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THE SENATE

TWELFTH PARLIAMENT

THE REPORT OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

ON

PETITION BY RESIDENTS OF MSAMBWENI VILLAGE IN VOI SUB-COUNTY OF TAITA TAVETA COUNTY REGARDING THE ALLEGED IMPENDING EVICTIONS OF MSAMBWENI RESIDENTS BY A PRIVATE COMPANY

JUNE, 2021

(2) Rt. Hon. Speaker
You may approve for tabling.
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CHAPTER I

INTRODUCTION

1. At the sitting of the Senate held on 30th September, 2020 the Senator, Taita Taveta County, Sen. Johnes Mwaruma, reported to the Senate that a Petition had been submitted through the Clerk, by residents of Msambweni Village in Voi Sub-county of Taita Taveta County regarding the alleged impending evictions of Msambweni residents by a private company.

2. The Prayers in the said Petition are that the Senate—

i) deals with the Petition immediately in view of the urgency and seriousness of the matters raised herein;
ii) conduct an investigation to establish how it was possible for the Commissioner of Lands to allow Bata Shoe Company to transfer its lease grant to Sparkle Properties Limited in total disregard of the terms and conditions of the grant, which opposed the same;
iii) conduct an investigation to establish how it was possible for Bata Shoe Company to sell the land to Sparkle Properties Limited at Kshs12 million, and yet, it had not done any development on it;
iv) recommends that appropriate action be taken against the Commissioner of Lands for colluding with Bata Shoe Company to transfer Msambweni residents' land to Sparkle Properties Limited, despite there being terms and conditions against the same.
v) recommends that the Ministry of Lands acquires the disputed land and settles the residents on it through compulsory acquisition.
vi) takes any other appropriate action it deems fit to ensure that the residents of Msambweni live in peace as before.

3. Pursuant to standing order 232(1) of the Standing Orders of the Senate, the Petition was committed to the Land, Environment and Natural Resources Committee.

B. LEGAL BASIS FOR PETITIONS

4. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the Senate Standing Orders.

5. Article 37 of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while Article 119(1) of the Constitution provides that *"every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation."*

6. Section 5(2) of the Petition to Parliament (Procedure) Act, provides that *a petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House*. In this regard, standing order 232 of the Senate Standing Orders provides as follows-

   232. Committal of Petitions

   (1) Every Petition presented or reported pursuant to this Part, shall stand committed to the relevant Standing Committee.

   (2) Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes.

7. Standing order 233 requires the Clerk to, within fifteen days of tabling of the report on a petition under Standing Order 232 (Committal of Petitions), submit a copy of the report to the petitioner or petitioners.

CHAPTER 2

CONSIDERATION OF THE PETITION

Approach taken by the Committee

1. In considering the Petition, the Committee observed that it would be important to verify the facts alleged by the Petition. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.

2. In this regard the Committee received the Petition from the Petitioner through the House and further met with the Petitioners on several occasions as it met with stakeholders and further during its county visit to Taita Taveta County.

3. Thereafter the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning, the Chairperson of the National Land Commission and the Governor, County Government of Taita Taveta who virtually appeared before the Committee.

4. The Committee further undertook a site visit on 27th March, 2021 as observed in the photos attached below.

Photos of the Committee engagement with Members of the Public during its site visits

A. Petitioners' Submissions

Vide a letter REF: SEN/DCS/LENR/2/2020/(68) dated 27th October, 2020, the Committee invited the Petitioners to virtually appear before the Committee on Wednesday, 4th November, 2020 who thereafter appeared and prosecuted their Petition.

The Petitioners submitted as follows:

1. Around August 1978, the Late Hon E.T Mwamunga, the then M.P Voi Constituency, Bata Shoe Company Limited officials and Ministry of Land Officials visited Msambweni village in Kaloleni Ward (then Voi South Ward) and requested the residents for land to put up the biggest shoe factory in Africa, which residents warmly accepted in view of the benefits which were to come with this factory namely; employment, piped water, schools, electricity, health centre etc.
2. On 20th December, 1978, Bata Shoe Company Limited was issued with a letter of allotment with conditions attached to it.
3. On 1st January, 1979, Bata Shoe Company Limited was issued with a 99 years lease/grant No. CR 23979 with conditions attached to it.
4. On 21st May, 1979, Director of Physical Planning wrote to the Commissioner of Lands requesting him to fast track the issue of compensation of Msambweni residents before commencement of construction of the factory.
5. Bata Shoe Company Limited did not put the factory on the said land instead constructed a mini shoe factory in a different land within Voi town, operated it for around four years then shut it down.
6. The residents were left without any information regarding the factory.
7. In 2011, after 32 years without fulfilling any conditions stated in the letter of allotment and Grant, Bata Shoe Company Limited fraudulently sold a densely populated Msambweni Village to Sparkle Properties Limited at Kshs. 12,000,000.00.
8. In 2013, Sparkle Properties Limited moved to the Environment and Land Court in Mombasa seeking to evict Msambweni residents from their ancestral land.
9. On 24th February, 2020, the High court issued a Judgement in favour of Sparkle Properties Limited. The judgement was communicated to the defendants one month later after the close of the window period for lodging an appeal.

10. On 27th April, 2020, Msambweni residents petitioned the Taita Taveta County Governor.

11. On 26th June, 2020, the residents moved to the Court of Appeal seeking the review of the case (Appeal No. 42 of 2020).

12. On 19th August, 2020, Sparkle Properties Limited moved to Mombasa and extracted the decree.

13. On 24th August, 2020, Sparkle Properties Limited moved to Mombasa High Court seeking eviction orders against Msambweni residents.

14. On 7th August, 2020, Msambweni residents petitioned the Senate of the Republic of Kenya to intervene on the matter.

15. On 28th August, 2020, Msambweni residents petitioned the National Lands Commission Chairman on the matter, the responses of which they are yet to receive.

16. On 28th August, 2020, Msambweni residents complained to the Commission on Administrative Justice seeking its intervention on the matter. On 5th October 2020, the Commission on Administrative Justice responded to the complaints having referred the matter to the Chief Executive Officer of the National Land Commission.

B. <u>Response by the Cabinet Secretary, Ministry of Lands and Physical Planning</u>

Vide a letter Ref: **SEN/DCS/LENR/2/2021/(23)** dated 15th April, 2021, the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning to respond to the Petition in its entirety. Based on the concerns raised, the Ministry provided the following responses:

The subject parcel of land is situated within Voi Township and borders Ndara A adjudication section and Kaloleni Majengo Squatter Upgrading Scheme. The parcel is registered at the Mombasa Land Registry under the Registered Titles Act, Cap. 281 *(repealed)* as Land Reference No. 1956/506 C.R. No 23979 on Survey plan No. 107124 measuring approximately 54.26 hectares.

The land was allocated to Bata Shoe Company Limited who intended to establish a shoe factory on the land, and was issued with title deed on April 30, 1993. Bata Shoe Company Limited later sold the parcel to Sparkle Properties Limited at a consideration of Kshs. 12,000,000. The transfer was lodged on March 21, 2011 and a new title issued to Sparkle Properties Limited as the proprietor (see **Annexure 17** on the response of the Ministry).

The proprietor upon receiving title to the land discovered that squatters had moved in and constructed residential houses, they also prevented the owner from taking possession or accessing the property. This prompted the company to move to the Environment and Land Court at Mombasa, Civil Case No. 265 of 2013 (Sparkle properties Limited -vs- Johana Ngai & 8 Others)

On January 27, 2020, the court rendered Judgment on the case as follows-

a) Permanent injunction restraining the defendants whether acting by themselves; their employees, agents and/or servants and/or through any other manner

whatsoever interfering with the suit property to unit L.R. No. 1956/506.

b) Mandatory injunction compelling the defendants to demolish and or pull down structures erected on the suit property and to give vacant possession to the plaintiff.
c) That there be a permanent injunction restraining the defendants and/or their agents to allow them to occupy or construct the unoccupied space and proceed with construction forthwith
d) General damages for trespass awarded at Ksh.150,000 payable by each defendant to the plaintiff giving a total sum of Kshs.1,050,000 with interest from the date of filing suit until payment is made in full.
e) Costs of the suit awarded to the plaintiff.

The issues raised in the petition were adequately canvassed in the suit. (see **Annexure 18** on the response of the Ministry)

The Cabinet Secretary, MoLPP, further addressed the following emerging issues;

i) Explanation on the circumstances that led the Commissioner of Lands into changing the conditions of the lease
ii) Submit relevant documentation and evidence of correspondence that led to the change of the lease conditions
iii) Proposals on the best way of assisting the people of Msambweni to get back their land

In response to issue **(i) and (ii)**, the subject parcel was originally Government land. The Commissioner of Lands allocated it to Bata Shoe Company Limited and was registered on April 30, 1993 as CR. 23979. A copy of the Grant is attached to the response of the Ministry and marked as **Annexure 18**.

The conditions for the lease are contained in the Grant. The relevant conditions of the lease are the Special Conditions; No. 2 on development of the property within 24 months of registration of the Grant; No. 5 on the user for the property and Nos. 9 & 10 restricting transfer of the property unless Special Condition No. 2 is fulfilled.

The Commissioner of Lands gave consent for the transfer of the property to Sparkle Properties Limited despite Special Condition No. 2 being unfulfilled. Bata Shoe Company transferred the property to Sparkle Properties Limited vide a transfer lodged on March 21, 2011.

The question of the propriety of the title held by Sparkle Properties Limited has been subject of litigation in Environment and Land Court, Mombasa, Civil Case No. 265 of 2013. The Court considered the circumstances of the transfer with regard to the Special Conditions Nos. 2, 9 and 10 and upheld title as per the judgment marked **annexure 19** in the response of the Ministry.

In response to **Question (iii),** the Ministry stated that it had noted the plight of the Petitioners who are facing imminent evictions and promised to engage the Land Settlement Fund Board of Trustees to consider their case for resettlement.

C. Response by the National Land Commission

Vide a letter Ref: SEN/DCS/LENR/2/2021/(23) dated 15th April, 2020, the Committee invited the Chairperson of the National Land Commission and received the following submissions at the Committee meeting held on 12th May, 2021;

a) **Explanation on who was compensated for the aforementioned parcel of land compulsorily acquired by Kenya Railways, during the construction of the Standard Gauge Railway, providing the amount compensated**;

Msambweni village was one of the residential areas of Voi town that were affected by land acquisition for the Construction of Nairobi – Mombasa Standard Gauge Railway (phase 1) pursuant to a request by Kenya Railways Corporation. The section affected lie near and almost parallel to the Nairobi – Mombasa road South of Voi town.

The village is part of Land Reference No. 1956/506 registered in the name of Sparkle properties limited but which initially was owned by Bata Shoe Company hence popularly known as Bata area.

The notice of intention to acquire land for the project was published in Kenya Gazette notice No. 4096 20th June, 2014. Inquiry was held as scheduled on 28th August, 2014 at Voi County Commissioner's Office. The registered owner of the Land appeared at the inquiry and presented its claim to compensation for the Land. Msambweni residents, who were in occupation of the land, also presented their claim to compensation for the land and improvements. While the ownership of improvements was determined on the ground for the respective developers/occupants, no ownership documents were presented for land.

The subject parcel was listed in a subsequent addendum vide Gazette Notice No. 5040 and its inquiry was published in gazette notice no. 6205 of 5th September, 2014. The area acquired out of the subject parcel is **16.893 ha** for both the railway line and part of the Voi station.

However, during the inquiry it became evident that there was an ongoing Court case between the registered land owners and the occupants of the land. This was listed as ELC

civil suit no 265 of 2013, Sparkle Properties Limited Vs Johana Ngai and others.

In 2020 the Commission received a Court ruling confirming that Sparkle properties limited were the rightful owners of the disputed parcel pursuant to which the Commission issued an award of **Kshs.192, 015,974.00**.

Upon conclusion of the inquiry in line with section 113 of the Land Act 2012, the Commission subsequently issued awards for interests determined on the land and improvements. However, payment for land has not been done pending conclusion of the Court case. Awards for the improvements were issued, accepted and paid for and a list of the persons compensated is as follows;

#	PARCEL NO.	PAYEE	AMOUNT	KRC PAYMENT
1	BATA	JACOB KARUTI IMUNYA	908,040.00	Payment 001
2	BATA	FREDRICK NJUMWA NYAMBU	922,300.00	Payment 001
3	BATA	GLADNESS WAKIO MSAFIRI	745,775.00	Payment 001
4	BATA	GRACE WANJALA MWADIME	1,518,862.50	Payment 001
5	BATA	FESTUS KATITU BAYA	74,750.00	Payment 001
6	BATA	ELIZABETH MARGRET KIMBAYA	215,280.00	Payment 001
7	BATA	JAMILA WAKIO ALI	1,948,445.00	Payment 008
8	BATA	HENRY MBOCE NJUGUNA	51,750.00	Payment 001
9	BATA	WALTER KALENDO	1,856,560.00	Payment 003
10	BATA	EVANSON MWACHIA MALOMBO	498,180.00	Payment 001
11	BATA	JASPHER PETER TATUA	866,122.50	Payment 001

		MAMBORI		
12	BATA	ASHA MWAKE NDOLONGA	397,440.00	Payment 001
14	BATA	JOHNSON WAKISE MWANJALA	268,812.00	Payment 001
15	BATA	SAIDI MWALUMA NDOLONGA	23,000.00	Payment 001
16	BATA	ADIJA NDUNDA NDOLONGA	386,400.00	Payment 001
17	BATA	FATUMA CHAO NDOLONGA	1,245,450.00	Payment 001
18	BATA	HAMISA KALELA NYOKA	1,303,065.00	Payment 001
19	BATA	WILSON MWANDOE	182,160.00	Payment 001
20	BATA	ABADIAH MAKANYO MWANGOO	432,860.00	Payment 001
21	BATA	HAMFREY BUNYALI KESEKWA	811,842.50	Payment 001
22	BATA	JACKTON MWAWASI WAMADA	1,311,000.00	Payment 001
23	BATA	KASSIM MUNYIKA	712,080.00	Payment 001
25	BATA	FESTUS MAGHANGA	742,325.00	Payment 001
26	BATA	BERNARD SHAKI MWAPULA	354,545.00	Payment 001
27	BATA	HEMEDI MWAKULOMBA HAMISI	367,540.00	Payment 001
28	BATA	HAMISI M.MWAKICHONDA	537,050.00	Payment 008
29	BATA	BAKARI MWALIMU NYOKA	658,605.00	Payment 001
30	BATA	HALIMA MALISO	560,970.00	Payment 017

31	BATA	KHADIJA MALISO	321,540.00	Payment 008
32	BATA	MUSA MWAMBURI MALISO	1,577,800.00	Payment 008
33	BATA	ABASI KIMBIO MALISO	74,980.00	Payment 001
34	BATA	HANIVA MASHAKA MAGANGA	373,750.00	Payment 001
35	BATA	HAMISI KILUNCHU IDDI	363,400.00	Payment 001
36	BATA	COLIN MZEE MWAFUGA	278,300.00	Payment 004
37	BATA	ALOISE JUMA WERE	182,390.00	Payment 001
38	BATA	MUSA MWAMBURI MKWALE	1,028,330.00	Payment 001
39	BATA	RAMA MWALIMU KALELA	1,074,100.00	Payment 001
40	BATA	EDITH MWAKABA	292,675.00	Payment 001
41	BATA	JOSEPH MWAKSHIN LEO	274,160.00	Payment 001
42	BATA	SANDRA MWARABU	1,630,470.00	Payment 001
43	BATA	VERITY WINIFRED MKABILI	115,000.00	Payment 004
45	BATA	MATANO KATEMBO	3,251,855.00	Payment 003
46	BATA	RUSSIANAH NAFULA NYANGE	51,290.00	Payment 004
47	BATA	ROSE ELEEN WANJALA	2,222,375.00	Payment 001
48	BATA	JOEL SIO MANAMBO	156,227.50	Payment 001
49	BATA	ZACHARIA M. MWALUDA	28,750.00	Payment 001
50	BATA	JULIUS MTWANGUO KIMONGE	113,850.00	Payment 001
51	BATA	ISAAC JEREMIAH MBOGO	2,798,295.00	Payment 001

52	BATA	NAHASHON KISOCHI HARIDON	2,778,400.00	Payment 003
53	BATA	KASYOKI SYULU	1,758,120.00	Payment 001
54	BATA	SYLVESTER MAGHANGA MUGENDI	1,122,515.00	Payment 001
55	BATA	BEATRICE MBATHA MTEPE	40,250.00	Payment 001
56	BATA	JOHN MBURU WACHIRA	62,560.00	Payment 001
57	BATA	OMAR MWAMBOLE MWALUMA	1,017,405.00	Payment 001
58	BATA	JIMNAH THIONGO KARIUKI	1,247,750.00	Payment 001
59	BATA	ANNA MESI MBASHU	23,000.00	Payment 001
60	BATA	MARK MWAURA KINUTHIA	23,000.00	Payment 005
61	BATA	JOHN MWAKATINI TUGU	1,467,745.00	Payment 001
62	BATA	EMMANUEL HAMISI MBOGA	5,324,270.00	Payment 001
63	BATA	PATRIC WANDANA	369,150.00	Payment 001
64	BATA	SCOLAH MASHAKA CHAU	868,020.00	Payment 001
65	BATA	ERNEST MWAKIO	2,141,990.00	Payment 001
66	BATA	ELIZABETH ANYANGO PALO	1,470,275.00	Payment 001
67	BATA	ERIC WAFULA OKUMU	443,440.00	Payment 001
68	BATA	KENYOLD WANYAMA	40,250.00	Payment 001
69	BATA	BICKSON MBWANGI MWAKUDUA	304,520.00	Payment 001
71	BATA	AMINA WAUDA LAMECK	1,523,865.00	Payment 001
72	BATA	MADINA MAPEM ETHOKON	507,437.50	Payment 001

		KIRIAM		
73	BATA	PAUL NJOROGE	3,510,835.00	Payment 001
74	BATA	JENIPHER MESI NYAMBU	1,751,500.00	Payment 001
75	BATA	RAPHAEL SHUMA	27,500.00	Payment 001
76	BATA	MARY ADHIAMBO MANGO	892,170.00	Payment 005
77	BATA	MWANAISHA ABDALLAH MOHAMED	2,452,375.00	Payment 001
78	BATA	KHAMISI JUMA FADHILI	1,869,555.00	Payment 001
79	BATA	JAPHET KIMBIO MWANGANYI	1,528,350.00	Payment 001
80	BATA	SALIM MOHAMED YUNIS	2,007,900.00	Payment 001
81	BATA	HARRISON MAHUTHU MIRANJI	611,167.50	Payment 001
82	BATA	SHABAN MALISO MWAMBURI	2,589,800.00	Payment 001
83	BATA	JEREMIAH MBINGU	237,590.00	Payment 001
84	BATA	HAMILTON MBOGO	929,660.00	Payment 003
86	BATA	ELIAS KIMWAGA MTIGO	588,167.50	Payment 001
87	BATA	VALLERY MBORI WAMAZA	277,840.00	Payment 001

b) If compensation has not been done, then the payment be held until the dispute has been sorted out;

The Commission issued awards for interests determined on the land but none was paid for the land pending conclusion of the Court case. However awards for improvements on the land were issued and paid for. Compensation is yet to be paid out to the land owner; this is undergoing due diligence and receipt of funds for disbursement to be done. It is

important to note that this dispute having been processed in Court, payment can only be stopped if there are further Court orders on the same or a stay. The Commission is yet to receive any of these

C) Explanation on the possibility of using Settlement Fund Trustees (SFT) in attempting to resolve the impasse affecting the people of Msambweni.

