiations between the plaintiffs and The Office of the President over the land portion Deed Plan L.R No 7879124 as valid and binding upon the parties thereto.

c) A finding that the valuation of Deed Plan L.R NO. 7879/24 dated 11th May 2012 prepared by Camp Valuers wherein is also indicated the rental loss/loss of use that the plaintiffs have suffered since the trespass and illegal occupation of the Deed plan L.R No 7879/24 as valid and binding ,

d) That upon payment of the sum of Kenya Shillings One Hundred Million (Kshs. 100,000,000/=) being the capped amount on the charge over L.R No 7879/4 to Continental Credit Finance Limited (In Liquidation), the 1st Defendant herein and Kenya Shillings Fifty Million (Kshs. 50,000,000,000/=) in legal fees to D.N. Njogu & Co Advocates for the charger Continental Credit Finance Ltd (in liquidation), the Official Receiver and interim liquidator -The Department of the Registrar General, do forthwith release to the Plaintiffs the Discharge of charge over L.R No 787914.

The Court in its judgment of 12th February 2013, held that

a) The property subject of the suit is the entire 37.4 acres (including the housing units that the GSU bought from KPTC) and that the compensation shall be for the entire property,

b) the claim for recovery of Kshs. 1,670,270, 000/= as open market value for loss of rental income, was unsustainable,

c) Awarded the plaintiffs the sum of Kshs. 4,086,683,330 as fair value for the property suit.

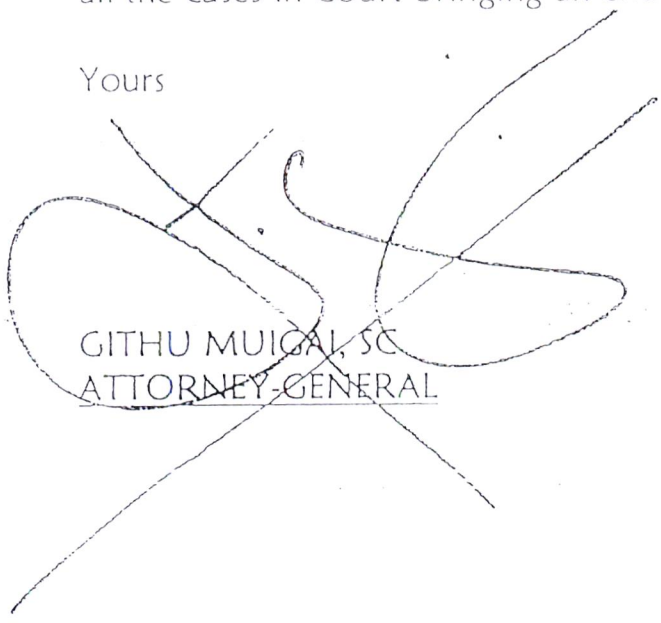
d) Awarded to the plaintiffs the costs of the suit.

From the foregoing, it is clear that the GSU have been in occupation of a portion of the parcel of land without consideration for the parcel of land in occupation. At the last negotiations the offer from the registered owner stood at Kshs. 3.15 Billion Shillings, and the counter offer from the Negotiating team stood at Kshs. 487 Million shillings ,and the Court in its judgment of 12th February awarded the registered owner Kshs. 4.08 Billion Shillings.

In light of the history of the matter, we agree with you that this matter be settled amicably through negotiations, this notwithstanding the fact that we have filed a Notice of Appeal in Court which only addresses the issue of quotam and not the merits of the case and was intended to ease pressure over the execution of the judgment.

Under a separate cover, this office will be contacting the register owner with a view of negotiating for a settlement, which if reached, would extinguish all the cases in Court bringing an end to this long standing matter.

Yours



GITHU MUIGAI, SC
ATTORNEY-GENERAL

86.
37

THE STATE LAW OFFICE

OFFICE OF THE ATTORNEY-GENERAL

Your Ref: _____ Date: 6th March 2013

Our Ref: AG/CONF/14/12/2 VOL. I

Harit Sheth,
Harit Sheth Advocates
4th Floor, Block 3, Delta Riverside
Riverside Drive
P.O Box 43045-00100
NAIROBI

RE: CIVIL CASE NO 617 OF 2012: AFRISON EXPORT IMPORT LTD. & HUELANDS LTD VS AG & OTHERS;

Reference is made to the above matter in which we have filed a Notice of Appeal on the judgment of Hon. Justice A. Mabeya delivered on 12th February 2013.

Purely on a without prejudice basis and with no admission of liability, we would welcome a proposal for settlement of this matter for onward transmission to our client.

Yours

GITHU MUIGAI, SC
ATTORNEY GENERAL
c.c

Mr. Mutea Iringo , CBS
Permanent Secretary
Provincial Administration &
Internal Security
Harambee House
NAIROBI

THE STATE LAW OFFICE

OFFICE OF THE ATTORNEY-GENERAL

Your Ref: 209/015/NB/521 Date: 18th March 2013

Our Ref: AG/CPT/OP/327

E. Mutea Iringo, CBS
Permanent Secretary
Provincial Administration and
Internal Security
Office of the President
NAIROBI

RE: NRB. HCCC CIVIL SUIT NO. 617 OF 2012 – AFRISON EXPORT & IMPORT LIMITED & ANOR. VS. ATORNEY GENERAL AND OTHERS

We refer to the above matter and wish to inform you that we convened a meeting to agree on an amicable settlement of the decree on Friday 15th March 2013 in our office with officers from your office and the director of the plaintiff company.

The aim of the meeting was to review the judgement made in favour of the plaintiff delivered by Justice Mabeya awarding the claimant Kshs. 4,086,683,330.00 on 12th February 2013 and the intended appeal by the Attorney General on the quantum of the award.

In attendance were: -

Claimant:

1. Mr. Francis Mburu - Director of the plaintiff company

Defendants:

1. Mr. Victor Okioma - Office of the President
2. Mr. J.M. Kirubi - " " "
3. Mr. P.N. Mwangi - " " "
4. Mr. K. Kamau - " " "
5. Ms. Muthoni Kimani - Office of Attorney General

The meeting observed that the award included an acreage of land which was not part of the land that the government is to procure hence the need for review of the award. The correct acreage being procured is 19.5 acres plus 46 plots. The valuation adopted by the Court was therefore erroneous and could be corrected under the slip rule or through an appeal.

The parties agreed that it was in the interest of both parties to resolve this long outstanding dispute and reach an amicable settlement of the value of the property, which should be acceptable to both the vendor and the government.

The claimant's offer of Kshs. 2.7 billion as the purchase price was inclusive of Kshs. 150 million payable to the Official Receiver and D. Njogu advocate. After protracted negotiations, the claimant was agreeable to Kshs. 2.4 billion excluding the Kshs.150 million due to Official Receiver which claim the Attorney General should address with the Receiver.

In our view the proposed settlement is fair taking into consideration the circumstances under which the government entered and occupied the claimant's property and the need to perfect the title of the property and secure the government interest.

Please let us have your approval of the proposed agreement together with the proposed terms and conditions of payment to enable our office draft the necessary consent.

Muthoni Kimani, MBS
Senior Deputy Solicitor General
FOR: ATTORNEY GENERAL

Copy to:

Hon. Attorney General

(89) 43

FILE REF: 60/CPT/OP/327/12

96.

Hon Attorney General

Suit: Letter to Ministry advising on global settlement. 13/3/13

RE: NRB. HCCC CIVIL SUIT NO. 617 OF 2012 – AFRISON EXPORT & IMPORT LIMITED & ANOR. VS. ATORNEY GENERAL AND OTHERS

As directed by you we held a meeting with officers from the Office of the President and the Director of the plaintiff decree holder. The attendants were: -

Claimant:

1. Mr. Francis Mburu - Director of the plaintiff company

Defendants:

1. Mr. Victor Okioma - Office of the President
2. Mr. J.M. Kirubi - " " "
3. Mr. P.N. Mwangi - " " "
4. Mr. K. Kamau - " " "
5. Ms. Muthoni Kimani - State Law Office

The meeting discussed the judgement of Justice Mabeya delivered on 12/2/13 awarding the claimant 4,086,683,330.00 and the notice of appeal filed by the Attorney General in this matter.

It was observed that the award included an acreage of land which was not part of the land that the government is to procure. The correct acreage being procured is 19.5 acres plus 46 plots. The valuations used by the Court are therefore erroneous and could be corrected under the slip rule.

The parties agreed that it was in the interest of both parties to resolve this long outstanding dispute and reach an amicable settlement of the value of the property which will be acceptable to both the vendor and the government.

The claimant has made an offer of 2.7 billion as the sale price which was inclusive of 150 million payable to the official receiver and D. Njogu advocate.

After protracted negotiations, the claimant was acceptable to 2.4 billion excluding the 150 million due to official receiver. The Office of the Attorney General which is also incharge of the official receiver to explain the basis of the receiver's claims especially taking into consideration that the matter has been under receivership for more than 20 years contrary to the practice in receivership of banking institutions under the Depositors Protection Fund.

The Office of the Attorney General to communicate to the Office of the President on the proposed settlement for the Office of the President to initiate the process of payment which will inform the timelines for the payment and the consent letter to be filed in this matter.

Submitted for your directions.

Muthoni Kimani, MBS
Senior Deputy Solicitor General

15th March 2013

10 (45)

22 MAR 2013

62

22 MAR 2013

OFFICE OF THE PRESIDENT

Telegraphic address: "Rais"
Telephone: 227411
When replying please quote
Ref. No.

PROVINCIAL ADMINISTRATION
AND
INTERNAL SECURITY

P.O. Box 30510-00100
Nairobi

209/015/NB/521
and date

22nd March, 2013

Hon. Prof. Githu Muigai, EGH, FCIArb.,MP
The Attorney General
State Law Office
NAIROBI

Dear Prof. Githu

ORGENT

(a) Before Settlement agreement & final consent.
(b) Keep eye on interests & Short receiver.

RE: NRB. HCCC CIVIL SUIT NO. 617 OF 2012 – AFRISON EXPORT & IMPORT LIMITED & ANOR VS. ATTORNEY GENERAL AND OTHERS

We are in receipt of your letter Ref No. AG/CPT/OP/327 dated 18th March 2013 on the matter of GSU Drive-In Estate along Thika Road.

Going by your advice, it appears that the negotiated price is the best option available for purposes of bringing this long outstanding matter to an amicable settlement.

I note that the negotiations arrived at a figure of Kshs. 2.4 Billion from the Court decree of Kshs. 4.08 Billion as full and final settlement of the plaintiff's claims against Government while the Official Receiver's claim shall be handled by your office.

We appreciate the efforts to secure government interest in the subject property and accept your advice to settle the matter as long as it guarantees an unencumbered title to the land in favour of the Government.

You may proceed to file the consent to facilitate the procurement process.

Yours, Sincerely

E. M. IRINGO, CBS
PERMANENT SECRETARY

52

THE STATE LAW OFFICE

OFFICE OF THE ATTORNEY-GENERAL

Your Ref: .....

Date: 2nd April 2013

Our Ref: AG/CPT/OP/327/12

04 APR 2013

The Deputy Registrar
High Court of Kenya
NAIROBI

RE: NRB. HCCC CIVIL SUIT NO. 617 OF 2012 – AFRISON EXPORT & IMPORT LIMITED & ANOR. VS. ATORNEY GENERAL AND OTHERS

Please record the following order by consent.

1. The judgement awarded in favour of the plaintiff by Hon. Mabeya on 12/2/13 for Kshs. 4,086,683,330.00 is hereby reduced to Kshs. 2.4 billion being the agreed purchase price of the land.

2. Each party to bear its/his own costs.

Harit Seth
Advocate for the Plaintiff

Muthoni Kimani, MBS
For: Attorney General

64

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 617 OF 2012

AFRISON EXPORT LIMITED .....1ST PLAINTIFF
HUELANDS LIMITED .....2ND PLAINTIFF

VERSUS

CONTINENTAL CREDIT FINANCE LIMITED (IN LIQUIDATION)..... 1ST DEFENDANT
OFFICIAL RECEIVER & INTERIM LIQUIDATOR .....2ND DEFENDANT
THE HON. ATTORNEY GENERAL
(SUED ON BEHALF OF THE OFFICE OF THE PRESIDENT) .....3RD DEFENDANT

AND

IN THE MATTER OF VALUATION OF LAND (DEED PLAN L.R. NO 7879/24) AND SALE THEREOF TO THE OFFICE OF THE PRESIDENT OF THE REPUBLIC OF KENYA

AND

IN THE MATTER OF VENDORS CLAIM FOR THE SALE PRICE AND ASSESSED RENTAL LOSS/LOSS OF USE ARISING OUT OF ILLEGAL OCCUPATION OF DEED PLAN L.R. NO. 7879/24 BY THE OFFICE OF THE PRESIDENT SINCE SEPTEMER, 1988

DECREE

Claim for:-

1. **THAT** this court be pleased to find and declare that the OFFICE OF THE PRESIDENT has trespassed and been in illegal occupation of Deed Plan L.R No.7879/24 since September, 1988.

2. **THAT** this court be pleased to recognize and declare the sale negotiations between the Plaintiffs and The office of the President over the land portion Deed Plan L.R no. 7879/24 as valid and binding upon the part is thereto.

3. **THAT** the court do find as valid and biding the valuation of deed Plan L.R No. 7879/24 dated 11th May, 2012 prepared by CAMP VALUERS wherein is also indicated the rental loss/loss of use that the Plaintiffs have suffered since the trespass and illegal occupation of the Deed Plan L.R No. 7879/24.

4. **THAT** upon payment of the sum of Kenya Shilling One hundred Million (Kshs.100,000,000/-) being the capped amount on the charge over No. 7879/24 to CONTINENTAL CREDIT FINANCE LIMITED (IN LIQUIDATION), the 1st Defendant herein and Kenya Shillings Fifty Million (50,000,000/-) in legal fees to D.N. Njogu &

Co. Advocates for the Charger CONTINENTAL CREDIT FIANANCE LTD. (IN LIQUIDATION), THE OFFICIAL RECEIVER AND INTERIM LIQUIDATOR the department of the registrar general, do forthwith release to the plaintiffs the Discharge of Charge over L.R No. 7879/24

5. **THAT** THE OFFICE OF THE PRESIDENT do pay to the Plaintiffs, the assessed value of the Plaintiff's land identified as Deed Plan L.R No.7879/24 together with the rental loss/loss of usage as indicated in the REPORT AND VALUATION thereof prepared by CAMP VALUERS dated 11th May, 2012.

6. **THAT** this Honourable Court be pleased to make suitable orders as to costs.

UPON READING the consent dated 2nd April, 2013 and signed by the Counsels for the respective parties

IT IS HEREBY ORDERED BY CONSENT

1) **THAT** judgment made herein on 12th March, 2013 for Kshs.4,086,683,330/- is hereby varied and reduced to Kshs.2,400,000,000 as the agreed purchase price.

2) **That** each party to bears its own costs of the suit.

GIVEN UNDER my hand and the seal of the Honourable court at Nairobi this 8th day of April, 2013

ISSUED at Nairobi this ..... 12th ..... Day of April 2013,

.....

DEPUTY REGISTRAR
HIGH COURT OF KENYA
MILIMANI COMMERCIAL & ADMIRALTY DIVISION

REPUBLIC OF KENYA

69

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Your Ref: OP/209/015/NB/521 19th October, 2015

Our Ref: AG/CPT/OP/327/12

Principal Secretary
Ministry of Interior & Coordination of
National Government
P.O Box 30510 -00100
NAIROBI.

RE: NAIROBI HCCC NO. 617 OF 2012
AFRISON EXPORT & IMPORT LTD & ANOTHER –VS- HON. ATTORNEY GENERAL

We refer to your letter under Ref: OP/209/015/NB/521 and dated 17th September, 2015 on the above referenced matter requesting for legal opinion from the Hon. Attorney General on the following:

a) The legal implication if the ministry proceeds to settle the balance of the decretal sum during the audit query processing;

b) The legal implication of withholding payment while the court order persists; and

c) The way forward in view of the two processes that affect the handling of the court award in this matter.

To answer yours concerns it is important to set out the historical and factual background of the claim. The claimant instituted the proceedings seeking the following reliefs;

a) That the Office of the President is truly indebted to the plaintiffs in the sum of Kshs 6,450,000,000 being the assessed uncontested full value of the purchase price in respect of the plaintiffs land Deed plan L.R No. 7879/24 the subject matter of the O.S.

b) That the Office of the President is further truly indebted to the plaintiffs in the sum of Ksh 1,670,270,000 being the rental loss/loss of use of the plaintiffs Deed plan L.R No. 7878/24 the subject matter of this originating summons, Loss occasioned to the plaintiffs by the Office of the President trespass and illegal occupation of Deed Plan L.R No 7878/24 from September 1988 to date.

c) That the Office of the President do pay to the plaintiff the sums stated in 1 and 2 hereinabove forthwith.

d) That upon payment and receipt of the sum of Kenya shillings One Hundred Million being the amount capped on the charge held by Continental Credit Finance Ltd (in liquidation) over the plaintiffs land L.R No 7879/24 plus a further Kshs 50,000,000 in legal fees due to D. N Njogu & co Advocates from the chargee, Continental Credit Finance Limited in liquidation do forthwith discharge the charge they hold over the plaintiffs land L.R No. 7879/4 Deed Plan 7879/24 inclusive.

The Office of the Attorney General filed a defence denying the claim. The court heard the matter and found that it was not disputed that the government had unlawfully occupied the claimants land and therefore the only issue for determination was what was the fair value of the land. The court then entered judgment in favour of the claimant for Kshs 4,086,683,330 as fair value for the property in addition to the cost of the suit.

Aggrieved by the said judgement the office of the Attorney General filed a notice of appeal and requested for proceedings. However your ministry being aware that it was important to secure the title to the suit property and in compliance with the directions of the parliamentary committee on administration and National security wrote to the office of the Attorney General vide your letter of 25th February 2013 seeking advice on the possibility of an out of court settlement.

The office of the Attorney General reviewed the matter and considered the chances of success of the appeal appreciating the fact that what was in contention before the High court was the question of the value of the land and not the fact of unlawful occupation. It considered the legal risk if the appeal were to succeed and the decretal sum varied downwards the amounts payable would probably be as high as the court award or even higher depending on the length of time it would take to prosecute the appeal.

Negotiations were carried out between senior officers of your ministry and the directors of the claimants company under the guidance of the office of the Attorney General on 15th march 2013.Arising out of the negotiations the decretal sum was varied downwards to kshs 2,400,000,000.

In fulfilment of the judgement your Ministry paid a sum of 1.2 billion on 28th July 2014. However the balance of the decretal sum continued to accrue interest at 14% which as at 12th February, 2015 had reached Kshs 612m.

Your Ministry then agreed with the decree holder leading to a consent dated 25th March 2015 capping the interest as at 28th February, 2015.

With regard the audit queries, it is the legal opinion of the Hon. Attorney General that though the Office of the Auditor General is a constitutional office whose mandate is to enhance accountability within the government's expenditure framework, it cannot override a valid court order unless the facts thereof establishes fraud and are accordingly used to set aside the judgment. The same seeks to question the validity of the procurement process for the 196 maisonettes between your Ministry and the defunct Kenya posts and Telecommunication Corporation (KPTC) on or around 18th August 1988. However our perusal of the sale agreement does not show any wrongdoing on the part of your Ministry as the Government got value for money apart from the fact that the value for the extra land acquired has appreciated astronomically and that the lack of titles for the 196 maisonettes acquired in 1988 was merely due to the slow process of liquidation of continental credit finance and a myriad of court cases surrounding the liquidation process.

In conclusion, it is the advice of the Hon. Attorney General that the court judgments should be enforced immediately failure of which the government stands exposed to the following legal ramifications:

a) Contempt proceedings with a potential to committal of the Principal Secretary to civil jail.

b) Exposing the government to pay the decretal sum of Kshs. 2,400,000,000.00 plus interest at the rate of 14% as ordered by the court on the 4th February, 2013 at the instance of the decree holder.

Therefore it is our considered opinion that your Ministry be advised to deposit the entire balance of the decretal sum in our office to enable us call for the completion documents and facilitate registration of the entire 38 acres including the 196 maisonettes.

Muthoni Kimani, MBS
Senior Deputy Solicitor General
FOR: THE HON. ATTORNEY GENERAL

73

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

DIRECTOR OF SURVEYS
RECEIVED
07 OCT 2015
P. O. Box 30046, NAIROBI

AG/L&E/MICT/137/14

7th October, 2015

The Director of Survey
P O Box 30046
NAIROBI

RE: NRB HCCC CIVIL SUIT NO.617 OF 2012 AFRISON EXPORT & IMPORT LTD & ANOTHER –VS-ATTORNEY GENERAL & 2 OTHERS

Above matter refers.

In the year 1988 the then Ministry of State for Provincial Administration and Internal Security entered into an agreement with the defunct Kenya Posts and Telecommunications Corporation (KPTC) for the Purchase of 196 housing Units at Drive-in-estate along Thika road on L.R No 7879/4. The houses were partially developed through a loan advanced to Afrison Export & Import Ltd and Hueland Ltd by Continental Credit Finance Ltd which was subsequently placed under receivership before the houses could be legally transferred to the Government.

The Ministry further fenced off an additional 19.5 acres making a total of the land occupied by it to 38 acres. The registered owner Afrison Export & Import Limited then filed a case in the High Court wherein the court ordered the Government to compensate it.

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112 - 00100, NAIROBI,KENYA TEL:+254 20 2227461/2251355/07119445555 / 0732529995
E-MAIL: info.statelawoffice@kenya.go.ke. WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILESELASSIE AVENUE
P.O. Box 56057-00200, Nairobi- Kenya TEL: Nairobi 2240029 / 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

We are now in the process of finalising payments to the owner and would be obliged if you could carry out a survey on the ground to ascertain that the land the Government is paying for is 38acres.

Our request has been necessitated by the fact that Kenya Urban Roads Authority has acquired and paid for a portion of the land for purposes of expansion of outering road.

The registered owner has undertaken survey works through Sky Limited Development Co Ltd a copy of which we have annexed for your perusal.

Waigi Kamau
Snr.Principal State Counsel

CC

Principal Secretary
Ministry of Interior and Co-ordination
Of National Government
NAIROBI

Harit Sheth & Co-Advocates
4th floor
Delta-Riverside
NAIROBI

Aa/cpr/rep/3 4-
ANNEX 14
(67)

75

REPUBLIC OF KENYA

MINISTRY OF LAND, HOUSING & URBAN DEVELOPMENT

SURVEY OF KENYA

All correspondence
Should be addressed to:-
Provincial Surveyor
Nairobi Area
P.O. Box 6426, Nairobi
Telegrams:"PROVISURVEYS, Nairobi
Telephone: 802242
When replying please quote

PROVINCIAL SURVEY OFFICE
P.O. BOX 6426
00300 NAIROBI

Ref No:AS/22/C/NP/VOL.III/58

Date 2nd December, 2015

The Snr. Principal State Counsel
Office of the Attorney General &
Department of Justice
P.O Box 40112,
00100 NAIROBI

RE: NRB HCCC CIVIL SUIT NO.617 OF 2012: L.R NO.7879/4 AFRISON EXPORT & IMPORT LTD Vs. ATTORNEY GENERAL & OTHERS

AUTHORITY: Director of Surveys letter Ref: AA/149/C Vol.41/60 dated 16th October 2015
DATUM PLANS: Survey plans F/R 379/60, F/R 222/65, F/R 222/64.

METHOD:
The site was visited on various dates starting on 23rd November 2015.

A ray trace was carried out using the beacons TH1x (F/R 379/60) and MT1 (F/R 222/65) which yielded a scale factor of 1.000096648 and a swing of 15°02'54". The computed coordinates of the new traverse points were confirmed by checking with point RE (F/R 222/64).

The established points were used to pick the boundaries of the subject parcel of land specifically the new wall constructed along the Outering road.

The picked points were coordinated and then plotted in relation to the survey plan.

OBSERVATIONS:

The land in question is described as L.R No.7879/24 and contained in F/R 379/60.The total area of the parcel as contained in F/R 379/60 is 15.857 Ha (39.18Acres).

e area that has been taken up by the road (Outering road) is 0.537 Ha (1.32Acres)
e: the road was picked as fenced on the ground.

michelle 2.00

Thus the area of the remaining parcel i.e after excision of the road is 15.320Ha which is equivalent to 37.86 acres.

76

Attached please find the sketch of the as picked on the ground and the survey plan F/R 379/60.

Ann W. Mwangi
PROVINCIAL SURVEYOR
NAIROBI

ENCL

C.C Director of Surveys
P.O Box 30046-00100
NAIROBI

D. NJOGU & CO. Advocates
Commissioners for Oaths
David Njogu, LL.B., (Hons) Hbi

Top Plaza, Suite 12
2nd Floor
Kindaruma Road, Off Ngong Road
P.O. Box 60713-00200, Nairobi, Kenya
Tel: 020 2047996, 020-202171124
Cell: 0732 253803, 0718-226906
Fax: 020 2048046

Email: dnjoguadvocates@gmail.com

77

154

Our Ref: Your Ref: Date: 01/10/2013

M/s Harit Sheth Advocates
4th Floor, Block 3 Delta Riverside
Riverside Drive
P.O BOX 43045-00100
Nairobi.

8/10/13

Dear Sir/Madam,

RE: LAND REFERENCE NUMBER 7879/4
AFRISON EXPORT IMPORT LIMITED & HUELANDS LIMITED

We refer to the above matter and letter of undertaking dated 16th September 2013 and send herewith the following documents:

1. Original last conveyance dated 29/12/1981 with deed plan annexed in respect of L.R 7879/4
2. Partial re-conveyance in respect of L.R 7879/25 duly executed by our client.

Your client has confirmed to ours that he has the original deed plan for L.R 7879/25.We shall shortly send to you Certificate of sub-division to be issued by the Nairobi City County Government.

Yours Faithfully

D. Njogu & Company
Advocates

CC. The Official Receiver and Interim Liquidator
Continental Credit Finance Limited
Ngumba House, 2nd Floor
P.O. Box 57192, 00200
Nairobi.

D. NJOGU & CO. Advocates
Commissioners for Oaths
David Njogu, LL.B., (Hons) Nbi

78

Top Plaza, Suite 12
2nd Floor
Kindaruma Road, Off Ngong Road
P.O. Box 60713-00200, Nairobi, Kenya
Tel: 020 2047996, 020-202171124
Cell: 0732 253803, 0718-226906
Email: dnjoguadvocates@gmail.com
Fax: 020 2048046

Our Ref: Your Ref: Date: 17/06/2014

M/s Harit Sheth Advocates
4th Floor, Block 3 Delta Riverside
Riverside Drive
P.O BOX 43045-00100
Nairobi.

Dear Sir,

RE: LAND REFERENCE NUMBER 7879/4 AND
LOANEE: AFRISON EXPORT IMPORT LIMITED & HUELANDS LIMITED

We refer to the above matter and your letter of professional undertaking dated 9th April 2013 which we accept and enclose the following documents:

1. Original mortgage dated 20th December 1981.
2. Original Deed Plan number 33844924 for L.R.7879/24 Nairobi.
3. Re-conveyance of mortgage in respect of the whole L.R.7879/4 Nairobi.

Kindly expedite the process for early completion. Please acknowledge receipt by stamping and signing on a copy hereof.

Yours Faithfully,

D. Njogu & Company
Advocates.

CC. The Official Receiver
Continental Credit Finance Limited (in liquidation)
Ngumba House 2nd Floor
P.O.Box 57192, 00200
Nairobi.

Harit Sheth Advocates

Arbitrators, Mediators, Commissioner for Oaths & Notaries Public

79

H. A. Sheth MCIArb
Richard M. Kariuki MCIArb, CPS(K)

Edwin C. Koech MCIArb
Susan M. Wanjohi
Catherine N. Ngunjiri
Victoria M. Mwangome

Our Ref:

Your Ref:

9th April, 2013

D.N. Njogu & Company
Advocates
Top Plaza, 2nd Floor, Suite 12
Kindaruma Road, off Ngong Road
P O Box 60713-00200
NAIROBI

Att: Mr. David Njogu

Dear Sir,

RE: NAIROBI HIGH COURT CIVIL COMMERCIAL CASE NO. 617 OF 2012
AFRISON EXPORT AND IMPORT LIMITED & ANOTHER VS. ATTORNEY GENERAL AND OTHERS

Reference to the caplioned whereby a settlement has been reached at K.Shs. 2,400,000,000/- with our clients.

Your clients Continental Credit Finance Limited have a Mortgage over Land Reference No. 7879/4 in the name of Afrison Export and Import Limited and Huelands Limited.

The parties have agreed that K.Shs.100,000,000/= (Kenya Shillings One hundred Million) is payable to your client in full discharge of our clients' obligations. A further sum of K.Shs. 50,000,000/= (Kenya Shillings Fifty Million) would be paid in respect of advocate fees. We are advised that you hold the Deed Plan for L.R. 7879/24 being the portion being sold to the Government.

4th Floor,
Block 3, Delta Riverside,
Riverside Drive,
P.O. Box 43045-00100
Tel: +254 0722 306830/0733 440648
0705 009999/0728 009999
NAIROBI, KENYA

To facilitate smooth completion we require your clients to execute a Re-conveyance of Mortgage over L.R 7879/24 and release the same to us together with original Deed Plan.