The right to shelter is enshrined in article 53 (1) of the Constitution of Kenya and so is the protection of right to property in article 40 (1). These appear to be competing rights in the instant petition. If the right to property were to be upheld and enforced, the Government may opt to cushion its citizens through the Settlement Fund Trustee through the Ministry of Lands and Physical Planning.

However, only the Board of Trustees for the Land Settlement Fund (LSF) can comment on the possibility of using the fund to resolve the impasse affecting the people of Msambweni in Voi.

D. <u>Responses by the County Government of Taita Taveta</u>

Vide a letter Ref: SEN/DCS/LENR/2/2021/(23) dated 15th April, 2020, the Committee invited the Chairperson of and received the following submissions at the Committees meeting held on 12th May, 2021;

Background

Msambweni neighborhood in Voi hosts approximately 3500 people. Just like in Mkamenyi, residents of Msambweni are victims of historical injustice and institutional malfeasance. The land the residents of Msambweni reside on was initially occupied by their kin as farmland. The land was, in the late 1970s, allocated to Bata Shoe Company for purposes of establishing a shoe making factory with strict conditions that the land should not be sold, transferred or its use changed.

Other than failing to put up the factory, Bata Shoe Company sold the land to a private company, Sparkle Properties Ltd, in contravention of conditions accompanying the letter of allotment. It is the private company (Sparkle Properties Ltd) that obtained eviction orders from high court in 2020 so as, not only to evict Msambweni residents, but also to be paid Ksh 1,050,000/= (One Million, Fifty Thousand Shillings only) in compensation

by the hapless residents.

Be it as it may, this is no longer a Land administrative or management issue, rather it is a legal matter that can only be dealt with legally-through the courts. Being a legal matter, the most promising remedy is for the community is to appeal the Court's decision. Once the court sets aside the orders, it will then be possible for new evidence (of technical nature which was not considered by the Court) to be adduced in order to defeat the earlier ruling. The other alternative, though unpopular, is for the community to mobilize resources of their own and buy the land from the company. However, the most convenient (with justification) option is for the government to acquire the land from the current registered owner and settle the residents.

The County Government's position is that—

i. The residents of Msambweni cannot and must not be moved out. It is too late in the day for the title holders to claim the land. The residences have settled on the land for decades, put up permanent dwellings, public utilities such as schools, social halls, places of worship, etc. It will be immoral to evict the residents.

ii. The land was acquired from the residents fraudulently. The residences had donated the land to Bata Shoe company to build a shoe factory in the area. The shoe factory was never built. So, the residences have a right to reposes their ancestral land. That is what they are trying to do-to reclaim the land from fraudsters.

CHAPTER 5

COMMITTEE OBSERVATIONS

In accordance with the Prayers of the Petitioner the Committee observes as follows:

a) The Committee is persuaded that the Msambweni Community, as occupiers of the Msambweni land, were consulted and allowed the allocation of the land to Bata Shoe Company Limited to build what the Company dubbed as the "biggest shoe factory in Africa". The Committee notes that there were no documents supporting this consultation and agreement but is persuaded by the oral accounts given by the Petitioners and other evidence submitted by stakeholders.

b) The Committee notes that the prior to the consultation and agreement by the Msambweni Community to the allocation of the Msambweni land to Bata Shoe Company Limited, the land had not been delineated nor title issued but was occupied, since around 1938, by the forefathers of the Msambweni Community. Upon the Msambweni Community's consultation and agreement and to secure its rights to the land, Bata Shoe Company Limited applied to the Commissioner of Lands to be allotted the land. The Commissioner of Lands must have been aware of the agreement between Bata Shoe Company Limited and the Msambweni Community thus including the condition that, among other conditions, the Company builds a shoe factory within 24 months of the issuance of the title.

c) For reasons not made available to the Committee, Bata Shoe Company Limited reneged on their promise to build a shoe factory. They sat on the land for more than thirty (30) years and thereafter sold it to Sparkle Properties Limited for Kshs. 12 Million. The Committee notes that Bata Shoe Company Limited made a Kshs. 12 Million profit with no investment and at the expense of the Msambweni community.

d) The Committee notes that the Commissioner of Lands must have colluded with Bata Shoe Company Limited to facilitate the transfer of the land to Sparkle Properties Limited without considering the conditions of the allotment of the land to Bata Shoe Company Limited.

e) The Committee noted the court matter in respect to the issues raised in the Petition and perused the judgement therein. Whereas the court determined that the Msambweni land belonged to Sparkle Properties Limited, it failed to consider the possibility of fraud or any other impropriety that may have taken place to "persuade" the Commissioner of Lands to ignore the conditions of the allotment of the land to Bata Shoe Company Limited and allow the Company to sell the land to Sparkle Properties Limited.

f) The Committee also noted that there were discrepancies in the dates of the documentation used to sell and transfer the Msambweni land from Bata Shoe Company Limited to Sparkle Properties Limited. The consent to transfer the land, the most important document in this transaction, seems to have been issued even before the agreement to sell the land was agreed upon. According to the High Court Judgement pertaining to the Petition (Civil Case No. 265 of 2013, Sparkle Properties Limited v Johana Ngai and 8 others), the consent to transfer the land from Bata Shoe Company Limited to Sparkle Properties Limited is dated 2nd October, 2010 whereas the agreement for sale between the two companies is dated 2nd November, 2010 (see page 10 of the Judgement). This means that the two companies agreed to the sale and transfer of the land one month after Bata Shoe Company Limited had already secured the consent to transfer the land to Sparkle Properties Limited.

g) The Committee determines that the Commissioner of Lands erred in issuing a consent for the transfer of the Msambweni land from Bata Shoe Company Limited to Sparkle Properties Limited.

h) The Committee further determines that the entire process of the sale and transfer of the Msambweni land from Bata Shoe Company Limited to Sparkle Properties Limited reeks of irregularities and fraud and ought to be investigated to establish the true circumstances surrounding the transaction.

CHAPTER 6

COMMITTEE RECOMMENDATIONS

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders recommends as follows in accordance with the prayers of the Petitioners—

a) On the prayer that the Senate investigates how it was possible for the Commissioner of Lands to allow Bata Shoe Company Limited to transfer its lease grant to Sparkle Properties Limited in total disregard of the terms and conditions of the grant, which opposed the same, the prayer that the Senate investigates how it was possible for Bata Shoe Company to sell the land to Sparkle Properties Limited at Kshs. 12 million, and yet, it had not done any development on it and the prayer that the Senate recommends that appropriate action be taken against the Commissioner of Lands for colluding with Bata Shoe Company Limited to transfer Msambweni residents' land to Sparkle Properties Limited, despite there being terms and conditions against the same:

Committee Recommendation

The Committee recommends that the DCI and the EACC investigate the circumstances leading to the Commissioner of Lands ignoring the conditions of the grant of the Msambweni land to Bata Shoe Company Limited and issuing a consent to the transfer of the land to Sparkle Properties Limited and report back to the Senate within six (6) months of the tabling of this report.

b) On the prayer that the Senate recommends that the Ministry of Lands acquires the disputed land and settles the residents on it through compulsory acquisition:

Committee Recommendation

The Committee recommends that the Cabinet Secretary, Ministry of Land and Physical and the Cabinet Secretary, Ministry of Interior and Coordination of National Government ensure that the residents of Msambweni are NOT evicted from the Msambweni land until the investigations into the transfer of the land to Sparkle Properties Limited is completed by the DCI and the EACC and a report made to the Senate.

c) On the prayer that the Senate take any other appropriate action it deems fit to ensure that the residents of Msambweni live in peace as before:

Committee Recommendation

The Committee recommends that the National Land Commission ensures that no funds for compensation for compulsory acquisition of the Msambweni land is released to Sparkle Properties Limited or any other entity until the investigations into the transfer of the land to Sparkle Properties Limited is completed by the DCI and the EACC and a report made to the Senate.

The Committee further recommends that the DCI and the EACC investigate the entire process of the sale and transfer of the Msambweni land by Bata Shoe Company Limited to Sparkle Properties Limited and report back to the Senate within six (6) months of the tabling of this report.

APPENDICES

A. ANNEX I: MINUTES OF THE MEETINGS

B. ANNEX II: SUBMISSIONS BY STAKEHOLDERS

(Attached separately)

MINUTES OF THE 35TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON FRIDAY, 11TH JUNE, 2021 AT SAROVA WHITESANDS HOTEL, MOMBASA AT 2.00 PM.

MEMBERS	PRESENT
1. Sen. Mwangi Paul Githiomi, MP	- **Chairperson**
2. Sen. Philip Mpaayei, MP	- **Vice Chairperson**
3. Sen. Mwaruma Johnes, MP	- Member
4. Sen. Ndwiga Peter Njeru, EGH, MP	- Member
5. Sen. Boy Issa Juma, MP	- Member
	ABSENT WITH APOLOGY
1. Sen. George Khaniri, MGH, MP	- Member
2. Sen. Gideon Moi, CBS, MP	- Member
3. Sen. (Dr.) Lelegwe Ltumbesi, MP	- Member
4. Sen. Sylvia Kasanga, MP	- Member

IN ATTENDANCE	SECRETARIAT
1. Ms. Veronicah Kibati	- Principal Clerk Assistant
2. Mr. Victor Bett	- Clerk Assistant
3. Mr. Crispus Njogu	- Clerk Assistant
4. Mr. Yussuf Shimoy	- Clerk Assistant
5. Ms. Mitchell Otoro	- Legal Counsel
6. Ms. Lucianne Limo	- Media Relations Officer
7. Ms. Sakina Halako	- Personal Secretary
8. Mr. John Pere	- Sergeant-At-Arms
9. Mr. James Kimiti	- Audio Recording
10. Mr. Naftali Ondiba	- Finance Officer
11. Mr. Benard Oteyo	- Office Assistant

MINUTE SEN/SCLENR/198/2021: PRELIMINARIES

The meeting was called to order at 2.30 pm by the Vice Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/199/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP as follows –

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. **Adoption of the following Petition Reports;**
   (a) Draft Report of the Committee on the Petition regarding the alleged historical land injustices involving Plot No. 162/V/M.N.CR 1070, in Mombasa County (Salim Mwidadi & others)

(b) Draft Report of the Committee on the Petition regarding the alleged impending evictions of Msambweni residents by a private company.

5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLENR/200/2021: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Committee differed the confirmation of Minutes.

MINUTE SEN/SCLENR/201/2021: ADOPTION OF THE FOLLOWING PETITION REPORTS;

(a) Draft Report of the Committee on the Petition regarding the alleged historical land injustices involving Plot No. 162/V/M.N.CR 1070, in Mombasa County (Salim Mwidadi & others)

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders, hereby **adopted its report** with the following recommendations in accordance with the Prayers of the Petitioner—

1. **That the National Lands Commission expedites their investigation on the issue as a historical land injustice and give directions within three (3) months.**
2. **That the Ministry of Interior and Coordination of National Government ensures that Fish Landing Sites and Jetty's that may not be accessible be open to the public.**

The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Philip Mpaayei, MP and Sen. Boy Issa Juma, MP respectively.

(b) **Draft Report of the Committee on the Petition regarding the alleged impending evictions of Msambweni residents by a private company.**

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders, hereby **adopted its report** with the following recommendations in accordance with the Prayers of the Petitioner—

a) On the prayer that the Senate investigates how it was possible for the Commissioner of Lands to allow Bata Shoe Company Limited to transfer its lease grant to Sparkle Properties Limited in total disregard of the terms and conditions of the grant, which opposed the same, the prayer that the Senate investigates how it was possible for Bata Shoe Company to sell the land to Sparkle Properties Limited at Kshs. 12 million, and yet, it had not done any development on it and the prayer that the Senate recommends that appropriate action be taken against the Commissioner of Lands for colluding with Bata Shoe Company Limited to transfer

Msambweni residents' land to Sparkle Properties Limited, despite there being terms and conditions against the same:

Committee Recommendation

The Committee recommends that the DCI and the EACC investigate the circumstances leading to the Commissioner of Lands ignoring the conditions of the grant of the Msambweni land to Bata Shoe Company Limited and issuing a consent to the transfer of the land to Sparkle Properties Limited and report back to the Senate within six (6) months of the tabling of this report.

b) On the prayer that the Senate recommends that the Ministry of Lands acquires the disputed land and settles the residents on it through compulsory acquisition:

Committee Recommendation

The Committee recommends that the Cabinet Secretary, Ministry of Land and Physical and the Cabinet Secretary, Ministry of Interior and Coordination of National Government ensure that the residents of Msambweni are NOT evicted from the Msambweni land until the investigations into the transfer of the land to Sparkle Properties Limited is completed by the DCI and the EACC and a report made to the Senate.

c) On the prayer that the Senate take any other appropriate action it deems fit to ensure that the residents of Msambweni live in peace as before:

Committee Recommendation

The Committee recommends that the National Land Commission ensures that no funds for compensation for compulsory acquisition of the Msambweni land is released to Sparkle Properties Limited or any other entity until the investigations into the transfer of the land to Sparkle Properties Limited is completed by the DCI and the EACC and a report made to the Senate.

The Committee further recommends that the DCI and the EACC investigate the entire process of the sale and transfer of the Msambweni land by Bata Shoe Company Limited to Sparkle Properties Limited and report back to the Senate within six (6) months of the tabling of this report.

The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Philip Mpaayei, MP respectively.

MINUTE SEN/SCLENR/202/2021: ANY OTHER BUSINESS;

There was no other business discussed.

MINUTE SEN/SCLENR/203/2021: DATE OF NEXT MEETING;

The meeting was adjourned at 1.00 pm and the next meeting was scheduled for 12th June, 2021.

Signed:..... Date: **23/6 /2021**

SEN. MWANGI PAUL GITHIOMI, MP

CHAIRPERSON

STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

MINUTES OF THE 6TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 24TH FEBRUARY, 2021 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS	**PRESENT**
1. Sen. Mwangi Paul Githiomi, MP	- **Chairperson**
2. Sen. Philip Mpaayei, MP	- **Vice Chairperson**
3. Sen. Ndwiga Peter Njeru, EGH, MP	- Member
4. Sen. (Dr.) Lelegwe Ltumbesi, MP	- Member
5. Sen. Sylvia Kasanga, MP	- Member
6. Sen. Mwaruma Johnes, MP	- Member
7. Sen. Boy Issa Juma, MP	- Member
	ABSENT WITH APOLOGY
1. Sen. Gideon Moi, CBS, MP	- Member
2. Sen. George Khaniri, MGH, MP	- Member

IN ATTENDANCE

A. SENATORS

1. Sen. Mohamed Faki, MP	- Senator, Mombasa County

B. STAKEHOLDERS

a) NATIONAL LAND COMMISSION (NLC)

1. Mr. Gerishom Otachi	- Chairperson, NLC
2. Prof. James Tuitoek	- Commissioner, NLC
3. Mr. Reginald Okumu	- Commissioner, NLC
4. Ms. Esther Murugi	- Commissioner, NLC

b) MINISTRY OF LANDS AND PHYSICAL PLANNING (MoLPP)

1. Dr. Nicholas Muraguri, CBS	- PS, MoLPP
2. Mr. Chacha Maroa	- Lands Registrar
3. Mr. Kamau Joram	- Lands Administrator
4. Mr. James Kamoni	- Lands Administrator
5. Ms. Rael Chesang	- Lands Administrator
6. Ms. Caroline Menin	- Legal Officer
7. Mr. Sego Manyarkiy	- Land Registrar, Taita Taveta

C. PETITIONERS

1. Mr. Nyange	- Advocate, Msambweni Petitioners
2. Mr. Brian Njumwa	- Petitioner

D. SECRETARIAT

1. Mr. Victor Bett	- Clerk Assistant
2. Ms. Clare Kidombo	- Research Officer
3. Mr. Mitchell Otoro	- Legal Counsel
4. Mr. James Kimiti	- Audio Officer

MINUTE SEN/SCLENR/28/2021: PRELIMINARIES

The meeting was called to order at 11.11 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/29/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Philip Mpaayei, MP and seconded by Sen. Ndwiga Peter Njeru, EGH, MP as follows –

1. Preliminaries - *Prayer*
2. Confirmation of Minutes of Previous Sittings;
3. Matters Arising;
4. **Meeting with the CS Ministry of Lands and Physical Planning and the Chairperson National Land Commission on Petitions and Statements as follows:**
   i. Petition concerning the alleged exchange and final transfer of Titles for parcels of land known as Lari Nyakinyua Solai Farm(located in Solai, Nakuru County) and Riyobei Farm Limited(located in Gilgil, Nakuru County;
   ii. Petition submitted by the Rendille and Samburu Community Representatives concerning the alleged acquisition of Karare land in Marsabit County, by the Kenya Defence Forces;
   iii. Petition submitted by the Wajomvu Community, Mombasa County, concerning the alleged historical land injustices involving Plot No. 162/V/M.N.CR 1070, in Mombasa County;
   iv. Petition submitted by the Residents of Mkamenyi Village in Voi sub-county of Taita Taveta County, The alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County;
   v. Petition submitted by the Residents of Msambweni Village in Voi sub-county of Taita Taveta County, concerning the alleged impending evictions of Msambweni residents by a private company;
   vi. Statement requested by Sen. Anuar Loitiptip, MP, on 24th September, 2020, regarding the alleged displacement of squatters from Hidabwo area in Lamu County; and
   vii. Statement requested by Sen. Anuar Loitiptip, MP, on 24th September, 2020, regarding the alleged encroachment of Lake Kenyatta riparian land in Lamu County.
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLENR/30/2021: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

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

MINUTE SEN/SCLENR/31/2021: MEETING WITH THE CS MINISTRY OF LANDS AND PHYSICAL PLANNING AND THE CHAIRPERSON NATIONAL LAND COMMISSION ON PETITIONS AND STATEMENTS

11. On 26/6/2020 the residents moved to Court of Appeal seeking review of the case (Appeal No, 42(2020),
12. On 19th August, 2020, Sparkle properties Ltd moved to Mombasa and extracted the decree,
13. On 24th August, 2020, Sparkle Properties Ltd moved to Mombasa High Court seeking eviction orders against Msambweni residents.
14. On 7th Augus, 2020 Msambweni residents petitioned the Senate of the Republic of Kenya to intervene on this matter.
15. On 28/8/2020 Msambweni residents petitioned the National Lands Commission Chairman on the Land matter, the responses of which they are yet to receive,
16. On 28/8/2020 Msambweni residents complained to the office of Kenya Administrative Justice seeking their intervention on this matter. On 5th October 2020 they responded to their complaints having referred the matter to the CEO, National Land Commission.