In consideration of your releasing the same to us we undertake to pay to yourselves K.Shs.100,000,000/= (Kenya Shillings One hundred Million) from the sale proceeds of L.R. No. 7879/25 being the portion being retained by our client. We further undertake to pay to you the sum of K.Shs. 50,000,000/= (Kenya Shillings Fifty Million Only) in respect of advocate fees.

This undertaking shall become effective only upon receipt of the Re-Conveyance of Mortgage duly executed by your client over L.R. 7879/24 together with the Deed Plan. Payment of the two sums shall become payable within 12 months of the issuance of the new Certificate of Title for L.R. NO. 7879/25 whichever is the later.

Yours faithfully,

HARIT SHETH

cc. client

16.

81

REPUBLIC OF KENYA
THE NATIONAL TREASURY

THE NATIONALTREASURY
P O BOX 30007 - 00100
NAIROBI

Telegraphic Address: 22921
Finance – Nairobi
FAX NO. 310883
Telephone: 2252299
When Replying Please Quote

Date: 12th February, 2018

Ref: CONF/MOF GL 1/01/TY3/(16)

The Solicitor General
State Law Office & Department of Justice
Sheria House, Harambee Avenue
P.O. Box 40112-00100
NAIROBI

NAIROBI HCCC NO. 617 OF 2012
AFRISON EXPORT IMPORT LIMITED & ANOTHER VS. ATTORNEY GENERAL
SALE OF LR NO. 7879/24 (ORIGINAL NO. 7879/4/4/13 RUARAKA)

The above subject matter refers.

Attached, please find dully filled conveyance documents for LR NO. 7879/24 original No. 7879/4/4/13 Ruaraka for your necessary action.

BONIFACE SIMBA, OGW
FOR: PRINCIPAL SECRETARY/NATIONAL TREASURY

CC:Dr. Karanja Kibicho, CBS
Principal Secretary
Ministry of Interior & Co-ordination of
National Government
P.O. Box 30510 -00100
NAIROBI

DATED 2016

82

AFRISON EXPORT IMPORT LIMITED & HUELANDS LIMITED

TO

CABINET SECRETARY TO THE TREASURY OF KENYA

INDENTURE OF CONVEYANCE

LAND REFERENCE NUMBER 7879/24
ORIGINAL NUMBER 7879/4/3

Drawn By:
Henia Anzala & Associates
Studio House, 3rd Floor East Wing
P.O Box 51745 – 00100
Arwings Kodhek Road
Nairobi

83

THIS INDENTURE OF CONVEYANCE is made this day of Two Thousand One Hundred and Sixteen *BETWEEN* AFRISON EXPORT IMPORT LIMITED AND HUELANDS LIMITED limited liability companies incorporated in the republic of Kenya and of Post Office Box Number 46817 – 00100 Nairobi (hereinafter called "the Vendors" which expression shall where context so admits include their successors and assigns) of the one part AND THE CABINET SECRETARY TO THE TREASURY OF KENYA of Post Office Box Number 30007 - 00100, Nairobi aforesaid (hereinafter called "the Purchaser" which expression shall where the context so admits include his personal representatives and assigns) of the other part.

WHERAS:

A. By virtue of an Indenture of Conveyance dated Twenty Ninth day of December One Thousand Nine Hundred and Eighty One (registered in the Government Lands Registry at Nairobi in Volume N.52 Folio 42/1 File 16178 and made between JORETH LIMITED (therein described) of the one part and the Vendors of the other part for the consideration therein mentioned ALL THAT piece or parcel of land situate in the City of Nairobi in the Nairobi Area of the Republic of Kenya containing by measurement One Five Decimal Eight Six (15.86) hectares or thereabouts that is to say Land Reference Number 7879/24 (Original Number 7879/4/3) which piece of land is a portion of the premises comprised in and conveyed by an Indenture of Conveyance dated the day of December One Thousand Nine Hundred and Fifty Eight (registered in the Government Lands Registry at Nairobi in Volume N. 43 Folio 302/1 therein described) together with the building and improvements erected and being thereon conveyed unto the Vendors for an estate in fee simple subject as therein mentioned.

B. The Vendors have sub-divided the said piece of land into two portions and have agreed with the Purchaser for the sale to the Purchaser of one sub-divided portion of 30 acres at the price or sum of Kenya Shillings Two Billion Four Hundred Million (Kshs. 2, 400, 000, 000) (plus interest thereon pursuant to the Consent Judgement dated 2nd April 2013) subject as hereunder mentioned.

INDENTURE OF CONVEYANCE

84

THIS INDENTURE OF CONVEYANCE is made this day of Two Thousand One Hundred and Sixteen *BETWEEN* AFRISON EXPORT IMPORT LIMITED AND HUELANDS LIMITED limited liability companies incorporated in the republic of Kenya and of Post Office Box Number 46817 – 00100 Nairobi (hereinafter called "the Vendors" which expression shall where context so admits include their successors and assigns) of the one part AND THE CABINET SECRETARY TO THE TREASURY OF KENYA of Post Office Box Number 30007 - 00100, Nairobi aforesaid (hereinafter called "the Purchaser" which expression shall where the context so admits include his personal representatives and assigns) of the other part.

WHERAS:

A. By virtue of an Indenture of Conveyance dated Twenty Ninth day of December One Thousand Nine Hundred and Eighty One (registered in the Government Lands Registry at Nairobi in Volume N.52 Folio 42/1 File 16178 and made between JORETH LIMITED (therein described) of the one part and the Vendors of the other part for the consideration therein mentioned ALL THAT piece or parcel of land situate in the City of Nairobi in the Nairobi Area of the Republic of Kenya containing by measurement One Five Decimal Eight Six (15.86) hectares or thereabouts that is to say Land Reference Number 7879/24 (Original Number 7879/4/3) which piece of land is a portion of the premises comprised in and conveyed by an Indenture of Conveyance dated the day of December One Thousand Nine Hundred and Fifty Eight (registered in the Government Lands Registry at Nairobi in Volume N. 43 Folio 302/1 therein described) together with the building and improvements erected and being thereon conveyed unto the Vendors for an estate in fee simple subject as therein mentioned.

B. The Vendors have sub-divided the said piece of land into two portions and have agreed with the Purchaser for the sale to the Purchaser of one sub-divided portion of 30 acres at the price or sum of Kenya Shillings Two Billion Four Hundred Million (Kshs. 2, 400, 000, 000) (plus interest thereon pursuant to the Consent Judgement dated 2nd April 2013) subject as hereunder mentioned.

NOW THIS DEED WITNESSETH and without prejudice to the said agreement A. A 39.183 acres (thirty nine point one eight three acres) pursuant to the said agreement and in consideration of the sum of Kenya Shillings Two Billion Four Hundred Million (Kshs. 2, 400, 000, 000) plus interest thereon pursuant to the consent judgement Dated 2nd April 2013 paid by the Purchaser to the Vendors on or before the execution hereof (receipt whereof the Vendors hereby acknowledge to the Vendor)

85

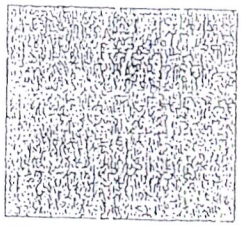
HEREBY CONVEY unto the Purchaser all their right title and interest in and ALL THAT piece or parcel of land situated in the City of Nairobi in the Nairobi Area in the Republic of Kenya containing by measurement thirty nine point one eight three acres (39.183 acres) which includes one hundred and ninety six (196) individual maisonettes on Deed Plan No. 13421/275 to Deed Plan No. 13421/292 sitting on seven point five acres (7.5 acres) part of the thirty nine point one eight three acres already paid for through Kangwana & Co. Advocates on behalf of KPTC on 10th May 1988.

The Thirty Nine Point One Eight Three acres (39.183 acres) includes one point six eight three acres (1.683 acres) reserved for a commercial purpose and remains to revert back to the registered owners at an appropriate time, otherwise it has to be paid off separately by the purchaser as it is neither part of thirty seven point five (37.5 acres) nor part of the consent Judgement dated 2nd April 2013.

IN WITNESS WHEREOF the Vendors and the Purchaser have set their hands hereto the day and year first hereinbefore written.

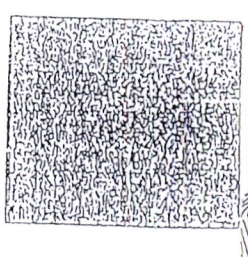
SEALED with a Common Seal
of the VENDOR
AFRISON EXPORT IMPORT LIMITED
In the presence of:

86



DIRECTOR

Passport/ID No: A 079523
Signature.....
PIN Number.....A000129452D.....



DIRECTOR

Passport/ID No: 27582587
Signature.....
PIN Number.....A004504205G

Advocate

I HEREBY CERTIFY that FRANCIS MBURU MUNGAI and .....JUSTIN.....MBURU....being Directors of AFRISON EXPORT IMPORT LIMITED and being known to me acknowledge the above signatures to be the heirs and I further certify that the photographs affixed above are true likeliness of the Said Directors and that their above Nation Identity Card Numbers/ Passport Numbers and PIN Numbers are numbers of the originals of their documents which I have seen.

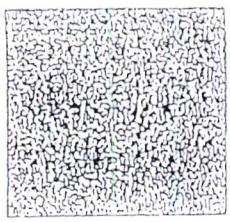
DUNCAN ANZALA
ADVOCATE &
COMMISSIONER FOR OATHS
P.O. Box 51745 00100 NAIROBI
F105 ...75...08

Signed:.....

ADVOCATE OF THE HIGH COURT OF KENYA

87

Signed by.....
Cabinet Secretary to the Treasury of Kenya
In the Presence of:



ID/PP NO.....
PIN No.....
Signature.....

ADVOCATE

I HEREBY CERTIFY that

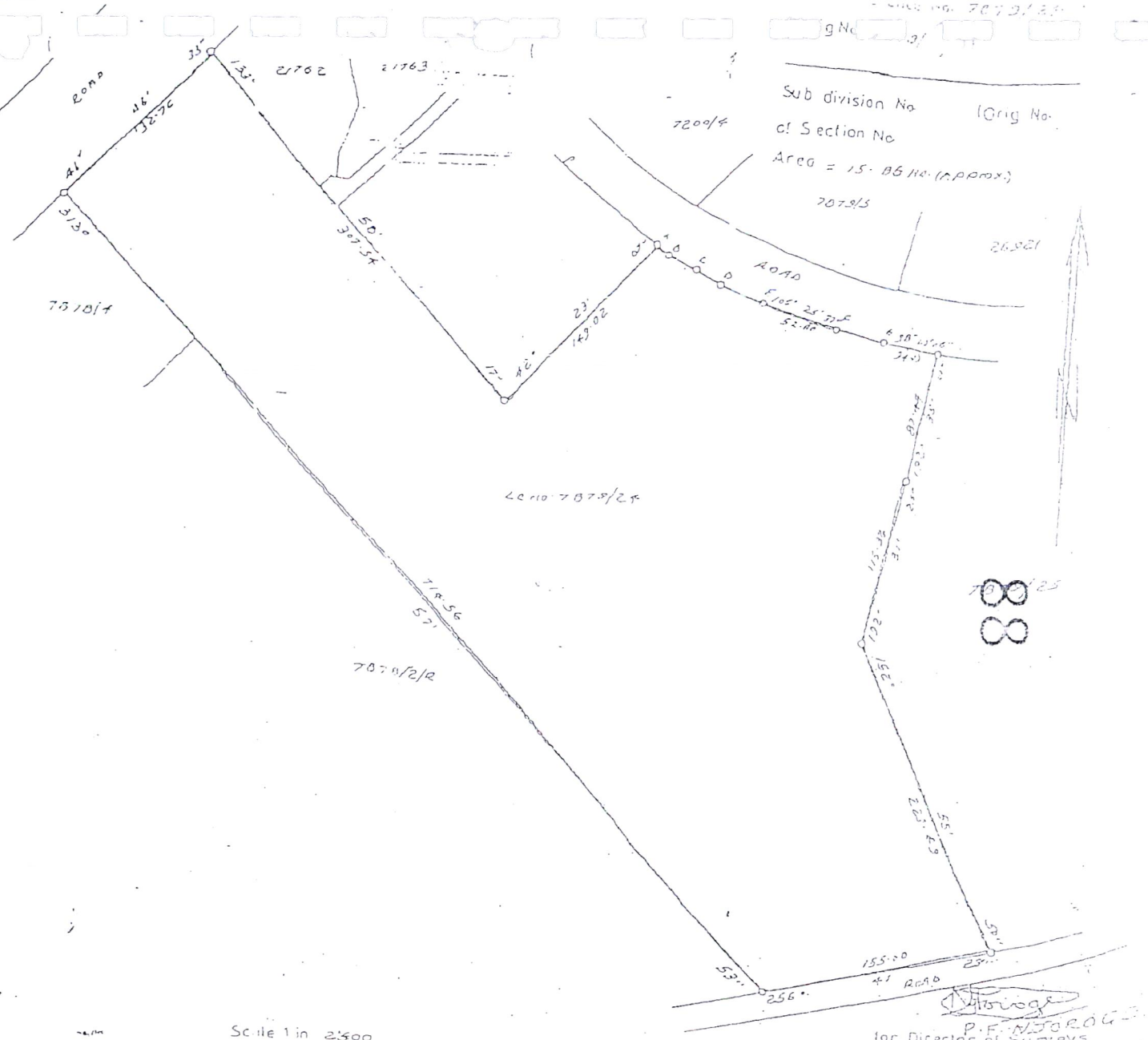
.....being the Cabinet Secretary, to the Treasury of Kenya and being known to me Acknowledged the above signature to be his/hers and I further certify that the photograph affixed above is a true likeliness of the said Cabinet Secretary and that his/her above National Identity Card Number / Passport Number and PIN Number are numbers on the originals of his/her documents which I have seen.

Signed:.....

ADVOCATE OF THE HIGH COURT OF KENYA

Drawn By:
Henia Anzala & Associates
Studio House, 3rd Floor East Wing
P.O Box 51745 – 00100
Arwings Kodhek Road
Nairobi

	Bearings °	'	"	Distance Metres
A-B	120	49	26	9·74
B-C	115	54	57	21·21
C-D	113	58	42	19·37
D-E	111	02	21	29·61
F-G	101	32	50	34·66



~~Licensed Surveyor~~

F.R. No. 379/60
COMPS No. 62074

Traced by [illegible]

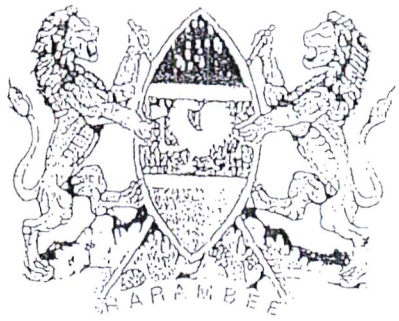
Compared by [illegible]

Scale 1 in 2500

P.F. NJOROGE
for Director of Surveys
Nairobi 18TH MARCH 20[illegible]

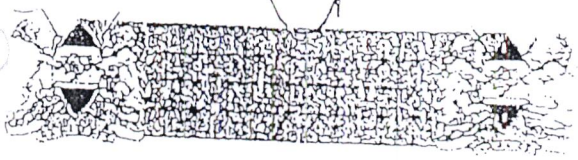
DEED PLAN No. 395

Hati hii ni ya kuwaomba na kuwataka kwa jina la Rais wa Jamhuri ya Kenya wote wanaohusika, kwa kusudi wamruhusu mwenye hati hii kusafiri bila kizuizi ama kizuizi, tena kumpatia na kumhifadhi kwa kadiri anavyohitaji.



These are to request and require in the Name of The President of the Republic of Kenya all [illegible] *whom it may concern to allow the bearer to pass freely without let or hindrance, and to afford him or her every assistance of protection of which he or she may stand in need.*

Sahihi ya Afisa wa Pasi *Signature of Passport Officer*



89

PASI HII INAWEZA KUSAFIRIWA KATIKA NCHI ZOTE ZA JUMUIYA YA MADOLA NA ZA KIGENI

THIS PASSPORT IS VALID FOR ALL PARTS OF THE COMMONWEALTH AND ALL FOREIGN COUNTRIES

PASI

PASSPORT

REPUBLIC OF KENYA

Namba ya Pasi *No. of Passport* A079523

Kuna kurasa 32 kalika Pasi hii
This Passport contains 32 pages

NEXT OF KIN

In case of an emergency please contact the following

1st Next of kin:

Full names:

Postal address:

Residential address:

District:

Telephone no:

Town:

Location:

Estate:

Village:

Street:

2nd Next of kin:

Full names:

Postal address:

Residential address:

District:

Tele_ _ne no:

Town:

Location:

Estate:

Village:

Street:

General Data of the Taxpayer

Name	HUELANDS LIMITED		
Taxpayer PIN	P051408297T		
Registration Date	Dec 21, 2012	Taxpayer Category	DOMESTIC
Activity	Others	91	

Contact Information

District	NAIROBI EAST	City/Town	NAIROBI CITY (EAST)
Street / Road	RIVER SIDE	Building	RIVER SIDE COURT
Area Name		LR Number	
P.O. Box	20		
Main Email Address	00100 - 46817		
	machgathu@yahoo.com		

Tax Obligation	Obligation Register Date
INCOME TAX COMPANY (IT2C)	DEC 31, 2011

This certificate is computer generated and therefore not signed. It is valid certificate issued under the authority of KRA.

12/21/2012 9:40

94

18

MINISTRY OF EDUCATION

Office of the Principal Secretary, State Department of Basic Education

Telegraphic; "EDUCATION", Nairobi
Telephone: Nairobi 3318581
Email: ps@education.go.ke
When replying please quote

JOGOO HOUSE "B"
JARAMBEE AVENUE
P. O. BOX 30040-00100
NAIROBI

Ref. No. MOE.GEN/4L/12/(17)

Date 29th June, 2017

Prof. Githu Muigai, EGH, SC
Attorney General
Office of the Attorney General and
Department of Justice
P. O. Box 40112-00100
NAIROBI

Dear AG

RE: LEGAL OPINION ON COMPENSATION FOR LR NO7879/4 RUARAKA HIGH SCHOOL AND DRIVE IN PRIMARY SCHOOL

We are in receipt of letters Ref.VAL.1446 dated 13th September, 2016 and 24th April, 2017 from the National Land Commission (copies attached).

Ruaraka High School is a public secondary school established in the year 1984, while Drive-In-Estate Primary School was established in 1987.

The schools are located in part of LR. No.7879/4 measuring 13.5364 acres. Ruaraka High School occupies 7.6 acres which they claim to have been allocated to them. (Copy of the allotment letter attached).

The land in which the schools are situated was part of Drive-In-Estate.

A company by the name Afrison Export Import Limited has now written to the National Land Commission seeking to be compensated for the land measuring 13.5364 acres.

A gazette notice for the intention to acquire has been prepared and awaiting gazettement.

In view of the above, I now write to request for a legal opinion on the same before we request the National Treasury to set aside resources for compensation and gazettement of the intention.

Enclosed are bundles of documents on the subject.

Yours Sincerely

Dr. Belio Kipsang, CBS
PRINCIPAL SECRETARY

Encls

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: AG/CONF/21/72 VOL 1

July 7, 2017

Dr. Belio Kipsang, CBS
Principal Secretary
Ministry of Education
Jogoo House "B"
P.O. Box 9583-00200
NAIROBI

RE: LEGAL OPINION ON COMPENSATION FOR LR. NO. 7879/4 RUARAKA HIGH SCHOOL AND DRIVE IN PRIMARY SCHOOL

We refer to your letter under Ref. No. MOE.GEN/41/12/ (17) dated 29th June, 2017 in which you requested for our legal opinion on the above compulsory acquisition of LR. No. 7879/4 for purposes of continued establishment of Ruaraka High School and Drive In primary school.

The request is premised on the following background information:-

i. That Ruaraka High School is a public secondary school established in the year 1984, while Drive-In-Estate Primary School was established in 1987.
ii. The schools are located in part of LR. No. 7879/4 Measuring 13.5364 acres. Ruaraka High School occupies 7.6 acres which they claim to have been allocated to them.
iii. The Ministry had constituted a team to investigate the matter and a report was submitted to the Principal Secretary.
iv. In the said report, the team was of the view that the company had surrendered a portion of the land for public utility and therefore no basis for their compensation.
v. In the correspondence availed we note there was a letter of allotment issued to the secondary school.
vi. A letter dated 28th March, 1984 from the Nairobi City Council to the Developer, informed them that their proposed development was given conditional subdivision approval and it's up to them to accept the same or cancel the subdivision.

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/0711944555/0732529990
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 36057-00200, Nairobi-Kenya TEL: Nairobi 2224029/2240337
E-MAIL: ... WEBSITE: ...

Annex VIII - Submissions by the Managing Director, Afrison Import Export Ltd and Huelands Ltd

REPUBLIC OF KENYA
IN THE MATTER OF THE OATHS AND STATUTORY DECLARATIONS ACT
(CHAPTER 15 LAWS OF KENYA)

AFFIDAVIT

I **FRANCIS MBURU MUNGAI** of P.O Box 46817-00100 Nairobi within the Republic of Kenya do hereby make oath and state as follows:

1. **THAT** I am a male adult of sound mind hence competent to swear this Affidavit.
2. **THAT** I am a director of **AFRISON EXPORT IMPORT LIMITED, HUELANDS LIMITED, DRIVE IN ESTATE DEVELOPERS LIMITED** and **WHISPERING PALMS ESTATE LIMITED.**
3. **THAT** I aver that I have been duly authorized by the directors of **AFRISON EXPORT IMPORT LIMITED, HUELANDS LIMITED, DRIVE IN ESTATE DEVELOPERS LIMITED** and **WHISPERING PALMS LIMITED** to swear this Affidavit on their behalf as well as on my behalf.
4. **THAT** I aver that I swear this Affidavit in respect of the following:
   a) Land Reference Number 7879/4(measuring 96 acres).
   b) General Service Unit land measuring 37.4 acres: Land Reference Number 7879/24 (which was sub- divided from Land Reference Number 7879/4).
   c) Drive In Primary School and Ruaraka High School measuring 13.5364 acres (excised from Land Reference Number 7879/25)
5. **THAT** I aver that **AFRISON EXPORT AND IMPORT LIMITED** and **HUELANDS LIMITED** are the registered owners of Land Reference Number 7879/4 (measuring 96 acres).
6. **THAT** I aver that the said Land Reference Number 7879/4 has been sub-divided to two parcels of land namely:
   a) Land Reference Number 7879/24 which is the portion occupied by the General Service Unit (its acreage is 37.4 acres).
   b) Land Reference Number 7879/25 which is the portion that remained after 37.4 acres were excised from 96 acres and it belongs to **AFRISON EXPORT AND IMPORT LIMITED** and **HUELANDS LIMITED.**
7. **THAT** I aver that the land currently occupied by Drive In Primary School and Ruaraka High School and which is in issue in the investigations by the Senate and the National Assembly measure 13.5364 Acres and the same was excised from Land Reference Number 7879/25.

VII

8. **THAT** I aver that in 1981, the directors of **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** purchased the land (Land Reference Number 7879/4) from **JORETH LIMITED.**
9. Further to paragraph 8 above I aver that the directors of **JORETH LIMITED** were Mr. Duncan Ndegwa, the late Mr. Njenga Karume and the late Arthur Magugu.
10. **THAT** further to paragraph 8 above I aver that after **AFRISON EXPORT AND IMPORT LIMITED** and **HUELANDS LIMITED** bought the said land, the Government expressed an interest in acquiring the entire 96 acres from **AFRISON EXPORT LIMITED** and **HUELANDS LIMITED** and it went ahead and illegally cordoned off the land from the public.
11. **THAT** further to paragraph 10 above I aver the then President Daniel Arap Moi said the reason why the Government wanted to acquire the said 96 acre piece of land was because the Government intended to develop houses on the entire 96 acres land which houses were to be used by the General Service Unit (G.S.U).
12. Further to paragraph 11 above I aver that the said project did not take place but the Government continued to occupy the said land.
13. **THAT** I aver that up to the year 2012 when **AFRISON EXPORT LIMITED** and **HUELANDS LIMITED** filed **HIGH COURT CIVIL CASE NUMBER 617 OF 2012** the Government had only paid them for the 198 maisonettes which stand on 7.4 acres and are currently housing police officers from the General Service unit.
14. **THAT** I aver that in due course the directors of **AFRISON EXPORT AND IMPORT LIMITED** and **HUELANDS LIMITED** sold 30 acres to the Government for General Service Unit housing project.
15. **THAT** I aver that currently the portion occupied by General Service Unit measures 37.4 acres (comprises the 7.4 acres where the maisonettes occupied by the officers of the General service Unit are and the said 30 acres that the Government had illegally fenced off when the General service unit took possession/ occupied the said maisonettes / after it later they decided it did not want to acquire the entire 96 acres.
16. **THAT** I aver that in or about 1986, the Government controversially constructed two schools (Drive In Primary School and Ruaraka High School) within Land Reference Number 7879/4 and just like in the previous instances of illegal trespass by General service police no payment was made to the owners of the said land **(AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED.**
17. **THAT** I aver that the Government also constructed an office for the area District Officer (DO) and chief within Land reference Number 7879/4 without any approval from **AFRISON EXPORT AND IMPORT LIMITED** and **HUELANDS LIMITED** and it also did not pay for this.
18. **THAT** I aver that in the year 2012, frustrated and left with no option, **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** decided to seek Court's intervention by filing **HIGH COURT CIVIL CASE NUMBER 617 OF**

2012 where it , *interalia*,sought damages for loss of use of it's land as well as orders to compel the Government to pay for the 30 acres which it had illegally added to the 7.4 acres. The said 30 acres were adjacent to the said maisonettes.

19. **THAT** I aver that In **HIGH COURT CIVIL CASE NUMBER 617 OF 2012** the directors of **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** were very clear in their demand that the Government had to pay them compensation for damages occasioned to them due to loss of use of their land arising from the illegal occupation of their land by the Government.
20. **THAT** I aver that **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** won the said **HIGH COURT CIVIL CASE NUMBER 617 OF 2012.**
21. **THAT** I aver that in the said **HIGH COURT CASE NUMBER 617 OF 2012** the Court awarded **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED KENYA SHILLINGS 4,086,683,330** for the additional 30 acres that the Government had illegally occupied.
22. Further to paragraph 21 above I aver that the Attorney General negotiated with **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** and the said Court award of **KENYA SHILLINGS 4,086,683,330** for the said the 30 acres was reduced to **KSHS 2,400,000,000 (2.4 BILLION)**
23. **THAT** I aver that it is now six years since when the said award was reduced to **KSHS 2,400,000,000 (2.4 BILLION)** and contrary to the agreement that the said **KSHS 2,400,000,000 (2.4 BILLION)** was to be paid within ninety days from the time **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** sold the thirty acres at a discounted price to the Office of the President the Government has only paid Sh1.8 billion and this has caused the delay in transferring the 37.4 acres to the Government.
24. **THAT** I aver that in or about 2009, the Government, through the City Council of Nairobi housing department, illegally issued letters of allotment to people and it allocated part of (LR NO 7879/4) to the said people and it went ahead and illegally allowed the said persons to occupy/trespass on **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** land (LR NO 7879/4).
25. Further to paragraph 24 above I aver that the said illegal issuance of letters of allotment was effected by crooked land grabbers and fraudulent Government officers after manufacturing a forged letter of the then Minister of Lands Mr. Kibwana.
26. Further to paragraph 25 above I aver that the said land grabbers are very highly placed in the Government and are very influential business people in the society.
27. Further to paragraph 25 and 26 above I aver that the said Land grabber have been frustrating **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED'S** requests for compensation from the Government and that some of the said land grabbers are politicians, senior civil servants etc who fear that **AFRISON**

EXPORT IMPORT LIMITED and **HUELANDS LIMITED** will demolish the illegal buildings/structures erected on the land they have grabbed.

28. Further to paragraph 27 above I aver that even after winning cases against the said land grabbers in court, the said land grabbers too just like the Government, have disregarded/ignored court Judgements which have declared that they are occupying the said land illegally.

29. I aver that any attempts by **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** to regularise the status of their land and/or push for compensation in respect of the illegal occupation of their land by the Government/land grabbers has always met stiff challenges/ a lot of difficulties and they have always been subjected to a lot of trauma, ridicule and psychological harassment and torture and this is actually what is happening currently in respect of the current compensation that was paid to them for the thirteen point five acres for the schools even after gazettment by the National Land Commission and the law was followed in the said acquisition and even in a clear case where even the Attorney General, in his opinion, pointed that the said trespassers had been illegally occupying our land for more than 28 years.

30. **THAT** I aver that the Government continues to operate with impunity and has refused to pay the balance of 600 million plus 150 million (which the Office of the President undertook to pay directly to the Official receiver) and which issue was agreed between **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** and the Attorney General.

31. **THAT** I aver that **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED'S** land has been acquired by the following three different Government Departments: Kenya Urban Roads Authority (under the Ministry of Transport), (G.S.U land)/ Office of the President (under Interior ministry) and Ministry of Education.

32. Further to paragraph 31 above I aver as follows:

i) The Kenya Urban Roads Authority (KURA) has acquired about 12 acres for the construction of Outering Road and access roads from Outering Road to Mathare North Road (all gazetted in the Kenya gazette).

ii) The Ministry of Education has acquired 13.5 acres (occupied by Drive In Primary School and Ruaraka High School).

iii) The Interior Ministry has occupied 37.4 acres(198 three bedroomed maisonettes stand on this land)

33. **THAT** I aver that after being frustrated for many years by the illegal occupation of their land by **DRIVE IN PRIMARY SCHOOL** and **RUARAKA HIGH SCHOOL**, in 2017 **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS**

LIMITED got a chance to ventilate their grievances through ElimuYetu Programme established by the Education Ministry.

34. Further to paragraph 33 above I aver that the Ministry of education had formed a task force, under the leadership of the Education Principal Secretary, which was mandated to establish the public schools that were on private land in the entire country.

35. Further to paragraph 34 above I aver that **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** were granted a hearing by the task force in respect of their 30 years grievances about the illegal occupation of their land and thereafter the Ministry of Education wrote to the National Land Commission, which upon satisfaction that we were the real beneficiaries, replied to the Ministry of Education asking it to approve **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** payment/compensation.

36. **THAT** I aver that so far Under Elimu Yetu Programe, which is an initiative by the Government to acquire title deeds for public schools built on private land, there are over 2,000 public schools on private land.

37. Further to paragraph 36 above I aver that the two schools built on **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** land became beneficiaries under this program of Elimu Yetu.

38. **THAT** I aver that under the Elimu Yetu Programme the Government wants to give Title Deeds to schools without Titles Deeds.

39. **THAT** I aver that the Government paid **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** almost half of the open/current market value for the said 13.5 acres occupied by the two public schools (**DRIVE IN PRIMARY SCHOOL** and **RUARAKA HIGH SCHOOL**).

40. **THAT** further to paragraph 39 above I aver that according to the open market valuation by Camp Valuers the said 13.5 acres are worthy **KENYA SHILLINGS FOUR HUNDRED MILLION** per acre and that the said thirteen point five acres are valued at approximately **KENYA SHILLINGS FIVE BILLION NINE HUNDRED MILLION(KSHS 5,900,000,000)** but **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** sold the same to the Government at about **KENYA SHILLINGS THREE BILLION TWO HUNDRED MILLION (KSHS 3.2 BILLION).**

41. **THAT** further to paragraph 39 and 40 above I aver that **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** were not happy with the low offer of about **KENYA SHILLINGS THREE BILLION TWO HUNDRED MILLION (KSHS 3.2 BILLION)** but hostile circumstances forced them to take it as the only other option, which was to file a suit at the LAND DIVISION OF THE HIGH COURT challenging the said compulsory acquisition, would have taken long to resolve the stalemate.

42. Further to paragraph 41 above I aver that so far the Government has paid a deposit of **KENYA SHILLINGS ONE BILLION FIVE HUNDRED MILLION(KSHS 1.5 BILLION)** to **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** .
43. **THAT** I aver that the 13.5 acre parcel is a very prime parcel of land because it strategically positioned (adjacent to Delarue and the Kenya School of monitory studies) and that the land touches Thika super highway on one side, outering road on the other and Mathare north road connecting Huruma and Juja road on the other and that this land can only be compared with land at Eastleigh which is currently being sold at **KENYA SHILLINGS ONE BILLION PER ACRE.**
44. **THAT** further to paragraph 43 above I aver that other properties within the vicinity like the Garden City fetch a price higher than this.
45. **THAT** I aver that **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** demanded **KENYA SHILLINGS 550 MILLION** per acre from the Government but the Government awarded them **KENYA SHILLINGS 206 MILLION** per acre as compensation for the said 13.5 acres where the two public schools in issue herein are situated.
46. **THAT** I aver that the acquisition process in respect of the said 13.5 acres was done according to the law and was/is above board and further aver as follows:

    a) The said acquisition process was done according to the law and was/is above board but a certain clique of individuals who are extortionists are maliciously using the media to spread propaganda against **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** for their own personal interests
    b) The money paid to **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** was paid after the due legal process was followed.

47. The directors of **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** have carried out a private probe /investigation and have established how a scheme to extort money from **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** was crafted by one **MESHACK ONYANGO DEHAY, GEORGE ONDUTO** and **JULIUS NGARE NGUYU.**
48. **THAT** I aver that the said **MESHACK ONYANGO DEHAY, GEORGE ONDUTO** and **JULIUS NGARE NGUYU** are well-known individuals within the streets of Nairobi and well known by Government officials as they visit Government offices on daily basis from one corridor to another searching for/tracing who is being paid by the Government in different Ministries, and through corrupt means they are able to secure/obtain sensitive and confidential Government documents.
49. **THAT** I aver that it is the said **MESHACK ONYANGO DEHAY, GEORGE ONDUTO** and **JULIUS NGARE NGUYU** who have been spreading malicious propaganda against **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS**

LIMITED in the press/ Senate/ National Assembly/ Government offices and security agencies/ anybody who cares to listen to them.

50. **THAT** I aver that the said **MESHACK ONYANGO DEHAY, GEORGE ONDUTO** and **JULIUS NGARE NGUYU** operate with impunity while their many victims suffer immensely under their extortionist schemes.

51. **THAT** I aver that the said **MESHACK ONYANGO DEHAY, GEORGE ONDUTO** and **JULIUS NGARE NGUYU** are lethal/dangerous and should be investigated/tamed to wipe out the injustices that **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** and others have suffered in their hands and in order to protect the silent victims of their extortion/blackmail schemes.

52. **THAT** I aver that the said **MESHACK ONYANGO DEHAY, GEORGE ONDUTO** and **JULIUS NGARE NGUYU** have also been black mailing other Government official involved in the acquisition process herein and they conspire with corrupt Government officials to obtain documents from the Government offices which documents they use to further/execute their extortion schemes.

53. **THAT** I aver that the said **MESHACK ONYANGO DEHAY** and six others had planned to extort a total of **KENYA SHILLINGS 280 MILLION** from the deposit of **KENYA SHILLINGS ONE BILLION FIVE HUNDRED MILLION** which the Government paid **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** as compensation but after **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** resisted such attempts they formulated and fabricated untruths and lies against **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** so as to blackmail/cripple them financially.

54. Further to paragraph 47 to 53 above I urge the Government to take **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED'S** grievances/investigations/information seriously in order to protect business people/ **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED**.

55. **THAT** I aver that the said extortionists have also reported **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** to the Kenya Police and the Director of Criminal Investigation and the Ethics and Anti Corruption Commission who are also currently investigating the issues herein.

56. **THAT** I aver that the ownership of the land in issue before the Senate and the National Assembly (L.R NO 7879/4 and the subsequent sub-divisions) is not in dispute and further aver as follows:

    a) The said land belongs to **AFRISON EXPORT AND IMPORT LIMITED** and **HUELANDS LIMITED** which issue is not in doubt and has never been challenged by anyone and/or any challenges have been dismissed by Courts.

a) The Courts have in numerous cases confirmed **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** as the absolute owners of the land in issue herein.

b) The over ambitious land grabbers (including the two public schools) herein have no legitimate claim to the land and the period they have been trespassing/squatting on the land of **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIM** is immaterial and can not confer title to them.

c) The alleged letters(s) of allotment(s) allegedly issued to the two public schools and members of the public by either the Commissioner of Lands and/or Nairobi City Council are useless/worthless pieces of paper which can not confer legitimate title to them because Land Reference Number 7879/4 and all parcels sub-divided there from were at all material times registered in the name of **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** and the commissioner of lands and/or Nairobi City Council had no power to allocate the same .

d) The Title Deed of Land Reference Number 7879/4(measuring 96 acres) is still intact at the Ministry of Lands and a copy of the same is in the custody of the Official Receiver (which is a department in the Attorney General's chambers) who is co-ordinating the transfer of the respective parcels of land that **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** have sold to the Government. The Official Receiver is also co-ordinating the transfer of the parcel(s) that the Government has acquired from **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED.**

57. The allegation that **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** have been selling the same piece of land to the Government over and over again is unfounded and false as each portion of land **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** have sold to the Government ...s been gazetted separately for acquisition in accordance with the law.

58. ...e allegation that the land's valuation was too high is totally untrue and baseless because the value awarded to **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** by the National Land Commission is half what **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** were seeking given the fact that the land is a freehold title and is for multi-purpose use (that is both commercial and residential).

59. The valuation on the basis of which compensation of about **KENYA SHILLINGS 3.2 BILLION** was paid to **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** was based on the valuation of the Government/National Land Commission valuers.

60. **THAT** I aver that through a letter dated 22nd January 2018 **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** instructed the National Land Commission to pay them the compensation in respect of the two public schools (Drive In Primary School and Ruaraka High School) through the account of **WHISPERING PALMS ESTATE LIMITED** and that there is nothing abnormal and/ or illegal and/or or un-procedural about such instructions.
61. **THAT** I aver that **WHISPERING PALMS ESTATE LIMITED** is a sister company of **AFRISON EXPORT IMPORT LIMITED** and **HUELANDS LIMITED** and the directors of the three companies are the same.
62. Further to paragraph 61 above I aver that **FRANCIS MBURU MUNGAI** is the controlling shareholder/Managing Director of the three companies and he run them on day to day basis and that **DRIVE IN ESTATE DEVELOPERS LIMITED** is the controlling shareholder of **HUELANDS LIMITED.**
63. **THAT** I swear this Affidavit in support of the averments herein.
64. **THAT** what is deponed to herein is true to the best of my knowledge, belief, and information save where herein expressly stated.

SWORN AT NAIROBI
BY THE SAID FRANCIS MBURU MUNGAI
THIS 16th **DAY OF** April **2018**
BEFORE ME

PHILIP S. KISAKI
COMMISSIONER FOR OATHS
P. O. Box 4641 - 00100
NAIROBI

COMMISSIONER FOR OATHS

Afrison Export Import Limited

17th August 2016

Chairman,
National Land commission
Ardhi House,
1st Ngong Avenue, Off Ngong Road,
P.O. Box 44417 – 00100,
NAIROBI

Dear Sir,

RE: HISTORICAL INJUSTICE; PARTIAL OCCUPATION OF PRIVATE PROPERTY L.R. NO. 7879/4 BY THE MINISTRIES OF EDUCATION AND INTERIOR (CHIEF'S CAMP)

The above matter refers.

We, Afrison Export Limited and Huelands Ltd are the registered owners of the above property (LR No. 7879/4) having acquired the same in 1981. The title of the land is a colonial government title with a freehold ownership of over 900 years lease (Copy attached for ease of reference).

Over time, persons unknown to me invaded the above property and have settled on it. Be as it may, Schools, Government administrative offices, Roads and other support services have been constructed on the land to support the population in the area without my consent.

Currently we have a School and Chief's camp on my property for which I have received no compensation.

The matter has been going on for over 30 Years

The purpose of this letter is to request you to compensate our companies for the taken land and illegal occupation for public utilities namely:

i. Ruaraka Secondary School – 13.5364 acres
ii. Chief's Camp - 4.0 acres

Attached please find copies of my valuation reports for both land value and occupation value from the time of illegal occupation took place for your information and further action

Yours faithfully

FRANCIS MBURU
DIRECTOR
AFRISON EXPORT IMPORT LIMITED & HUELANDS LIMITED

Riverside Drive, Riverside Court, Suite B3
P.O. Box 46817- 00100 G.P.O. Nairobi, Kenya

OF NAIROBI AREA

City of Nairobi

ce Map South A·37 / 6·11·b B

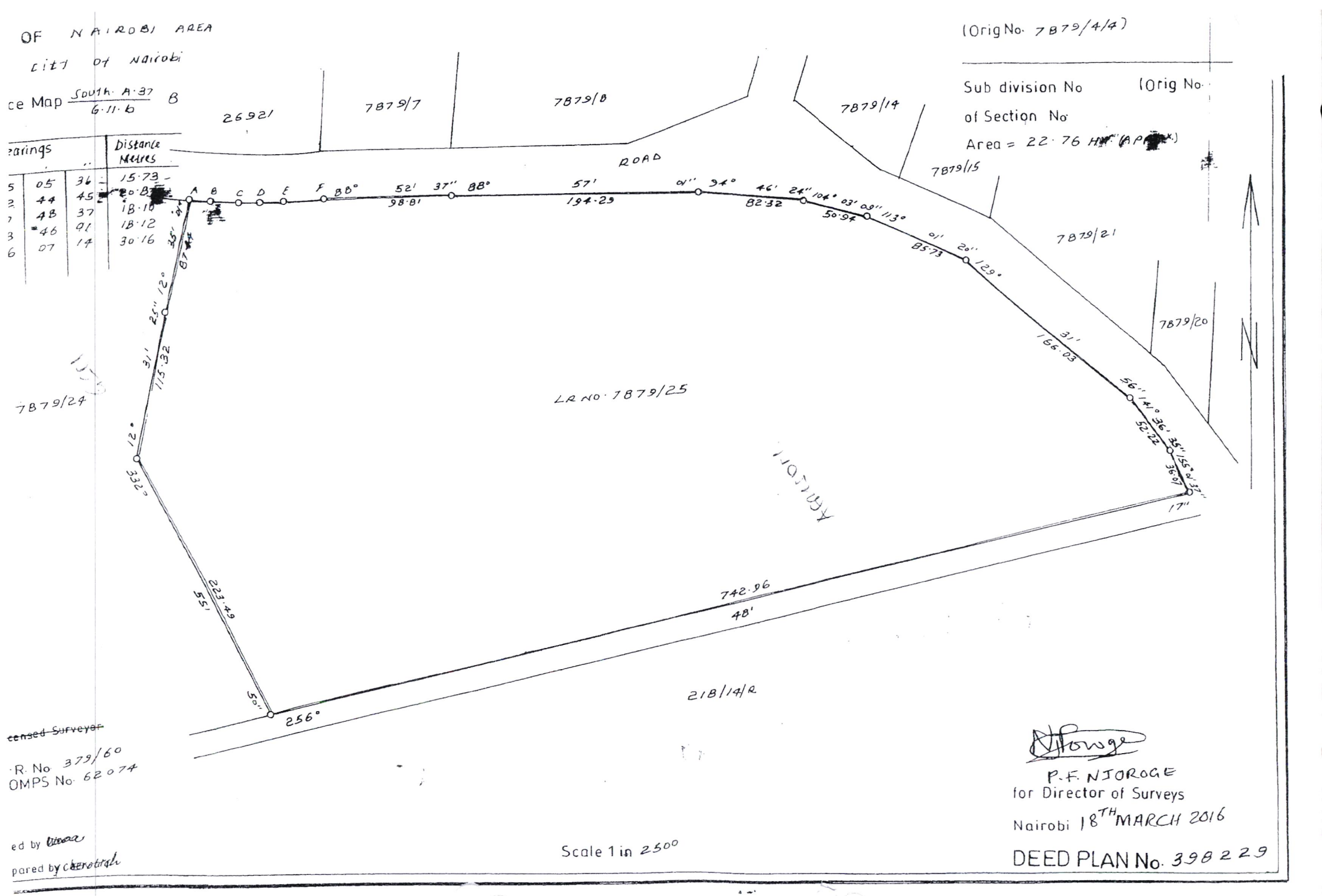
(Orig No. 7879/4/4)

Sub division No (Orig No.

of Section No

Area = 22·76 Ha (AP)

Bearings			Distance Metres
5	05	36	15·73
2	44	45	20·B
7	48	37	1B·10
3	46	01	1B·12
6	07	14	30·16



censed Surveyor

R. No 379/60
OMPS No 62074

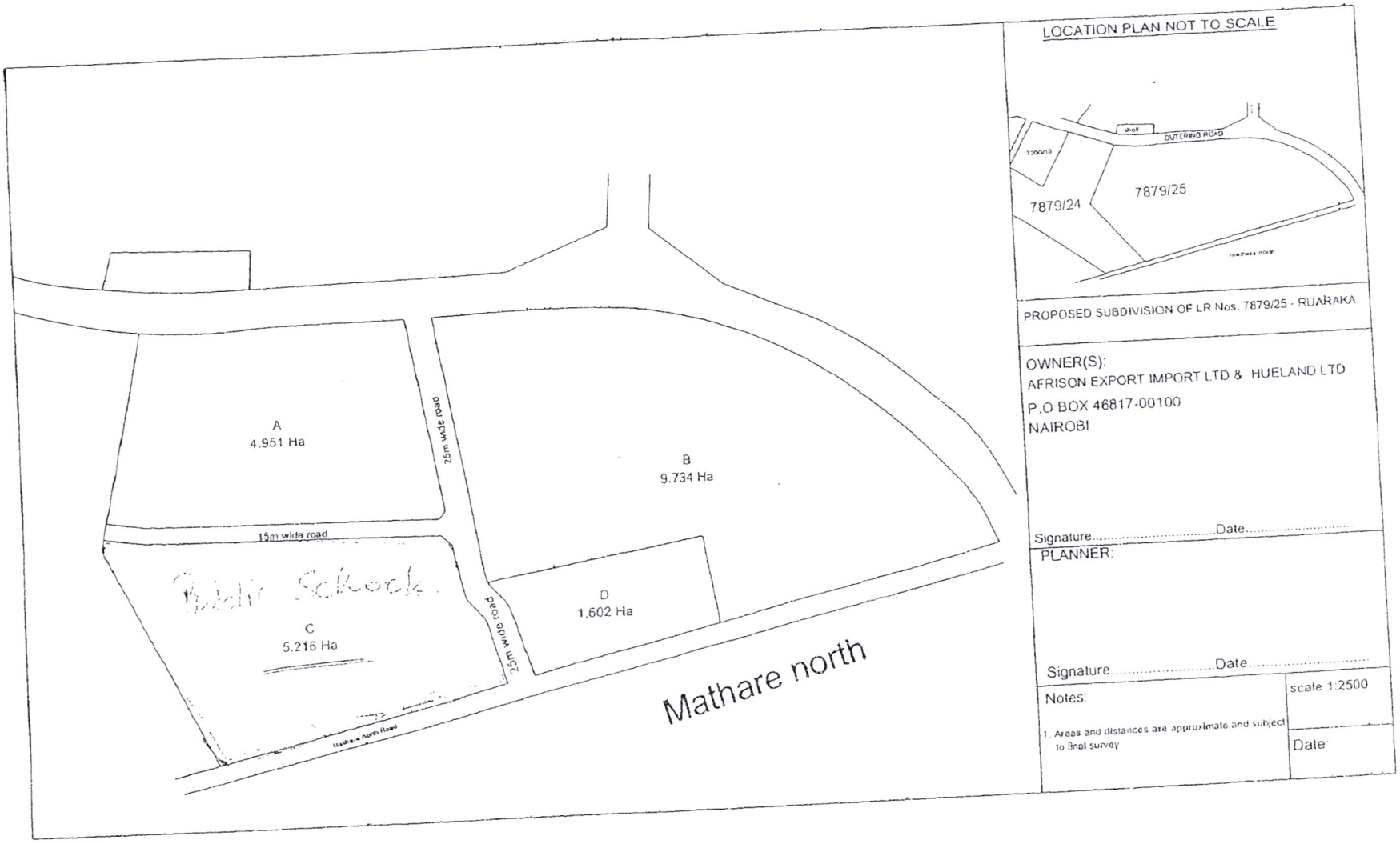
ed by

pared by

Scale 1 in 2500

P.F. NJOROGE
for Director of Surveys
Nairobi 18TH MARCH 2016

DEED PLAN No. 398229



LOCATION PLAN NOT TO SCALE

PROPOSED SUBDIVISION OF LR Nos. 7879/25 - RUARAKA

OWNER(S):
AFRISON EXPORT IMPORT LTD & HUELAND LTD
P.O BOX 46817-00100
NAIROBI

Signature.....Date.....

PLANNER:

Signature.....Date.....

Notes:

1. Areas and distances are approximate and subject to final survey

scale 1:2500

Date

No. C. 23387.

CERTIFICATE OF INCORPORATION

I hereby Certify, that—

AFRISON EXPORT IMPORT LIMITED.....

is this day Incorporated under the Companies Act (Cap. 486) and that the Company is LIMITED.

Given under my hand at Nairobi this FIRST day of DECEMBER One Thousand Nine Hundred and EIGHTY ONE.

Dy. Registrar of Companies

GPK 1111—10m—6/78—(F9)

Telegrams: "INTESTATE", Nairobi
Telephone: Nairobi 227461
Please address all communications to:
THE REGISTRAR –GENERAL

DEPARTMENT OF
THE REGISTRAR GENERAL
P.O. Box 30031- 00 100
NAIROBI

Our Ref:. C. 23387
Your Ref: //

19th August 2015

George Otieno Ondutu
P. O. Box, 8148-00100
Nairobi

Dear Sir/(s),

RE: AFRISON EXPORT IMPORT LIMITED

I refer to your letter last dated 19th August 2015
According to the company's annual returns last dated 31st January 2014, the names of directors/shareholders of the above Company with their particulars are as follows;

Names	Address	Shares
Francis Mburu	P.O. Box, 46817-00100 Nairobi	1
Mark Mungai Mburu	P.O. Box, 46817-00100 Nairobi	NIL
Justin Mungai Mburu	P. O. Box, 46817-00100 Nairobi	NIL
	Non director shareholder	
Equator Brent Limited	P. O. Box, 46817-00100 Nairobi	99
	Total	

The nominal share capital of the company is **Kshs 50,000/-** divided into **500** ordinary shares of **Ksh.100 /-** each.

Yours faithfully,

ASSISTANT REGISTRAR OF COMPANIES.

DUPLICATE FOR THE FILE

No.
C. 23261.

CERTIFICATE OF INCORPORATION

I hereby Certify, that—

HUELANDS LIMITED

is this day Incorporated under the Companies Act (Cap. 486) and that the Company is LIMITED.

Given under my hand at Nairobi this SIXTH day of NOVEMBER One Thousand Nine Hundred and EIGHTY ONE.

Certificate received by John Gitonga

J. Gitonga

Date 7/11/81

Dy. *Registrar of Companies*

GPK 366—5m—4/81—(F9

No. CPR/2009/15903

CERTIFICATE OF INCORPORATION

I hereby CERTIFY, that -

EQUATOR BRENT LIMITED

is this day Incorporated under the Companies Act (Cap. 486) and that the Company is **LIMITED**.

GIVEN under my hand at Nairobi this **22 nd** day of **December** Two Thousand and **Nine**

Registrar Of Companies

Telegrams: "INTESTATE", Nairobi
Telephone: Nairobi 227461
Please address all communications to:

DEPARTMENT OF
THE REGISTRAR GENERAL
P.O. Box 30031 - 00 100
NAIROBI

Our Ref: C. 127827

18th October , 2017

George Otieno Onduto
P. O. Box, 37285-00100
NAIROBI.

Dear Sir/(s),

THE COMPANIES ACT 2015

RE: WHISPERING PALMS ESTATE LIMITED

I refer to your letter dated 29th September, 2017.

According to the company's records (no annual returns has been filed since incorporation) the names of directors/ shareholders of the above Company with their particulars are indicated as follows:-

Names	Address	Nationality	Shares
Francis Mburu	P.O Box 46817-00100 Nairobi	Kenyan	50
Mark Mungai Mburu	P.O Box 46817-00100 Nairobi	Kenyan	25
Justin Mungai Mburu	P.O Box 46817-00100 Nairobi	Kenyan	25
		Total	**100**

The nominal share capital of the company is **Kshs100,000/=** divided into **1,000** ordinary shares of **Kshs100/=** each.

Yours faithfully,

SARAH NDUNG'U
FOR REGISTRAR OF COMPANIES.

Ng'ang'a

Annex IX - Submissions by the Ethics and Anti – Corruption Commission

Harit Sheth Advocates

Arbitrators, Mediators, Commissioner for Oaths & Notaries Public

Harit A. Sheth FCIArb, CPM (MTI)
Richard M. Kariuki MCIArb, CS.

Edwin C. Koech MCIArb
Susan M Wanjohi - Thagana
Victoria M. Mwangome
Monica W. Munene

PRINCIPAL SECRETARY
THE NATIONAL TREASURY
17 MAY 2018
RECEIVED
P. O. Box 30007 - 00100, NAIROBI.

Our Ref: AG/L&E/MICT/137/14
Your Ref:

16th May, 2016

The Honourable Attorney General
Justice (Rtd.) Kihara Kariuki
Sheria House
Harambee Avenue
NAIROBI

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT
RECEIVED
17 MAY 2018
CENTRAL REGISTRY
P. O. Box 30510-00100, NRB

Dear Sir,

RE: HIGH COURT CASE NO. 617 OF 2012
AFRISON EXPORT & IMPORT LIMITED & ANOTHER V. THE ATTORNEY GENERAL & OTHERS

We refer to the subject matter whereby we act for the plaintiffs.

By a judgment delivered in the matter on 12th February 2013, judgment was entered in favor of our clients for the sum of K.Shs.4, 086,883,330/-. By a consent dated 2nd April 2013 the parties mutually agreed to reduce the judgment amount to K.Shs 2, 400,000,000/-.

It was also agreed that the Government will pay a further sum of K.Shs. 150,000,000/- through our office to M/s D. Njogu & Company Advocates for Continental Finance Limited (in liquidation). We have issued our professional undertakings to the said firm in exchange of the title documents including the Re-Conveyance of mortgage over the subject property.

On 25th August 2014 we received KShs.1, 200,000,000/- pursuant to the said consent being 50% of the principal decretal amount.

By another consent dated 25th March 2015 the Government agreed to pay KShs.600, 000,000/- as interest on the decretal amount which amount was received by us on 20th April, 2015.

We received a further sum of KShs. 600,000,000/- on 10th May, 2016 being the second instalment on the decretal amount. A further sum of K.Shs.78, 339,170/- was

4th Floor,
Block 3, Delta Riverside,
Riverside Drive
P.O. Box 43045-00100 NAIROBI, KENYA
TEL: +254 0722 306830/0733 440648
0705 009999/0728 009999
Dropping Zone No. 197, Revlon Plaza
E-mail: karibu@haritsheth-advocates.com
www.haritsheth-advocates.com

inexplicably paid by your office to the firm of Ahmednassir Abdikadir Advocates despite knowledge that we are on record for the plaintiffs and we hold the completion documents and despite our written protestations. The balance of the decretal amount is therefore K.Shs.521,660,830/-.

There is now in total a sum of KShs.671, 660,830/- (K.Shs. 521,660,830/- + K.Shs. 150,000,000/-) outstanding from the Government inclusive of the said amount due to Continental Credit Finance Limited (in liquidation).

We are holding the original indenture of conveyance for the original portion measuring 96 acres being Land Reference Number 7879/4. The conveyance in respect of the sub-divided portion being purchased by the Government being Land Reference Number 7879/24 is with your office.

The Government cannot however register the conveyance in its favor unless we release the said original indenture of conveyance and re-conveyance to your office for which we have given an undertaking to do upon the payment of the said balance to our office.

The other sub-divided portion being Land Reference Number 7879/25 is where the schools stand and we have been reading about this particular portion recently in the newspapers.

There has been unreasonably long delay of about five years now in payment of the full amount by the Government with the sad result that the Government has not gotten title to the property despite having paid a considerable amount of the decretal amount. We are at a loss to understand why the said outstanding amounts have not been allocated in the budget for all these years given the obvious importance of having a title in favour of the Government.

We kindly therefore request you to advise the Treasury to have the said **K.Shs. 671,660,830/-** allocated forthwith and released to us so we can forward the said documents for registration of the title in favour of the Government.

Yours Faithfully,

HARIT SHETH

Cc. The Hon. Solicitor General
Sheria House
Harambee Avenue
NAIROBI

The Principal Secretary to the Treasury
Treasury Building
Harambee Avenue
NAIROBI

The Principal Secretary
[illegible] the President &
Ministry of Interior and Co-ordination of National Government
NAIROBI

The Chairman
Budget and Appropriations Committee
National Assembly
Parliament Building
NAIROBI

Harit Sheth Advocates

Arbitrators, Mediators, Commissioner for Oaths & Notaries Public

Harit A. Sheth FCIArb, CPM (MTI)
Richard M. Kariuki MCIArb, CS.

Edwin C. Koech MCIArb
Susan M Wanjohi - Thagana
Victoria M. Mwangome
Monica W. Munene

Our Ref:

Your Ref: **AG/L&E/MICT/137/14**

16th May, 2018

The Honourable Attorney General
Justice (Rtd.) Kihara Kariuki
Sheria House
Harambee Avenue
NAIROBI

Dear Sir,

RE: HIGH COURT CASE NO. 617 OF 2012
AFRISON EXPORT & IMPORT LIMITED & ANOTHER V. THE ATTORNEY GENERAL & OTHERS

We refer to the subject matter whereby we act for the plaintiffs.

By a judgment delivered in the matter on 12th February 2013, judgment was entered in favor of our clients for the sum of K.Shs.4, 086,883,330/-. By a consent dated 2nd April 2013 the parties mutually agreed to reduce the judgment amount to K.Shs 2, 400,000,000/-.

It was also agreed that the Government will pay a further sum of K.Shs. 150,000,000/- through our office to M/s D. Njogu & Company Advocates for Continental Finance Limited (in liquidation). We have issued our professional undertakings to the said firm in exchange of the title documents including the Re-Conveyance of mortgage over the subject property.

On 25th August 2014 we received KShs.1, 200,000,000/- pursuant to the said consent being 50% of the principal decretal amount.