The Committee resolved to:

- **Invite the Cabinet Secretary Ministry of Lands and Physical {Planning**
- **Invite the National Land Commission**
- **Conduct a site visit to Taita Taveta County**

MINUTE SEN/SCLENR/278/2020: ANY OTHER BUSINESS;
There was no other business discussed.

MINUTE SEN/SCLENR/279/2020: DATE OF NEXT MEETING;
The meeting was adjourned at 1.00 pm and the date of the next meeting was scheduled for Thursday, 5th November, 2020 at 9.00 am a site visit to Langata Constituency.

Signed: **For:** ..... Date: **19/11/2020**

SEN. MWANGI PAUL GITHIOMI, MP

CHAIRPERSON

STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

6. Proper land procedures should be followed as per the land laws to avoid future disputes amongst the community and the sisal farm management.

The Committee thereafter resolved to:

- **Have an Executive Summary of the issues raised prepared for the Committee.**
- **Invite the Cabinet Secretary Ministry of Lands and Physical {Planning**
- **Invite the National Land Commission**
- **Conduct a site visit to Taita Taveta County**

MINUTE SEN/SCLENR/277/2020: MEETING WITH PETITIONERS ON THE PETITION CONCERNING THE ALLEGED IMPENDING EVICTIONS OF MSAMBWENI RESIDENTS BY A PRIVATE COMPANY IN TAITA TAVETA COUNTY

The Petitioners submitted as follows:

1. Around August 1978, The Late Hon E.T Mwamunga the then M.P Voi Constituency, Bata Shoe Company officials and Ministry of Land Officials visited Msambweni village in Kaloleni Ward then Voi South Ward and requested the residents of land to put the biggest shoe factory in Africa which residents warmly accepted in view of the benefits which were to come with this factory namely; Employment, piped water, schools, electricity, health centre etc.
2. On 20th December 1978, Bata Shoe Company was issued with a letter of allotment with conditions attached to it.
3. On 1st January 1979, Bata Shoe Company was issued with a 99 years lease/grant No. CR 23979 wth conditions attached to it.
4. On 2lst May 1979, Director of Physical Planning wrote to the Commissioner of Lands requesting him to fast track the issue of compensation of Msambweni residents before commencement of construction of the factory.
5. Bata Shoe Co. Ltd did not put the factory on the said land instead constructed a mini shoe factory in a different land within Voi town and even operated it for around four years then closed down.
6. The residents remained hanging without any information regarding the said factory.
7. In 2011, after 32 years without fulfilling any conditions stated in in the letter of allotment and grant Bata Shoe Co. Ltd sold fraudulently a densely populated Msambweni Village to Sparkle properties Ltd at Kshs. 12,000,000.00.
8. In 2013 Sparkle properties Limited moved to Environment and Land division high court in Mombasa seeking to evict Msambweni residents in their ancestral land.
9. In 2020 February 24th the High court issued a Judgement in favour of Sparkle Properties Ltd. A judgement which was communicated to the defendants one month later after the close of the window period of appeal.
10. On 27/4/2020 Msambweni residents petitioned the Governor Taita Taveta County.

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

MINUTE SEN/SCLENR/274/2020: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Sylvia Kasanga, MP and seconded by Sen. George Khaniri, MGH, MP as follows –

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. **Meeting with Petitioners on the Petition concerning the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County;**
5. **Meeting with Petitioners on the Petition concerning the alleged impending evictions of Msambweni residents by a private company in Taita Taveta County;**
6. Any other Business;
7. Date of the next meeting;
8. Adjournment.

MINUTE SEN/SCLENR/275/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Committee differed the confirmation of Minutes to the next housekeeping meeting.

MINUTE SEN/SCLENR/276/2020: MEETING WITH PETITIONERS ON THE PETITION CONCERNING THE ALLEGED ENCROACHMENT OF LAND BELONGING TO MKAMENYI RESIDENTS BY VOI POINT LIMITED IN TAITA TAVETA COUNTY

The Petitioners submitted that the Committee assists them to ensure that:

1. Disregard and nullification of the idea of the Director Voi Point Limited allocating the said 35 acres of land to the 28 families of Mkamenyi squatters.
2. Recognition of the original 54 families which were legitimate residents of Mkamenyi and not the 28 families imposed to them by the former manager Mr. Zaheed Din.
3. Mkamenyi residents participates in the demarcation and be shown the entire area they possessed before the coming of Voi Sisal Estate;
4. A committee is formed from Mkamenyi community and empowered to carry out all activities in allocation and demarcation of the land in question to the right families involved.
5. Considering the time the Voi Sisal Management has wasted on their development activities (compensation should be looked into for the delayed infrastructure and land developments).

MINUTES OF THE 50TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 4TH NOVEMBER, 2020 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS	**PRESENT**
1. Sen. Mwangi Paul Githiomi, MP	- **Chairperson**
2. Sen. Philip Mpaayei, MP	- **Vice Chairperson**
3. Sen. George Khaniri, MGH, MP	- Member
4. Sen. Mwaruma Johnes, MP	- Member
5. Sen. Sylvia Kasanga, MP	- Member
6. Sen. (Dr.) Lelegwe Ltumbesi, MP	- Member

ABSENT WITH APOLOGY

1. Sen. Gideon Moi, CBS, MP	- Member
2. Sen. Ndwiga Peter Njeru, EGH, MP	- Member
3. Sen. Boy Issa Juma, MP	- Member

IN ATTENDANCE

A. PETITIONERS - PETITION CONCERNING THE ALLEGED ENCROACHMENT OF LAND BELONGING TO MKAMENYI RESIDENTS BY VOI POINT LIMITED IN TAITA TAVETA COUNTY

1. Joseph M. Njumwa
2. Francis Mwasho
3. Juma Mwamburi
4. Saumu K. Mwamburi
5. Hassan Kiboko
6. Gladys Juma
7. Julius Mwasezi

B. PETITIONERS - PETITION CONCERNING THE ALLEGED IMPENDING EVICTIONS OF MSAMBWENI RESIDENTS BY A PRIVATE COMPANY IN TAITA TAVETA COUNTY

1. Alfred Mwaengo Mnjama
2. Abbas Maliso Kalela
3. Johana Ngai
4. Omar Mwandembe Mwachofi
5. Zainab Kachi Mwalimo
6. Hadija Ramadhan Nzau
7. Said Mwaluma Ramadhan
8. Hassan Nzai Abdallah

C. SECRETARIAT

1. Mr. Victor Bett	- Clerk Assistant
2. Mr. Moses Kenyanchui	- Legal Counsel
3. Mr. John Ngang'a	- Audio Recording

MINUTE SEN/SCLENR/273/2020: PRELIMINARIES

the land, it didn't follow through this proposal to conclusion. At the same time the advisory did not clarify the reversion procedure and those responsible for its initiation. In the end these decisions were never communicated to the National Land Commission for action, thus the delays in settling the squatters.

It was until June,2020 when a formal communication was submitted to the County Assembly for review. The County Assembly communicated its earlier decision (resolution of 2014) to the National Land Commission on 30th June, 2020.

Ultimately, the legal mandate on Land Adjudication and Settlement rests with national government Ministry of Lands and Physical Planning and to some extent National Land Commission and not the County government. The county government's role is facilitative. Once we receive a communication from The National Land Commission on the way forward, we shall take necessary action. The County government is ready to facilitate and fast track adjudication/settlement process.

County Government's position

i. The lease on Land Parcel L. R/No. 5827 should not be renewed.

ii. The people have settled on the land for over 20 years, invested their time and resources on the farms making Machungwani the food basket of Taita/Taveta and the coastal region at large. It is only fair, therefore, that they are allocated the farms.

The Committee resolved as follows:

- *That since the County Government has recalled its previous communication to the NLC regarding the renewal of the lease, then the inconsistencies and contradictions be clearly spelt out for the benefit of the NLC as it freshly considers the renewal of the Lease for the People of Machungwani.*

MINUTE SEN/SCLENR/136/2021: ANY OTHER BUSINESS

There was no other business discussed.

MINUTE SEN/SCLENR/137/2021: DATE OF NEXT MEETING

The meeting was adjourned at 2.18 pm and the date of the next meeting was to be held on thereafter.

Signed:..... Date: **30/6 /2021**

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

3.10 A large section of the parcel lies on the right hand side as one travels along the murrum road heading towards Kimorigo area. A small section is on the left hand side extending up to the Machungwani water canal near Kiwalwa. **There are semi-permanent residential developments and temporary structures which appear to have been constructed in the last 5-7 years**. The more developed area lies between the Eldoro-Mschekesheni junction up to the water canal in Kiwalwa. There are temporary farm boundaries made by the encroachers. The main crops found on the farm include oranges, bananas, mangoes, beans cassava and coconut. Irrigation water is obtained from the Machungwani water canal. The marshy/swampy area is found midway between Kiwalwa and Kimorigo is scarcely built due to flooding in the wet season but used to graze livestock in the dry season.

3.11 There is an old staff camp and an office near Kiwalwa which was built by the immediate lease holder. It is alleged that the camp was abandoned in sometimes in 2013 after members of the public invaded the land after expiry of the lease. The lease holder has availed approximately 100 acres to the prisons department for farming. The department uses it to grow maize, tomatoes, kales and fish farming.

3.12 Status and way forward

a) The renewal of lease for LR No 5827 is pending at the National Land Commission has not been processed. In considering the application for renewal of lease, the Commission will take into account the provisions of section 13 of the Land Act 2012.
b) The Ministry of Lands and Physical Planning may also provide more information on this land based on the records in their possession.

- **Submissions by County Government of Taita Taveta**

Background

Machungwani (Land Parcel L. R/No. 5827) had a 99 years lease (from January 1914) which expired on January 2013. An application for renewal of lease on Land Parcel L/R No. 5827 was submitted to the County government sometimes in 2014. The government then, by way of an advisory, sought comments from the County Assembly, which upon debate on 04th December, 2014, resolved that the lease should not be renewed. The assembly recommended that the land reverts back to government by way of reversion as per county department of land's advisory.

However, due to the inconclusive, contradictory and inconsistent nature of the advisory, the process could not be concluded and, as such, predisposed the lease renewal process to manipulative actions. As it were, the advisory gave room to underhand dealings in the lease renewal process. While agreeing that Machungwani Estate was a volatile situation, the advisory recommended that any decision entered must be **in secret** and that the decision of the County Assembly must be relayed to the National Land Commission under **confidential cover**. The N.L.C. was advised **not to make public** pronouncements of its decision.

While the advisory proposed formation of committee comprising of, among others, political leaders, local residents, County and Provincial Administrators and the technical committee of the Lands Sector, to spearhead acquisition and adjudication of

3.4 Available records show that LR No. 5827 measuring 2970 acres was registered in the name of Basil Criticos under leasehold tenure for 99 years from January 1, 1914 **(Annex 1 and Annex 2)**. Therefore, the lease expired on January 1, 2013.

3.5 On November 20, 2012 Walker Kontos advocates for Basil Criticos applied to the Town Council of Taveta for extension of lease on LR No 5827 by filing the relevant forms for Development permission **(Annex 3).** Incidentally, in February 8, 2012 the Government through the Permanent Secretary in the office of the Deputy Prime Minister and Minister of local Government had directed County Councils to **"stop processing of land leases until the National Land Commission, and the appropriate County Government mechanisms are in place" (Annex 4).** There appears to have been no activity on this matter until 2014.

3.6 On October 1, 2014 the Deputy Governor and CEC Lands, Taita Taveta County wrote to the County Assembly (Ref Way forward on Parcel Land ref. Number 5827 - Taveta owned by Basil Criticos) giving directions which in substance recommended non-renewal of the lease but allocating it to the those in occupation. The letter also acknowledged that Basil Criticos occupied 45.96 Ha **(Annex 5).** The County Assembly agreed with the directions given by the County Government as indicated in a letter dated June 30, 2020 from Clerk of the County Assembly of Taita Taveta **(Annex 6).** The letter indicates that the resolution of the County Assembly was passed on December 4, 2014.

3.7 Petition Civil Case No. 576 of 2012.
In a Judgement by Justice E O Obaga dated March 12, 2020; paragragh 11 states that **"On 1st April 2018, the County Government of Taita Taveta held a meeting where the issue of renewal of the petitioner's lease was deliberated upon and approved. A notification of approval of the extension was subsequently issued on 17th April 2019 and a letter written on the same day to the National Land Commission stating that the County Government had no objection to renewal of the lease" (Annex 7).**
A copy of the minutes of the above referred meeting are annexed **(Annex 7a).**

3.8 On April 17, 2018 the CECM in charge of Lands, Environment and Natural Resources, Taita Taveta wrote to the Commission partly stating that **"We recommend the renewal of the parcel of land L.R. No. 5827 approximately 2970 acres in Machungwani area in Taita Taveta" (Annex 8)**. Attached to the referred letter was FORM P.P.A.2 **(Annex 9).** A follow-up letter by Walker Kontos was made in February 2020 which is the basis of the ground report referred to in paragraph 3.9 (b) below.

3.9 (b) Status of the persons currently farming and residing in the aforementioned parcel of Land
In July 2020, NLC prepared a ground status report of the parcel and the findings are summarized below.

Isangaiwishi and must be recognized and registered as members of Isangaiwishi community land with all rights.

ii. Mwakitau town settlement established before the first World War must not be interfered with.

MINUTE SEN/SCLENR/135/2021: PETITION ON THE ALLEGED DELAYED ADJUDICATION AND THE SETTLEMENT OF SQUATTERS ON MACHUNGWANI LAND IN TAITA TAVETA COUNTY AFTER EXPIRY OF LEASE;

- **Submissions by Ministry of Lands and Physical Planning**

According to our records, the land is registered as L.R No.5827 (I.R 1056). It is situated in Taveta Sub-County in Taita Taveta County and measures approximately 2970 Acres.

The parcel was first registered in the name of East African Estates Limited on February 26, 1925 on a 99-year lease with effect from January 1, 1914. The parcel has been transferred severally overtime. It was last transferred to Basil Criticos on February 23, 2010. The lease expired on January 1, 2013. A copy of the title is marked **annexure 13.**

The Ministry is aware an application for the renewal of lease has been lodged with the National Land Commission **(annexure 14).** In light of the foregoing, the issues raised by the Petitioners are best handled by the National Land Commission and the Taita Taveta County Government in line with the provisions of Section 13 of the Land Act, 2021 and the Land Regulations, 2017.

- **Submissions by National Land Commission**

3.1 (a) Explanation and relevant documentation on the current status of the lease for Machungwani Farm and whether there have been efforts by the Previous Lessee to renew the Lease.

3.2 Appearance by NLC before the Senate on April 7, 2021

Hon Chair, the National Land Commission appeared before the Senate Standing Committee on Land on April 7, 2021 and gave the following response with respect to the above petition;

"The Commission will seek to establish the status of the lease with the Ministry of Lands and Physical Planning to determine the way forward. Possible reservation of the land for settlement may be recommended to the Settlement Fund Trust if the expiry of the lease is confirmed and the Conditions in section 13 of the Land Act (relating to pre-emptive rights) have been complied with,"

3.3 Request by the Senate on April 7, 2021

After the presentation, the Senate asked the Commission to provide detailed information with respect to the Status of the lease for this land.

Hon Chair we provide the following history and chronology of the events regarding the status of the lease of LR No 5827.

- *That the Petitioners should urged to first launch an appeal in court then the other subsequent processes can follow.*

MINUTE SEN/SCLENR/134/2021: PETITION ON MWAKITAU LAND OWNERSHIP DISPUTE BETWEEN MWAKITAU RESIDENTS AND ISANGA IWISHI GROUP RANCH;

- **Submissions by County Government of Taita Taveta**

Background

Isanga Iwishi Group had attempted to evict approximately 10,000 residents of Mwakitau location from what was until recently known as Isanga Iwishi Group Ranch. Bura/ Isanga Iwishi/18 was registered in 1984 and measures approximately 5992.2 Ha. The community challenged registration/issuance of title deed to the group in court first in 1984 and then in 1999 on grounds that the ranch was established in an area that they were residing on since 1920 without their involvement as residents of the area. In both cases the community lost the case against the group. The last time the court ruled in favor of the group ranch was in 2008 at the High Court in Mombasa (Misc. Civil Application No. 255 of 2000). To forestall the eviction, however, the County government obtained orders to stop the planned eviction until an ownership case is heard and determined. The matter is still in court.

The Mwakitau community argues that they want the areas they have occupied for over 100 years be converted to a settlement scheme and issued with individual title deeds. While the community may invoke provisions of Limitations of Actions Act on Adverse Possession, they have the option of either appealing the 2008 High Court ruling (they have ruled out this option citing the high costs involved) or taking advantage of the new window obtaining under the Community Land Act so that they become members of Isanga Iwishi Community. Thereafter, being members of the Isanga Iwishi, they may call a meeting of the assembly as per section 23 of the Act and pass a resolution by majority vote to subdivide the land and acquire individual titles.

In the meantime, the County government in collaboration with the Ministry of Lands and Physical Planning is implementing the Community Land Act, 2016 which will ensure that Mwakitau residents became members of Isanga Iwishi Community. On 05th March, 2021 residents convened the Assembly meeting and elected Community Land Management Committee. The next step shall be to formalize the arrangements by registering the Isanga Iwishi Community. Mwakitau community will then automatically become members of Isanga Iwishi as per the Community Land Regulations, 2017, Paragraph 4 of the Third Schedule.

County government's position

i. The government acknowledges the fact that the people of Mwakitau have lived in the area for years as a Community and, therefore, are part and parcel of

rights in the instant petition. If the right to property were to be upheld and enforced, the Government may opt to cushion its citizens through the Settlement Fund Trustee through the Ministry of Lands and Physical Planning.
However, only the Board of Trustees for the Land Settlement Fund(LSF) can comment on the possibility of using the fund to resolve the impasse affecting the people of Msambweni in Voi.

- **Submissions by County Government of Taita Taveta**

Background
Msambweni neighborhood in Voi hosts approximately 3500 people. Just like in Mkamenyi, residents of Msambweni are victims of historical injustice and institutional malfeasance. The land the residents of Msambweni reside on was initially occupied by their kin as farmland. The land was, in the late 1970s, allocated to Bata Shoe Company for purposes of establishing a shoe making factory with strict conditions that the land should not be sold, transferred or its use changed.

Other than failing to put up the factory, Bata Shoe Company sold the land to a private company, **Sparkle Properties Ltd**, in contravention of conditions accompanying the letter of allotment. It is the private company (Sparkle Properties Ltd) that obtained eviction orders from high court in 2020 so as, not only to evict Msambweni residents, but also to be paid Ksh 1,050,000/= (One Million, Fifty Thousand Shillings only) in compensation by the hapless residents.

Be it as it may, this is no longer a Land administrative or management issue, rather it is a legal matter that can only be dealt with legally-through the courts. Being a legal matter, the most promising remedy is for the community is to appeal the Court's decision. Once the court sets aside the orders, it will then be possible for new evidence (of technical nature which was not considered by the Court) to be adduced in order to defeat the earlier ruling. The other alternative, though unpopular, is for the community to mobilize resources of their own and buy the land from the company. However, the most convenient (with justification) option is for the government to acquire the land from the current registered owner and settle the residents.

County Government's position

i. The residents of Msambweni cannot and must not be moved out. It is too late in the day for the title holders to claim the land. The residences have settled on the land for decades, put up permanent dwellings, public utilities such as schools, social halls, places of worship, etc. It will be immoral to evict the residents.

ii. The land was acquired from the residents fraudulently. The residences had donated the land to Bata Shoe company to build a shoe factory in the area. The shoe factory was never built. So, the residences have a right to reposes their ancestral land. That is what they are trying to do-to reclaim the land from fraudsters.

The Committee resolved as follows:

62	BATA	EMMANUEL HAMISI MBOGA	5,324,270.00	Payment 001
63	BATA	PATRIC WANDANA	369,150.00	Payment 001
64	BATA	SCOLAH MASHAKA CHAU	868,020.00	Payment 001
65	BATA	ERNEST MWAKIO	2,141,990.00	Payment 001
66	BATA	ELIZABETH ANYANGO PALO	1,470,275.00	Payment 001
67	BATA	ERIC WAFULA OKUMU	443,440.00	Payment 001
68	BATA	KENYOLD WANYAMA	40,250.00	Payment 001
69	BATA	BICKSON MBWANGI MWAKUDUA	304,520.00	Payment 001
71	BATA	AMINA WAUDA LAMECK	1,523,865.00	Payment 001
72	BATA	MADINA MAPEM ETHOKON KIRIAM	507,437.50	Payment 001
73	BATA	PAUL NJOROGE	3,510,835.00	Payment 001
74	BATA	JENIPHER MESI NYAMBU	1,751,500.00	Payment 001
75	BATA	RAPHAEL SHUMA	27,500.00	Payment 001
76	BATA	MARY ADHIAMBO MANGO	892,170.00	Payment 005
77	BATA	MWANAISHA ABDALLAH MOHAMED	2,452,375.00	Payment 001
78	BATA	KHAMISI JUMA FADHILI	1,869,555.00	Payment 001
79	BATA	JAPHET KIMBIO MWANGANYI	1,528,350.00	Payment 001
80	BATA	SALIM MOHAMED YUNIS	2,007,900.00	Payment 001
81	BATA	HARRISON MAHUTHU MIRANJI	611,167.50	Payment 001
82	BATA	SHABAN MALISO MWAMBURI	2,589,800.00	Payment 001
83	BATA	JEREMIAH MBINGU	237,590.00	Payment 001
84	BATA	HAMILTON MBOGO	929,660.00	Payment 003
86	BATA	ELIAS KIMWAGA MTIGO	588,167.50	Payment 001
87	BATA	VALLERY MBORI WAMAZA	277,840.00	Payment 001

b) If compensation has not been done, then the payment be held until the dispute has been sorted out;

The Commission issued awards for interests determined on the land but none was paid for the land pending conclusion of the Court case. However awards for improvements on the land were issued and paid for. Compensation is yet to be paid out to the land owner; this is undergoing due diligence and receipt of funds for disbursement to be done. It is important to note that this dispute having been processed in Court, payment can only be stopped if there are further Court orders on the same or a stay. The Commission is yet to receive any of these

C) Explanation on the possibility of using Settlement Fund Trustees (SFT) in attempting to resolve the impasse affecting the people of Msambweni.

The right to shelter is enshrined in article 53 (1) of the Constitution of Kenya and so is the protection of right to property in article 40 (1). These appear to be competing

22	BATA	JACKTON MWAWASI WAMADA	1,311,000.00	Payment 001
23	BATA	KASSIM MUNYIKA	712,080.00	Payment 001
25	BATA	FESTUS MAGHANGA	742,325.00	Payment 001
26	BATA	BERNARD SHAKI MWAPULA	354,545.00	Payment 001
27	BATA	HEMEDI MWAKULOMBA HAMISI	367,540.00	Payment 001
28	BATA	HAMISI M.MWAKICHONDA	537,050.00	Payment 008
29	BATA	BAKARI MWALIMU NYOKA	658,605.00	Payment 001
30	BATA	HALIMA MALISO	560,970.00	Payment 017
31	BATA	KHADIJA MALISO	321,540.00	Payment 008
32	BATA	MUSA MWAMBURI MALISO	1,577,800.00	Payment 008
33	BATA	ABASI KIMBIO MALISO	74,980.00	Payment 001
34	BATA	HANIVA MASHAKA MAGANGA	373,750.00	Payment 001
35	BATA	HAMISI KILUNCHU IDDI	363,400.00	Payment 001
36	BATA	COLIN MZEE MWAFUGA	278,300.00	Payment 004
37	BATA	ALOISE JUMA WERE	182,390.00	Payment 001
38	BATA	MUSA MWAMBURI MKWALE	1,028,330.00	Payment 001
39	BATA	RAMA MWALIMU KALELA	1,074,100.00	Payment 001
40	BATA	EDITH MWAKABA	292,675.00	Payment 001
41	BATA	JOSEPH MWAKSHIN LEO	274,160.00	Payment 001
42	BATA	SANDRA MWARABU	1,630,470.00	Payment 001
43	BATA	VERITY WINIFRED MKABILI	115,000.00	Payment 004
45	BATA	MATANO KATEMBO	3,251,855.00	Payment 003
46	BATA	RUSSIANAH NAFULA NYANGE	51,290.00	Payment 004
47	BATA	ROSE ELEEN WANJALA	2,222,375.00	Payment 001
48	BATA	JOEL SIO MANAMBO	156,227.50	Payment 001
49	BATA	ZACHARIA M. MWALUDA	28,750.00	Payment 001
50	BATA	JULIUS MTWANGUO KIMONGE	113,850.00	Payment 001
51	BATA	ISAAC JEREMIAH MBOGO	2,798,295.00	Payment 001
52	BATA	NAHASHON KISOCHI HARIDON	2,778,400.00	Payment 003
53	BATA	KASYOKI SYULU	1,758,120.00	Payment 001
54	BATA	SYLVESTER MAGHANGA MUGENDI	1,122,515.00	Payment 001
55	BATA	BEATRICE MBATHA MTEPE	40,250.00	Payment 001
56	BATA	JOHN MBURU WACHIRA	62,560.00	Payment 001
57	BATA	OMAR MWAMBOLE MWALUMA	1,017,405.00	Payment 001
58	BATA	JIMNAH THIONGO KARIUKI	1,247,750.00	Payment 001
59	BATA	ANNA MESI MBASHU	23,000.00	Payment 001
60	BATA	MARK MWAURA KINUTHIA	23,000.00	Payment 005
61	BATA	JOHN MWAKATINI TUGU	1,467,745.00	Payment 001

area acquired out of the subject parcel is **16.893 ha** for both the railway line and part of the Voi station.

However, during the inquiry it became evident that there was an ongoing Court case between the registered land owners and the occupants of the land. This was listed as ELC civil suit no 265 of 2013; Sparkle Properties Limited Vs Johana Ngai and others.

In 2020 the Commission received a Court ruling confirming that Sparkle properties limited were the rightful owners of the disputed parcel pursuant to which the Commission issued an award of **Kshs.192, 015,974.00.**

Upon conclusion of the inquiry in line with section 113 of the Land Act 2012, the Commission subsequently issued awards for interests determined on the land and improvements. However, payment for land has not been done pending conclusion of the Court case. Awards for the improvements were issued, accepted and paid for and a list of the persons compensated is as follows;

#	PARCEL NO.	PAYEE	AMOUNT	KRC PAYMENT
1	BATA	JACOB KARUTI IMUNYA	908,040.00	Payment 001
2	BATA	FREDRICK NJUMWA NYAMBU	922,300.00	Payment 001
3	BATA	GLADNESS WAKIO MSAFIRI	745,775.00	Payment 001
4	BATA	GRACE WANJALA MWADIME	1,518,862.50	Payment 001
5	BATA	FESTUS KATITU BAYA	74,750.00	Payment 001
6	BATA	ELIZABETH MARGRET KIMBAYA	215,280.00	Payment 001
7	BATA	JAMILA WAKIO ALI	1,948,445.00	Payment 008
8	BATA	HENRY MBOCE NJUGUNA	51,750.00	Payment 001
9	BATA	WALTER KALENDO	1,856,560.00	Payment 003
10	BATA	EVANSON MWACHIA MALOMBO	498,180.00	Payment 001
11	BATA	JASPHER PETER TATUA MAMBORI	866,122.50	Payment 001
12	BATA	ASHA MWAKE NDOLONGA	397,440.00	Payment 001
14	BATA	JOHNSON WAKISE MWANJALA	268,812.00	Payment 001
15	BATA	SAIDI MWALUMA NDOLONGA	23,000.00	Payment 001
16	BATA	ADIJA NDUNDA NDOLONGA	386,400.00	Payment 001
17	BATA	FATUMA CHAO NDOLONGA	1,245,450.00	Payment 001
18	BATA	HAMISA KALELA NYOKA	1,303,065.00	Payment 001
19	BATA	WILSON MWANDOE	182,160.00	Payment 001
20	BATA	ABADIAH MAKANYO MWANGOO	432,860.00	Payment 001
21	BATA	HAMFREY BUNYALI KESEKWA	811,842.50	Payment 001

The subject parcel was originally Government land. The Commissioner of Lands allocated it to Bata Shoe Company Limited and was registered on April 30, 1993 as CR 23979. A copy of the Grant is marked **annexure 18**.

The conditions for the lease are contained in the Grant. The relevant conditions of the lease are the Special Conditions; No. 2 on development of the property within 24 months of registration of the Grant; No. 5 on the user for the property and Nos. 9 & 10 restricting transfer of the property unless Special Condition No. 2 is fulfilled.
The Commissioner of Lands gave consent for the transfer of the property to Sparkle Properties Limited despite Special Condition No. 2 being unfulfilled. Bata Shoe Company transferred the property to Sparkle Properties Limited vide a transfer lodged on March 21, 2011.
The question of the propriety of the title held by Sparkle Properties Limited has been subject of litigation in Environment and Land Court, Mombasa, Civil Case No. 265 of 2013. The Court considered the circumstances of the transfer with regard to the Special Conditions Nos. 2, 9 and 10 and upheld title as per the judgment marked **annexure 19**.
Honourable Chair, in response to **Question (iii),** I wish to submit as follows;
The Ministry has noted the plight of the Petitioners who are facing imminent evictions. We shall engage the Land Settlement Fund Board of Trustees to consider their case for resettlement.

- **Submissions by National Land Commission**

Honourable Chair, the Commission wishes to respond as follows:

a) **Explanation on who was compensated for the aforementioned parcel of land compulsorily acquired by Kenya Railways, during the construction of the Standard Gauge Railway, providing the amount compensated**;
Msambweni village was one of the residential areas of Voi town that were affected by land acquisition for the Construction of Nairobi – Mombasa Standard Gauge Railway (phase 1) pursuant to a request by Kenya Railways Corporation. The section affected lie near and almost parallel to the Nairobi – Mombasa road South of Voi town.

The village is part of the land L.R. NO. 1956/506 registered in the name of Sparkle properties limited but which initially was owned by Bata Shoe Company hence popularly known as Bata area.

The notice of intention to acquire land for the project was published in Kenya Gazette notice No. 4096 20th June, 2014. Inquiry was held as scheduled on 28th August 2014 at Voi County Commissioner's Office. The registered owner of the Land appeared at the inquiry and presented their claim to compensation for the Land. At the same time, Msambweni residents who were in occupation presented their claim to compensation for land and improvements. While the ownership of improvements was determined on the ground for the respective developers/occupants, no ownership documents were presented for land.

The subject parcel was listed in a subsequent addendum vide Gazette notice no. 5040 and its inquiry was published in gazette notice no. 6205 of 5th September, 2014. The

- **Submissions by Ministry of Lands and Physical Planning**

The subject parcel of land is situated within Voi Township and borders Ndara A adjudication section and Kaloleni Majengo Squatter Upgrading Scheme. The parcel is registered at the Mombasa Land Registry under the Registered Titles Act, Cap. 281 *(repealed)* as L.R No. 1956/506 C.R. No 23979 on Survey plan No. 107124 measuring approximately 54.26 hectares.

This parcel was allocated to Bata Shoe Company Limited who intended to establish a shoe factory on the land, and was issued with title deed on April 30, 1993. Bata Shoe Company later sold the parcel to Sparkle Properties Limited at a consideration of Kshs.12,000,000. The transfer was lodged on March 21, 2011 and a new title issued to sparkle properties limited as the proprietor (**Annexure 17**).

The proprietor upon receiving title to the land discovered that squatters had moved in and constructed residential houses, they also prevented the owner from taking possession or accessing the property. This prompted the company to move to the Environment and Land Court at Mombasa, Civil Case No.265 of 2013 (Sparkle properties Limited -vs- Johana Ngai & 8 Others)

On January 27, 2020 the court rendered Judgment on the case as follows-

a) Permanent injunction restraining the defendants whether acting by themselves; their employees, agents and/or servants and/or through any other manner whatsoever interfering with the suit property to unit L.R 1956/506.
b) Mandatory injunction compelling the defendants to demolish and or pull down structures erected on the suit property and to give vacant possession to the plaintiff.
c) That there be a permanent injunction restraining the defendants and/or their agents to allow them to occupy or construct the unoccupied space and proceed with construction forthwith
d) General damages for trespass awarded at Ksh.150,000 payable by each defendant to the plaintiff giving a total sum of Kshs.1,050,000 with interest from the date of filing suit until payment is made in full.
e) Costs of the suit awarded to the plaintiff.

The issues raised in the instant petition were adequately canvassed in the suit. **(Annexure 18)**

Further Questions;

i) **Explanation on the circumstances that led the Commissioner of Lands into changing the conditions of the lease**
ii) **Submit relevant documentation and evidence of correspondence that led to the change of the lease conditions**
iii) **Proposals on the best way of assisting the people of Msambweni to get back their land**

Honourable Chair,

A response to the petition was presented to the Committee in the meeting held on February 24, 2021. The response is listed as item no. 5 on Page 11 in our report dated February 24, 2021 marked **annexure 1**.

Honourable Chair,

In response to Questions **(i) and (ii)** I wish to respond as follows;

dwellings and artefacts that point to human habitation on the said land for over 100 years (the community has resided on the land since 1890). Currently, the entire Mkamenyi land has been encapsulated by what is known as Land Registration No. 28683 measuring approximately 4800 Acres. The owner being Voi Plantations Ltd (Voi Point Ltd).

When Voi Plantations Ltd. lease expired in 1993, (original number being L/R No. 4637) it was expected that the land would revert back to the community. Having failed to obtain approval for lease renewal from the then Municipal Council of Voi, the Plantation obtained extension for the lease in a manner that is believed to be irregular. Never the less, the community has continued to reside on their land as squatters. Recently Voi Point Ltd (current owners of the land) offered to allocate the community 35 Acres of land, which they later on, owing to pressure from the community and the government, increased to 150 Acres, which, again is not what the community is asking for.

The community's prayer is that Voi Point Ltd. allocates them at least 2000 Acres. It is also the community's prayer that the entire 4800 Acres will ultimately be returned to them as the rightful owners of the land.

County Government's position

i. There is need for thorough investigations into the circumstances leading to renewal of lease on L/R No. 4637 (original number) and the recent subdivision and sale of Land Registration No. 28683 (new number).
ii. Voi Point Ltd should allocate the people of Mkamenyi at least 2000 Acres pending the outcome of investigations on matters under caption (i) above.