By another consent dated 25th March 2015 the Government agreed to pay KShs.600, 000,000/- as interest on the decretal amount which amount was received by us on 20th April, 2015.

We received a further sum of KShs. 600,000,000/- on 10th May, 2016 being the second instalment on the decretal amount. A further sum of K.Shs.78, 339,170/- was

OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE
P. O. Box 40112 - 00100
NAIROBI
16 MAY 2018
GOVERNMENT REGISTRY
RECEIVED
Signature

4th Floor,
Block 3, Delta Riverside,
Riverside Drive
P.O. Box 43045-00100 NAIROBI, KENYA
TEL: +254 0722 306830/0733 440648
0705 009999/0728 009999
Dropping Zone No. 197, Revlon Plaza
E-mail: karibu@haritsheth-advocates.com
www.haritsheth-advocates.com

inexplicably paid by your office to the firm of Ahmednassir Abdikadir Advocates despite knowledge that we are on record for the plaintiffs and we hold the completion documents and despite our written protestations. The balance of the decretal amount is therefore K.Shs.521,660,830/-.

There is now in total a sum of KShs.671, 660,830/- (K.Shs. 521,660,830/- + K.Shs. 150,000,000/-) outstanding from the Government inclusive of the said amount due to Continental Credit Finance Limited (in liquidation).

We are holding the original indenture of conveyance for the original portion measuring 96 acres being Land Reference Number 7879/4. The conveyance in respect of the sub-divided portion being purchased by the Government being Land Reference Number 7879/24 is with your office.

The Government cannot however register the conveyance in its favor unless we release the said original indenture of conveyance and re-conveyance to your office for which we have given an undertaking to do upon the payment of the said balance to our office.

The other sub-divided portion being Land Reference Number 7879/25 is where the schools stand and we have been reading about this particular portion recently in the newspapers.

There has been unreasonably long delay of about five years now in payment of the full amount by the Government with the sad result that the Government has not gotten title to the property despite having paid a considerable amount of the decretal amount. We are at a loss to understand why the said outstanding amounts have not been allocated in the budget for all these years given the obvious importance of having a title in favour of the Government.

We kindly therefore request you to advise the Treasury to have the said **K.Shs. 671,660,830/-** allocated forthwith and released to us so we can forward the said documents for registration of the title in favour of the Government.

Yours Faithfully,

HARIT SHETH

Cc. The Hon. Solicitor General
Sheria House
Harambee Avenue
NAIROBI

The Principal Secretary to the Treasury
Treasury Building
Harambee Avenue
NAIROBI

The Principal Secretary
Office of the President &
Ministry of Interior and Co-ordination of National Government
NAIROBI

The Chairman
Budget and Appropriations Committee
National Assembly
Parliament Building
NAIROBI

REPORT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION TO THE DEPARTMENTAL COMMITTEE ON LANDS OF THE NATIONAL ASSEMBLY ON INVESTIGATIONS INTO ALLEGED IRREGULAR COMPENSATION OF LR NO. 7879/4 – AFRISON EXPORT AND IMPORTS LIMITED BY THE NATIONAL LAND COMMISSION

COMMITTEE ROOM

MAIN PARLIAMENT BUILDINGS

==========

THURSDAY

3rd May, 2018

==========

IX

REPORT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION TO THE DEPARTMENTAL COMMITTEE ON LANDS OF THE NATIONAL ASSEMBLY ON INVESTIGATIONS INTO ALLEGED IRREGULAR COMPENSATION OF LR NO. 7879/4 – AFRISON EXPORT AND IMPORTS LIMITED BY THE NATIONAL LAND COMMISSION

Background

The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under the Ethics and Anti-Corruption Commission Act of 2011. The Act was enacted pursuant the requirements in Article 79 of the Constitution. The mandate of the Commission is to combat corruption and economic crime in Kenya through law enforcement, prevention, public education and promotion of ethical standards and practices. Apart from the Act aforesaid and the constitutional mandate conferred on it specifically in enforcement and ensuring compliance with chapter Six of the Constitution, the Commission also derives its statutory mandate from a number of other statutes namely, the Anti-Corruption and Economic Crimes Act of 2003, the Leadership and Integrity Act, 2012 and the Public officer Ethics Act, 2003.

This is a report to the Departmental Committee on Lands of the National Assembly on matters that have been handled by EACC in the exercise of its mandate, relating to or touching on the alleged irregular compensation of LR No. 7879/4 – Afrison Export and Imports Limited by the National Land Commission. It is submitted pursuant to a written request by the Departmental Committee on Lands vide letter ref: NA/DC/LND/2018/(38) dated 24th April, 2018.

PART I: INVESTIGATIONS BY EACC ON RUARAKA LAND

The Commission is currently seized of the following investigations touching on a parcel of land reference **7879/4, Ruaraka**. The table below shows the particulars and status of the investigations.

XI

S/No.	ALLEGATION/PARTICULARS	STATUS
1.	Inquiry into allegation that National Land Commission (NLC) is in the process of compensating the purported owners of the land belonging to Ruaraka High School and Drive-In Primary School on L.R. 7879/4 (Part). The land owners will be compensated Kshs 3,269,040,600 after which Titles to the two schools will be issued to the Ministry of Education	• Documents collected from concerned public institutions • Statements recorded from most of the witnesses • Valuation of the property undertaken • Payments of Kshs. 1.5 billion made by the NLC on 30th January, 2018, leaving a balance of Kshs. 1.7 billion • EACC stopped any further payment until conclusion of investigations on 2nd March, 2018 • Investigations on-going
2.	Inquiry into allegations of irregular compensation on LR 7879/4 for acquisition of a road reserve on Outering Road. The Kenya Urban Roads Authority (KURA), through the National Land Commission (NLC) has so far made a payment of Kshs. 1.4 billion to M/s Afrison Import Export and Ms. Huelands Ltd, the proprietors of LR 7879/4. The proprietors are currently seeking a further compensation of Kshs 2.182 billion. It is also alleged that the land on which they were compensated by KURA had already been acquired by the GSU	Investigations on initial stages
3.	Inquiry into allegations of irregular compensation on LR 7879/4 for acquisition of houses by the Ministry of Interior and Coordination of National Government for use by senior GSU officers. It is further alleged that the survey map was altered so as to overpay the owner. The Government has already made a payment of Kshs 2.4 billion for this land but the title has not been issued or any entries for the government interest made in the title for LR 7879/4.	Investigations on initial stages

DATED at Nairobi this 02 day of May 2018

HALAKHE D. WAQO CBS, MCIArb
SECRETARY/CHIEF EXECUTIVE OFFICER

REPORT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION TO THE DEPARTMENTAL COMMITTEE ON LANDS OF THE NATIONAL ASSEMBLY ON INVESTIGATIONS INTO ALLEGED IRREGULAR COMPENSATION OF LR NO. 7879/4 – AFRISON EXPORT IMPORT LIMITED AND HUELANDS LIMITED BY THE NATIONAL LAND COMMISSION

COMMITTEE ROOM

CONTINENTAL HOUSE

==========

THURSDAY

10th May, 2018

==========

REPORT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION TO THE DEPARTMENTAL COMMITTEE ON LANDS OF THE NATIONAL ASSEMBLY ON INVESTIGATIONS INTO ALLEGED IRREGULAR COMPENSATION OF LR NO. 7879/4 – AFRISON EXPORT IMPORT LIMITED AND HUELANDS LIMITED BY THE NATIONAL LAND COMMISSION

Background

The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under the Ethics and Anti-Corruption Commission Act of 2011. The Act was enacted pursuant the requirements in Article 79 of the Constitution. The mandate of the Commission is to combat corruption and economic crime in Kenya through law enforcement, prevention, public education and promotion of ethical standards and practices. Apart from the Act aforesaid and the constitutional mandate conferred on it specifically in enforcement and ensuring compliance with chapter Six of the Constitution, the Commission also derives its statutory mandate from a number of other statutes namely, the Anti-Corruption and Economic Crimes Act of 2003, the Leadership and Integrity Act, 2012 and the Public officer Ethics Act, 2003.

This is a report to the Departmental Committee on Lands of the National Assembly on matters that have been handled by EACC in the exercise of its mandate, relating to or touching on the alleged irregular compensation of LR No. 7879/4 – Afrison Export and Imports Limited by the National Land Commission. It is submitted pursuant to a written request by the Departmental Committee on Lands vide letter ref: NA/DC/LND/2018/(38) dated 24th April, 2018.

PART I: INVESTIGATIONS BY EACC ON RUARAKA LAND

The Commission is currently seized of the following investigations touching on a parcel of land reference **7879/4, Ruaraka**. The table below shows the particulars and status of the investigations.

CONFIDENTIAL

S/No.	ALLEGATION/PARTICULARS	STATUS
1.	Inquiry into allegation that National Land Commission (NLC) is in the process of compensating the purported owners of the land belonging to Ruaraka High School and Drive-In Primary School on L.R. 7879/4 (Part). The land owners will be compensated Kshs 3,269,040,600 after which Titles to the two schools will be issued to the Ministry of Education	• Report received on 25th January 2018 through an intelligence report. • Investigations commenced immediately. • Preliminary investigations revealed: i. The total amount payable as compensation for the land LR 7879/4 was Kshs. 3,269,040,600 ii. On 30th January 2018, the National Land Commission made an initial payment of Kshs. 1.5 billion to M/s Whispering Palms Estate Ltd. iii. The received funds of Kshs. 1.5 billion was subsequently moved to other bank accounts. • A full investigation was commenced and some of the actions taken so far include: i. On 2nd March, 2018 EACC stopped NLC from making further payment pending the conclusion of the investigations ii. Documents relating to the case were collected from concerned public institutions iii. Statements have been recorded from both witnesses and suspects. iv. A Valuation of the property has been undertaken. • The Investigations is on-going
2.	Inquiry into allegations of irregular compensation on LR 7879/4 for acquisition of a road reserve on Outering Road. The Kenya Urban Roads Authority (KURA), through the National Land Commission (NLC) has so far made a payment of Kshs. 1.4 billion to M/s Afrison Import Export and Ms. Huelands Ltd, the proprietors of LR 7879/4. The proprietors are currently seeking a further compensation of Kshs 2.182 billion. It is also alleged that the land on which they were compensated by KURA had already been acquired by the GSU	Investigations on-going

CONFIDENTIAL

3.	Inquiry into allegations of irregular compensation on LR 7879/4 for acquisition of houses by the Ministry of Interior and Coordination of National Government for use by senior GSU officers. It is further alleged that the survey map was altered so as to overpay the owner. The Government has already made a payment of Kshs 2.4 billion for this land but the title has not been issued or any entries for the government interest made in the title for LR 7879/4.	Investigations on-going

DATED at Nairobi this 9th day of May 2018

HALAKHE D. WAQO CBS, MCIArb
SECRETARY/CHIEF EXECUTIVE OFFICER

CONFIDENTIAL

Annex X - Submissions by the Principal Secretary, State Department for Early Learning Basic Education

REPORT ON LAND COMPENSATION FOR RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOLS

The Ministry received a letter from the National Land Commission on the 13th September 2016 addressed to the Cabinet Secretary indicating that they had received a complaint from Afrison Export and Import Limited the registered owners of LR no.7879/4 that the government schools has been occupying their parcel of land measuring13.5364 acres for 30years without compensation. The commission in their letter indicated that it is the legal entity mandated to determine and advise on compensation and that we should make arrangements to compensate the land owner after the due legal process has been conducted.

The commission indicated that they had done ground inspection to verify the complaint and confirmed the existence of the schools (Ruaraka High School and Drive inn Primary School.

On the 7th February 2017 the Ministry acknowledged that the schools were within the said LR NO7879/4 and sought guidance from the commission on the way forward.

On the 16th March 2017 the commission wrote to the ministry and advised that as per the provisions of Section 107(1) of the Land Act where it prescribes that whenever National Government is satisfied that it may be necessary to acquire some particular parcel of land, the respective Cabinet Secretary should submit a formal request for acquisition of public land to the commission.

In that regard, the Cabinet Secretary made the request as advised by the commission on 17th March 2017.

The commission on the 24th April, 2017 wrote back to the Ministry advising that according to the provisions of the Land Act 2012, Part Viii on compulsory acquisition prompt compensation should be paid. The commission indicated that the two schools occupy 13.5364acres valued at Kshs.3,269,040,600 inclusive of 15% statutory disturbance allowance and that the commission had duly undertaken the legal process and the ministry was expected to deposit the funds in the commission's account.

As part of ensuring that due process had been followed, on the 29th June 2017, the principal Secretary wrote to the Attorney General attaching all documents in possession of the ministry then including assessment report of the schools

indicating that Ruaraka Secondary School was established in 1984 while Drive inn Primary School was established in 1987.

- Key among the documents was a claim by the school that they were allocated the land
- A letter dated 3rd August 1984, where the Ministry of Education had written to the commissioner of land supporting the Company's bid to erect a private school on the said land.
- A certificate of Postal Search dated 8th December 2016 indicating that the Land Reference LR NO.7879/4 measuring approximately 96acres under freehold tenure is registered in the name of Afrison Export and Import Ltd and Huelands Ltd as tenants in common and equal shares.

On **30th June 2017**, the Ministry through the Principal Secretary wrote to the Principal Secretary National Treasury forwarding a letter dated 24th April 2017 from the National Lands Commission indicating the valuation of the land at Kshs.3, 269,040,600. In the letter the Principal Secretary Informed the Principal Secretary National Treasury that they had sought the legal opinion of the Attorney General which would be shared once received with treasury on the compensation. The letter to Treasury was to bring to their attention the budgetary implication of the same.

The opinion from the Attorney General dated **7th July 2017** was sent to Treasury on **18th July 2017**.

The National Treasury through the Principal Secretary wrote to the Ministry on **13th November 2017** giving authority to the ministry to spend Kshs.1, 500,000,000 in the compulsory acquisition of part of LR No. 7879/4 pending regularization of the expenditure in the 2017/18 supplementary II estimates indicating the balance will be reviewed in the context of 2018/19 budget.

The Ministry initiated the process of transferring the funds to the National Land Commission on the **11th December 2017** by requesting exchequer from the National Treasury(attached is the request letter). The exchequer reflected on our accounts on the 11th January 2018.

Upon seeking necessary advice from internal team of staff, the Principal Secretary wrote to the commission seeking necessary documents to commence transfer process of the funds. (*Attached is a letter dated 15th January 2018*) seeking the commission to avail the valuation report and formal request for the funds.

The commission responded on **16th January 2018** with the said documents. Upon receipt, the process of transferring of the funds commenced on **the19th January 2018** with the senior Accountant General seeking authority to transfer the funds indicating that the following documents were available

1. Valuation Report
2. Formal request letter from NLC
3. Letter of the Cabinet Secretary instructing NLC to acquire the land
4. Certificate of search
5. Copy of Indenture
6. All relevant documents.

The Ministry wrote to NLC on 19th January 2018 indicating the release of the funds which hit their National bank Account on **22nd January 2018**. Given that Ministry of Education was not the last government spending entity; the NLC was advised to ensure that

- They were in possession of instruments of ownership for the land
- Due diligence was exercised in the process of compulsory acquisition

On 15th **February 2018** the National Land Commission confirmed disbursement of the funds to the land owners. The ministry wrote back to the commission on **21st February 2018** asking them to ensure that given the partial payments of the land, the interest of the schools should be secured.

- We wish to table all documents in a bundle
- We appreciate the committee for the critical role they have played in this matter and we hope to get finality to this long outstanding matter.
- We also acknowledge the critical role the National Land Commission has played and continue to do so in securing public school land, ensuring that the schools obtain their land title documents and resolving land disputes in schools like Naka Primary School in Nakuru, Kagumo TTC in Nyeri, Mwamdudu Primary in Kwale, Shree Cutchi Primary in Nairobi and Chebisaas Girls in Nandi.

The 15% statutory disturbance allowance

480 M
2.8 Billion } 214 Million per Acre

APPENDICES

1. Letter from National Land Commission to the Cabinet Secretary dated 13th September, 2016
2. Letter to Chair National Land Commission dated 7th February, 2017
3. Letter from Chair National Land Commission to Principal Secretary dated 16th February, 2017
4. Letter to Chair National Land Commission by Cabinet Secretary dated 17th March, 2017
5. Letter from National Land Commission to the Cabinet Secretary dated 24th April, 2017
6. Letter to the Attorney General dated 29th June, 2017
7. Letter to Principal Secretary, National Treasury dated 30th June, 2017
8. Legal opinion dated 7th July, 2017
9. Assessment Report by the Ministry's Quality Assurance Officers dated 3rd February, 2017
10. Letter from National Land Commission dated 21st June, 2017
11. Gazette Notice dated 30th June, 2017
12. Letter dated 13th November, 2017 by the Principal Secretary, National Treasury

MINISTRY OF EDUCATION

Office of the Principal Secretary, State Department of Early Learning and Basic Education

Telegrams: "EDUCATION", Nairobi
Telephone: Nairobi 3318581
Fax No.: 254-2-214287
E-mail: **ps@education.go.ke**
When replying please quote

PRINCIPAL SECRETARY
JOGOO HOUSE "B"
HARAMBEE AVENUE
P. O. BOX 30040
NAIROBI

Ref. No. MOE.GEN/4L/12/17

15th May, 2018
date

Dr. Nicholas Muraguri
Principal Secretary
Ministry of Lands
P.O. Box 30450-00100
NAIROBI

Dear PS

RE: CONFIRMATION OF LAND ACREAGE FOR RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

Following our appearance today before the Parliamentary Departmental Committee on lands, it came to our attention that there is an inconsistency on the land acreage being occupied by the two schools i.e. the letter from the claimant indicates the acreage as 13.5364 while the valuation report places the acreage at 13.7701.

The purpose of this letter is to urgently request that you send a surveyor to the ground to survey and confirm the right acreage of the land.

Yours Sincerely

Dr. Belio Kipsang, CBS
PRINCIPAL SECRETARY

14 SEP 2016

NATIONAL LAND COMMISSION
Our Land, Our Wealth, Our Heritage

OFFICE OF THE CHAIRMAN

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

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

VAL.1446

13th September, 2016

Dr. Fred Matiang'i
Cabinet Secretary
Ministry of Education, Science & Technology
P. O. Box 30040-00100
NAIROBI.

Dear Dr. Matiang'i

ACQUISITION OF PART OF L.R. NO. 7879/4 – RUARAKA PRIMARY AND SECONDARY SCHOOLS

Further to our letter Ref. VAL.1446 dated 29th August 2016 we draw your attention to the acreage that Afrison Export Import Limited is laying claim for compensation on L.R. No. 7879/4 (part) to be 13.5364 acres.

This is further to receipt by the Commission a complaint from Afrison Export & Import Limited who are the registered owner of L.R. No. 7879/4 cited along Outering Road. The land owner has placed a complaint to the Commission that the Government has been occupying his land for the last 30 years at no compensation. These are some of the issues the Commission is mandated to look at in reference to Article 40(3) and 67(g) of the Constitution and the Land Act Part VIII on prompt payment in full of just compensation upon depriving a person of his property.

The Commission has undertaken a ground inspection to verify the complaint and confirmed the existence of Ruaraka Primary and Secondary School on the above

quoted land. The complainant has indicated that the National Government institutions occupy an area of 13.5364 acres. He has also submitted an independent valuation report as a compensation claim, however, the Commission is the legal entity mandated to determine and advise on compensation values. This letter is therefore to request the Ministry of Education, Science and Technology to confirm the status and make arrangements to compensate the land owner in order to close this long outstanding matter.

Copy of title and the complaint letter are hereby attached for ease of reference.

.

Yours Sincerely.

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics

Encl.

Afrison Export Import Limited

17th August 2016

NATIONAL LAND COMMISSION
VICE-CHAIR
29 AUG 2016
RECEIVED
P.O. Box 44417 NAIROBI

Chairman,
National Land commission
Ardhi House,
1st Ngong Avenue, Off Ngong Road,
P.O. Box 44417 – 00100,
NAIROBI

Dear Sir,

RE: HISTORICAL INJUSTICE; PARTIAL OCCUPATION OF PRIVATE PROPERTY L.R. NO. 7879/4 BY THE MINISTRIES OF EDUCATION AND INTERIOR (CHIEF'S CAMP)

The above matter refers.

We, Afrison Export Limited and Huelands Ltd are the registered owners of the above property (LR No. 7879/4) having acquired the same in 1981. The title of the land is a colonial government title with a freehold ownership of over 900 years lease (Copy attached for ease of reference).

Over time, persons unknown to me invaded the above property and have settled on it. Be as it may, Schools, Government administrative offices, Roads and other support services have been constructed on the land to support the population in the area without my consent.

Currently we have a School and Chief's camp on my property for which I have received no compensation.

The matter has been going on for over 30 Years

The purpose of this letter is to request you to compensate our companies for the taken land and illegal occupation for public utilities namely:

i. Ruaraka Secondary School – 13.5364 acres
ii. Chief's Camp - 4.0 acres

Attached please find copies of my valuation reports for both land value and occupation value from the time of illegal occupation took place for your information and further action

Yours faithfully

FRANCIS MBURU
DIRECTOR
AFRISON EXPORT IMPORT LIMITED & HUELANDS LIMITED

Riverside Drive, Riverside Court, Suite E2
P.O. Box 46817-00100 G.P.O. Nairobi, Kenya

CC.

Cabinet Secretary,
The Ministry of Ministry Of Interior and Coordination of National Government,
Harambee House, Harambee Avenue,
P.O. Box 30510 – 00100,
NAIROBI.

Cabinet Secretary,
The Ministry of Education, Science and Technology
Jogoo House B, Harambee Avenue
P.O Box 30040-00100
NAIROBI, Kenya

PROVISIONAL 30 DEC 1981 £21,000 D ϕ/=

THIS INDENTURE is made the Twenty-ninth day of December One thousand nine hundred and Eighty-One BETWEEN JORETH LIMITED a limited liability company incorporated in the Republic of Kenya having its registered office at Nairobi and of Post Office Box Number 47122 Nairobi aforesaid (hereinafter called "the Vendor" which expression shall where the context so admits include its successors and assigns) of the one part and AFRISON EXPORT IMPORT LIMITED a limited liability company incorporated in the Republic aforesaid and of Post Office Box Number 40469 Nairobi and HUELANDS LIMITED a limited liability company incorporated in the Republic aforesaid and of Post Office Box Number 57192 Nairobi (both of which are hereinafter called "the Purchasers" which expression shall where the context so admits include their respective successors and assigns) of the other part:

WHEREAS by virtue of an Indenture dated the Fourth day of December One thousand nine hundred and Fifty-eight (registered in the Government Lands Registry at Nairobi in Volume N 43 Folio 302/1) and made between Gladys Thomson (therein described) of the one part and the Vendor of the other part for the consideration therein mentioned ALL THAT piece or parcel of land situate in the City of Nairobi in the Nairobi Area of the Republic of Kenya containing by measurement One hundred and Sixty-eight decimal five 168.5 (~~109.5~~) acres or thereabouts known as Land Reference Number 7879 (Original Number 216/2 & 4922/4) and which said piece of land is more particularly delineated and described on Plan Number 47389 annexed to the Indenture in recital and thereon bordered red was conveyed unto the Purchaser for an estate in fee simple Subject to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder and

WHEREAS the Vendor has caused the said piece of land to be divided into

INDENTURE WITNESSETH that in consideration of the sum of Shillings Fourteen Million (Shs.14,000,000/-) paid by the Purchasers to the Vendor on or before the execution hereof (the receipt whereof is hereby acknowledged by the Vendor) the Vendor being beneficial owner HEREBY CONVEYS unto the Purchasers ALL THAT piece or parcel of land situate in the City of Nairobi in the Nairobi Area of the Republic of Kenya containing by measurement Ninety six acres (96 acres) (approximately) known as Land Reference Number 7879/4 being a remainder portion of the premises comprised in and conveyed by the Indenture dated the Fourth day of December One thousand nine hundred and Fifty-eight (registered as aforesaid in Volume N 43 Folio 302/1) and is more particularly delineated and described on Land Survey Plan Number 85744 annexed hereto and thereon bordered red TO HOLD the same unto the Purchasers as tenants in common in equal shares for an estate in fee simple SUBJECT to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder.

IN WITNESS WHEREOF the Vendor and the Purchasers have caused their respective Common Seals to be hereunto affixed the day and year hereinbefore written.

SEALED with the Common Seal)
of JORETH LIMITED)
in the presence of :)

DIRECTOR

DIRECTOR/SECRETARY

SEALED with the Common Seal

of AFRISON EXPORT IMPORT LIMITED

in the presence of :-

DIRECTOR

DIRECTOR/SECRETARY

G. K. WARUHIU — ADVOCATE
P.O. Box 47122
NAIROBI

SEALED with the Common Seal

of HUELANDS LIMITED

in the presence of :

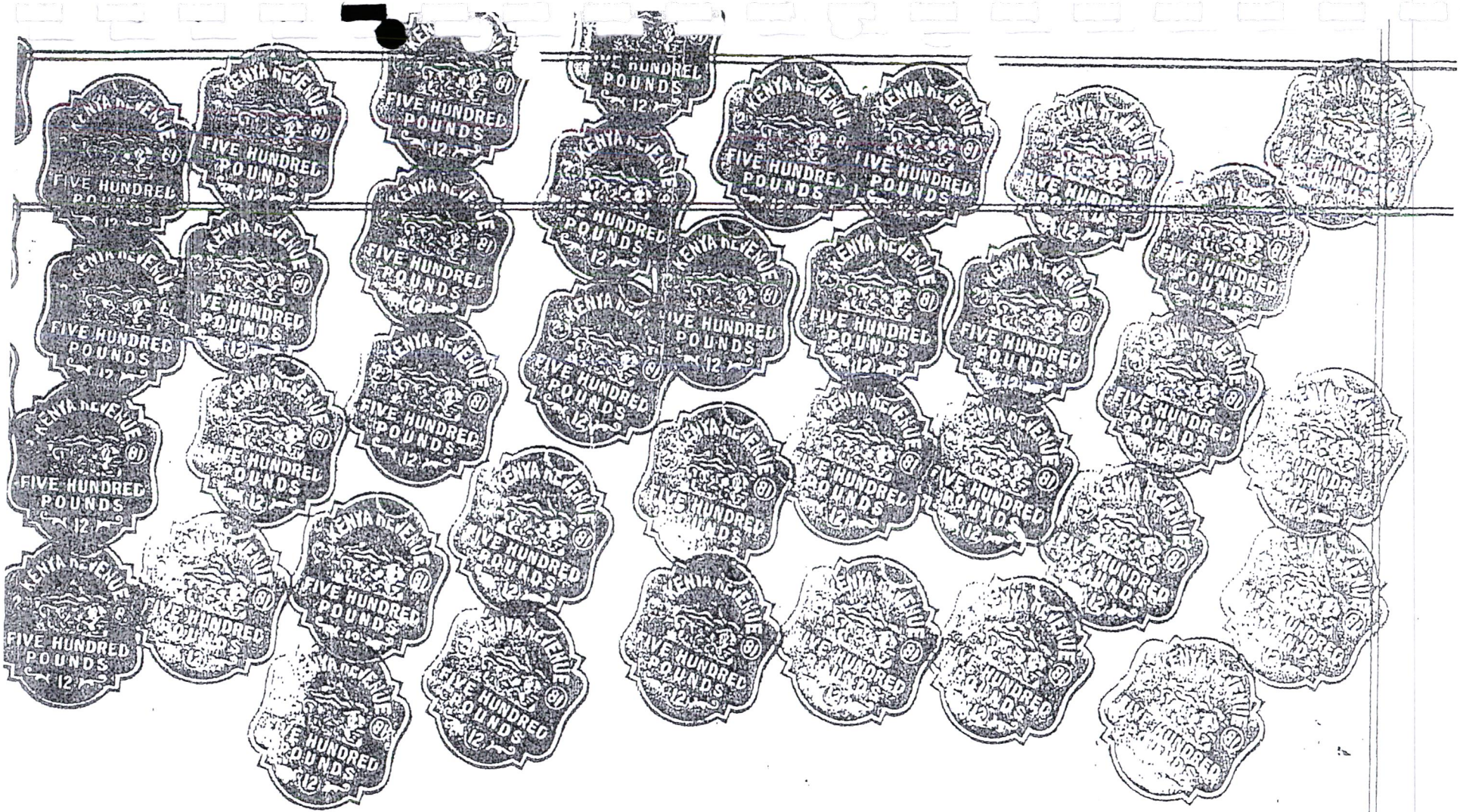
DIRECTOR

DIRECTOR/SECRETARY

G. K. WARUHIU — ADVOCATE
P.O. Box 47122
NAIROBI

11.55 A 30-12-81

1300 N52 42/1 16178


KENYA REVENUE
FIVE HUNDRED POUNDS

MINISTRY OF EDUCATION

Office of the Principal Secretary, State Department of Basic Education

Telegrams: "EDUCATION", Nairobi
Telephone: Nairobi 3318581
Fax No.: 254-2-214287
E-mail: ps@education.go.ke
When replying please quote

PRINCIPAL SECRETARY
JOGOO HOUSE "B"
HARAMBEE AVENUE
P. O. BOX 30040
NAIROBI

Ref. No. MOE/CONF/G5

Date 7th February, 2017

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman,
National Land Commission,
Ardhi House
NAIROBI.