The Committee resolved as follows:

- *Invite the Management of Voi Point Limited;*
- *Invite the Directorate of Criminal Investigations to give the status of investigations into the irregularities that were allegedly raised by the County Government of Taita Taveta on the aforementioned parcel of land.*
- *allegations raised by the County Government where they informed the Committee that the County Government had made a report to the Directorate of Criminal Investigations concerning irregularities that had taken place during the process of renewal of lease on Land Registration Number 4637 (original number) and the recent subdivision and sale of Land Registration Number 28683 (new number).*
- *The Chair further issued a directive that the Ministry of Lands and Physical Planning should forthwith withhold further subdivision being done on the said parcel of Land until the Committee completes its investigation.*

MINUTE SEN/SCLENR/133/2021: PETITION SUBMITTED BY THE RESIDENTS OF MSAMBWENI VILLAGE IN VOI SUB-COUNTY OF TAITA TAVETA COUNTY CONCERNING THE ALLEGED IMPENDING EVICTIONS OF MSAMBWENI RESIDENTS BY A PRIVATE COMPANY;

Honourable Chair,
The approvals obtained from the County Government were for the subdivisions only. The County Government has not given approval for change of user on any of the sub plots. We had erroneously reported that an approval for change of user had been granted for L.R No. 28683/9.

iii) **Provide the transfer documents and correspondence between the Ministry of Lands and Physical Planning, the County Government of Taita Taveta and Voi Point Limited**

Honourable Chair,
As earlier indicated, Voi Point Limited is yet to present to the Ministry the deed plans for the sub plots to facilitate preparation of the title documents for the transfers, if any.

iv) **Proposals on how to assist the Petitioners in obtaining more land noting that twenty-eight (28) families living within Voi Point Limited were allocated thirty-five (35) acres of land**
Honourable Chair,
In the meeting with the Committee on February 24, 2021, the Ministry undertook to refer the matter to the Land Settlement Fund Board of Trustees for consideration of acquisition of additional alternative land for settlement of the squatters. We shall report on the progress once the Board convenes.

- **Submissions by National Land Commission**

a) Explanation on the circumstances that led the Commissioner for Lands to change the conditions of lease;

On the above subject matter, National Land Commission is unable to explain the circumstances that led to variation of the lease conditions because the records are held by the Ministry of Lands and Physical Planning who are in a better position to explain the same.

b) Submit relevant documentation and evidence of correspondence that led to the change of the lease conditions
Based on the response to (a) above, the commission has no documentary evidence in support of the variation to the lease conditions

c) Proposals on the best way of assisting the people of Msambweni to get back their land.
The people of Msambweni can negotiate with the land owner perhaps using a government Arbitrator such as National Land Commission to chart a better way that will yield a win win situation for both parties.

- **Submissions by County Government of Taita Taveta**

Background
The basis of Mkamenyi community's petition is that they are victims of historical injustice. Evidence of community's residence on the land are ancient graves,

x. The Charge in favour of Diamond Trust Bank of Kenya Limited was registered against all the resultant subplots of L.R. No. 28683 apart from L.R. No. 28683/27 that the bank issued a discharge.

xi. On June 25, 2020, the County Government of Taita Taveta approved the subdivision and change of user of L.R. No. 28683/9 into 52 subplots (A copy of the notification of approval (**Annexure 15**). The subdivision was conditional upon surrender of 10% of the total acreage for public utility and use. The subdivision was also approved by the Voi Land Control Board as shown in **Annexure 16**.

Honourable Chair,

L.R. No. 28683/27 measuring approximately 35 acres is the portion that Voi Point Limited reserved for the settlement of the squatters. According to our records the plot is still r
egistered under Voi Point Limited. Given that this land is private land, we advise that the squatters to engage Voi Point Limited on their grievances.

Further Questions:

i) **Explanation on the current status of the lease for Voi Point Limited, given the ongoing subdivision of the land into small parcels implying change of use for the land**

In the report submitted on February 24, 2021, the Ministry reported that the County Government of Taita Taveta approved the subdivision of the land L.R. No. 28683 into 28 portions of various sizes for agricultural use on February 6, 2020. The subdivision was approved on the condition that Voi Point Limited was to surrender Plot No. 25 (L.R. No. 28683/27) measuring approximately 13.68 Hectares for Mkamenyi Squatter Settlement. Voi Point Limited accepted the conditions of the provisional approval. New Certificates of Title were issued for L.R. Nos. 28683/4 to 28683/31 the resultant subdivisions of L.R. No. 28683 On February 27, 2020.

It was also reported that on June 25, 2020, the County Government of Taita Taveta approved the subdivision of L.R. No. 28683/9 into 52 subplots. The subdivision was conditional upon surrender of 10% of the total acreage for public utility and use.

Honourable Chair

I wish to add that the County Government of Taita Taveta also approved the subdivision of L.R. No. 28683/12 (22 subplots) and L.R. No. 28683/20 (147 subplots) on June 25, 2020. The subdivisions were conditional upon surrender of 10% of the total acreage for public utility and use.

Copies of the PPA 2 forms, Land Control Board consents, approvals by the Ministry and other relevant correspondence for the subdivisions are marked **annexures 20.**

Voi Point Limited is yet to present to the Ministry the deed plans for all the sub-plots to facilitate preparation of the title documents.

ii) **Relevant documentation with attachments on the approval of the change of user from agricultural land to commercial land**

i. The subject land was originally LR No. 4637 registered as Grant No. C.R. 8814. It was granted to the British East Africa Corporation Limited in 1923 for a term of 99 years from January 1, 1923 to January 1, 2022. The grant was initially issued for agricultural purpose only but the user was later extended to include a petroleum service station.

ii. The Grant was transferred to Voi Sisal Estates Limited on August 6, 1947 and on March 25, 2011 it was surrendered to the Government to pave way for its extension of the term. (A copy of the surrendered Grant C.R. 8814 is annexed herewith marked **Annexure 7**).

iii. The Grant was extended for a further term of 99 years commencing January 1, 1993 at an annual rent of Kshs.353.795 (revisable). The parcel was registered as Grant No. C.R. 51725, LR No. 28683 measuring approximately 1953 Hectares. The land was granted to be utilized for agricultural purposes and residence for the grantee. (A copy of the Grant No. C.R. 51725 is annexed marked **Annexure 8**).

iv. On February 23, 2012 the land was transferred to Voi Plantations Limited for USD.1,855,670 and charged to Diamond Trust Bank of Kenya Limited for Kshs.300,000,000 and USD.5,000,000. On December 29, 2017 a further charge to Diamond Trust Bank of Kenya Limited for Kshs.150,000,000 was registered.

v. On December 29, 2017 a second further charge for Kshs.1,079,737,000 and a third further charge for Kshs.1,189,511,500 was registered in favour of Diamond Trust Bank of Kenya Limited. A fourth further charge for Kshs.4,218,875,000 was registered on December 29, 2017.

vi. On October 1, 2014 the National Land Commission awarded Voi Plantations Limited Kshs.359,531,100 in respect of the land acquired for the development of the Mombasa-Nairobi Standard Gauge Railway. The area of land acquired measured approximately 14.9621 Hectares. (A copy of the Award is marked **Annexure 9**).

vii. On February 13, 2019, all the charges were discharged and the land transferred to Voi Point Limited for Kshs.4,000,000,000. A charge to Diamond Trust Bank of Kenya Limited for Kshs.4,000,000,000 and a further charge to the same bank for Kshs.800,000,000 were registered on the same date. A copy of the official search is marked **Annexure 10**.

Honourable Chair,

viii. On February 6, 2020, the County Government of Taita Taveta approved the subdivision of the land into 28 portions of various sizes for agricultural use. A copy of the notification of approval (**Annexure 11**) and certificate of subdivision (**Annexure 12**) are annexed herewith. The subdivision was approved on the condition that the company was to surrender Plot No. 25 (L.R. No. 28683/27) measuring approximately 13.68 Hectares for Mkamenyi Squatter Settlement as per the copy of the provisional approval marked **Annexure 13**. Voi Point Limited accepted the conditions of the provisional approval as shown in the copy of the acceptance letter marked **Annexure 14**.

ix. On February 27, 2020 new Certificates of Title were issued for L.R. Nos. 28683/4 to 28683/31 the resultant subdivisions of L.R. No. 28683.

MINUTE SEN/SCLENR/130/2021: PRELIMINARIES

The meeting was called to order at 11.24 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/131/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. (Dr.) Lelegwe Ltumbesi, MP and seconded by Sen. Mwaruma Johnes, MP as follows –

1. Preliminaries – *Prayer*
2. Adoption of the Agenda
3. Petition submitted by the Residents of Mkamenyi Village in Voi sub-county of Taita Taveta County, the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County;
    - Submissions by Ministry of Lands and Physical Planning
    - Submissions by National Land Commission
    - Submissions by County Government of Taita Taveta
4. Petition submitted by the Residents of Msambweni Village in Voi sub-county of Taita Taveta County concerning the alleged impending evictions of Msambweni residents by a private company;
    - Submissions by Ministry of Lands and Physical Planning
    - Submissions by National Land Commission
    - Submissions by County Government of Taita Taveta
5. Petition on Mwakitau land ownership dispute between Mwakitau Residents and Isanga Iwishi Group Ranch; and
    - Submissions by Ministry of Lands and Physical Planning
    - Submissions by National Land Commission
    - Submissions by County Government of Taita Taveta
6. Petition on the alleged delayed adjudication and the settlement of squatters on Machungwani land in Taita Taveta County after expiry of lease.
    - Submissions by Ministry of Lands and Physical Planning
    - Submissions by National Land Commission
    - Submissions by County Government of Taita Taveta
7. Any other Business;
8. Date of the next meeting;
9. Adjournment.

MINUTE SEN/SCLENR/132/2021: <u>PETITION SUBMITTED BY THE RESIDENTS OF MKAMENYI VILLAGE IN VOI SUB-COUNTY OF TAITA TAVETA COUNTY, THE ALLEGED ENCROACHMENT OF LAND BELONGING TO MKAMENYI RESIDENTS BY VOI POINT LIMITED IN TAITA TAVETA COUNTY</u>

- **<u>Submissions by Ministry of Lands and Physical Planning</u>**

According to our records, the land in question measures approximately 1953 hectares and is situated within Voi town in Taita Taveta County. A chronology of ownership of the parcel is as follows-

MINUTES OF THE 24TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 12TH MAY, 2021 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS	**PRESENT**
1. Sen. Philip Mpaayei, MP	- **Vice Chairperson**
2. Sen. (Dr.) Lelegwe Ltumbesi, MP	- Member
3. Sen. Mwaruma Johnes, MP	- Member

	ABSENT WITH APOLOGY
1. Sen. Mwangi Paul Githiomi, MP	- **Chairperson**
2. Sen. Gideon Moi, CBS, MP	- Member
3. Sen. Boy Issa Juma, MP	- Member
4. Sen. Sylvia Kasanga, MP	- Member
5. Sen. Ndwiga Peter Njeru, EGH, MP	- Member
6. Sen. George Khaniri, MGH, MP	- Member

IN ATTENDANCE

A. STAKEHOLDERS

i. NATIONAL LAND COMMISSION (NLC)

1. Mr. Gerishom Otachi	- Chairperson, NLC
2. Ms. Getrude Nguku	- V. Chair, NLC
3. Prof. James Tuitoek	- Commissioner, NLC
4. Ms. Esther Murugi	- Commissioner, NLC
5. Mr. Kennedy Alela	- PA Chair, NLC

ii. MINISTRY OF LANDS AND PHYSICAL PLANNING (MoLPP)

1. Hon. Alex Mbiu	- CAS, MoLPP
2. Mr. Kamau Joram	- Lands Administrator
3. Ms. Caroline Menin	- Legal Officer
4. Mr. Nyankeruma	- MoLPP

iii. COUNTY GOVERNMENT OF TAITA TAVETA

1. Gov. Granton Samboja	- Governor, Taita Taveta County
2. Ms. Majala Mlagui	- Dep. Gov. TaitaTaveta County
3. Mr. Mwandawiro Mghanga	- CECM Lands & Physical Planning
4. Mr. Reuben Ngeti	- Chief Officer, Lands & Physical Planning

B. PETITIONERS

1. Mr. Thomas Tole
2. Mr. Alfred Mnjama

C. SECRETARIAT

1. Mr. Victor Bett	- Clerk Assistant
2. Mr. Mitchell Otoro	- Legal Counsel
3. Mr. James Kimiti	- Audio Recording

The agenda of the meeting was adopted after being proposed by Sen. Boy Issa Juma, MP and seconded by Sen. Philip Mpaayei, MP as follows –

1. Preliminaries - *Prayer*
2. Adoption of the Agenda;
3. Petition submitted by the Residents of Msambweni Village in Voi sub-county of Taita Taveta County, concerning the alleged impending evictions of Msambweni residents by a private company;
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLENR/87/2021: PETITION SUBMITTED BY THE RESIDENTS OF MSAMBWENI VILLAGE IN VOI SUB-COUNTY OF TAITA TAVETA COUNTY, CONCERNING THE ALLEGED IMPENDING EVICTIONS OF MSAMBWENI RESIDENTS BY A PRIVATE COMPANY;

Presentation by Residents of Msambweni

The representative of the Petitioners took the Committee though the Petition they had earlier submitted to the committee. They further deposited supporting documents for their Petition and further took the Committee to where graves of their loved ones are indicating that they have resided on the land many years. Their main prayer was that cancellation of the earlier title issued to Bata Shoe Company and that the further sell of the land Sparkle Limited be halted and the title deed should not be processed until the tussle over the land is handled to its logical conclusion.

The Committee made the following observations;

- **That the matter is still in the courts and that Settlement Fund Trust can be considered to ensure the prayer of the people of Mkamenyi are upheld. This was further supported by the MoLPP as well as the Chairperson, NLC;**
- **The law of adverse possession could also be used since they have resided on the land for more than 12 years, 1978 to date;**
- **Can pass as an historical land injustice.**

MINUTE SEN/SCLENR/88/2021: ANY OTHER BUSINESS

There was no other business discussed.

MINUTE SEN/SCLENR/89/2021: DATE OF NEXT MEETING

The meeting was adjourned at 4.35 pm and the date of the next meeting was to be was to follow thereafter at a different venue.

Signed:..... Date: **29/6 /2021**

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

MINUTES OF THE 17TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON SATURDAY, 27TH MARCH, 2021 AT 2.00 PM IN TAITA TAVETA COUNTY.

MEMBERS	**PRESENT**
1. Sen. Mwangi Paul Githiomi, MP	- **Chairperson**
2. Sen. Philip Mpaayei, MP	- **Vice Chairperson**
3. Sen. Mwaruma Johnes, MP	- Member
4. Sen. Ndwiga Peter Njeru, EGH, MP	- Member
5. Sen. Boy Issa Juma, MP	- Member
	ABSENT WITH APOLOGY
1. Sen. George Khaniri, MGH, MP	- Member
2. Sen. Sylvia Kasanga, MP	- Member
3. Sen. Gideon Moi, CBS, MP	- Member
4. Sen. (Dr.) Lelegwe Ltumbesi, MP	- Member

IN ATTENDANCE

A. MINISTRY OF LANDS AND PHYSICAL PLANNING (MoLPP)

1. Mr. Thomas Bosire	- Lands Coordinator, Taita Taveta

B. NATIONAL LAND COMMISSION (NLC)

1. Prof. James Tuitoek	- Commissioner, NLC

C. COUNTY GOVERNMENT OF TAITA TAVETA

1. Hon. Mwandawiro Mghanga	- CEC, Lands Taita Taveta County
2. Mr. Reuben Ngeti	- Chief Officer, Lands Taita Taveta

D. SECRETARIAT

1. Mr. Victor Bett	- Clerk Assistant
2. Mr. Yussuf Shimoy	- Clerk Assistant
3. Mr. Crispus Njogu	- Clerk Assistant
4. Mr. Mitchell Otoro	- Legal Counsel
5. Mr. Stephen Maru	- Sergeant-At-Arms
6. Ms. Lucianne Limo	- Media Relations Officer
7. Ms. Dorine Mbui	- Secretary
8. Josephine Galsaraco	- Office Assistant
9. Ms. Millicent Ratemo	- Audio Recording

MINUTE SEN/SCLENR/85/2021: PRELIMINARIES

The meeting was called to order at 10.23 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/86/2021: ADOPTION OF AGENDA

MINUTE SEN/SCLENR/33/2021: DATE OF NEXT MEETING

The meeting was adjourned at 1.11 pm and the date of the next meeting was to be called on notice.

Signed:..... Date: **31/3/2021**

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

Response by the National Land Commission

Hidabu is an informal squatter settlement within Lamu Island specifically within registration section Lamu/Block II. The area comprises of several government reserved land and registered private parcels.
The County government of Lamu engaged a private survey firm, Spatial Milestone (K) Ltd, to survey the squatted area. The project is ongoing and at planning stage, so far capturing over 300 squatters. Some of the squatters in the settlement have permanent buildings and others semi-permanent structures built over diverse dates.
The table below, give an impression of the current status of the affected plots.

	Plot No.	**Size (Ha)**	**Ownership**	**Ground Occupant**
1	Lamu/Block II/126	2.97	Government of Kenya	• County Commissioner's residence • LAWASCO, KPLC sub-station, KBC mast, Radio Rahma mast. • Lower part settled by over 30 squatters.
2	Lamu/Block II/127	4.86	Government of Kenya	• Public Works and Housing offices • Probation office • Churches (5 No) • Lower part settled by over 120 squatters
3	Lamu/Block II/128	5.06	Government of Kenya	• King Fa had Hospital (Public). • Lower part has over 60 squatters.
4	Lamu/Block II/129	6.14	Government of Kenya	• King Fa had Hospital; Mosque (1 No) • Lower part settled by 50 families(squatters)
5	Lamu/Block II/345 Lamu Block II/348 Lamu/Block II/350	0.10 0.10 0.10	Kilim Ltd	Have on-going investigation by DCI Lamu between the owner and squatters. • Parcel 345 has a well dug by area MCA. • Plot 348 has 2 permanent houses by squatters, while 350 has some recently erected posts.