Dear

RE: LR NO 7879/4 RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

This is to acknowledge receipt of your letter ref. Val 1446 dated 13th September, 2016 addressed to the Cabinet Secretary in regard to the above subject matter.

The Ministry acknowledges that both Ruaraka High and Drive Inn Primary Schools occupy art of the above LR No which is private land. In the interest of securing public investments in the two schools, it is necessary to have the land on which the schools are developed, acquired through the principle of eminent domain i.e. acquisition in the public interest. As per your constitutional and legal mandate, the National Land Commission is requested to guide us in this process, including the gazetting of the said parcel, for purposes of compulsory acquisition and after gazetting, provide us with acquisition plans.

The Ministry therefore awaits your advisory note to determine the total acreage of the land on which the two schools occupy and the estimated value for the Ministry's further action.

Yours Sincerely

Dr. Belio R. Kipsang, CBS
PRINCIPAL SECRETARY

Copy to: Cabinet Secretary
Ministry of Education

NATIONAL LAND COMMISSION
Our Land, Our Wealth, Our Heritage

OFFICE OF THE CHAIRMAN

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

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

Ref: VAL.1446

16th February 2017

Dr. Belio R. Kipsang, CBS
Principal Secretary
Ministry of Education
Jogoo House "B"
NAIROBI

Dear Dr. Kipsang,

L.R. NO. 7879/4 RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

We are in receipt of your letter Ref. MOE/CONF/G5 dated 7th February 2017.

The Commission shall undertake the proposed works under the law. Please note that Section 107(1) of the Land Act prescribes that whenever the National Government is satisfied that it may be necessary to acquire some particular land, the respective Cabinet Secretary shall submit a request for acquisition of public land to the Commission to acquire the land on its behalf.

Kindly make your Cabinet Secretary aware of this requirement so that we proceed with the intended acquisition.

Yours Sincerely,

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics

Copy to: **Director, Valuation & Taxation, NLC**

MINISTRY OF EDUCATION SCIENCE & TECHNOLOGY
RECEIVED
17 FEB 2017
PRINCIPAL SECRETARY'S OFFICE
P. O. Box 30040-00100,
NAIROBI
STATE DEPARTMENT OF EDUCATION

(2)

Republic of Kenya

MINISTRY OF EDUCATION

Office of the Cabinet Secretary

Telephone: +254 20 3318581
Facsimile: +254 20 2251991
Email: cs@education.go.ke
Website: www.education.go.ke

Jogoo House "B"
Harambee Avenue
P. O. Box 30040-00100
Nairobi, Kenya

When replying please quote:

MOE. CONF/G5 VOL.II/16

17th March 2017

Prof. Mohammed A. Swazuri, PhD, OGW
Chairman
National Land Commission
Ardhi House
P.O. Box 44417
NAIROBI

Dear Prof. Swazuri,

RE: L.R. NO. 7879/4 RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

I refer to your letter dated 16th February 2017 addressed to Dr. Belio Kipsang, the Principal Secretary responsible for Basic Education, in response to his letter dated 7th February 2017.

As per the provisions of Section 107(1) of the Land Act, the Ministry of Education has determined that it is necessary to acquire all that piece of land on which the two respective institutions named above, are situated. I therefore formally request the National Land Commission to commence the process leading to the acquisition of the said private land.

The procedure for the acquisition is well within your purview and I will urge that you address yourself to this matter as soon as practicable to enable the two government institutions acquire title deeds to the land they currently occupy.

Thank you for your cooperation.

Yours Sincerely

Fred Matiang'i, PhD, EGH
CABINET SECRETARY

Copy to: **Dr. Belio R. Kipsang, CBS**
Principal Secretary
State Department of Basic Education
Ministry of Education
NAIROBI

NATIONAL LAND COMMISSION
Our Land, Our Wealth, Our Heritage

OFFICE OF THE CHAIRMAN

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

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

NLC/VAL.1446

24th April 2017

Dr. Fred Matiang'i
Cabinet Secretary
Ministry of Education, Science & Technology
P. O. Box 30040-00100
NAIROBI.

Dear

L.R. 7879/4 RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

The Commission refers to your letter Ref. MOE/CONF/G5 dated 7th February 2017 whereby the Ministry of Education acknowledges that both Ruaraka High and Drive Inn Primary Schools occupy part of L.R. No.7879/4 which is private land. The commission has noted the Ministry's interest to secure the public investments in the two schools through the principle of eminent domain.

The purpose of this letter is to refer you to provisions in the Land Act 2012 Part VIII on compulsory acquisition whereby prompt compensation is to be paid. The land owner has cited a survey of the schools as occupying 13.5364 acres and the Commission's letter Ref.VAL.1446 of 13th September 2016 (copies attached for ease of reference)

Therefore kindly set aside the compensation funds for this land amounting to **Kshs.3,269,040,600/=**inclusive 15% statutory disturbance allowance provided under the Land Act 2012. The Commission is duly undertaking the legal process and the Ministry is expected to deposit the funds in the Commission details as provided hereunder;

Account Name	:	**National Land Commission**
Bank	:	**National Bank**
Branch	:	**Upper Hill**
Account Number	:	**0100103298000**
Bank Code	:	**12004**

Your prompt action will enable the Commission to disburse the payments on time in accordance with constitutional provision on promptness of just compensation once the acquisition process is commenced.

Yours sincerely

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics

NATIONAL LAND COMMISSION
Our Land, Our Wealth, Our Heritage

OFFICE OF THE SECRETARY/CEO

Website: www.landcommission.go.ke
Telephone: Nairobi 2718050
Email Address: info@landcommission.go.ke

When replying please quote

ARDHI HOUSE
1ST NGONG AVENUE
OFF NGONG ROAD
P. O. BOX 44417
NAIROBI

Ref. CF 4271

21st June 2017

SCFO/AS DLS
Process as here in
22/6/17

Dr. Belio R. Kipsang, CBS
Principal Secretary
Ministry of Education
Jogoo House "B"
Harambee Avenue
NAIROBI.

Dear Sir,

THE LAND ACT (NO. 6 OF 2012)
L.R. NO. 7979/4 RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

We refer to your letter Ref. MOE/CONF/G5 dated 7th February 2017. Please let us have a Banker's Cheque for Kshs.6,960/= (Kenya Shillings Six Thousand Nine Hundred and Sixty shillings only) payable to Government Printer to facilitate Gazettement of the above project Notice of Intention to acquire.

Enclosed herewith please find Proforma Invoice No. PUBS No.085693 16-17 dated 21st June 2017.

Yours Sincerely,

Chavangi Aziz Tom
SECRETARY/CEO

Encl.

21 JUN 2017

REPUBLIC OF KENYA

GOVERNMENT PRINTERS

P.O. Box 30128–00100, NAIROBI

Pro Forma Invoice

PUBS. No. 185693 16—17

National Land Commission
P.O Box 44417
NAIROBI

Telephone: "GAZETTE", Nairobi
Telephone: Nairobi 317840/1/2
Fax: 2226602

21/06/17

PROFORMA INVOICE for the following goods as per your Requisition

YOUR ORDER NO. AND DATE	DESCRIPTION	QUANTITY	AMOUNT KSh.	AMOUNT cts.
	Gazettement of:			
	Drive Inn primary school and Ruaraka High school	½ Column	6,000	00
	+ 16% VAT		960	00
	Bks 6,960/=			
		TOTAL ..	6,960	00

PROFORMA

IMPORTANT:

Amount quoted is in Kenya Currency.
Please return a copy of the Pro Forma Invoice with the payment.
Publication ordered will be dispatched on the settlement of this Invoice plus postage.
The prices given in this Invoice are bound to change without notice.
Please quote the Invoice No. on all correspondence relating to this Invoice.
Additional charges will be made if customer changes original design.

for Government Printer

(L) 631—140 Bks.—2/20

GAZETTE NOTICE NO.....

THE LAND ACT (NO. 6 OF 2012)

MINISTRY OF EDUCATION - DRIVE INN PRIMARY SCHOOL AND RUARAKA HIGH SCHOOL

INTENTION TO ACQUIRE

IN PURSUANCE of Sections 112 and 162(2) of the Land Act No. 6 of 2012, the National Land Commission on behalf of Ministry of Education gives notice that the Government intends to acquire the following parcels of land for Ruaraka High School and Drive Inn Primary School in Nairobi County.

SCHEDULE

L.R. No.	Registered Owner	Area to Be acquired (Ha)
L.R. 209/7879/4 Purpose – Drive Inn Primary School	Afrison Import Export Ltd & Huelands Limited	2.8255
L.R. 209/7879/4 Purpose – Ruaraka High School	Afrison Import Export Ltd & Huelands Limited	2.7472

Plans of the affected land may be inspected during office hours at the office of the National Land Commission, Ardhi House, 3rd Floor Room No. 305, 1st Ngong Road Nairobi. Notice of Inquiries will be published in the Kenya Gazette as per Section 112(1) of the Land Act (No. 6 of 2012).

Dated .....Day of 2017

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission
Associate Professor in Land Economics

issued to the said M'Atugi M'Ichunge (deceased), shall be deemed to be cancelled and of no effect.

Dated the 30th June, 2017.

C. M. MAKAU,
Land Registrar, Meru District.

MR/3425459

GAZETTE NOTICE NO. 6321

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Joseph Kajogi M'Rujau (deceased), is registered as proprietor of all that piece of land known as Abogeta/U-Kiungone/1872, situate in the district of Meru, and whereas the High Court in succession cause No. 486 of 2012, has issued grant of letters of administration and certificate of confirmation of grant in favour of Jane Ncoro Kajogi, and whereas the said court has executed an application to be registered as proprietor by transmission R.L 19, and whereas the land title deed in respect of Joseph Kajogi M'Rujau (deceased) is lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with registration of the said application to be registered as proprietor by transmission R.L. 19 in the name of Jane Ncoro Kajogi, and upon such registration the land title deed earlier issued to the said Joseph Kajogi M'Rujau (deceased), shall be deemed to be cancelled and of no effect.

Dated the 30th June, 2017.

C. M. MAKAU,
Land Registrar, Meru District.

MR/3425459

GAZETTE NOTICE NO. 6322

THE LAND ACT

(*No.* 6 *of* 2012)

MINISTRY OF EDUCATION

DRIVE INN PRIMARY SCHOOL AND RUARAKA HIGH SCHOOL

MINISTRY OF TRANSPORT AND INFRASTRUCTURE–ACCESS ROAD TO UPGRADED OUTERING ROAD

INTENTION TO ACQUIRE LAND

IN PURSUANCE of sections 112 and 162 (2) of the Land Act (No. 6 of 2012), the National Land Commission on behalf of Ministry of Education gives notice that the Government intends to acquire the following parcels of land for Ruaraka High School, Drive Inn Primary School and access road to the upgraded Outering Road in Nairobi County.

SCHEDULE

L.R. No.	*Registered Owner*	*Area to be Acquired (Ha)*
L.R. 209/7879/4 Purpose—Drive Inn Primary School	Afrison Import Export Limited and Huelands Limited	2.8255
L.R. 209/7879/4 Purpose—Ruaraka High School	Afrison Import Export Limited and Huelands Limited	2.7472
L.R. 209/7879/4 Purpose—Access Road to upgraded Outering Road	Afrison Import Export Limited and Huelands Limited	1.198

Plans of the affected land may be inspected during office hours at the office of the National Land Commission, Ardhi House, 3rd Floor, Room No. 305, 1st Ngong Road, Nairobi. Notice of inquiries will be published in the *Kenya Gazette* as per section 112 (1) of the Land Act (No. 6 of 2012).

Dated the

MUHAMMAD A. SWAZURI,
Chairman, National Land Commission.

MR/3588561

GAZETTE NOTICE NO. 6323

THE CONSTITUTION OF KENYA

TURKANA COUNTY ASSEMBLY STANDING ORDERS

FIRST ASSEMBLY (FIFTHE SESSION)

HOUSE BUSINESS CALENDER (2017)

IT IS NOTIFIED for general information of the members of county Assembly of Turkana and the public that pursuant to the provisions of Standing Order 26 of the Turkana County Assembly Standing, by a resolution made on 19th April, 2017, the County Assembly approved the calendar of the Assembly (Regular Sessions) for 2017 as set out in the Schedule.

SCHEDULE

Period	*Days*
A: Sitting Days Tuesday, 7th February to Thursday, 20th April, 2017 *B: Short Recess* Friday, 21st April, 2017 to Monday, 8th May, 2017	Tuesday, 7th February to Monday, 8th May, 2017 Tuesday (Morning) Wednesday (Morning and Afternoon and Thursdays (Morning)
Fifth Session: second Part *C: Sitting Days* Tuesday, 9th May to Thursday, 15th June, 2017 *D: Sine Die Recess Period* Friday, 16th June, 2017 to Monday, 7th August, 2017	Tuesday, 9th May to Monday, 7th August, 2017 Tuesday (Morning) Wednesday (Morning and Afternoon and Thursdays (Morning) *Sine Die* Recess Period

MINISTRY OF EDUCATION

Office of the Principal Secretary, State Department of Basic Education

Telegraphic; "EDUCATION", Nairobi
Telephone: Nairobi 3318581
Email: **ps@education.go.ke**
When replying please quote

JOGOO HOUSE "B"
IARAMBEE AVENUE
P. O. BOX 30040-00100
NAIROBI

Ref. No. MOE.GEN/4L/12/(17)

Date 29th June, 2017

Prof. Githu Muigai, EGH, SC
Attorney General
Office of the Attorney General and
Department of Justice
P. O. Box 40112-00100
NAIROBI

Dear AG

RE: LEGAL OPINION ON COMPENSATION FOR LR NO7879/4 RUARAKA HIGH SCHOOL AND DRIVE IN PRIMARY SCHOOL

We are in receipt of letters Ref.VAL.1446 dated 13th September, 2016 and 24th April, 2017 from the National Land Commission (copies attached).

Ruaraka High School is a public secondary school established in the year 1984, while Drive-In-Estate Primary School was established in 1987.

The schools are located in part of LR. No.7879/4 measuring 13.5364 acres. Ruaraka High School occupies 7.6 acres which they claim to have been allocated to them. (Copy of the allotment letter attached).

The land in which the schools are situated was part of Drive-In-Estate.

A company by the name Afrison Export Import Limited has now written to the National Land Commission seeking to be compensated for the land measuring 13.5364 acres.

A gazette notice for the intention to acquire has been prepared and awaiting gazettement.

In view of the above, I now write to request for a legal opinion on the same before we request the National Treasury to set aside resources for compensation and gazettement of the intention.

Enclosed are bundles of documents on the subject.

Yours Sincerely

Dr. Belio Kipsang, CBS
PRINCIPAL SECRETARY

Encls

MINISTRY OF EDUCATION

Office of the Principal Secretary, State Department of Basic Education

Telegraphic; "EDUCATION", Nairobi
Telephone: Nairobi 3318581
Email: **ps@education.go.ke**
When replying please quote

JOGOO HOUSE "B"
HARAMBEE AVENUE
P. O. BOX 30040-00100
NAIROBI

Ref. No. MOE.GEN/31L/8 VOL.X

Date 30th June, 2017

Dr. Kamau Thugge, CBS
Principal Secretary
National Treasury
P. O. Box 30007
NAIROBI

Dear PS

RE: COMPENSATION FOR RUARAKA HIGH SCHOOL AND DRIVE IN PRIMARY SCHOOL

Reference is made to the above subject. We are in receipt of a self-explanatory letter from the National Land Commission advising us to allocate money for the compulsory acquisition of part of LR No.209/7879/4. (Copy of the letter attached).

We have sought the Attorney General's legal opinion, which we will share with you once we get it. In the meantime, the intention to compulsorily acquire the said parcels of land on which the two schools are situated, has been gazetted through the Gazette Notice No.6322 of 30th June, 2017.

The purpose of this letter is to bring to your attention the budgetary implication.

Yours Sincerely

Dr. Belio Kipsang, CBS
PRINCIPAL SECRETARY

Encls.

REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: AG/CONF/21/72 VOL 1

July 7, 2017

Dr. Belio Kipsang, CBS
Principal Secretary
Ministry of Education
Jogoo House "B"
P.O. Box 9583-00200
NAIROBI

RE: LEGAL OPINION ON COMPENSATION FOR LR. NO. 7879/4 RUARAKA HIGH SCHOOL AND DRIVE IN PRIMARY SCHOOL

We refer to your letter under Ref. No. MOE.GEN/41/12/ (17) dated 29th June, 2017 in which you requested for our legal opinion on the above compulsory acquisition of LR. No. 7879/4 for purposes of continued establishment of Ruaraka High School and Drive In primary school.

The request is premised on the following background information:-

i. That Ruaraka High School is a public secondary school established in the year 1984, while Drive-In-Estate Primary School was established in 1987.
ii. The schools are located in part of LR. No. 7879/4 Measuring 13.5364 acres. Ruaraka High School occupies 7.6 acres which they claim to have been allocated to them.
iii. The Ministry had constituted a team to investigate the matter and a report was submitted to the Principal Secretary.
iv. In the said report, the team was of the view that the company had surrendered a portion of the land for public utility and therefore no basis for their compensation.
v. In the correspondence availed we note there was a letter of allotment issued to the secondary school.
vi. A letter dated 28th March, 1984 from the Nairobi City Council to the Developer, informed them that their proposed development was given conditional subdivision approval and it's up to them to accept the same or cancel the subdivision.

vii. The developers in their letter dated 3rd April, 1984 declined the condition for the subdivision.

viii. A letter dated 3rd August, 1984 the Ministry of Education wrote to the Commissioner of Lands supporting the Companies bid to erect a private school on the said land.

ix. That a Certificate of Postal Search dated 8th December, 2016, indicates that the Land Reference LR. No. 7879/4 measuring approximately 96 acres under a Freehold tenure is registered in the name of Afrison Export Import Limited and Huelands Limited as tenants in common in equal shares.

Having considered the request in light of the background facts as rationalized against the Constitution and the applicable law, we advise as follows:-

1. The legal basis and the efficacy of the process of compulsory land acquisition in Kenya should be done within the broader constitutional and statutory framework of the right based approach to property protection under Article 40 of the Constitution; Chapter Five of the Constitution on Land and environment; and the Land Act, cap 280 of the Laws of Kenya, which are the primary legislations governing compulsory acquisition process.

2. As a right based approach, Article 40(3) states as follows;
   "(3)The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
   a. *results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or*
   b. *is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—*
      i. *requires prompt payment in full, of just compensation to the person; and*
      ii. *allows any person who has an interest in, or right over, that property a right of access to a court of law."*

3. The import of Article 40(3) of the Constitution is that for compulsory acquisition to issue, the land must be acquired for a public purpose or in the public interest and there should be prompt payment in full, of just compensation to the person.

4. We note that the both Ruaraka High School and Drive-In-Estate School are public schools. Accordingly, it is our legal advisory that the Constitutional requirement of public purpose or interest as a factor in compulsory acquisition of private land is fulfilled.

vi. By dint of section 120 of the Land Act, the Commission is required to take possession of the land on the day specified by notice addressed to the registered proprietor of the land and the Registrar and the title shall then be deemed to vest in the national or county governments as the case may be; and

vii. Under section 121 of the Land Act, the Commission is required to demand in writing for the surrender of the title documents to the Registrar in the event that the title documents have not been delivered by the person having possession of the documents of title.

Please be advised accordingly.

GITHU MUIGAI, EGH, SC
ATTORNEY GENERAL

Copy to:

Dr. Muhammad A. Swazuri, PhD, OGW
Chairperson
National Land Commission
NAIROBI.

Telephone : Nairobi 24344—6, Ext. 1
When replying please quote
Ref. No. M.E.S.T./143/84
and date

CHIEF INSPECTOR OF SCHOOLS
INSPECTORATE
P.O. Box 30426
NAIROBI, KENYA

3rd August, 84

Commissioner of Lands,
P.O. Box 30089,
NAIROBI.

NAIROBI SECONDARY SCHOOL SITE OFF THIKA ROAD ON A PORTION OF LR. NO. 7879/4

Reference is made to your letter Ref. 108096/43 dated 14/7/84 on the above subject.

The Director of Drive In Estate Developers Ltd. has contacted this Office with the proposal of erecting a Private Secondary School on the above site. As you could be aware, this Ministry is highly trying to encourage developers of Private Secondary Schools since the existing schools are unable to cater for the many students leaving the Primary Schools. Also the Ministry is quite overburdened with the maintenance of existing secondary schools and therefore there is no finance for new secondary schools at present.

We are convinced beyond any doubt that Drive In Estate Developers Ltd. is financially capable of developing the school site and to provide education facilities essentially needed to cater for the population.

The Director of the Firm submitted to this office some impressive building plans for the site. These plans must have costed the Company great amount of money.

In consideration of the fact that the school site came as a result of sub-division scheme mounted by this Firm on its own land, it would rather be unfair to deter it from undertaking the development on which some money has already been spent.

This Ministry has therefore relinquished any interest on the plot and would appreciate if Drive In Estate Developers Ltd. would go ahead with the proposed development.

Yours faithfully,

D. M. NDUNGU
for: PERMANENT SECRETARY

c.c. Drive In Estate Developers Ltd.,
P.O. Box 46817,
NAIROBI.

The Provincial Commissioner,
NAIROBI.

QUALITY ASSURANCE AND STANDARDS DIVISION
P. O. BOX 30040-00100 NAIROBI
581 06 FEB 2017
RECEIVED

MINISTRY OF EDUCATION
STATE DEPARTMENT OF BASIC EDUCATION

Telegrams: "SCHOOLING", Nairobi
Tel. 0202453699 Fax 2244831 Nairobi
When replying please quote

REGIONAL COORDINATOR OF EDUCATION
NAIROBI REGION
NYAYO HOUSE
P.O.BOX 74629- 00200
NAIROBI

Ref: CQAS/KAS/8/16(1)

Date: 3rd February 2017

The Principal Secretary
State Department of Basic Education
Ministry of Education
P. O. Box 30040
NAIROBI

RE: QUALITY ASSURANCE AND STANDARDS INVESTIGATIVE REPORT – RUARAKA HIGH SCHOOL

Enclosed please find a copy of assessment report compiled following an investigation of the school on 27th January 2017 by a team of officers led by the Regional Coordinator of Education for your attention. Major recommendations of the report include;

1. The Official Receiver and Liquidator, Mr. Paul Omondi Mbago should release the school land documents.
2. The Cabinet Secretary, Ministry of Education (MOE) in liaison with the Chairman, National Lands Commission to facilitate for the processing of the title deeds of the said public schools to have the matter settled once for all.
3. The Cabinet Secretary Ministry of Education and the Chairman National Lands Commission should hasten the processing of the school lands documents to protect them from grabbing or encroachment.
4. Having been a surrendered portion of land for the public utility, the panels view was that the claimant has no basis for compensation for the land.

MR. JOHN L. OLOLTUAA
REGIONAL COORDINATOR OF EDUCATION
NAIROBI REGION

cc.

- **CABINET SECRETARY, Ministry of Education**
- **DIRECTOR GENERAL**
- **DIRECTOR, QUALITY ASSURANCE AND STANDARDS**
- **SUB-COUNTY DIRECTOR OF EDUCATION, Kasarani Sub-County**

MINISTRY OF EDUCATION

State Department of Basic Education

QUALITY ASSURANCE AND STANDARDS ASSESSMENT REPORT

1.0 PARTICULARS OF THE INSTITUTION

1.1	Name of Institution	:	Ruaraka High School
	Address	:	P.O.Box 57378 – 00200 Nairobi
	Telephone No	:	0722668967
1.2	Name of Headteacher	:	Agnes Wangui Chege
	TSC NO.	:	184363
	Tel. No.	:	0722668967/07008480459
1.3	Location; Zone	:	Ruaraka
	Division	:	Ruaraka
	Sub-County	:	Kasarani
	County	:	Nairobi
1.4	Type of school	:	Mixed day secondary school
1.5	Registration No.	:	GP/A/5879/09
	Date of registration	:	23rd March, 2009
	Approved pupil enrollment	:	640 students
	Actual pupil enrolment	:	640 students
1.6	Sponsor	:	CBE
1.7	Management	:	BOM
1.8	Date of Standards assessment	:	27/1/2017
1.9	Purpose of the Standards Assessment	:	Investigative
1.10	Dates of previous Standards Assessment	:	14/9/2010
1.11	Purpose of the last Standards Assessment	:	Advisory

2.0 Preamble

The team arrived in the school at 7.40 a.m. and was welcome by the school principal. The school was in assembly.

2.1 History of the school

The idea of the secondary school was muted by a resident the late D'Silva, who was commonly known as Baba Dogo in 1979. He donated 2 acres of land. Community members contributed Ksh. 200 each, and were able to raise over Ksh.400,000 to start

construction of the secondary school. The 2-acre piece of land was found inadequate for the secondary school, and through the intervention of the then Mayor, Mr. Andrew Ngumba, the 3.05ha of land was acquired from the Commissioner of Lands of the surrendered public utility portion by the Drive In Estate housing project.

The school was formally started in 1984 as a public mixed day secondary school. The first students were initially accommodated in Valley Bridge (Mathare North) Primary School and later (1987 when the Drive In Estate Primary classes were completed), some classes in Drive-in-Estate Primary School as the high school developed the physical facilities. By the end 1985, a total of Ksh. 1,130,000 had been invested in the construction of the school buildings (*Appendix 3; History of the school*). The school occupied the current site in 1989, and whole school was accommodated in 1992. The parents had put up most of the physical facilities. The school which was the Economic Stimulus Pilot school for the double shift had grown to an enrolment of 640 students.

3.0 BACKGROUND AND PURPOSE

The panel was composed following a letter received by the cabinet secretary (CS) from the Chairman, National Lands Commission referenced "acquisition of part of L.R.No.7879/4 – Ruaraka Primary and Secondary Schools" (*Appendix 2*), and detailing that a company by name Afrison Export Import Limited was laying claim for compensation on L.R. No.7879/4 (part) of 13.5364 acres and that the government was occupying the land for the last 30 years at no compensation.

The commission, the letter claims had allegedly undertaken a ground inspection to verify the complaint and had confirmed the existence of Ruaraka Primary and secondary school on the quoted land.

4.0 Allegations

That the national government institutions by the name Ruaraka Primary and Secondary schools were occupying and operating on land claimed by Afrison Export Import Limited L.R. No. 7879/4(part) of 13.5364

The panel was mandated to verify:

4.1 The existence of national government institutions by the name either

a) Ruaraka Primary and Secondary School
b) Ruaraka Primary School

c) Ruaraka Secondary School
d) Any other school going by the name Ruaraka

4.2 The existence of a government learning institution(s) on the L.R.No.7879/4 (part) measuring 13.5364 acres.

4.3 The circumstances under which this institutions may have been established.

4.4 The proof of ownership of the land documents on which these institutions were built.

5.0 METHODOLOGY

The team employed the following three methods to collect data.

1) Perusal of documents
2) Observation
3) Interviews of the principal, Ruaraka High School, headteacher Drive In Estate Primary School, headteacher and director Ruaraka Academy, former and current BOM Chair of Ruaraka High school.

6.0 FINDINGS

6.1 On the existence of national government learning institutions by name of either

a. Ruaraka Primary and Secondary School
b. Ruaraka Primary School
c. Ruaraka Secondary School
d. Any other school going by the name Ruaraka

The team established that there was no any school in Kasarani Sub-county or in Nairobi County registered or known as either

a) Ruaraka Primary and Secondary School
b) Ruaraka Primary School nor
c) Ruaraka Secondary School

The letter thus refers to non- existent school(s).

The panel however established that there were two registered schools having one of their names as Ruaraka.

a) Ruaraka High school, a public secondary school (*Appendix 4*)
b) Ruaraka academy (*Appendix 5*) a private school located more than 5 kilometers from Ruaraka High school, in Roysambu Constituency, Thome Estate near Southern Bypass. This was a private school that stood on private land L.R.

No.1701-17258 (*Appendix 5b*). This could not have been the school referred to in the letter.

6.2 **On the existence of a national government learning institution(s) on the L.R. No. 7879/4 (part) measuring 13.5364 acres.**

The panel established that Ruaraka High School, a government registered public secondary school stood on part of L.R. No.7879/4 measuring 3.05 hectares (approx. 7.6 acres) as per the letter allotment Ref. No.108096/57 dated 28th June 1999 (*Appendix 6*) for 99 years from 1st July, 1999, and had paid dues therein via KCB Bank Cheque to the Commissioner of Lands of Ksh.3, 566 dated 10th September, 1999 (*Appendix 7*). The adjacent national government learning institution was Drive-In Estate Primary school, a public Primary school, whose land ownership documents, as was reported were held in trust by the Nairobi City County, as was expected of land documents of all public primary schools in Nairobi. The size of this land could not be verified, but was suspected to be slightly bigger than the high school land.

6.3 **The circumstances under which these institutions were established.**

It was reported that the said company in equal share with another company acquired the whole parcel of 96 acres of land in 1981 with the intention of putting up 600 housing units. The construction of these housing units started in 1985. As with all other estates, it was a requirement that the company surrenders part of the land for public utility. When the idea of the school was muted, it was to start on a two acre of land donated by a Mr. D'Silva (Baba Dogo). In 1984, the surrendered public utility land was acquired from the Commissioner of lands. A Survey Map dated 6th September, 1982 (*appendix 8*) indicated on the plan that it was 'surveyed plan for secondary school plot, part of L.R.No.7879/4, Drive-in Estate Nairobi'. Further the survey map was approved for sub-division by the Nairobi Municipal Council under minute 15 of the planning committee held on 6th September, 1992 after recommendation by Survey of Kenya on 25th October, 1983 (*See appendix 8*).

Ruaraka high school has an allotment letter dated 28th June 1999 on a portion of L.R.No.78791/4 of 3.05 hectares (approx.) to the Permanent Secretary, Ministry of Education Ref. No. 108096/57 (*appendix 6*). Director of Surveys instructed the provincial

surveyor vide letter dated 8th November, 1999 (*Appendix 9*) to undertake a survey of the Uns. Secondary School Site off Thika Road on a portion of L.R. No.7879/4 Nairobi.

From the school correspondences to the Official Receiver and Liquidation (*Appendix 10 a, b, c, d*) of Continental Credit Finance Limited (C.C.F Ltd.), a Mr. Paul Omondi Mbago, and the Provincial commissioner, it was evident that the school had been issued with a separate allotment No.LR 13421/243 from the Drive-in Estate LR No. 7879/4. Further the Official Receiver and Liquidator confirmed through his letter dated 21st February, 2000 Ref: ORW/30/86 that the school was on a piece of land located within Drive-In Estate whose title he was holding (*appendix 11*), and that the piece of land on which the school was built was one of the pieces surrendered by Drive-in Estate to the city authorities for the establishment of public utilities such as the school. He was ready to issue the title deed for the school plot once the deed plans for the separate titles were registered and noted that he was undertaking the process with the assistance of his surveyor and planner.

From the documents availed from the school, it was evident that surrender of a portion of land for primary and secondary school for public utility was mandatory for approval of subdivision of the Housing Scheme (*Appendix 12*).

The panel thus established that the Ruaraka High school and Drive-in Estate Primary school was established on public utility land surrendered by Drive-in-Estate and registered by Survey of Kenya as schools'plots.

6.4 Ownership of the land on which the schools stood

From a report and valuation by Panorama Valuers dated 31st March, 1998, the L.R. NO 7879/4 (part only) (*see Appendix 12*) was a freehold interest registered in the names Afrison Export Limited and Huelands Limited of P. O. Box 40469 and 57192 Nairobi respectively as tenants in common in equal shares, and not Afrison Export Import Limited as claimed in the letter. The report further notes that in its valuation, it had excluded:-

a) That part developed and occupied by Ruaraka Primary school
b) That part developed and occupied by Ruaraka Secondary school
c) That part currently being developed with a permanent church
d) All open spaces, roads of access and proposed roads of access;

on assumption that these had been surrendered for public utility as a condition for the approval of the subdivision.

Further, a letter from the school to the Official Receiver and Liquidator, C.C.F Ltd Mr. Paul Omondi Mbago dated 11th August, 1999 indicated that the Ruaraka High School had already been done by a Mr. Kamwere (surveyor) (*appendix 13*) and issued with a new L.R. No 13421/243, and that he (the surveyor) still held the deed plans for the school awaiting further instructions by the Official Receiver and Liquidator to release the deed plans to enable school process the school land title.

However, a letter from the Department of Registrar General, Office of the Official Receiver to the Ministry of Lands and Housing, Department of Lands, and attentioned to a Mr. S. G. Gikonyo and dated 18th May 2005 referenced 'Winding up Cause No. 1986 Continental Credit Finance Ltd (in Liquidation) – Ruaraka High School(*appendix 14*) seemed to contradict earlier assertions and stated that the Official Receiver had never excised any plot from the Drive-In-Estate property for the time Continental Credit Finance had been in liquidation, but had on a letter dated 26th May 2005 ref. 217905/9 confirmed that according to the Letter of Allotment that the beneficiaries was the Permanent Secretary, Ministry of Education, and not the school (*Appendix 15*).

The panel thus established that;

1. The national government learning institutions stood on land set aside for public utility, owned by The Permanent Secretary, Ministry of Education as per the allotment letter.
2. The processing of the school land documents had proceeded very well through all the official channels i.e. surveyor, City Planning, Official Receiver and Liquidator.
3. The Official Receiver and Liquidator held the answers as
    a. why the process of acquiring the school land title deed was delayed,
    b. why he had not instructed the surveyor to release the deed plans to the school, and
    c. why, after confirming he was ready to issue title deed to the school in his letter of 2000, a letter from the Registrar of 2005 says otherwise that the school land had never been hived off.
4. There was no single document availed which indicated there was supposed to be any compensation by the national government for the public utility plots.

quoted land. The complainant has indicated that the National Government institutions occupy an area of 13.5364 acres. He has also submitted an independent valuation report as a compensation claim, however, the Commission is the legal entity mandated to determine and advise on compensation values. This letter is therefore to request the Ministry of Education, Science and Technology to confirm the status and make arrangements to compensate the land owner in order to close this long outstanding matter.

Copy of title and the complaint letter are hereby attached for ease of reference.

Yours sincerely.

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics

Encl.

7.0 CONCLUSION AND RECOMMENDATIONS

7.1 CONCLUSION

There were two public learning institutions that had been established on the surrendered portion for public utility from the L. R. No. 7879/4 Drive-In-Estate, and that these portions were utilized as intended for the public.

7.2 RECOMMENDATIONS

1. The Official Receiver and Liquidator, Mr. Paul Omondi Mbago should release the school land documents.
2. The Cabinet Secretary, Ministry of Education (MOE) in liaison with Chairman, National Lands Commission to facilitate for the processing of the title deeds of the said public schools to have the matter settled once and for all.
3. The Cabinet Secretary, Ministry of Education and the Chairman National Lands Commission should hasten the processing of school lands documents to protect them from grabbing or encroachment.
4. Having been a surrendered portion of land for the public utility, the panels view was that the claimant has no basis for compensation for the land.

Appendix 1: **Panel members**

NAME	DESIGNATION	STATION	SIGN
1. Mr. John L. Ololtuaa	- RCE	Nairobi Region	
2. Florence Hungi	- CQASO	RCEs Office, Nairobi	
3. Victoria N. Mbwika	- SCDE	Kasarani	
4. David K. Ndung'u	- SCQASO	Kasarani	
5. Anthony M. Mbasi	- PEO	RCEs Office, Nairobi	

Appendix

Noted
26/9/2016
JL (RCE)

OFFICE OF THE CHAIRMAN

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

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

VAL.1446

13th September, 2016

ATC
Copies
Form a panel
headed by RCE
to visit the se

Dr. Fred Matiang'i
Cabinet Secretary
Ministry of Education, Science & Technology
P. O. Box 30040-00100
NAIROBI.

Dear Dr. Matiang'i

ACQUISITION OF PART OF L.R. NO. 7879/4 – RUARAKA PRIMARY AND SECONDARY SCHOOLS

Further to our letter Ref. VAL.1446 dated 29th August 2016 we draw your attention to the acreage that Afrison Export Import Limited is laying claim for compensation on L.R. No. 7879/4 (part) to be 13.5364 acres.

This is further to receipt by the Commission a complaint from Afrison Export & Import Limited who are the registered owner of L.R. No. 7879/4 cited along Outering Road. The land owner has placed a complaint to the Commission that the Government has been occupying his land for the last 30 years at no compensation. These are some of the issues the Commission is mandated to look at in reference to Article 40(3) and 67(g) of the Constitution and the Land Act Part VIII on prompt payment in full of just compensation upon depriving a person of his property.

The Commission has undertaken a ground inspection to verify the complaint and confirmed the existence of Ruaraka Primary and Secondary School on the above

quoted land. The complainant has indicated that the National Government institutions occupy an area of 13.5364 acres. He has also submitted an independent valuation report as a compensation claim, however, the Commission is the legal entity mandated to determine and advise on compensation values. This letter is therefore to request the Ministry of Education, Science and Technology to confirm the status and make arrangements to compensate the land owner in order to close this long outstanding matter.

Copy of title and the complaint letter are hereby attached for ease of reference.

Yours sincerely.

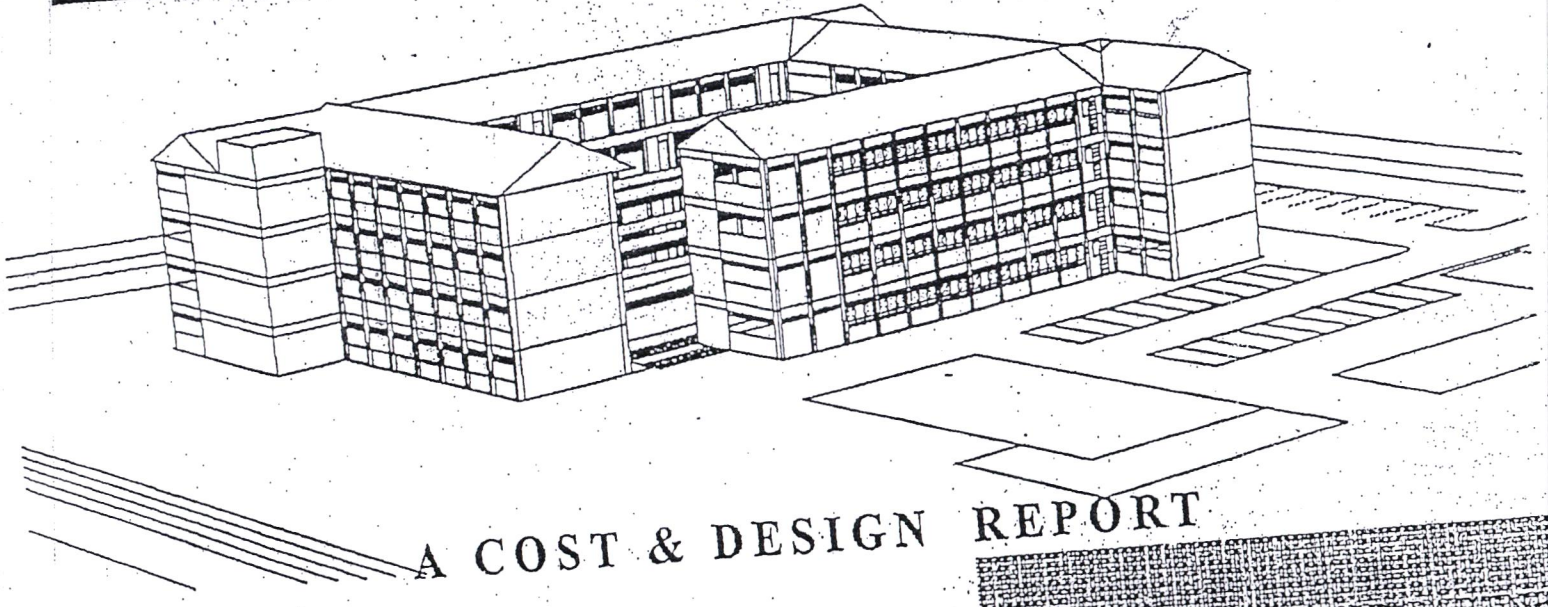
Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics

Encl.

COMPLETION

OF

RUARAKA HIGH SCHOOL.



A COST & DESIGN REPORT

ARCHITECTS:

[redacted]

INTRODUCTION

In 1979 when Ruaraka High School was started the demand for secondary school education far outstriped the facilities available with only a third of those completing primary school education able to secure places in the existing secondary schools.

The problem has been with us for a long time having been inherited at the time of independence.

If this trend continued only an estimated 300,000 pupils out of a total of over 1,000,000 pupils then in standard one would be able to go to secondary schools after their examination in 1991, eight years later.

Many organizations in this country have come up with projects designed to supplement the government efforts in solving this problem As far back as 1963, village polytechnics were started in this country. Today there are about 300 such institutions with an yearly intake estimated at 7,500 pupils from primary schools. Clearly this is still far too small a number and as the village polytechnics are much more expensive to equip and run, building more high schools will continue to offer the best solution for quite some time to come.

The government currently spends an estimated 30% of its annual budget on education alone. The public has greatly helped by on a self help basis building harambee secondary schools throughout the republic. It is in this spirit of Harambee for which this country is well known that Ruaraka High School was conceived.

THE LOCATION

The school as the name implies is located at Ruaraka in Mathare constituency a mere seven kilometres from the City centre and immediately to the north of Mathare Valley slum area.

Out of the eight constituencies of Nairobi, Mathare is the most densely populated and until recently the most neglected part of the city. The community mainly consist of people from the low income brackets.

In the recent past various community development projects have been started in the area and some world organisations such as the World Bank and the European Economic Com-

INTRODUCTION

In 1979 when Ruaraka High School was started the demand for secondary school education far outstriped the facilities available with only a third of those completing primary school education able to secure places in the existing secondary schools.

The problem has been with us for a long time having been inherited at the time of independence.

If this trend continued only an estimated 300,000 pupils out of a total of over 1,000,000 pupils then in standard one would be able to go to secondary schools after their examination in 1991, eight years later.

Many organizations in this country have come up with projects designed to supplement the government efforts in solving this problem As far back as 1963, village polytechnics were started in this country. Today there are about 300 such institutions with an yearly intake estimated at 7,500 pupils from primary schools. Clearly this is still far too small a number and as the village polytechnics are much more expensive to equip and run, building more high schools will continue to offer the best solution for quite some time to come.

The government currently spends an estimated 30% of its annual budget on education alone. The public has greatly helped by on a self help basis building harambee secondary schools throughout the republic. It is in this spirit of Harambee for which this country is well known that Ruaraka High School was conceived.

THE LOCATION

The school as the name implies is located at Ruaraka in Mathare constituency a mere seven kilometres from the City centre and immediately to the north of Mathare Valley slum area.

Out of the eight constituencies of Nairobi, Mathare is the most densely populated and until recently the most neglected part of the city. The community mainly consist of people from the low income brackets.

In the recent past various community development projects have been started in the area and some world organisations such as the World Bank and the European Economic Com-

munity have funded housing improvement schemes in the area.

By 1984 only one secondary school had been added to the two that existed before independence. During the same period 23 primary schools had been added to the original five making a total of 28 each with 3 or 4 streams with classes of 45 pupils each. The need for secondary schools was therefore in this area therefore needed urgent attention.

While it is recognized that the provision of secondary schools will not by itself solve the many problems of the youth of Mathare it would nonetheless go a long way towards fulfilling a need that has been there for many years.

THE SITE

The school is located within a housing estate that was then under construction. The site is 3 Ha. plot that adjoins a similar sized plot now occupied by a primary school.

The site is served by Outer ring road to the north and is therefore easily accessible from the main centres of population concentration in theconstituency such as Kariobangi, Dandora and Huruma housing estates to the east. To the south lies Mathare Valley slum area. It slopes gently from west to east thereby making it relatively cheap to build on and easy to drain.

THE PROGRAMME

When the Architects were given a brief there were already 90 students undergoing studies on a temporary site and it was hoped that they would be accommodated in the new school as soon as the first phase was completed. This was planned to be at the end of the year 1984.

THE PROPOSED SCHOOL

There were to be two streams of students both girls and boys to start with. The classes were designed to take 45 students each. With the then newly introduced 8:4:4 system of education two streams would require eight classrooms. The total number of student population was therefore estimated at 360 at completion of phase II.

The total number of streams when the school is fully operational is four and the design allowed for both vertical as well as horizontal expansion of the required facilities. It was proposed to build four classrooms, a laboratory, a library and the administration wing in the first phase.

Phase II would consist of a further four classrooms a domestic crafts room and a workshop for heavier crafts such as woodworking.

The buildings are arranged around a courtyard with classrooms to the north, the administration wing on the East, a laboratory on the West and the library (currently used as classrooms) to the south. The playing fields are to the West of the complex.

A BRIEF HISTORY

The history of Ruaraka High School goes back to 1979 when the late D'silva locally known as 'Baba Dogo' donated a two-acre piece of land and the parents raised over Shs. 400,000/- to give birth to Ruaraka High School.

The two-acre plot was later found to be too small for a secondary school and it was not until 1984 that a six-acre plot of land near the Drive-in Estate off Outer Ring Road was acquired from the Commissioner of lands. The two-acre plot with half-finished structures was abandoned and an Architect engaged to design the new school on the bigger site.

By the end of September 1985 over Kshs. 1,130,000/- which also included the value of donated materials and services had been invested in the construction of the school buildings.

In the meantime, pupils in the 1st two form I classes were admitted in 1984 when on 28th of February 1984 50 boys and 34 girls started their lessons in Mathare North Primary School premises where some space was found. In the meantime the construction of Ruaraka High School came to a halt due to lack of funds.

In January 1987 the High School had grown in student population to the extent that it could no longer be accommodated within the Mathare North Primary School as the latter was also growing in population.

Fortunately for Ruaraka High School a new primary adjacent to the High School site was just nearing completion and once again Ruaraka High School moved in to occupy some of the empty classrooms.

In mid 1987 a Board of Governors was formally set up under the chairmanship of Mr. N. Njama himself a former Divisional Advisor with Nairobi City Commission Schools. It was hoped that the new board would revive the construction of the school. The Board set to work to raise funds to enable the school to start operating from its own premises by 1989 at the latest. By this time Ruaraka High School would,if the planned growth was realised, require 12 classrooms whereas there would be space for 7 classes only in the primary school where the High School was housed.

To compound matters, the school was threatened with non-registration of Form IV candidates for Kenya Certificate of Secondary Examination (K.C.S.E.) the following year due to lack of proper facilities for practical subjects.

Realizing the seriousness of the situation the Ministry of Education came to the rescue with some Kshs. 500,000/- to help complete one laboratory in the school.

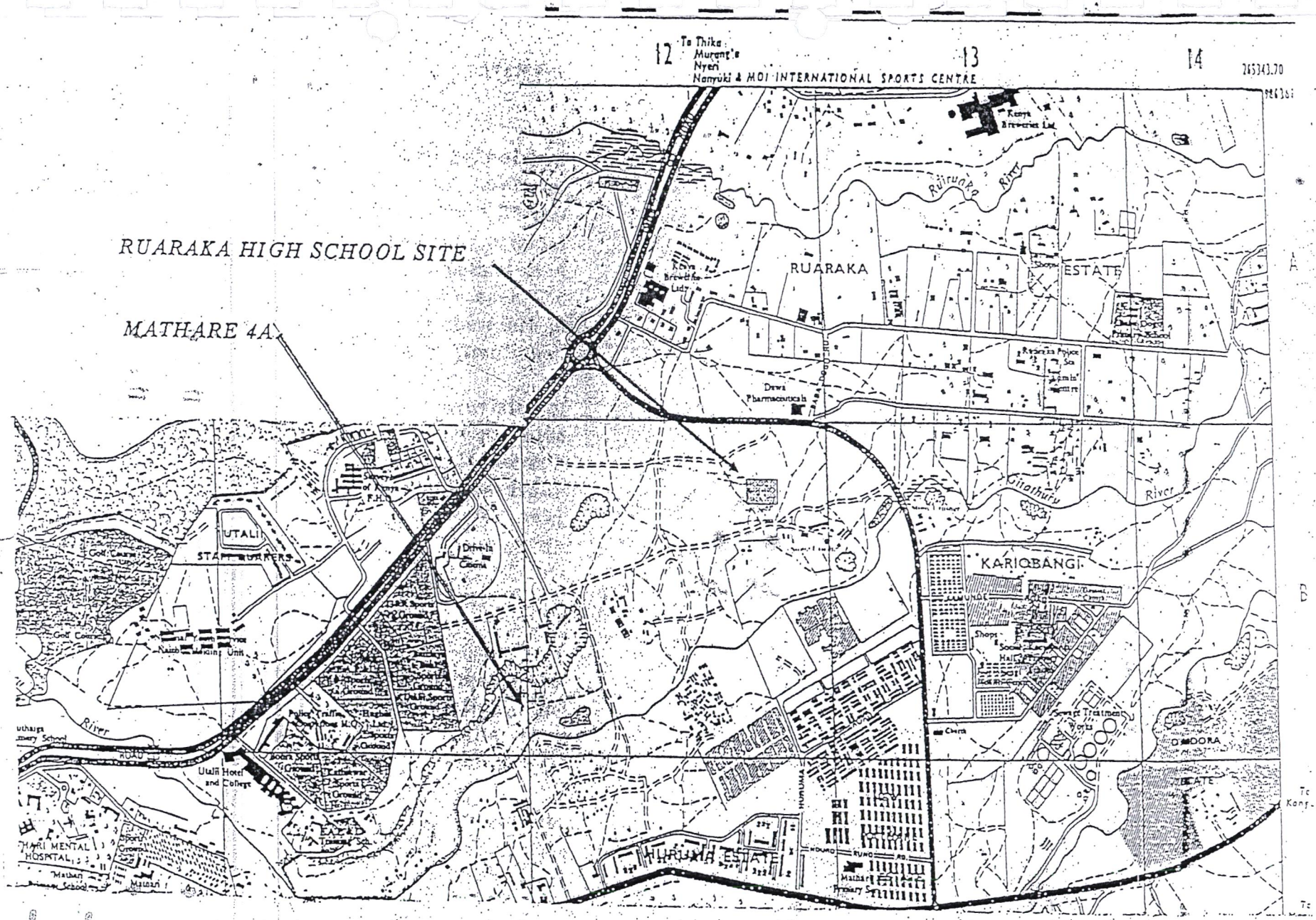
By January 1989 the High School (at least half of it) started operating from its present premises for the first time since its inception in 1984.

THE SCHOOL TODAY (1996)

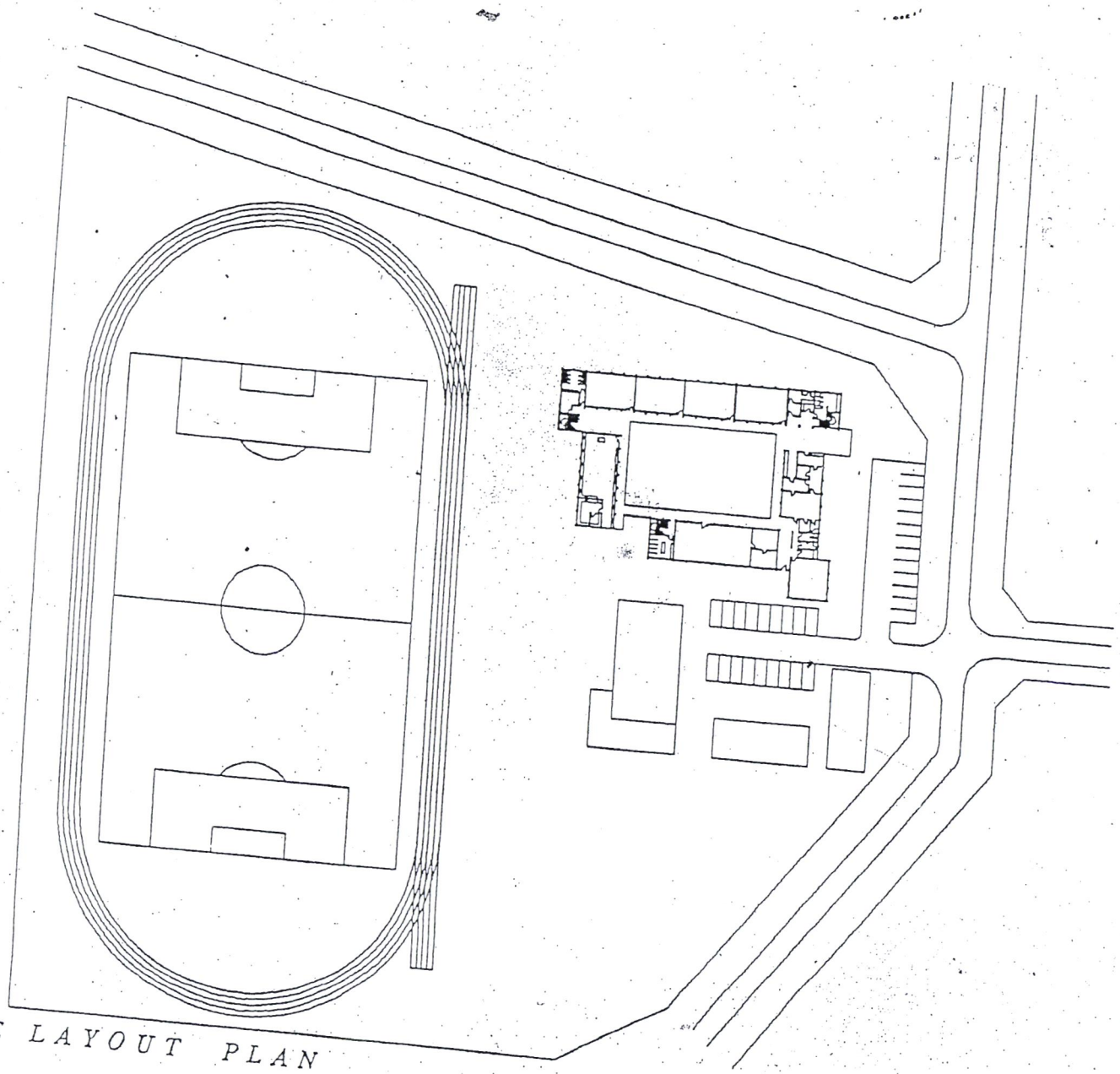
On site are the ground floor structures comprising six classrooms, a laboratory, a half completed administration block and ancillary facilities. Pit latrines serve both students and staff awaiting completion of the toilet areas which unlike other areas cannot be used while still halfcompleted.

A further two classrooms has been added on the 1st floor and the whole school is now accomodated on the site.

The Buildings are still incomplete but at least the students have a roof over their heads. Stairs need Balustrading the walkways need a cement screed, storm water drainage is yet to be completed etc.



LOCATION PLAN



SITE LAYOUT PLAN

REPUBLIC OF KENYA

MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY

CERTIFICATE OF REGISTRATION OF SCHOOLS

NAME OF SCHOOL RUARAKA HIGH SCHOOL	TOWN OR LOCATION AND PLOT NUMBER RUARAKA
CLASSIFICATION OF SCHOOL MIXED DAY SECONDARY SCHOOL (PUBLIC)	DISTRICT KASARANI PROVINCE NAIROBI
NAME OF MANAGER BOARD OF GOVERNORS	ADDRESS OF MANAGER/SPONSOR P.O. BOX 57378-00200 NAIROBI NAIROBI (COUNCIL DEB
INSTRUCTION MAY BE GIVEN IN THIS SCHOOL UP TO FORM 1-4	MAXIMUM NUMBER OF PUPILS TO BE ACCOMMODATED FOUR STREAMS SECONDARY SCHOOL FROMS 1-4 @ 4 STUDENTS PER CLASS WITH A MAXIMUM ENROLMENT 640 STUDENTS
REGISTRATION NUMBER GP/A/5879/09	SUBJECTS TAUGHT 8-4-4 CURRICULUM
DATE OF REGISTRATION 23/3/09	ENOS MAGWA FOR: PERMANENT SECRETARY
	SPECIAL REMARKS THIS CERTIFICATE OF RE-REGISTRATION CANCEL PREVIOUS ONE NO.GP/A/729/97

NAME OF SCHOOL	DATE	REGISTRATION NUMBER	TOWN OR LC
RUARAKA HIGH SCHOOL	23/3/09	GP/A/5879/09	RUARAKA

Distribution

White —SCHOOL
Blue —P.D.E.
Pink —MANAGER
Yellow —M.O.E.S.T.

NOTES

1. This certificate is the property of the ministry and must be returned to the ministry on demand.

2. If it is proposed that any of the particulars in this certificate should be changed, a new application for registration must be made in the normal way.

3. It is illegal to hold or have in custody an invalid certificate of registration of a school.

GPK (L) 288—500Bks.—14/2002

CERTIFICATE OF REGISTRATION OF SCHOOLS

DISTRIBUTION
WHITE - SCHOOL
BLUE - PEO
GREEN - MANAGER
YELLOW - MEST

NOTE
1 This Certificate is the property of the Ministry and must be returned to the Ministry on demand
2 If it is proposed that any of the particulars in this certificate should be changed, a new application for registration must be made in the normal way
3 It is illegal to hold or have in custody an invalid certificate of registration of a school.