The government agencies such as the hospital, housing and Interior occupying the reserved plots assert that they require the land for future public purposes.

Proposal

i. Stakeholder consultative meeting involving area leadership, county government and relevant national government departments to review and provide solution.
ii. Those on private land to negotiate with the land owners.

Honourable Chair; the above are the answers to the various issues raised, which we respectfully submit.

MINUTE SEN/SCLENR/32/2021: ANY OTHER BUSINESS

There was no other business discussed.

whose governance was devolved from the National government and placed to the county government by the Constitution, 2010. LKBMU is therefore currently under the County Government of Lamu.

There have been disputes between the LKBMU and the local community regarding encroachment of the riparian land falling in the zone covering Plots Nos.1609, 1610, 2570, 2568, 5722 and the high-water mark. The zone in contention is swampy and partly covered with thick natural vegetation.

The dispute is mainly attributed to the fact that the entire external boundary of the riparian is not physically marked nor surveyed. The Lake Kenyatta catchment area is not registered or gazetted.

Honourable Chair, we propose-

i. Mapping out the catchment/lake boundaries by the relevant ministries
ii. Gazettement of this ecologically sensitive area
iii. Multi sectoral Protection and management of the catchment area by the relevant MDAs and County government of Lamu

vii. <u>Statement requested by Sen. Anuar Loitiptip, MP, on 24th September, 2020, regarding the alleged encroachment of Lake Kenyatta riparian land in Lamu County.</u>

<u>Response by the Ministry of Lands and Physical Planning</u>

Honourable Chair,

The Hon. Sen. Anwar Loitiptip, MP has requested the Cabinet Secretary to-

i) State whether Lamu County followed due process in licensing Lake Kenyatta Beach Management Unit which has been given the responsibility of managing areas of the beach reserved for hippopotamus to graze as well as recreational areas for fishermen and public
ii) Explain whether Lamu County authorized demarcation of the aid area and subsequently allocated the beach area to Lake Kenyatta Beach Management Unit
iii) State whether the title deeds for the land in question which are in the hands of Lake Kenyatta Beach Management Unit are genuine, and if so, did NLC conduct due diligence before issuance of the same
iv) Explain what measures the Ministry of Lands is putting in place to ensure that areas around water bodies used as grazing area for wildlife are protected

Honourable Chair, I wish to respond as follows:

A response to the Statement requested by the Hon. Senator was forwarded vide a report dated January 5, 2021. A copy of the report is marked **Annexure 25.**

Honourable Chair, I submit.

time. The attached plan marked **annexure 19** give an impression of the status and layout of the area.

The County Government of Lamu engaged a private survey firm, Spatial Milestone (K) Ltd, to survey the squatted area The project is ongoing and at planning stage, so far capturing over 300 squatters.

Ownership

	Plot No.	Size (Ha)	Ownership	Ground Occupant
1	Lamu/Block II/126	2.97	Government of Kenya (**Annexure 20**)	• County Commissioner's residence • LAWASCO, KPLC sub-station, KBC mast, Radio Rahma mast. • Lower part settled by over 30 squatters.
2	Lamu/Block II/127	4.86	Government of Kenya (**Annexure 21**)	• Public Works and Housing offices • Probation office • Churches (5 No) • Lower part settled by over 120 squatters
3	Lamu/Block II/128	5.06	Government of Kenya (**Annexure 22**)	• King Fahad Hospital (Public). • Lower part has over 60 squatters.
4	Lamu/Block II/129	6.14	Government of Kenya (**Annexure 23**)	• King Fahad Hospital; Mosque (1 No) • Lower part settled by 50 families (squatters)
5	Lamu/Block II/345 Lamu Block II/348 Lamu/Block II/350	0.10 0.10 0.10	Miliki Ltd (**Annexure 24**)	Have on-going investigation by DCI Lamu between the owner and squatters. • Parcel 345 has a well dug by area MCA. • Plot 348 has 2 permanent houses by squatters, while 350 has some recently erected posts.

The government agencies such as the hospital, housing and Interior occupying the reserved plots assert that they require the land for future public purposes.

Response by the National Land Commission

The area in question is the riparian land along Lake Kenyatta within Lake Kenyatta I Settlement Scheme established in1974. Lake Kenyatta Beach Management Unit (LKBMU) was registered in 2008 to manage fishing operations in the area and has been operating since then. The lake is a vital source of water and fish, biodiversity habitat and eco-tourism attraction. The fisheries department was one of the functions

b) Mandatory injunction compelling the defendants to demolish and or pull down structures erected on the suit property and to give vacant possession to the plaintiff.
c) That there be a permanent injunction restraining the defendants and/or their agents to allow them to occupy or construct the unoccupied space and proceed with construction forthwith.
d) General damages for trespass awarded at Ksh.150,000 payable by each defendant to the plaintiff giving a total sum of Kshs 1,050,000 with interest from the date of filing suit until payment is made in full.
e) Costs of the suit awarded to the plaintiff.

OPINION

It is the opinion of the Commission that, the issues raised by the petitioners are matters which were fully ventilated Civil Case No.265 of 2013.

The possible action the residents can take is to file an appeal against the judgment and seek further redress on the matter.

Any possible redress must be considered against the Court Decision.

vi. <u>Statement requested by Sen. Anuar Loitiptip, MP, on 24th September, 2020, regarding the alleged displacement of squatters from Hidabwo area in Lamu County; and</u>

<u>Response by the Ministry of Lands and Physical Planning</u>

Honourable Chair, I wish to respond as follows-

The Hon. Sen. Anwar Loitiptip, MP has requested the Cabinet Secretary to-

i. Explain the circumstances surrounding the ownership of the parcel of land in Hidabu Area, Lamu County, and state the genuine owners of the said parcel of land
ii. State who is behind the demarcation of the said piece of land and evicting persons who have occupied and settled on the said piece of land since 1998
iii. State whether Lamu County Government authorized the allegedly illegal demarcation of the piece of land
iv. Explain measures the Ministry of Lands and the National Land Commission have put in place to protect persons who have enjoyed quiet possession of the said piece of land for a period exceeding 12 years and ensure they are not going to be rendered squatters by rogue land grabbers allowed to own the land through adverse possession.

Response

Honourable Chair, I wish to respond as follows-

In response to questions (i), (ii), (iii) and (iv), I wish to respond as follows:

Hidabu area is an informal squatter settlement within Lamu Island specifically within registration section Lamu/Block II. The area comprises of several Government reserved land and registered private land parcels. Some of the squatters in the settlement have permanent buildings and others semi-permanent structures built over

c) That there be a permanent injunction restraining the defendants and/or their agents to allow them to occupy or construct the unoccupied space and proceed with construction forthwith
d) General damages for trespass awarded at Ksh.150,000 payable by each defendant to the plaintiff giving a total sum of Kshs.1,050,000 with interest from the date of filing suit until payment is made in full.
e) Costs of the suit awarded to the plaintiff.

The issues raised in the instant petition were adequately canvassed in the suit. **(Annexure 18)**

Response by the National Land Commission

Hon Chair,The Commission wishes to respond as follows:

The disputed parcel is situated within Voi Township and borders Ndara A Adjudication Section and Kaloleni Majengo Squatter Upgrading Scheme. The parcel is registered at the Mombasa Land Registry Under Cap 281(Registered Titles Act) now repealed as L.R No. 1956/506 C.R. No 23979 on Survey plan No. 107124 measuring approximately 54.26 Ha.

This parcel was allocated to BATA SHOE COMPANY LIMITED who intended to construct a shoe factory, and was issued with title deed on 30th April 1993. BATA SHOE COMPANY later sold the parcel to SPARKLE PROPERTIES LIMITED at a consideration of Kshs.12,000,000. The transfer was lodged on 21st March 2011 and a new title issued to sparkle properties limited as the proprietor.

The proprietor upon receiving title to the land discovered that squatters had moved in and constructed residential houses, they also prevented the owner from taking possession or accessing the property. This prompted her to move to the Environment and Land Court at Mombasa through Civil Case No.265 of 2013.

Sparkle properties Limited
VS
1. Johana Ngai
2. Fatuma Mwamburi
3. Suleiman Kiboi Mwanyambo
4. Hamisi Kalela
5. Alois Mwambi
6. Asha Mwake
7. Fatuma Kodi
8. Bata Shoe Co.Limited
9. The Attorney General

On 27th January, 2020 the Hon Judge A.Omollo delivered his ruling by entering Judgment for the plaintiff against the 1-7th defendants jointly and severally for:
a) Permanent injunction restraining the defendants whether acting by themselves; their employees, agents and/or servants and/or through any other manner whatsoever interfering with the suit property to unit L.R 1956/506.

Honourable Chair,
The petition dated September 10, 2020 was presented by residents of Msambweni village, Voi sub-county in Taita Taveta County. They claim to be living in fear of eviction by a private developer (Sparkle Properties Limited) from a parcel of land registered as No.1956/506, C.R No. 23979 measuring 54.26 hectares where they claim to have resided since1938.
According to the petitioners, their elders accepted a request by Bata Shoe Company to put up a factory on the subject land in 1978 on the premise that the factory would create employment for the community. A 99-year lease running from January 1, 1979 was granted on conditions, inter alia, that the land was to be used for a factory and that the company would not subdivide, sell, transfer or sublet the land.
Bata Shoe Company did not develop the land as agreed and in 2013 transferred the land to Sparkle Properties Limited for construction of a shopping mall in disregard of the conditions of the lease. The petitioners claim to have resisted the development, which prompted Sparkle Properties Limited to file a case court (ELC No. 265 of 2013) seeking to evict them. The court rendered its judgement on the case on February 24, 2020 allowing the eviction order sought by Sparkle Properties Limited. The court also ordered the residents of Msambweni to pay damages for trespass amounting to Kshs.1,050,000.
The petitioners are apprehensive that 3,500 people will be rendered homeless if the court orders are executed. They claim that efforts to resolve the matter with relevant authorities have not been successful and have thus engaged the Senate to intervene.
Response
Honourable Chair, I wish to respond as follows-
The subject parcel of land is situated within Voi Township and borders Ndara A adjudication section and Kaloleni Majengo Squatter Upgrading Scheme. The parcel is registered at the Mombasa Land Registry under the Registered Titles Act, Cap. 281 *(repealed)* as L.R No. 1956/506 C.R. No 23979 on Survey plan No. 107124 measuring approximately 54.26 hectares.

This parcel was allocated to Bata Shoe Company Limited who intended to establish a shoe factory on the land, and was issued with title deed on April 30, 1993. Bata Shoe Company later sold the parcel to Sparkle Properties Limited at a consideration of Kshs.12,000,000. The transfer was lodged on March 21, 2011 and a new title issued to sparkle properties limited as the proprietor (**Annexure 17**).
The proprietor upon receiving title to the land discovered that squatters had moved in and constructed residential houses, they also prevented the owner from taking possession or accessing the property. This prompted the company to move to the Environment and Land Court at Mombasa, Civil Case No.265 of 2013 (Sparkle properties Limited -vs- Johana Ngai & 8 Others)
On January 27, 2020 the court rendered Judgment on the case as follows-

a) Permanent injunction restraining the defendants whether acting by themselves; their employees, agents and/or servants and/or through any other manner whatsoever interfering with the suit property to unit L.R 1956/506.
b) Mandatory injunction compelling the defendants to demolish and or pull down structures erected on the suit property and to give vacant possession to the plaintiff.

subdivision was also approved by the Voi Land Control Board as shown in **Annexure 16**.

Honourable Chair,
L.R. No. 28683/27 measuring approximately 35 acres is the portion that Voi Point Limited reserved for the settlement of the squatters. According to our records the plot is still r
egistered under Voi Point Limited. Given that this land is private land, we advise that the squatters to engage Voi Point Limited on their grievances

Response by the National Land Commission

The above mentioned parcel measuring approximately 1953 hectares is situated within Voi town in the county of TAITA TAVETA. This parcel was allocate to VOI SISAL ESTATES through a grant No C.R 51725 registered at the Mombasa land registry. For a term of 99 years, effective 1.1.1993. This allocation was as a result of surrender registered in the Governments Land Titles Registry at Mombasa as C.R No. 8814/37.
The land mentioned above is Land registered under **(CAP 281) Registration of Titles Act (repealed)**. And is therefore under the custody of **Mombasa Lands Registry**. The parcel was later transferred to VOI PLANTATIONS LIMITED, who charged the parcel to Diamond Trust Bank Kenya Limited For KSH. 3,000,000,000/= and USA $ 5,000,000/=. Voi sisal estate later transferred the above parcel to Voi point limited at a consideration of Kenya shillings 1,002,0000,000/= (one billion and two million shillings)., and charged to DIAMOND TRUST BANK KENYA LIMITED for Ksh. 4,800,000,000/=
The county Government of Taita Taveta, has objected to the Transfer and Subdivision of the parcel, on allegations that they are aware that the lease earlier granted had expired, and that certain individuals had managed to renew the lease without seeking their approval. Allegations which have since been proved as untrue by the Land Registrar Mombasa.
Voi point limited has subdivided part of the parcel into various portions, **LR NO. 28683/27** measuring approximately 20.23 Hectares which was transferred to Mkamenyi society of Voi point with the intention to settle squatters residing within the parcel in an area known as Mkamenyi. All the above mentioned transactions were lodged at the Mombasa Land Registry.
It seems Mkamenyi squatters are claiming a larger share of land (i.e 35 acres given against 150 acres claimed) hence the dispute.
The company engaged the services of a private surveyor since this is a private matter .
The Commission's mandate in this matter is limited as the property in issue is private land. The Commission is , however, ready to assist or lead in an ADR mechanism that may be considered with a view to resolving the dispute.

v. **Petition submitted by the Residents of Msambweni Village in Voi sub-county of Taita Taveta County, concerning the alleged impending evictions of Msambweni residents by a private company;**

Response by the Ministry of Lands and Physical Planning

iii. The Grant was extended for a further term of 99 years commencing January 1, 1993 at an annual rent of Kshs.353.795 (revisable). The parcel was registered as Grant No. C.R. 51725, LR No. 28683 measuring approximately 1953 Hectares. The land was granted to be utilized for agricultural purposes and residence for the grantee. (A copy of the Grant No. C.R. 51725 is annexed marked **Annexure 8**).

iv. On February 23, 2012 the land was transferred to Voi Plantations Limited for USD.1,855,670 and charged to Diamond Trust Bank of Kenya Limited for Kshs.300,000,000 and USD.5,000,000. On December 29, 2017 a further charge to Diamond Trust Bank of Kenya Limited for Kshs.150,000,000 was registered.

v. On December 29, 2017 a second further charge for Kshs.1,079,737,000 and a third further charge for Kshs.1,189,511,500 was registered in favour of Diamond Trust Bank of Kenya Limited. A fourth further charge for Kshs.4,218,875,000 was registered on December 29, 2017.

vi. On October 1, 2014 the National Land Commission awarded Voi Plantations Limited Kshs.359,531,100 in respect of the land acquired for the development of the Mombasa-Nairobi Standard Gauge Railway. The area of land acquired measured approximately 14.9621 Hectares. (A copy of the Award is marked **Annexure 9**).

vii. On February 13, 2019, all the charges were discharged and the land transferred to Voi Point Limited for Kshs.4,000,000,000. A charge to Diamond Trust Bank of Kenya Limited for Kshs.4,000,000,000 and a further charge to the same bank for Kshs.800,000,000 were registered on the same date. A copy of the official search is marked **Annexure 10**.

Honourable Chair,

viii. On February 6, 2020, the County Government of Taita Taveta approved the subdivision of the land into 28 portions of various sizes for agricultural use. A copy of the notification of approval (**Annexure 11**) and certificate of subdivision (**Annexure 12**) are annexed herewith. The subdivision was approved on the condition that the company was to surrender Plot No. 25 (L.R. No. 28683/27) measuring approximately 13.68 Hectares for Mkamenyi Squatter Settlement as per the copy of the provisional approval marked **Annexure 13**. Voi Point Limited accepted the conditions of the provisional approval as shown in the copy of the acceptance letter marked **Annexure 14**.

ix. On February 27, 2020 new Certificates of Title were issued for L.R. Nos. 28683/4 to 28683/31 the resultant subdivisions of L.R. No. 28683.

x. The Charge in favour of Diamond Trust Bank of Kenya Limited was registered against all the resultant subplots of L.R. No. 28683 apart from L.R. No. 28683/27 that the bank issued a discharge.

xi. On June 25, 2020, the County Government of Taita Taveta approved the subdivision and change of user of L.R. No. 28683/9 into 52 subplots (A copy of the notification of approval (**Annexure 15**). The subdivision was conditional upon surrender of 10% of the total acreage for public utility and use. The

Honourable Chair,

The petition is dated August 7, 2020 and has been presented by Joseph M. Njuguna, Francis Mwasho, Juma Mwamburi, Saumu K. Mwamburi, Hassan Kiboko, Glady Juma and Julius Mwasenzi on behalf of residents of Mkamenyi village, Voi sub-county in Taita Taveta County.

From the petition, Mkamenyi village borders Voi Sisal Estate, which was initially *'gifted'* to a retired British soldier by the name Lezen in 1920 by the colonial government, for a period of 99 years. The petition states that the land was surrendered to the government in 1980 and was reallocated to Voi Sisal Estate Limited in 2012. It was transferred to Voi Point Limited in 2019.

The petitioners claim that between 1900 and 1930, the management of the sisal estate requested Mkamenyi elders to allow them to use part of their land located close to the river to install a water pump, farm food for their farmworkers and conduct agricultural research. By 1960s, the residents needed their land back to accommodate the growing population. However, according to the petitioners, the sisal estate refused to hand over the land and instead colluded with the police to extend the boundaries into the residents' homes and put the land under sisal plantation.

The petitioners state that they have engaged this Committee together with the Ministry of Lands and Physical Planning and the county leadership with a view to get back the land. On October 29, 2019, the management of Voi Point Limited invited their representatives to a meeting where they were informed that the company would surrender 35 acres to settle their 28 families. The proposal was however not amenable to the residents since they occupied 150 acres.