NAME OF SCHOOL RUARAKA ACADEMY	TOWN OR LOCATION AND PLOT NUMBER NAIROBI BLOCK 110/1018
CLASSIFICATION OF SCHOOL NURSERY & PRIMARY SCHOOL (PRIVATE)	DISTRICT PROVINCE NAIROBI NAIROBI
NAME OF MANAGER JOSEPHINE NJUNJI MBOYA	ADDRESS OF MANAGER P.O. BOX 65139 NAIROBI
INSTRUCTION MAY BE GIVEN IN THIS SCHOOL UP TO STD VIII	MAXIMUM NUMBER OF PUPILS TO BE ACCOMMODATED 4 NURSERY CLASSES @25 PUPILS PER CLASS DOUBLE STREAM STD I-III @40 PUPILS PER CLASS MAXIMUM 600 PUPILS
REGISTRATION NUMBER PE/547/97	SUBJECTS TAUGHT KIE NURSERY PROGRAMME 8.4.4 PRIMARY CYCLE
DATE OF REGISTRATION 8/8/97	OROO OYIOKA FOR: PERMANENT SECRETARY
	SPECIAL REMARKS THIS CERTIFICATE OF FULL REGISTRATION IS ISSUED IN ACCORDANCE WITH SECTION 15(1) OF THE EDUCATION ACT CAP 211

NAME OF SCHOOL	DATE	REGISTRATION NUMBER	TOWN OR LOCATION
RUARAKA ACADEMY	8/8/97	PE/547/97	NAIROBI

RUARAKA ACADEMY
P. O. Box 407-00618,
RUARAKA.
Tel: 0722-806552, 0700-737522

27/1/2017

PROPERTY RATES PAYMENT REQUEST

Number LR1701-17258
Date 19-Jan-2017

LA Name: - 001 - NAIROBI CITY COUNTY

CUSTOMER SERVICES OFFICE

The Customer Services Office Notifies

RUARAKA ACADEMY LTD (U0368150-U)

that the PROPERTY RATES payment for **BLOCK 110/1018 /BLOCK 110/1018** is due at the CASH OFFICE of the council

DETAIL OF CHARGES

Account	CostCentreID	Description	Amount (KSh)
1-2101	0304-02-00	Land Rates Current Year	115,000
		Bill Total Amount	**115,000**

ates : 115,000 Ground Rent : 0 Other Charges : 0 Total : 115,000

The total outstanding amount before payment is KShs. 115,000

NOTE : LATE PAYMENTS ATTRACT A PENALTY OF 3.00% PER MONTH FROM DUE DATE

Payment Information

0017942017010792 CHQ140075 313880 140075 LR1701-17258-115000 [RUARAKA ACADEMY LTD] 201701241125

RECEIVED BY IGITAU
THANK YOU

(Customer Copy)

RUARAKA ACADEMY
P. O. Box 427-00618,
RUARAKA
Tel: 0722-806552, 0700-737522

27/1/2017

Appendix 51(b)

REPUBLIC OF KENYA

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

REGISTERED

DEPARTMENT OF LANDS
P.O. Box 30089
NAIROBI

The Permanent Secretary,
Ministry of Education,
P.O. Box 30040, NAIROBI
Ref. No. 108096/57

28th June 19 99

SIR(S)/MADAM, RE: UNS. SECONDARY SCHOOL SITE - OFF THIKA ROAD ON A POR OF L.R.NO. 7879/4 NAIROBI

Fr 107/9

LETTER OF ALLOTMENT

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

AREA. 3.05 - 7.539 ares hectares (approximately). Appr. 7.532 Acres

TERM: 99 years from the 1.7.1999

STAND PREMIUM: Sh. Nil

ANNUAL RENT: Sh. 72/- } Subject to adjustment on survey, but there is no claim for reduction in area on survey.

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

SPECIAL CONDITIONS: *See* attached.

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

	Sh.
Stand Premium	Nil
Rent from 1.7.99 to 31.12.99	36.00
Conveyancing Fees	1,250.00
Registration Fees	250. 00
Rates ... on demand	--
Stamp Duty	30.00
Survey Fees ... on demand	--
Road and Road Drains ... on demand	
Others Allocation fees	2,000.00
Receipt No. ..... *Less* Deposit	
TOTAL Sh.	3,566.00

1/9/99

[P.T.O

*Delete as appropriate.

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

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

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

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

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

Authority: Government

File 108096/44

P. AMIANI (MRS)
for Commissioner of Lands

ENCL.

Y TO: P/S Ministry of Lands and Settlement, Nairobi
The Director of Surveys, Nairobi.
The Town Clerk. Nairobi City Council
~~The Clerk to the Council, County Council of xxxx~~
~~The District Commissioner xxx~~
The Director of Physical Planning, Nairobi.
~~District Land Officer xx~~ The Board of Governors, Ruaraka High School, P.O. Box 57378, NAIROBI
O/C Land Rents.
Rates Assistant.
The Accountant.
O/C Records ~~Hol cal~~ 31·8·99 A/R to note.
Senior Plan Record Officer.
Plot File.

GPK (L)

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

2. The Grantee shall within six months of the commencement of the term submit in triplicate to the Local Authority and the Commissioner of Lands plans (including block plans showing the positions of the buildings and a system of drainage for disposing of sewage surface and sullage water) drawings elevations and specifications of the buildings the Grantee proposes to erect on the land and shall within 24 months of the commencement of the term complete the erection of such buildings and the construction of the drainage system in conformity with such plans drawings elevations and specifications as amended (if such be the case) by the Commissioner PROVIDED that notwithstanding anything to the contrary contained in or implied by the Government Lands Act if default shall be made in the performance or observance of any of the requirements of this condition it shall be lawful for the Commissioner of Lands or any person authorized by him on behalf of the President to re-enter into and upon the land or any part thereof in the name of the whole and thereupon the term hereby created shall cease but without prejudice to any right of action or remedy of the President or the Commissioner of Lands in respect of any antecedent breach of any condition herein contained.

3. The Grantee shall maintain in good and substantial repair and condtiion all buildings at any time erected on the land.

4. The land and the buildings shall only be used for educational purposes and the accommodation for the Headmaster/Principal.

5. If the school erected on the land shall cease to function as such under the provisions of the Education Act 1968 or such other Act amending or repealing it or may be in force then the terms hereby created shall ipso facto also be determined and the land shall be deemed automatically to have reverted to the Government as from the date of such cessation without the necessity of any formal surrender thereof.

6. The land shall not be used for any purpose which the Commissioner of Lands considers to be dangerous or offensive.

7. The Grantee shall not subdivide the land, without the prior consent in writing of the Commissioner of Lands.

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

9. The Grantee shall pay to the Commissioner of Lands on demand such sum as the Commissioner of Lands may estimate to be the proportionate cost of constructing all roads and drains and sewers serving or adjoining the land and the proportionate cost for the supply of both the water and the electric power to the land and shall on completion of such construction and the ascertainment of the actual cost either pay (within 7 days of demand) or be refunded the amount by which the actual proportionate cost exceeds or falls short of the amount paid as aforesaid.

10. The Grantee shall from time to time pay the Commissioner of Lands on demand such proportion of the cost of maintaining all roads and drains serving or adjoining the land as the Commissioner may assess.

11. Should the Commissioner of Lands at any time require the said roads to be constructed to a higher standard the Grantee shall pay to the Commissioner on demand such proportion of such construction as the Commissioner may assess.

12. The Grantee shall pay such rates charges duties assessments or outgoings of whatever description as may be imposed charged or assessed by any Government or Local Authority upon the land or the buildings erected thereon including any contribution or other sum paid by the President in lieu thereof.

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

14. The Commissioner of Lands reserves the right to revise the annual ground rental payable hereunder after the expiration of the thirty-third and sixty-sixth year of the term hereby granted. Such rental will be at the rate of 4 per cent of the unimproved freehold value of land as assessed by the Commissioner of Lands.

14. ~~15.~~ Notwithstanding anything to the contrary contained herein or implied by the said Government Lands Act (Cap. 280) the Grantee shall on receipt of six months' notice in writing in that behalf surrender all or any part of the land required for public purposes without payment of compensation save in respect of such of the approved buildings as may have to be evacuated or demolished. No compensation shall be payable in respect of surrender of part of the land by reason of such surrender.

15. The Commissioner of Lands reserves the right to revise the annual ground payable hereunder on 31st December, 1998 and thereafter at the expiration every ten years of the term.

RUARAKA HIGH SCHOOL
SENIOR PRINCIPAL
DATE
P.O. Box 57376 - 00200 NAIROBI

GPK 1830—1m—9/75

All Correspondence
Should be addressed to:-
Director of Surveys

Telegrams: "Surveys"
Head Office: Ardhi House
Telephone: 718050

Field Headquarters, Ruaraka
Telephone: 802241-2

SURVEY OF KENYA
P.O. Box 30046, NAIROBI
KENYA

Date 8TH November, 1999

Our Ref CR/197/VOL.56/143

The Provincial Surveydr
P.O. Box 30046
NAIROBI

DATA BOOK NO. NBI/20/99

RE: UNS. SECONDARY SCHOOL SITE - OFF THIKA ROAD
ON A PORTION OF L.R. NO. 7879/4 - NAIROBI

Please arrange to undertake the Survey of the above mentioned portion of Land on accordance with the attached P.D.P. and letter of allotement Ref NO. 108096/57 of 28th June, 1999.

Relevant data information will be found on F/R NO. 107/9, a print is enclosed herewith.

Have a representative of the School sign a beacon certificate and submit your records with the P.D.P. intact for further processing.

F.M. Kamwaro
For:DIRECTOR OF SURVEYS

RUARAKA HIGH SCHOOL
SECRETARY
PRINCIPAL
DATE
P.O. Box 57378 - 00200 NAIROBI

C.C.

The Permanent Secretary
Ministry of Education
P.O. Box 30040
NAIROBI

Appendix 10(a)

Ruaraka High School

P.O. Box 57378, NAIROBI, Kenya
TEL: 860303

Ref. No:.....

Date: 11/8/99

MR PAUL OMONDI MBAGO
OFFICIAL RECEIVER $ LIQUIDATOR
C.C.F LTD
P.O BOX 57192
NAIROBI

Dear sir,

RE: DRIVE IN ESTATE L.R NO 7879/4

RUARAKA HIGH SCHOOL L.R. NO, 13421/243

Ruaraka High School is a public school and formed part of Drive in Estate in Ruaraka. It occupies the public utility plot which was supposed to have been surrendered to the Commissioner of Lands.

According to the sub division of the Estate which was carried out by Mr Kamwere (surveyor) it was given L.R. No. 13421/243.

The surveyor, who is still having the Deed plans for the School has idicated that, given instructions by you, he can release the Deed plans for the School so that we can be able to obtain a title for the School land.

We are therefore kindly requesting that you help us. Our development is at present hampered by not having a title Deed.

Yours Faithfully,

RUARAKA HIGH SCHOOL
SENIOR PRINCIPAL
DATE
P.O. Box 57378 - 00200, NAIROBI

M.N. KAMAU (MRS)
PRINCIPAL /B.O.G. SECRETARY

cc. The Commissioner of lands
P.O BOX 30089
NAIROBI

Appendix 10b

Ruaraka High School

P.O. Box 57378, NAIROBI, Kenya
TEL: 860303

Ref. No: .....

Date: 18th January 2000

THE OFFICIAL RECEEVER & LIQUIDATOR

C.C.F LTD
P. O. BOX 57192
NAIROBI

Dear Sir,

RE: DRIVE-IN ESTATE LR NO.7879/4 RUARAKA HIGH SCHOOL

Our letter dated 11th August 1999 and my subsequent visits to your office refers.

On your instruction, I went to see Mr Kamwere who said that he requires written instructions from you and also payment.

As we had discussed, the school's development has been greatly hampered by the lack of a title deed. Potential donors insist in seeing the official title before they extend any assistance. We have lost several donors because of this.

The school community and the Board of Governors would be very grateful if you can solve this problem urgently.

Yours faithfully

M. N. KAMAU (MRS)
PRINCIPAL/B.O.G. SECRETARY

RUARAKA HIGH SCHOOL
SENIOR PRINCIPAL
DATE
P.O. BOX 57378 - 00200

RUARAKA HIGH SCHOOL
P. O. Box 57378, NAIROBI.
Date 6-9-01

OFFICE OF THE PRESIDENT

Telegrams: .....
Telephone: Nairobi 333551
When replying please quote

Ref. No. LND 16/10 ..... and date

PROVINCIAL COMMISSIONER
NAIROBI AREA
P.O. Box 30124
NAIROBI

25th July, 2001....., 20.....

Mr. P. Omondi Mbago
Official Receiver and Liquidator
P.O.Box 30031
NAIROBI

RUARAKA HIGH SCHOOL – TITLE DEED

Reference is made to your letter Ref. ORW/30/86 of 21st February, 200 addressed to Principal Ruaraka High School on the above subject.

You did indicate that you were in the process of undertaking a process with the assistance of your surveyor and planner to get a title deed for the school.

Kindly let me know how far you have gone with the exercise since the school has lost a lot of potential donors who cannot assist without knowing the school land status.

RUARAKA HIGH SCHOOL
SENIOR PRINCIPAL
DATE
P.O. Box 57378 - 00200 NAIROBI

Appendix 16

Ruaraka High School

P.O. Box 57378, NAIROBI, Kenya
TEL: 860303

Ref. No: .....

Date: 16th July 2001

THE PROVINCIAL COMMISSIONER
NAIROBI PROVINCE
P. O. BOX 30124
NAIROBI

RE: RUARAKA HIGH SCHOOL - TITLE DEED

This is to inform you of the problems we have encountered in trying to obtain a title deed for the school.

Ruaraka High School is on a piece of land LR7879/4 which also includes Drive-In Estate. This piece of land was supposed to have been surrendered for public utility.

This land LR7879/4 was surveyed and subdivided by M/s Kanwere and Associates who still holds the Deed plans for all the subdivided plots including the school. The deed plans have never been submitted to the Commissioner of Lands because the surveyor was not paid his fees.

The Title Deed for the same LR7879/4 is held by the Registrar General as the official Receiver for Continental Credit Finance Ltd. The official Receiver has, vide his letter Ref.CRB/30/86 of 21st February 2001 (copy attached) recognized that the school has legal claims over the land it stands on. Our numerous efforts to have him release the Deed plans for the school so that we can get the Title Deed registered have been futile.

The lack of the Title has cost the school dearly as we have lost a potential donor who insisted on the school having a title before any development assistance could be given.

On behalf of the Board of Governors and the entire Ruaraka High School community I humbly request you to assist us to sort out this issue.

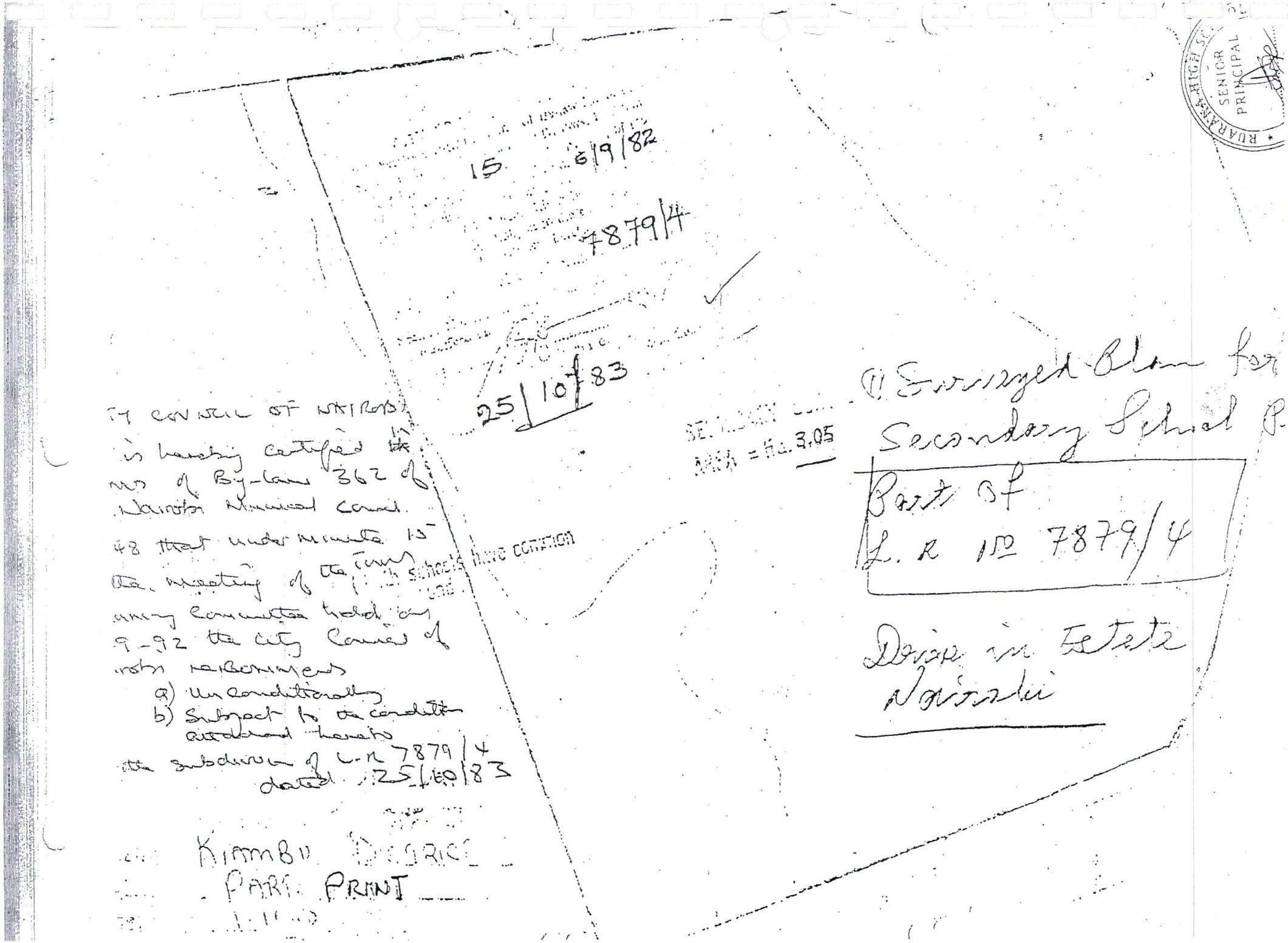
Yours faithfully

RUARAKA HIGH SCHOOL
SENIOR PRINCIPAL
DATE
P.O. Box 57378 - 00200 NAIROBI

M. N. KAMAU (MRS)
PRINCIPAL

c.c.
1. THE PROVINCIAL DIRECTOR OF EDUCATION
P. O. BOX 74629
NAIROBI

2. THE PERMANENT SECRETARY
MINISTRY OF EDUCATION SC. & TEC.
P. O. BOX 30040
NAIROBI



15 6/9/82

7879/4

25/10/83

SE... AREA = Ha. 3.05

(1) Surveyed Plan for Secondary School P...

Part of
L. R No 7879/4

Drive in Estate
Nairobi

...TY COUNCIL OF NAIROBI
is hereby certified in
...ns of By-law 362 of
Nairobi Municipal Council
48 that under minute 15
the meeting of the Town
...ning Committee held on
9-92 the City Council of
...robi recommends
a) Unconditionally
b) Subject to the condition
attached hereto
the subdivision of L.R 7879/4
dated 25/10/83

KIAMBU DISTRICT
PART PRINT

RUARAKA HIGH SCHOOL
SENIOR PRINCIPAL

BANKERS CHEQUE

KENYA COMMERCIAL BANK LIMITED

CITY CENTRE BRANCH
P.O. BOX 44252, NAIROBI

Not Negotiable
A/C Payee only

351

KENYA DUTY PAID

Date 10-9-99

01-118

RUARAKA HIGH SCHOOL
P.O. Box 57378 - 00200 NAIROBI
SENIOR PRINCIPAL
DATE

KSh 3566=

Pay COMMISSIONER OF LANDS — or Order

Kenya Shillings THREE THOUSAND FIVE HUNDRED

SIXTY SIX ONLY —

For Kenya Commercial Bank Ltd

CHQS ON SELVES-CURRENT ACC.DEPT. 04/08/99

Cheque Number Bank Code Account Number

Dec'96 Dai La Rue

PANORAMA VALUERS

LIMITING CONDITIONS

This property Report and Valuation is subject to the following limiting conditions:-

1. Neither the whole nor any part of this Report and Valuation or any reference to it may be included in any published document, circular or statement nor published in any way without the prior written approval of the firm of the form and context in which it may appear.

2. Where it is stated in the report that information has been supplied to the firm by another party, this information is believed to be reliable but the firm can accept no responsibility if this should prove not to be so, where information is given without being attributed directly to another party, this information has been obtained by our own search of records and examination of documents or enquiry from Government or other appropriate departments.

3. The responsibility of the firm in connection with this Report and Valuation is limited to the client to whom the Report is addressed.

4. The values assessed in this Report are for the subject property and any allocation of values between parts of the property apply only in the terms of and for the purposes of this Report. The values assessed should not be used in conjunction with other assessment as they may prove incorrect if so used.

5. While due care is taken to note significant building defects in the course of inspection, this is a Report and Valuation and not a structural survey and no guarantee is given in respect of rot, termite or pest infestation of other defects whether exposed or unexposed.

6. Where market values are assessed they reflect the full contract value and no account is taken of any liability to taxation on sale or of the costs involved in effecting the sale.

REPORT AND VALUATION

DATE OF INSPECTION: 31st March, 1998

L.R. NUMBER: 7879/4 (PART ONLY)

SITUATION: The property is situated at the junction of Thika Road and Outering Road and it is easily identified as Drive-In Estate.

TITLE: A freehold interest registered in the names of AFRISON EXPORT LIMITED AND HUELANDS LIMITED of P.O. Box 40469 and 57192 Nairobi respectively.
Both companies are tenants in common in equal shares.

The following encumbrances are registered against the title.

1. Mortgage dated 29th December, 1981 for KShs. 21,000,000/= in favour of Continental Credit Finance Limited.

2. 2nd mortgage dated 11th July, 1986 for KShs. 165,000,000/= in favour of Kenya Posts and Telecommunication Corporation.

3. Caveat dated 29th July, 1986 by Drive-In Estate Developers Limited claiming mortgagees interest by virtue of agreement in writing between the parties absolutely.

4. Prohibitory order dated 11th August, 1994 Civil Suit No. 1239 of 1993 in the 1st Class Magistrate's Court at Nairobi.

5. Prohibitory order dated 16th February, 1994 of Civil Suit No. 4 of 1991.

6. Notification of charge dated 10th June, 1997 by the Commissioner of Income Tax for KShs. 5,000,000/=.

7. Prohibitory order dated 4th February, 1997 Winding up Cause No. 29 of 1986 in the High Court of Kenya, Nairobi.

AREA: The whole parcel measures approximately 96 acres.

RATING ASSESSMENT: The current assessment of the entire 7879/4 is KShs. 10,000,000/=. Rates payable in 1998 amounts to KShs. 1,200,000/=.

3. Caveat dated 29th July, 1986 by Drive-In Estate Developers Limited claiming mortgagees interest by virtue of agreement in writing between the parties absolutely.

4. Prohibitory order dated 11th August, 1994 Civil Suit No. 1239 of 1993 in the 1st Class Magistrate's Court at Nairobi.

5. Prohibitory order dated 16th February, 1994 of Civil Suit No. 4 of 1991.

6. Notification of charge dated 10th June, 1997 by the Commissioner of Income Tax for KShs. 5,000,000/=.

7. Prohibitory order dated 4th February, 1997 Winding up Cause No. 29 of 1986 in the High Court of Kenya, Nairobi.

AREA: The whole parcel measures approximately 96 acres.

RATING ASSESSMENT: The current assessment of the entire 7879/4 is KShs. 10,000,000/=. Rates payable in 1998 amounts to KShs. 1,200,000/=.

SERVICES:

All the main services that is water, electricity, public sewer and telephone are connected to the property. The same services will be available to the subplots arising from the subdivision.
The property is well served with tar surfaced main roads namely Outering Road and Thika Road.
The access roads in the estate are tar surfaced.

THE PLOT:

A fairly level parcel of land apart from a small part on the eastern tip that slopes gently into Mathare River.
The parcel is mainly composed of murram which is fairly good for construction purposes.
Boundaries are marked with a chain link wire fence carried precast concrete posts.

IMPROVEMENTS:

Drive-In Estate was ambitious, potentially viable well planned housing scheme which would provide ancillary requirements such as schools, shopping centres facilities and open spaces.
Our instructions are to value the undeveloped part of the scheme.

We take this to mean the entire parcel exclusive of the following.

1. That part which is developed with maisonettes and occupied by the G.S.U. Personnel.

2. That part developed and occupied by Ruaraka Primary School.

3. That part developed and occupied by Ruaraka Secondary School.

4. That part currently being developed with a permanent church.

5. All open spaces, roads of access and proposed roads of access.

Our exclusion of 2 to 5 above assumes that the same have been surrendered for public utility as a condition for the approval of the subdivision scheme.

THE UNDEVELOPED PART:

The undeveloped part of L.R. NUMBER 7879/4 comprises the following scheme.

1. 317 No. Serviced residential sub-plots.

2. 103 No. Surveyed residential sub-plots but without services.

3. 421 No. Planned residential sub-plots.

4. Shopping centre plot planned to have 22 No. commercial sub-plots.

5. 7 No. Corner commercial sub-plots.

6. 2 No. Nursery school or any other public utility plots.

GENERAL REMARKS:

Drive-In Estate is situated in a convenient location along the famous Thika Road and Outering Road.

The Estate is well planned with all ancillary facilities such as schools, shopping facilities and open spaces. It lies opposite the Ruaraka Industrial Area.

Our valuation assumes a maximum development of the plot. We have further assumed that any would be purchaser of the plot would buy the land together with the proposed subdivision scheme which is

partly implemented and 198 maisonettes developed and occupied.

Since the title for the entire parcel is freehold we have assumed that titles for the sub-plots arising from the sub-division scheme will also be freehold.

The completed and occupied part of the project gives good indication and impression of how the rest of the project will look like when completed.

This is a project that will give a new image to this part of Ruaraka.

The eastern tip of the plot is occupied by squatters while part of the portion to the east of Ruaraka Secondary School has been quarried for building stones.

The quarries are shallow and would have little effect on construction.

The portion with serviced residential sub-plots is let to Rafiki Enterprises who use it as an open storage yard.

This is prime property that is ripe for development.

It would however be noted that the property market is currently depressed.

Ruaraka High School

P.O. Box 57378, NAIROBI, Kenya
TEL: 860303

Ref. No:.....

Date: 11/8/99

MR PAUL OMONDI MBAGO
OFFICIAL RECEIVER $ LIQUIDATOR
C.C.F LTD
P.O BOX 57192
NAIROBI

Dear sir,

RE: DRIVE IN ESTATE L.R NO 7879/4

RUARAKA HIGH SCHOOL L.R. NO, 13421/243

Ruaraka High School is a public school and formed part of Drive in Estate in Ruaraka. It occupies the public utility plot which was supposed to have been surrendered to the Commissioner of Lands.

According to the sub division of the Estate which was carried out by Mr Kamwere (surveyor) it was given L.R. No. 13421/243.

The surveyor, who is still having the Deed plans for the School has idicated that, given instructions by you, he can release the Deed plans for the School so that we can be able to obtain a title for the School land.

We are therefore kindly requesting that you help us. Our development is at present hampered by not having a title Deed.

Yours Faithfully,

RUARAKA HIGH SCHOOL
SENIOR PRINCIPAL
DATE
P.O Box 57378 - 00200 NAIROBI

M.N. KAMAU (MRS)
PRINCIPAL /B.O.G. SECRETARY

cc. The Commissioner of lands
P.O BOX 30089
NAIROBI

Telegrams: "INTESTATE", Nairobi
Telephone: Nairobi 227461
Please address all communications to:
THE REGISTRAR-GENERAL and
Quote Ref. No. .....
and date

DEPARTMENT OF
THE REGISTRAR-GENERAL
OFFICE OF THE OFFICIAL RECEIVER
P.O. Box 30031
NAIROBI

18th May, 2005 , 20

Ministry Of Lands And Housing,
Department Of Lands,
P.O Box 30089,
Nairobi.

Att: Mr. S.G.Gikonyo

Dear Sir,

Re:- Winding Up Cause No. 29 of 1986
Continental Credit Finance Ltd
(in liquidation) - Ruaraka High School

We refer to the above matter and to your letter dated 12th April, 2005.

The Official Receiver has never excised any plot from the Drive-in- Estate property for the time Continental Credit Finance has been in liquidation.

Yours faithfully,

P. Thoithi Kanyuira
Principal State Counsel
For: Official Receiver & Provisional Liquidator

Cc: Official Receiver,
Sheria House,
5th Floor,
Nairobi.

/sao

RUARAKA HIGH SCHOOL
SENIOR PRINCIPAL
DATE
P.O. Box 57378 - 00200 NAIROBI

Appendix 15

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

Ref. No. 217905/9
and date

MINISTRY OF LANDS AND HOUSING

DEPARTMENT OF LANDS
P.O. Box 30089
NAIROBI

26th May 2005

Principal/Secretary BOG
Ruaraka High School
P.O. Box 57378
NAIROBI

CONFIRMATION - L.R. NO. 7479/4

I refer to your letter of 12th May 2005. As you may realize the Letter of Allotment is in the name of the permanent Secretary, Ministry of Education and not your school, who are the real beneficiaries.

I would therefore suggest you approach your parent Ministry for assistance.

G.L. MUKOFU
For: COMMISSIONER OF LANDS

REPUBLIC OF KENYA
THE NATIONAL TREASURY

Telegraphic Address: 22921
FINANCE-NAIROBI
Fax No.: 315779
Telephone: 2252299
Email: ps@treasury.go.ke
Website: www.treasury.go.ke

THE NATIONALTREASURY
P.O. Box 30007 - 00100
NAIROBI

When replying please quote

Ref: DV/ES 1063/17/01 'A' (24)

Date: 13th November, 2017

Dr. Belio R. Kipsang, CBS
Principal Secretary
State Department for Basic Education
Ministry of Education
NAIROBI

MINISTRY OF EDUCATION SCIENCE & TECHNOLOGY
RECEIVED
24 NOV 2017
STATE DEPARTMENT OF EDUCATION

Dear PS

RE: LAND COMPENSATION FOR RUARAKA HIGH SCHOOL AND DRIVE-IN PRIMARY SCHOOL

Reference is hereby made to your letters Ref.No.MOE.GEN/3IL/8 VOL.X and MOEST/CONF/2/31TY/39 dated 30th June, 2017 and 18th July, 2017 respectively on the above subject matter.

The National Treasury has noted your request for funding amounting to Ksh.3,269,040,600 to cater for compulsory acquisition of part of land LR No.7879/4 measuring 13.5364 acres on which the above mentioned schools are built. We have also noted that the land is registered under Afrison Export and Import Ltd and the owners had written to the National Land Commission demanding compensation for the land which the schools had occupied for the last thirty (30) years.

It is further noted that the Ministry sought for legal opinion from the office of the Attorney General and Department of Justice on the matter and the Attorney General confirmed that the two schools are public schools, the Constitutional requirement of public purpose or public interest as a factor in compulsory acquisition of private land is fulfilled. He further advised on the procedure to be followed by the National

Land Commission in the compulsory acquisition of the land in line with the Land Act.

In the light of the legal advisory provided by the Attorney General and given that the two schools are existing and running and also taking into account the prevailing fiscal constraints, authority is hereby granted for the State Department of Basic Education to spend Ksh.1,500,000,000.00 in the compulsory acquisition of the above mentioned land pending regularization of the expenditure in the FY 2017/18 Supplementary II Estimates. The balance of the funding will be reviewed in the context of FY 2018/19 budget.

Please Ensure that due diligence is exercised in the process of this compulsory acquisition.

DR. KAMAU THUGGE, CBS
PRINCIPAL SECRETARY/THE NATIONAL TREASURY

Copy to:

Mr. Edward Ouko, CBS
The Auditor General
Kenya National Audit Office
NAIROBI

Mrs. Agnes Nangira Odhiambo, CBS
Controller of Budget
Office of the Controller of budget
NAIROBI

MINISTRY OF EDUCATION
State Department for Education

Telegrams: "EDUCATION", Nairobi
Telephone: Nairobi 318581
Fax. No: 218427
E-mail: ps@education.go.ke

When replying please quote

REPUBLIC OF KENYA

Jogoo House "B"
Harambee Avenue
P.O. Box 30040-001100
NAIROBI
Kenya

Ref. No. MOE.GEN/31L/8 VOL.X **29th November , 2017**

Principal Secretary
The National Treasury
P.O. Box 30007 - 00100
NAIROBI

Attn: Director Budget

RE: LAND COMPENSATION FOR RUARAKA HIGH SCHOOL AND DRIVE-IN PRIMARY SCHOOL

The National Treasury vide letter Ref. No. DV/ES 1063/17/01"A" (24) dated 13th November 2017 has granted authority to the State Department of Basic Education to spend **Kshs.1.5Billion** in compulsory acquisition of the land on which the two schools stand on. This is in light of the legal advisory provided by the Attorney General concerning the case.

The purpose of this letter is to seek your concurrence and introduction of a budget line item under 0-000401 – Headquarters Administrative Services to be used in favour of the National Land Commission for settlement of the case. Note that the balance from the transaction will be reviewed in 2018/19 budget.

RECEIVED
29 NOV 2017

B. Khadiagala
FOR: PRINCIPAL SECRETARY

N.O.O – PS

MINISTRY OF EDUCATION
STATE DEPARTMENT FOR BASIC EDUCATION

Telegrams"Education,"Nairobi
Telephone: 318581
Fax 214287
E-mail:ps@education.go.ke

Jogoo House 'B'
HARAMBEE AVENUE,
P. O. Box 30040-0100
NAIROBI, KENYA

RECEIVED
Accountant General Department
Treasury Management Section
11 DEC 2017
THE NATIONAL TREASURY
P. O. Box 30007, NAIROBI.

Ref No.: MOE/ACCT/1/03/Vol.11 (52)

11th December, 2017

The Principal Secretary
National Treasury
P O Box 30007-00100
NAIROBI

ATTN: EXCHEQUER SECTION

REF: REQUEST FOR RECURRENT EXCHEQUER- KSHS.1, 500,000,000.00.

Reference is made to the office of the controller of budget no.3/2013 dated July 3rd, 2013.

This is to request for a recurrent exchequer of Kshs.1, 500,000,000.00(One Billion, Five Hundred Million only) for the following purpose.

- Compensation for L.R NO.7879/4
  Ruaraka High School & Drive inn Primary School - Kshs. 1,500,000,000.00.

EMILIO MUKIRA
For: PRINCIPAL SECRETARY

REPUBLIC OF KENYA
THE NATIONAL TREASURY

Telegraphic Address: 22921
Finance
00100 FAX NO. 310833
Telephone: 2252299
When Replying Please Quote
Ref. No. RE: 1012/17/18

THE NATIONAL TREASURY
P O BOX 30007 -
NAIROBI

11th January, 2018

Head of Accounting Unit
State Department for Basic Education
Nairobi.

RECURRENT EXCHEQUER ISSUE NOTIFICATION

Please note the following amount was issued from the Exchequer Account on 11th January, 2018 and placed to the credit of your account with the Central Bank of Kenya.

	Kshs.
R 1063 State Department for Basic Education	**5,350,400,000**

2. You should forthwith record the above issue in your Vote Account by debiting your Ministry/Departments Cash Account and crediting "Recurrent Exchequer Account" with the amount shown above.

3. The total issues from the Recurrent Exchequer during the Current Financial Year Including the above amount is now **Kshs. 59,064,921,862.00**

G K KANGOGO
FOR: PRINCIPAL SECRETARY/ NATIONALTREASURY

C. C:The Controller of Budget,
Office of The Controller of Budget
P.O. Box 35616-00100
NAIROBI.

12/1/18

ISO 9001:2008
Certified.

CONFIDENTIAL

MINISTRY OF EDUCATION

Office of the Principal Secretary, State Department of Basic Education

Telegrams: "EDUCATION", Nairobi
Telephone: Nairobi 3318581
Fax No.: 254-2-214287
E-mail: ps@education.go.ke
When replying please quote

PRINCIPAL SECRETARY
JOGOO HOUSE "B"
HARAMBEE AVENUE
P. O. BOX 30040
NAIROBI

Ref. No. MOE/ACCT/1/19 (62)

15th January, 2018
date

Chavangi Aziz Tom
[redacted]ecretary/CEO
[redacted]tional Land Commission
Ardhi House
[redacted]st Ngong Avenue
O Box 44417
NAIROBI

Dear Chavangi

AND COMPENSATION FOR RUARAKA HIGH SCHOOL AND DRIVE-IN PRIMARY SCHOOL

We refer to your letters Ref. No. VAL.1446 and NLC/CAL.1446 of 13th September, 2016 and 24th April, 2017 respectively, on the above subject. Whereas you had requested us to deposit Ksh.3,269,040,600.00 in the Commission Account, the National Treasury granted us the authority to spend Ksh.1,500,000,000.00 in this FY 2017/2018. The balance of the funding will be reviewed in the context of FY 2018/2019.

The National Treasury has so far disbursed Ksh.1,500,000,000.00 to be transferred to your account to enable you settle part of the compensation. To enable us disburse the same amount to your account, kindly submit the following to my Office:-

1. A formal request of the said amount to be released to your bank account,
2. A valuation report showing clearly how the compensation amount of Ksh.3,269,040,600.00 was arrived at.

Kindly expedite.

Yours sincerely

Belio R. Kipsang, CBS
PRINCIPAL SECRETARY

RECEIVED
18 JAN 2018
P. O. Box 30040-00100
NAIROBI

NATIONAL LAND COMMISSION
Our Land, Our Wealth, Our Heritage

OFFICE OF THE CHAIRMAN

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

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

NLC/VAL.1446

16th January 2018

Dr. Belio R. Kipsang, CBS
Principal Secretary
Ministry of Education, Science & Technology
P. O. Box 30040-00100
NAIROBI.

SA Alg
Dear
18/1/18

Dear Dr. Kipsang,

LAND COMPENSATION FOR RUARAKA HIGH SCHOOL AND DRIVE-IN PRIMARY SCHOOL UPON L.R. NO. 7879/4 (PART) – NAIROBI COUNTY

The Commission acknowledges receipt of your letter Ref. MOE/ACCT/1/19 (62) dated 15th January 2018 in furtherance of ours Ref. NLC/VAL.1446 dated 24th April 2017 (copy attached for ease of reference).

The Commission notes the partial disbursement of **Kshs.1,500,000,000/=** as transferred into the Ministry of Education account towards settlement of part of the compensation. The Ministry is therefore advised to transmit this compensation into the Commission account as detailed hereunder:

Account Name	:	**National Land Commission**
Bank	:	**National Bank**
Branch	:	**Upper Hill**
Account Number	:	**01001032980000**
Bank Code	:	**12004**

Please note that this remittance will be disbursed to the land owner on a **WITHOUT PREJUDICE** understanding as the full compensation of **Kshs.3,269,040,600/=** that is inclusive of 15% statutory disturbance provided under the Land Act 2012 is awaited.

The Commission commits to issue the titles for both institutions to the Ministry of Education once final compensation is disbursed to the land owner.

Yours sincerely,

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics

NATIONAL LAND COMMISSION
Our Land, Our Wealth, Our Heritage

OFFICE OF THE SECRETARY/CEO

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

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

MINISTRY OF EDUCATION, SCIENCE & TECHNOLOGY
RECEIVED
16 JAN 2018
P.O. BOX 30040-00100
NAIROBI

NLC/VAL.1446

16th January 2018

Dr. Belio R. Kipsang, CBS
Principal Secretary
Ministry of Education, Science & Technology
P. O. Box 30040-00100
NAIROBI.

Dear Dr. Belio;

LAND COMPENSATION FOR RUARAKA HIGH SCHOOL AND DRIVE-IN PRIMARY SCHOOL UPON L.R. NO. 7879/4 (PART) – NAIROBI COUNTY

The Commission acknowledges receipt of the letter from the Ministry of Education Ref. MOE/ACCT/1/19 (62) dated 15th January 2018. The request for a Valuation Report showing how the compensation amount was arrived at.

The Commission hereby submits the report and valuation for your further use.

Yours Sincerely,

Chavangi Aziz Tom
SECRETARY/CEO

Encl.

REPORT AND VALUATION UPON

LR NO.7879/4 (PART),

RUARAKA HIGH SCHOOL

DRIVE INN PRIMARY SCHOOL

NAIROBI COUNTY

The National Land Commission received instructions from **Ministry of Education** to compulsory acquire land for Ruaraka High School and Drive Inn Primary School in accordance with the Land Act No.6 of 2012. The Inspection Report and Valuation for compulsory acquisition and compensation purposes is hereby appended.

DATE OF INSPECTION: 14th June 2017

DATE OF GAZETMENT: Gazette Notice No. 6322 of 30th June 2017

SITUATION: The property is situated off the upgraded Mathare –North Road that connects Outer-Ring Highway and Juja road. The Ruaraka High School and Drive Inn Primary School share the same compound and are sandwiched between the General Service Unit (GSU), De La Rue Company and Kenya School of Monetary Studies.

TITLE NUMBER: LR NO. 7879/4(part)

SERVICES: All main services, electricity, water and sewer are connected to the Property. Access roads are tarmacked and social amenities are in the vicinity.

AREA TO BE ACQUIRED: Gazetted 2.8255Ha or 6.9818 Acres for Drive Inn primary School and 2.7472Ha or 6.7883 Acres for

Ruaraka High School. **This totals to 5.5727 Ha or 13.7701 Acres.**

DESCRIPTION:

A fairly flat land parcel developed with permanent schools having complimentary administrative offices and classes as well as the playing grounds that have been approved to adoptive standards. The subject focus is land valued on unimproved land basis (USV).

COMPARABLES:

These are based on similar locality, complimentary use and approved development planning in accordance with the County Government of Nairobi. The analysis of values is elaborated herebelow:

LR. NO.	User	Location	Acreage	Stamp Duty Declaration	Acre Rate Analysis	Date of Valuation
1208/43	Residential	Thika Road (Jesus Winner Ministry)	0.1774 Ha or 0.438 Acres	60 million	237 m	2011
21762	Industrial	Junction of Thika & Outering Road	1,425 acres	150 million	101 m	2013
Block 98/78	Residential	Along Mombasa Road at Bellevue Junction	0.809 Ha or 2.002 acres	520 million 5/9/14	265 m	09/2014
LR 12803/43	Thika Commercial	Thika Road -Kamiti Juction	0.1774 Ha or 0.4383 acres	60 million 9/9/2011		
LR 7879/4 (Part)	Road	Ruaraka	0.4848 Ha or 1.198 acres	210 million 2017	—	April 2017

REMARKS:

The area being acquired fronts the Mathare North Road that connects Outering Highway and Juja Road. The area acquired is large enough to accommodate the two schools and their

complimentary uses in accordance with the Ministry of Education standards. These are schools both developed in 1984 and 1987 respectively by the Ministry of Education on private land. This is an accessible high potential area that is well served with public infrastructure and social amenities. The surrounding developments being the GSU, De La Rue Company and Kenya School of Monetary Studies forming an exclusive neighbourhood that secures the area giving it prominence compared to the lower parts bordering Mathare area on the same land parcel.

The rest of the neighbourhood has different retail investor enterprises that include banks, shopping malls, petrol stations and commercial premises. The current zoning is open to change of users and land values in open areas fronting the road have been escalating in a range of 20% to 50% per annum since 2010. The basis of comparable is stamp duty declaration.

SPECIAL NOTE: This is a statutory valuation undertaken underpart VIII of the Land Act 2012 on compulsory acquisition on interest on land. The Ministry of Education has duly noted that the 2 schools were built on private land with no consideration having exchanged hands. Therefore a statutory provision of 15% is duly included in the valuation.

VALUATION: In our opinion, a fair value to attach to this property for compulsory purchase is **Kshs.3,269,040,600 (READ: THREE BILLION TWO HUNDRED AND SIXTY NINE MILLION AND FORTY THOUSAND, SIX HUNDRED ONLY).**

For and on behalf of
CHAIRMAN, NATIONAL LAND COMMISSION

DR. SALOME L. MUNUBI
B.A. LAND ECON (HONS) M.I.S.K, MBA (UoN)
LICENSED AND PRACTISING VALUER

MINISTRY OF EDUCATION

Office of the Principal Secretary, State Department of Basic Education

Telegrams: "EDUCATION", Nairobi
Telephone: Nairobi 3318581
Fax No.: 254-2-214287
E-mail: **ps@education.go.ke**
When replying please quote

PRINCIPAL SECRETARY
JOGOO HOUSE "B"
HARAMBEE AVENUE
P. O. BOX 30040
NAIROBI

MOE/ACCT/1/19 (63)
Ref. No.....

19th January, 2018
.....
date

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman
National Land Commission
Lhi House
Ngong Avenue
P. Box 44417
NAIROBI

Dear Prof.

RELEASE OF KSH.1,500,000,000.00 FOR LAND COMPENSATION FOR RUARAKA HIGH SCHOOL AND DRIVE-IN PRIMARY SCHOOL UPON L.R. NO. 7879/4 (PART) – NAIROBI COUNTY

The above matter refers.

We have released an amount equivalent to **Ksh.1,500,000,000.00, (One Billion, Five Hundred Million, only)** to your **National Bank Account No. 01001032980000, Upper Hill Branch.** The money is meant for Land Compensation for Ruaraka High School and Drive-In Primary School as per earlier correspondence between different Government entities including National Land Commission and ourselves.

In light of the authority granted by the National Treasury and your formal request to release the funds, you are advised to ensure that you are in possession of the instruments of ownership for the land in accordance with the law. You are further advised to ensure that due diligence is exercised in the process of this compulsory acquisition.

Yours

Belio R. Kipsang, CBS
PRINCIPAL SECRETARY

Copy to: **Dr. Kamau Thugge, CBS**
The Principal Secretary
The National Treasury
P O Box 30007 – 00100
NAIROBI

MINISTRY OF EDUCATION

Office of the Principal Secretary, State Department of Basic Education

Telegrams: "EDUCATION", Nairobi
Telephone: Nairobi 3318581
Fax No.: 254-2-214287
E-mail: ps@education.go.ke
When replying please quote

PRINCIPAL SECRETARY
JOGOO HOUSE "B"
HARAMBEE AVENUE
P. O. BOX 30040
NAIROBI

Ref. No. MOE/ACCT/1/19 (63)

19th January, 2018
date

of. Muhammad A. Swazuri, PhD, OGW
nairman
N tional Land Commission
dhi House
Ngong Avenue
P Box 44417
IROBI

PS

D ar

RELEASE OF KSH.1,500,000,000.00 FOR LAND COMPENSATION FOR RUARAKA HIGH SCHOOL D DRIVE-IN PRIMARY SCHOOL UPON L.R. NO. 7879/4 (PART) – NAIROBI COUNTY

T e above matter refers.

e have released an amount equivalent to **Ksh.1,500,000,000.00, (One Billion, Five Hundred M lion, only)** to your **National Bank Account No. 01001032980000, Upper Hill Branch**. The ney is meant for Land Compensation for Ruaraka High School and Drive-In Primary School as per rlier correspondence between different Government entities including National Land Commission l ourselves.

ght of the authority granted by the National Treasury and your formal request to release the funds, are advised to ensure that you are in possession of the instruments of ownership for the land in cordance with the law. You are further advised to ensure that due diligence is exercised in the ocess of this compulsory acquisition.

urs

. Belio R. Kipsang, CBS
PRINCIPAL SECRETARY

py to: Dr. Kamau Thugge, CBS
The Principal Secretary
The National Treasury
P O Box 30007 – 00100
NAIROBI

19/1/18

MINISTRY OF EDUCATION

Office of the Principal Secretary, State Department of Early Learning and Basic Education

Telegrams: "EDUCATION", Nairobi
Telephone: Nairobi 3318581
Fax No.: 254-2-214287
E-mail: ps@education.go.ke
When replying please quote

PRINCIPAL SECRETARY
JOGOO HOUSE "B"
HARAMBEE AVENUE
P. O. BOX 30040
NAIROBI

MOE.GEN/31L/8 VOL.X

Ref. No.....

21st February, 2018

.....
date

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman
National Land Commission
P. O. Box 41777
NAIROBI

Dear Prof Swazuri

RE: REMISSION OF BALANCE FOR LAND COMPENSATION FOR RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

We acknowledge receipt of your letter Ref.NLC/VR.1446 contents whereof have been noted.

However, we wish to request that you formally acknowledge the receipt of Kshs.1,500,000,000.00 partial disbursement and confirm that the interest of the schools in the land has been secured.

Yours Sincerely

Dr. Belio Kipsang, CBS
PRINCIPAL SECRETARY

REPUBLIC OF KENYA

MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY

CERTIFICATE OF REGISTRATION OF SCHOOLS

NAME OF SCHOOL RUARAKA HIGH SCHOOL	TOWN OR LOCATION AND PLOT NUMBER RUARAKA
CLASSIFICATION OF SCHOOL MIXED DAY SECONDARY SCHOOL (PUBLIC)	DISTRICT KASARANI PROVINCE NAIROBI
NAME OF MANAGER BOARD OF GOVERNORS	ADDRESS OF MANAGER/SPONSOR P.O. BOX 57378-00200 NAIROBI NAIROBI COUNTY COUNCIL DEB
INSTRUCTION MAY BE GIVEN IN THIS SCHOOL UP TO FORM 1-4	MAXIMUM NUMBER OF PUPILS TO BE ACCOMMODATED FOUR STREAMS SECONDARY SCHOOL FROMS 1-4 @ 40 STUDENTS PER CLASS WITH A MAXIMUM ENROLMENT OF 640 STUDENTS
REGISTRATION NUMBER GP/A/5879/09	SUBJECTS TAUGHT 8-4-4 CURRICULUM
DATE OF REGISTRATION 23/3/09	ENOS MAGWA FOR: PERMANENT SECRETARY
	SPECIAL REMARKS THIS CERTIFICATE OF RE-REGISTRATION CANCELS THE PREVIOUS ONE NO.GP/A/729/97

NAME OF SCHOOL	DATE	REGISTRATION NUMBER	TOWN OR LOCATION
RUARAKA HIGH SCHOOL	23/3/09	GP/A/5879/09	RUARAKA

Distribution

White —SCHOOL
Blue —P.D.E.
Pink —MANAGER
Yellow —M.O.E.S.T.

NOTES

1. This certificate is the property of the ministry and must be returned to the ministry on demand.

2. If it is proposed that any of the particulars in this certificate should be changed, a new application for registration must be made in the normal way.

3. It is illegal to hold or have in custody an invalid certificate of registration of a school.

GPK (L) 288—500Bks.—14/2002

Telephone : Nairobi 24344—6, Ext. 1
When replying please quote
Ref. No. M.E.S.T./143/84
and date

CHIEF INSPECTOR OF SCHOOLS
INSPECTORATE
P.O. Box 30426
NAIROBI, KENYA

3rd August, 19 84

Commissioner of Lands,
P.O. Box 30089,
NAIROBI.

NAIROBI SECONDARY SCHOOL SITE OFF THIKA ROAD ON A PORTION OF LR. NO. 7879/4

Reference is made to your letter Ref. 108096/43 dated 14/7/84 on the above subject.

The Director of Drive In Estate Developers Ltd. has contacted this Office with the proposal of erecting a Private Secondary School on the above site. As you could be aware, this Ministry is highly trying to encourage developers of Private Secondary Schools since the existing schools are unable to cater for the many students leaving the Primary Schools. Also the Ministry is quite overburdened with the maintenance of existing secondary schools and therefore there is no finance for new secondary schools at present.

We are convinced beyond any doubt that Drive In Estate Developers Ltd. is financially capable of developing the school site and to provide education facilities essentially needed to cater for the population.

The Director of the Firm submitted to this office some impressive building plans for the site. These plans must have costed the Company great amount of money.

In consideration of the fact that the school site came as a result of sub-division scheme mounted by this Firm on its own land, it would rather be unfair to deter it from undertaking the development on which some money has already been spent.

This Ministry has therefore relinquished any interest on the plot and would appreciate if Drive In Estate Developers Ltd. would go ahead with the proposed development.

Yours faithfully,

D. M. NDUNGU
for: PERMANENT SECRETARY

c.c. Drive In Estate Developers Ltd.,
P.O. Box 46817,
NAIROBI.

The Provincial Commissioner,
NAIROBI.

NAIROBI CITY COMMISSION

TELEGRAMS: "MUNICIPALITY" NAIROBI
TELEPHONE 24281
XT: 105/Mr. Wang'ondu

CITY PLANNING DEPARTMENT

CITY HALL
P.O. BOX 30075
NAIROBI
KENYA

Ref. No. CPD/0644/7879/4

M/s Drive In Estate Developers Ltd.,
P.O. Box 46817,
NAIROBI.

28th March 1984.

(ATT: MR. FRANCIS MBURU)

Dear Sir,

RE: SUBDIVISION OF L.R. NO. 7879/4, OUTER RING ROAD, NAIROBI.

Your unreferenced letter of 14th March, 1984 in respect of the above mentioned property refers.

This is to advise you that, your proposed development was given conditional subdivision approval and its up to you to either accept them in total or cancel the said subdivision scheme.

Please be informed that, this Commission will not entertain any negotiations on the conditions of approval under reference, and is not, in any way whatsoever, interested in your Valuation Report, copies of which are returned herewith for your safe keeping.

Yours faithfully,

MWANGIH H.C. WANG'ONDU
DIRECTOR OF CITY PLANNING

c.c. Commissioner of Lands,
P.O. Box 30089, NAIROBI.

Director of Surveys,
Survey of Kenya,
P.O. Box 30046, NAIROBI.

B.S. Dogra Associate,
Project Architect,
P.O. Box 42784, NAIROBI.

MHCW/rk

Encls.

drive in estate
Developers Ltd.
Offices: Development House 1st Floor
P.O. Box 46817 Nairobi Tel: 340300/1 Telex: 23275 FRANDEVE

5TH April, 1984

The Director of City Planning
Nairobi City Commission
City Hall,
P.O. BOX 30075
NAIROBI.

(Att: Mr. Mwangih H. C. Wang'ondu)

Dear Sir,

RE: SUBDIVISION OF LR 7879/4 OUTERING ROAD, NAIROBI

Reference is made to your letter Ref. CPD/0644/7879/4 dated 28th March 1984 on the above matter which should have been addressed to the owners of the property as we are just mare contractors of the project.

The subdivission conditions given for the development of the project are not acceptable b the registered land owners of LR No. 7879/4.

We have been instructed by the registered land owners that they are not interested with your conditional approval, as a result of your above referenced letter paragraph 2 the ownershave accepted and cancelled the entire application of subdivision of the land, they are no longer interested with your conditional approval and you can adopt the cancellatio They have been informed by officers of your Council that your intention is to sell and allocate open spaces to individual after the surrender, as a result your condition are NOT acceptable.

FRANCIS MBURU
DRIVE IN ESTATE DEVELOPERS LTD

CC. Commissioner of Lands
P.O. Box 30089, NAIROBI.

DIrector of Surveys ,
Survey of Kenya,
P.O. Box 30046, NAIROBI.

B.S. Dogra Associates,
Project Architect
P.O. Box 42784, NAIROBI.

REPUBLIC OF KENYA

THE LAND ACT NO.6 OF 2012

THE LAND REGISTRATION ACT NO.3 OF 2012

GOVERNMENT LAND ACT CAP 280(REPEALED)

CERTIFICATE OF POSTAL SEARCH

AS ON: **8/12/2016**

L.R. NUMBER: **7879/4**

AREA: **96 Acres**

REGISTER **N 110 Folio 47 File 16178**

TENURE..... **FREEHOLD**

CURRENT REGISTERED PROPRIETOR: **AFRISON EXPORT IMPORT LIMITED and HUELANDS LIMITED as tenants in common in equal shares.**

ENCUMBRANCES

NIL

Signed ----------

REGISTRAR OF GOVERNMENT LANDS

C. N. Kituyi "215

Annex XI - Submissions by the Nairobi City County

Governor's Office
Telephone: 020 344194
web: www.nairobi.go.ke

City Hall,
P. O. Box 30075-00100,
Nairobi,
KENYA.

REPORT ON DRIVE-IN PRIMARY SCHOOL AND RUARAKA HIGH SCHOOL WITHIN PLOT L.R. NO. 7879/4 – RUARAKA

This report relates to the query by the National Assembly through its Departmental Committee on Lands vide their letter dated 7th May 2018 ref. NA/DC/LND/2018/(40) in which the Committee has sought to know:-

1) **How the two schools were established and status of approvals by the defunct City Council of Nairobi.**
2) **Any documents relating to the registration, construction approvals and land ownership of the primary school under the custody of the Nairobi City County.**
3) **Any approved plans for the construction of the 500 maisonettes on L. R. No. 7879/4 in 1981 and any conditions made to Afrison Export & Imports Ltd. and Hueland Ltd by the City Council of Nairobi regarding the construction.**

SUBMISSION

From our records, we have retrieved a letter dated 28th March 1984 ref. CPD/0644/7879/4 by the then Nairobi City Commission (City Planning Department) to **M/S Drive In Estate developers Ltd**. This letter apparently communicated the Commission's stand on a conditional sub-division which had been accorded to plot **L.R. No. 7879/4**. Even though the conditions have not been expressly been stated, reading through the file, one can easily infer sub-division surrender for social amenities (public utility) within the scheme because the plot (38.85ha) met the City Council threshold (10 acres) for

XI

surrender. The letter was copied to the Commissioner of Lands, Director of Surveys and more importantly, **M/S B.S. Dogra Associate** as project architect. This might infer some development which had taken place or was about to take place on the subject plot. Perhaps explaining the issue of the maisonettes in item No. 3.

On 5th April 1994, Drive In Estate Developers Ltd wrote back to the City Council of Nairobi declining the conditional approval and requesting for cancellation of the scheme. This means that the plot reverted to its position before the sub-division.

The matter of sub-division came up later with correspondences between the **Office of the President** and the **Ministry of Lands, Housing & Urban Development** requesting for excision of the portion of the plot which accommodates the General Service Unit (G.S.U) of the Kenya Police Service. The survey was done but without the planning process (sub-division). The survey produced plot L.R. No. 7879/24 (G.S.U houses) measuring 15.14 ha and the remainder L. R. No. 7879/25 measuring 23.47ha, part of which is occupied by the two schools. The excision was regularized by the Nairobi City County through a sub-division done on 2nd August 2013.

What can be deduced from the foregoing is that there has never been another sub-division of the plot, at least through a planning process as laid down by the Physical Planning Act cap. 286 which states that a development must take place on a planned (sub-divided) and surveyed plot with approved plans.

Therefore, going back to the establishment of the two schools, the Nairobi City County Government has not found any evidence of the approval for the construction of Drive-In Primary School and Ruaraka High School, nor has it established any sub-division approval for the parcels of land accommodating the two institutions.

On issue of registration of the institutions, the process is undertaken by the **Ministry of Education**. The Ministry would be better placed to comment on the matter. Further, since, to the best of our knowledge, the planning process was not undertaken, it is assumed that the land on which the two schools sit does not have ownership documents.

It has been stated that the maisonnetes were built in 1981. The fact that there was a project architect points to preparation of architectural plans for the housing scheme. However, the Nairobi City County Government has not come across approvals of the scheme by the City Council of Nairobi. What could only be assumed is that if at the time of developing the maisonnets, the developer did not have intention to sub-divide, then the approval might not have had any conditions save for provision of internal roads, water supply, street lighting etc. The apparent condition came when the sub-division obtained.

for

MIKE SONKO MBUVI

GOVERNOR