The residents are aggrieved that Voi Point Limited proceeded to survey the land without their involvement or the county government and processed a group title for the residents. The company invited the residents to a meeting on August 26, 2020 to issue the title document but they declined. It is claimed that the group title had names of persons who do not live in Mkamenyi. That, only six families residents of Mkamenyi are listed on the title. The petitioners state that efforts to resolve the issues with relevant authorities have been futile. They therefore request the Senate to-

i) investigate the case
ii) recommend that the Ministry of Lands and Physical Planning initiate an all inclusive, open and transparent process of giving the residents of Mkamenyi adequate land.

Response

Honourable Chair, I wish to respond as follows-

According to our records, the land in question measures approximately 1953 hectares and is situated within Voi town in Taita Taveta County. A chronology of ownership of the parcel is as follows-

i. The subject land was originally LR No. 4637 registered as Grant No. C.R. 8814. It was granted to the British East Africa Corporation Limited in 1923 for a term of 99 years from January 1, 1923 to January 1, 2022. The grant was initially issued for agricultural purpose only but the user was later extended to include a petroleum service station.
ii. The Grant was transferred to Voi Sisal Estates Limited on August 6, 1947 and on March 25, 2011 it was surrendered to the Government to pave way for its extension of the term. (A copy of the surrendered Grant C.R. 8814 is annexed herewith marked **Annexure 7**).

The petitioners claim that the community has occupied the land as their ancestral land over the years and has been utilising the same for farming, fishing and residential purposes. They complain that the Methodist church embarked on a subdivision and sale of the land to third parties. They are apprehensive that they will be displaced and have no alternative land. According to the petitioners, their case is an historical injustice that the colonial government committed on the community. They submitted a memorandum to the National Land Commission on the issue three (3) years ago but there has been no response from the Commission. The petitioners therefore request the Senate to intervene with a view to undertake an inquiry into the historical injustice claim.

Response

Honourable Chair, I wish to respond as follows-

According to records held by the Ministry, Plot No.162/V/M. N. CR 1070 was registered on October 27, 1923 in the name of the United Methodist Church Mission. The certificate of ownership No. 7540 was registered under title No. CR.6348 for the area measuring 151 acres. The registered proprietor later changed their name to Methodist Church Missions Kenya trustees registered in 1958 and later to Methodist Church in Kenya Trustees Registered.

On June 14, 1973, the Methodist Church in Kenya Trustees Registered transferred a portion of land to Municipal Council of Mombasa. The said subdivision MN/V/505 measuring 15.28 acres was registered on July 11, 1973 and assigned title No. CR 14323. The remainder thereof measuring 135.72 acres is held by the Methodist Church in Kenya Trustees Registered. A copy of the official search is marked **Annexure 6.**

Honourable Chair, the case presented by the petition is an historical injustice claim The National Land Commission is seized of the matter recorded as Historical Case No. NLC/HLI/565/2019. We invite the Committee to engage the Commission for appropriate redress.

Response by the National Land Commission

Hon Chair,The Commission respond as follows:

This matter is listed as a historical no.NLC/HLI/565/2019 that has been prioritized for investigations, hearing and determination.

The Chairman of NLC together with the County Co-ordinator joined the Senate team on Friday 19th February 24, 2021 on a visit to the ground and obtained first – hand information on the matter.

(The Committee noted the response but resolved that the matter be canvassed when the Petitioners are present)

iv. **Petition submitted by the Residents of Mkamenyi Village in Voi sub-county of Taita Taveta County, The alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County;**

Response by the Ministry of Lands and Physical Planning

conservation of biodiversity and among others in choosing the ideal location for the KDF Camp.

The Public Participation exercise was carried out successfully by the Joint MOD,KWS,CGM team(Comprising of all stakeholders),County Leadership,MPs, MCAs and members of the local community across the areas expected to host MOD facilities. The local community participated in the exercise and assisted representatives from the MOD to identify the suitable locations.

The petitioners are contesting the process followed in the allocation of Community Land at Karare ward.

The coordinates of the 5,000 Ha parcel of land allocated in Karare by the County Government of Marsabit is:-

STN	Eastings	Northings
A	376583	248844
B	374070	248821
C	370311	251031
D	366218	250703
E	366957	244713
F	373812	244527
G	373800	245810
H	376328	245840

When the above coordinates were plotted on the map it fell within the Marsabit National Reserve (Annex 1).

Conclusion

The contested parcel of land in question is part of the Marsabit National Reserve sitting next to the Marsabit National Park and not Community Land as alleged by the petitioners.

iii. Petition submitted by the Wajomvu Community, Mombasa County, concerning the alleged historical land injustices involving Plot No. 162/V/M.N.CR 1070, in Mombasa County;

Response by the Ministry of Lands and Physical Planning

Honourable Chair,

Salim Mwidadi, Mohamed Kombo, Kassim Mwikaa and Mwinyiusi Mwidadi petitioned the Senate on behalf of Wajomvu Community from Jomvu Kuu Village, Jomvu Kuu Ward in Jomvu Sub County presented the petition dated July 2, 2020 regarding ownership of Plot No. 162/V/M.N. CR. 1070 situated in Jomvu Kuu.

The petitioners claim that they are among the 12 Swahili tribes to settle in Mombasa approximately 800 years ago. They claim that on or about 1846, Dr. Kraph arrived on the East African Coast and settled in Rabai. That in 1877 through the benevolence of a jomvu elder by the name Mwidani, Dr. Kraph was given land to establish a church in the predominantly muslim community. According to the petitioners, the community donated a small area where the Methodist church was built. However, when land adjudication was undertaken in 1923, the church was allocated 150 acres of their land.

During the process of public participation the locals requested the allocation of Karare land to Ministry of Defence be reviewed downwards from 5,000 hectares to 2,500 hectares. The land is currently in the process of being planned, surveyed and titled in favor of Ministry of Defence. The Ministry is already in occupation of the two parcels of land allocated to them by the County Government of Marsabit.
There is a Court case filed by the Rendille Professionals Association and local elders on behalf of the Community regarding the allocations of the land parcels by the County Government of Marsabit.
Honourable Chair,
We invite the Committee to engage Ministry of Defence and the County Government of Marsabit for more information on the matter.

Response by the National Land Commission

The National Land Commission submitted as follows:

Background
The Commission wishes to bring to the attention of this esteemed Committee that there is an active Court matter at the Meru Environment and Land Court - Constitutional Petition No 4 of 2020, filed **by the Rendille Professionals Association and local elders on behalf of the Community regarding the allocations of the land parcels by the County Government of Marsabit** challenging the constitutionality of the process applied by the Department of Defense with regard to their interest in the subject land.

However the Commission wishes to briefly outline process the Ministry of Defence followed to acquire the land

1. The Ministry of Defence made a decision to establish a military barracks in Marsabit for security reasons and on 16th March 2012 made a formal request to be allocated land in Karare, Marsabit County. On 8th June 2015, the County Council of Marsabit formally allocated 2,500 Ha in Kubi Kalo. The processing of ownership of the land was overtaken by events following the coming in place of devolved governments in 2013.
2. On 18th June 2019, Ministry of Defence made a formal request to the County Government for allocation for land in Marsabit.
3. On 22nd July 2019, the County Government of Marsabit formally allocated land in Karare (5,000 Ha); Haiya (10,000 Ha) and Odda military camp (242 Ha). On 22nd August 2019 the department of defense requested the National Land Commission for allotment letters for the parcels of land. The Commission informed Department of Defence in a letter dated 4th November 2019, that it could not issue allotment letters because the land was community land. **It turns out that this may not have been the correct position.**

On January 16 th. , 2020, MOD & CGM resolved to subject the land allocations to a Public Participation process as advised by the National Land Commission. Subsequently Public Participation and Validation exercise for the land allocations was conducted from 21 to31 January 2020 in Marsabit County. The exercise considered critical factors such as human settlements, grazing areas, water catchment areas and

b) make appropriate recommendations to the Cabinet Secretary Ministry of Interior and Co-ordination of National Government based on the findings
c) give opportunity for the petitioners to further present the memorandum orally to the Senate

Response

Honourable Chair, I wish to respond as follows-

The KDF Strategic Defence Plan of 2018-2027 projected the expansion of the Kenya Army and redeployment of Formations to various parts of the Country with a sizeable force earmarked for deployment in Marsabit County. In pursuance to that strategic defence plan, the Ministry of Defence started the process of acquisition of land in Marsabit County with an intention to have military footprint in the northern region to deter/prevent constant incursion by the Ethiopian National Defence Forces and also support the Strategic Defence Plan in order to facilitate KDF achieve its mandate as provided for in Article 241(3) of the Constitution of Kenya.

In early 2012, the Ministry of Defence began formal engagements with the County Council of Marsabit for allocation of land in the County. This resulted in the allocation of 2,500 hectares of land in Kubi Kalo to Ministry of Defence on January 8, 2013. However, with the establishment of the County Government of Marsabit under the new constitutional dispensation, the allocation was rescinded and the Ministry of Defence was advised to restart the process of acquisition.

On January 10, 2019, the process was re- started with consultative meetings between Ministry of Defence and County Government of Marsabit led by the Chairman, Committee on Military Land & H.E Governor of Marsabit with all elected leaders including MPs, MCAs and CECMS. The leaders from Marsabit County agreed to allocate 5,000 hectares in Karare for the construction of Ministry of Defence camp and 10,000 hectares in Haiya for training.

The meeting further directed that a joint technical committee be formed to identify the suitable locations for deployment and training area. The joint technical committee met and worked as per the mandate given during the meeting. A detailed joint reconnaissance conducted between January 2-4, 2019 and May 29 to June 1, 2019 identified the actual locations. Following the engagements, the Ministry of Defence was formally allocated 5,000 hectares & 10,000 hectares of land in Karare and Haiya areas of the County respectively.

On January 16, 2020, the Ministry of Defence and County Government of Marsabit resolved to subject the land allocations to a public participation process as advised by the National Land Commission. Subsequently, the public participation and validation exercise for the land allocations was conducted from January 21-31, 2020 in Marsabit County. The exercise considered critical factors such as human settlements, grazing areas, water catchment areas and conservation of biodiversity and among others in choosing the ideal location for the KDF Camp.

The public participation exercise was carried out successfully by the Joint team comprising Ministry of Defence, Kenya Wildlife Service, County Government of Marsabit, county leadership including Members of Parliament, Members of the County Assembly and members of the local community across the areas expected to host the Ministry of Defence facilities. The local community participated in the exercise and assisted representatives from the Ministry of Defence to identify the suitable locations.

ii. **Petition submitted by the Rendille and Samburu Community Representatives concerning the alleged acquisition of Karare land in Marsabit County, by the Kenya Defence Forces;**

Response by the Ministry of Lands and Physical Planning

The petition dated April 29, 2020 concerning acquisition of Karare land by the Kenya Defence Forces has been presented by the Rendille Professional Association on behalf of residents of Rendille and Samburu communities residing in Kaware Ward, Marsabit County. The petitioners claim that the Rendille and Samburu communities in Marsabit County object to the compulsory acquisition of 2,500 acres of land in Kaware by the Kenya Defence Forces (KDF). They claim that the KDF expressed interest on the land in 2019. The petitioners' objection to the compulsory acquisition is based on the following-

i) The land is the communities' only fertile land and the only viable grazing area
ii) Karare ward being a water catchment area for the pastoral communities of Karare, Songa, Loglogo, Kamboye, Laisamis, Kargi and Korre communities plays a central role in the viability of pastoralism. A total of 98, 000 people and approximately 450,000 livestock depend on the ecosystem for their livelihoods
iii) The land is a sacred place for most cultural and religious ceremonies such as circumcision
iv) It is a major and only source of red ochre nalkaria hills which is sacred to the community
v) The land is a pathway for collection of Silaley gum used in circumcision and religious ceremonies
vi) It is also a source of Ibaa/sticks for use in Rendille/Samburu circumcision ceremonies
vii) It is a source of sagaram to feed livestock in a highly pastoral community
viii) The excision of the 2,500 acres of land some of which is protected forests and which is the only dependable dry season grazing area will lead to overuse of rangelands, environmental degradation, human-wildlife conflict and human- human conflict.

The petitioners claim that several meetings have been held between the communities' elders, County Commissioner and the KDF in which the communities proposed alternative land in Kubi Kalo for acquisition but the same was declined by the KDF. They are aggrieved that the process of compulsory acquisition is ongoing despite their protests.

The communities are apprehensive that that they could lose their land and their rights under the Constitution due to their minority status and weak representation in government. They aver that they have already lost 150,000 acres to the Lake Turkana Wind Power project, which was also compulsorily acquired despite their objection.

The petitioners therefore filed the petition to request the Senate to-

a) visit Karare community of Marsabit County to establish the facts of the case as soon as possible

AGREEMENT

On 24th April 2003, the directors of the two companies signed an agreement to exchange Title deeds to end the many years of conflict. This was not possible due to internal conflicts between the directors of the two land buying companies among themselves fighting for leadership and other interests.Lari Nyakinyua Land buying company had two factions and Solai Ruyobei too had the same and both dispute ended in court.

The directors who signed were;

Lari nyakinyua

a. John Nganga
b. Samuel Macharia
c. Hannah Muturi

Ruyobei

a. Morogo Chebet
b. Olari Chebet
c. Richard Bunditich
d. Musa Toroitich
e. Daniel ario

The Governor Nakuru County in a letter REF: NO. NCG/S/LND/VOL. II/09 dated 25th November, 2014 requested National Land Commission to expedite the matter of the two farms since it was becoming a security threat. On 9th December 2014, National Land Commission wrote a letter to the Governor from the perspective of the Commission, the exchange never materialized at that time due to the following reasons;

- Lari Nyakinyua still holds the title for Solai Farm which was invaded by Ruyobei members.
- Ruyobei Farmers Limited still holds a Title for Oljorai and are in court with Oljorai squatters and a faction of directors.
- Oljorai farm is in court being sued by Solai farmers Co. LTD.

Subsequently, the High Court in Nakuru ELC COURT Civil Case No. 87 of 2007, whose parties are **Nduguia Ole Osano** Vs two others (a) **Lands Limited** (b) **Solai Ruyobei Farm Limited** ruled in favor of SOLAI RUYOBEI FARMERS CO. LTD towards the end of 2019.

The 8000 acres of OLJORAI FARM is currently occupied by over 10,000 squatters for close to 30 years now. This is the same farm the High court ruled in favor of SOLAI RUYOBEI FARMERS CO. LTD which was supposed to be exchanged to LARI NYAKINYUA.

In early 2020 the parties reported back to the Commission that following the Court decision, they were willing to proceed with the exchange with the assistance of the provincial administration. They were to report back on the progress and the Commission awaits the report.

and 7364 to Lari Nyakinyua (Solai Farm) Limited for Kshs.6,000,000. (**Annexure 2**)

iii) Land Reference No. 2680 measuring approximately 4910 Acres is situated in Solai, Nakuru County and registered in the name of Lari Nyakinyua (Solai Farm) Limited. The parcel was until February 15, 1980 owned by Kenya Motor Holdings Limited who transferred it together with Land Reference No. 8435 and 7364 to Lari Nyakinyua (Solai Farm) Limited for Kshs.6,000,000. (**Annexure 3**)

iv) Land Reference No.7364 measuring approximately 857 Acres is situated in Solai, Nakuru County and registered in the name of Lari Nyakinyua (Solai Farm) Limited. The parcel was until February 15, 1980 owned by Kenya Motor Holdings Limited who transferred it together with Land Reference No. 2680 and 8435 to Lari Nyakinyua (Solai Farm) Limited for Kshs.6,000,000. (**Annexure 4**)

The parcels have been subject of litigation in various court cases as shown in **Annexure 5**.

We are aware that the National Land Commission has been involved in resolution of the dispute. We therefore invite the Committee to engage the Commission to provide more information on the case.

Response by the National Land Commission

The dispute between the two land buying companies dates back to the mid-seventies when Lari Nyakinyua first bought 8000 acres of land in Solai.

The following is the profile of the two land buying companies:

LARI NYAKINYUA FARMERS COMPANY LTD

This was women land buying company from Lari, Kiambu County popularly known as NYAKINYUA. The company bought 8000 acres of land in (Solai) Rongai Sub – County in the early seventies.

The women group Lari Nyakinyua while organizing to settle their members at the 8000 acre farm, members of the local community moved in and occupied the land forcefully to date denying the buyers an opportunity to settle.

At the advent of multi – politics in Kenya it was agreed by the leaders to compensate the Lari NYAKINYUA women with an alternative parcel equal to their original land but in a different Sub – County, now Gilgil **OLJORAI ADC FARM**.

RUYOBEI FARMERS COMPANY LIMITED

This is a registered land buying company formed by a community from Solai in Rongai Sub – County Nakuru County with the intention to buy land for its members.

A majority of their members moved into the land bought by LARI NYAKINYUA in Solai in 1992 when a decision was made to compensate members of LARI NYAKINYUA,following a series of meetings held by leaders from Nakuru and Lari, Kiambu.This led to the signing of the titles exchange agreement between the two land buying companies to bring to an end several years of long standing conflict between the two.

i. **Petition concerning the alleged exchange and final transfer of Titles for parcels of land known as Lari Nyakinyua Solai Farm(located in Solai, Nakuru County) and Riyobei Farm Limited(located in Gilgil, Nakuru County;**

Response by the Ministry of Lands and Physical Planning

Fredrick Kahia Thugi, Joseph Kamau Ngugi, Veronica Wanjiru Chege, Peter Muchume Gachii and James Ngugi being members of Nyakinyua Solai Farm Limited have presented the petition dated February 2019. The petitioners claim that their group purchased 8000 hectares of land in Solai, Nakuru County in 1980 that is now known as Lari Nyakinyua Solai Farm. A second group by the name Ruyobei Farm Limited also purchased 8000 hectares of land in Gilgil, Nakuru.

The petitioners claim that the two groups entered into a deed of exchange agreement signed on April 24, 2003 in a process spearheaded by the late retired president Daniel arap Moi. A second agreement on the same was signed on the same date before the then Gilgil District officer. According to the petitioners, the parties signed a third agreement on August 11, 2003 to authorize the groups to enter and subdivide their respective new parcels. Despite the agreements signed by the parties, transfer of title over the properties has not been effected to date.

The petitioners state that a meeting between the two groups and the National Land Commission was convened on October 26, 2016 at the Solai Farm. The purpose of the meeting was for the Commission to obtain confirmation of members of Nyakinyua Solai Farm Limited that they had authorised Ruyobei Farm Limited to proceed to subdivide the Lari Nyakinyua Solai Farm. This was confirmed at the meeting paving way for the subdivision. The Commission promised to convene a similar meeting at the Gilgil Ruyobei Farm. The meeting is yet to be set up.

The petitioners claim that their members have been prevented from accessing Ruyobei Farm by illegal occupants who have settled on the land. They claim that efforts to have the matter addressed by the National Land Commission have been futile. They have therefore presented the petition to request Senate to intervene and resolve the matter.

Response

Honourable Chair, I wish to respond as follows-

The subject parcels of land are –

a) Ruyobei Farm (Approximately 8019 Acres)

i) Land Reference No. 20229/1 measuring approximately 8019 Acres is situated in Gilgil, Nakuru County and is registered in the name of Solai Ruyobei Farm Limited**.** The parcel was until December 8, 1995 owned by Lands Limited who transferred it to Solai Ruyobei Farm Limited for Kshs. 24,000,000. (**Annexure1**)

b) Nyakinyua Farm (Approximately 7978 Acres)

ii) Land Reference No. 8435 measuring approximately 2211 Acres is situated in Solai, Nakuru County and registered in the name of Lari Nyakinyua (Solai Farm) Limited. The parcel was until February 15, 1980 owned by Kenya Motor Holdings Limited who transferred it together with Land Reference No. 2680

PETITIONERS SUBMISSIONS

MSAMBWENI

MINISTRY OF LANDS AND SETTLEMENT

Telegrams: "URBANPLAN", Nairobi
Telephone: Nairobi 27461 Ext.
When replying please quote
Ref. No. PPD/64/V/127
and date

DEPARTMENT OF PHYSICAL PLANNING
SHERIA HOUSE
CITY SQUARE
P.O. Box 45025
NAIROBI

21st May, 1979

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

Att. Mr. S.M. Ngare

REF: BATA SHOE CO. LTD SITE - VOI

You are aware that a site of approximately 50 ha. was allocated to the Bata Shoe Company Kenya Limited at Voi (refer to yours 37173/VIII/191 of 20th November).

At the time of our site visit we noted that there were some Settlements existing on to the proposed site for the factory. It was therefore felt that compensation would have to be paid to the people currently living on the site for the improvements which they had carried out; since the land itself does not belong to them. This was quite agreeable to the representatives of the Bata Shoe Company with whom we visited the site on the 8th August, 1978.

Considerable time has now elapsed and the people now living in the area are anxious to know when they are going to be paid their dues. I have now received one of the people in my office seeking to know when they are going to be paid compensation and then they are going to be asked to move from the site. It is proper for those who live on the site in question to be given reasonable time to find an alternative area in which to live as a short notice is going to cause them too much suffering.

I am therefore requesting you to take up this matter with the Bata Shoe Company Limited in order to work out the details on how these people can be paid compensation.

(A.N. Shibira)
for: DIRECTOR PHYSICAL PLANNING

CC.
General Manager,
Bata Shoe Company,
P.O. Box 23,
LIMURU.

The District Commissioner,
Taita - Taveta District.

ANS/EWN:

REPUBLIC OF KENYA

DISTRICT OF TAITA

Locality Voi Town

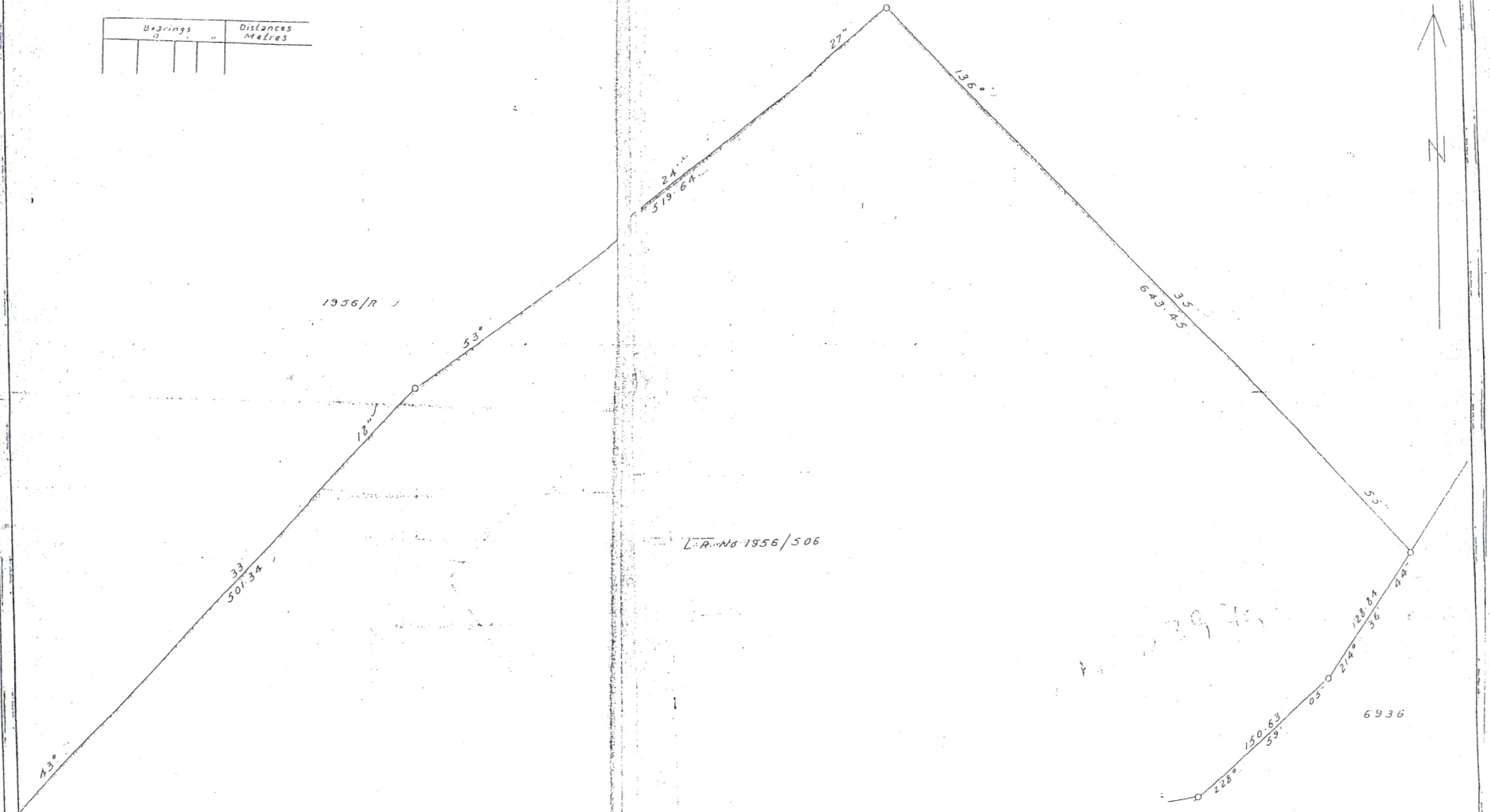
Reference Map South A 37 / U II C 4

Reference No

Orig.

Area = 54.26 Ha. (Approx)

Bearings °	'	"	Distances Metres



FORM 4 *(Inoffensive Industry)*

SPECIAL CONDITIONS

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 in writing 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 calendar months of the actual registration of the Grant 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 buildings the Grantee proposes to erect on the land and shall within 24 months of the actual registration of the Grant 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 condition all buildings at any time erected on the land.

4. Should the Grantee give notice in writing to the Commissioner of Lands that it is unable to complete the buildings within the period aforesaid the Commissioner of Lands shall (at the Grantee's expense) accept a surrender of the land comprised herein:

(i) Provided further that if such notice as aforesaid shall be given within 12 months of the actual registration of the Grant the Commissioner of Lands shall refund to the Grantee 50 per centum of the stand premium paid in respect of the land, or

(ii) at any subsequent time prior to the expiration of the said building period the Commissioner of Lands shall refund to the Grantee 25 per centum of the said stand premium. In the event of notice being given after the expiration of the said building period no refund shall be made.

5. The land and the buildings shall only be used for industrial purposes.

6. The buildings shall not cover more than 90 per centum of the area of the land or such lesser area as may be laid down by the Local Authority in its by-laws.

7. Accommodation not exceeding 100 square feet may be provided for a caretaker or night watchman or such lesser area as may be laid down by the Local Authority in its by-laws.

8. The land shall not be usedfor any purpose which the Commissioner of Lands considers to be dangerous or offensive.

9. The Grantee shall not subdivide the land without the prior consent in writing of the Commissioner of Lands.

10. The Grantee shall not sell transfer sooiet 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.

11. 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 proportionate cost either pay (within 30 days of demand) or be refunded the amount by which the actual proportionate cost exceeds or falls short of the amount paid as aforesaid.

12. The Grantee shall from time to time pay to 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.

13. 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.

(T/

REPUBLIC OF KENYA

SD £20
D 21/10/92

THE REGISTRATION OF TITLES ACT
(*Chapter* 281)

GRANT: NUMBER CR. 23979
ANNUAL RENT: SHS. 1740/-
TERM: 99 YEARS FROM 1.1.1979

(REVISABLE)

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of Shillings eight thousand and seven hundred (Shs.8,700/-) by way of stand premium paid on or before the execution hereof THE PRESIDENT OF THE REPUBLIC OF KENYA hereby GRANTS unto BATA SHOE COMPANY (KENYA) LIMITED , a limited liability company having its registered office at LIMURU (Post Office Box Number 23)

(hereinafter called "the Grantee ") ALL that piece of land situate in Voi Township in Taita-Taveta District containing by measurement Fifty four decimal two six (54.26) hectares/acres or thereabouts that is to say L.R. No. 1956/506 which said piece of land with the dimensions abuttals and boundaries thereof is delineated on the plan annexed hereto and more particularly on Land Survey Plan Number 107124 deposited in the Survey Records Office at Nairobi

TO HOLD

for the term of Ninety Nine (99) years from the first day of January One thousand nine hundred and Seventy Nine

SUBJECT to *(a)* the payment in advance on the first day of January in each year of annual rent of Shillings One thousand seven hundred and fourty (Shs.1,740/-) (REVISABLE)
(b) the provisions of the Government Lands Act (Chapter 280) and *(c)* the following Special Conditions (namely):

[P.T.O.

REPUBLIC OF KENYA

Telegrams: "Lands", Nairobi
Telephone: Nairobi 27471/Ext.

DEPARTMENT OF LANDS
P.O. Box 30089
NAIROBI

Ref. No. 37173/VIII/190

REGISTERED

The Managing Director,
Bata Shoe Co. Ltd.,
P.O. Box 23,
LIMURU.

20th December, 1978.

SIR(S)/MADAM,

LETTER OF ALLOTMENT

UNSURVEYED SITE FOR BATA SHOE CO. AT VOI

I have the honour to inform you that the Government hereby offers you a grant of UNSURVEYED PLOT shown edged red on the attached plan No. L.D. No. 37173/VII/1474 subject to your formal written acceptance of the following conditions and to the payment of the charges as prescribed hereunder:—

AREA: 50 hectares *or* ..... acres (approximately)

TERM: 99 years from the 1/1/1979

STAND PREMIUM: Sh. 8,000/=
ANNUAL RENT: Sh. 1,600/=
} Subject to adjustment 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 of the Laws of Kenya) and title will be issued under the Registration of Titles Act (Cap. 281).

SPECIAL CONDITIONS: See attached.

2. I should be glad to receive your acceptance of the attached conditions together with your cheque for the amount as set out below:—

		Sh.
Stand Premium		8,000/=
Rent from 1/1/1979 to 31/Dec. 1979		1,600/=
Conveyancing Fees		350/=
Registration Fees		50/=
Rates, proportion of (provisional)	On demand	-
Stamp Duty		280/=
Survey Fees	On demand	
Road and Road Drains	On demand	
Sewers	On demand	
	Less Deposit	
Receipt No.	TOTAL Sh.	10,280/=

SPECIAL CONDITIONS

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 in writing by the Commissioner of Lands and 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 6 calender months of the actual registration of the grant submit in triplicate to the Local Authority and the Commissioner of Lands plans (including block plans showing the positions of the buildings and 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 said actual registration of the grant complete the erection of such buildings and the construction of the drainage system in conformity with 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 Land 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 authorised 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 condition all buildings at any time erected on the land.

4. Should the Grantee give notice in writing to the Commissioner of Lands that they/he/she/it is unable to complete the buildings within the period aforesaid the Commissioner of Lands shall (at the grantees expenses accept a surrender of the land comprised herein. PROVIDED FURTHER that if such notice as aforesaid shall be given within twelve months of the commencement of the term the Commissioner of Lands shall refund to the Grantee fifty per centum of the stand premium paid in respect of the land or (2) at any subsequent time prior to the expiration of the said building period the Commissioner shall refund to the Grantee five per centum of the said stand premium. In the event of notice being given after the expiration of the said building period no refund shall be made.

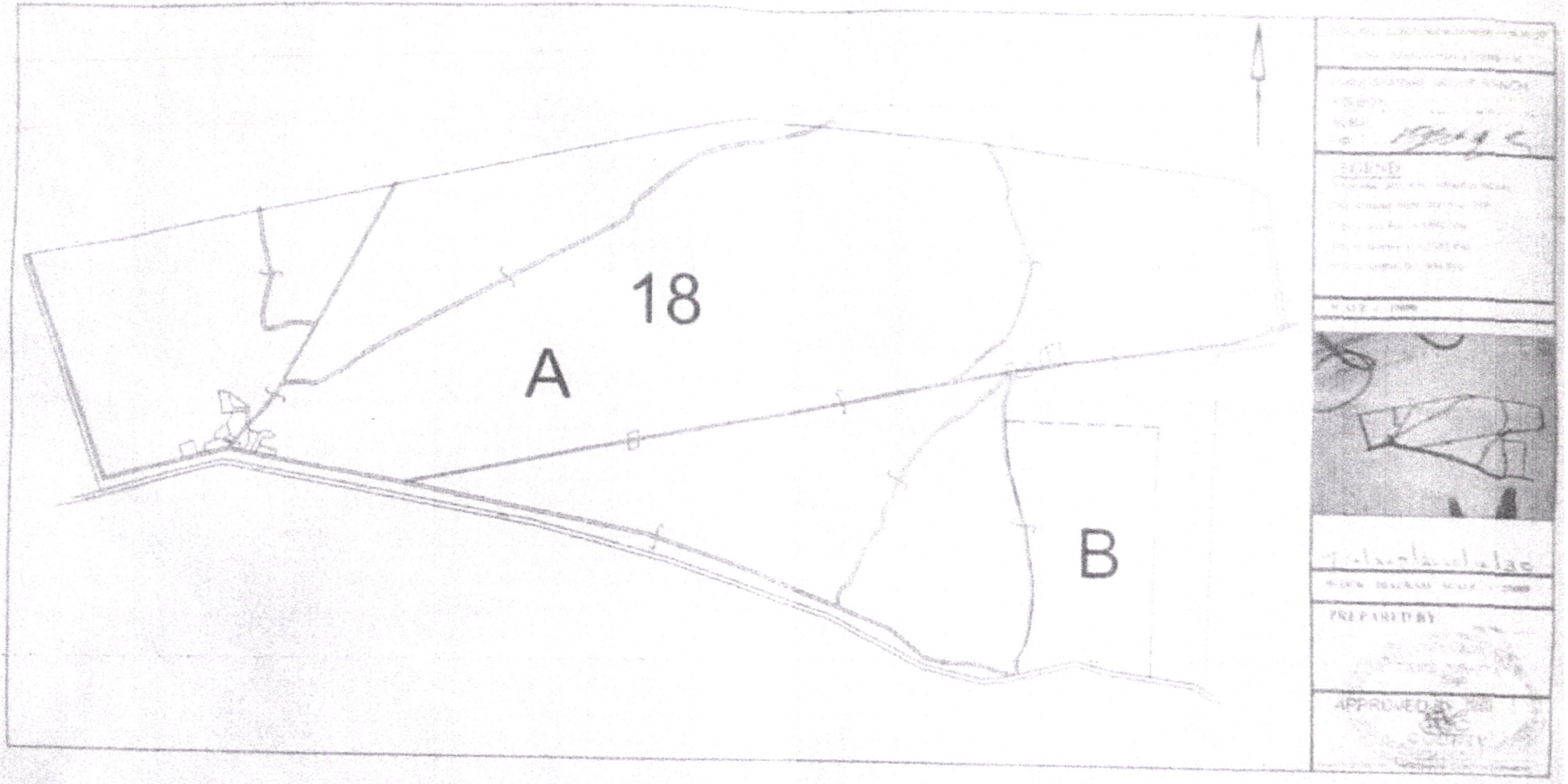
5. The land and the buildings shall only be used for a Bata shoe factory and accommadation for a caretakers flat night watchmen may be provided

6. The buildings shall not cover more than 90% per centum of the area of the land hereby allocated or such lesser area as may be laid down by the Local Authority in its by-laws.

7. The land shall not be used for the purposes of any trade or business which the Commissioner of Lands considers to be dangerous or offensive.

8. The Grantee shall not subdivide the land without prior consent in writing of the Commissioner of Lands.

...../2



B is the parcel of land transferred / sold to the University

Commissioner NLC

DATE: 28/08/2020

THE CHAIRMAN. NATIONAL LAND COMMISSION.

BATA / VOI MSAMBWENI VILLAGE FRAUDULENT LAND GRABING REPORT

On 8th August 1978, VOI MP who was also Minister of Trade and Industry, the late Mr. Eliud Timothy Mwamunga, Bata shoe company officials and Government officials visited Msambweni village to inform villagers of the proposal that Bata had intention to put up one of the largest shoe factories in Africa and therefore required a large area for this project. [130 acres was acquired] All this was UN surveyed land. In an already inhabited homesteads then.

Mwamunga introduced the proposal and explained to the Msambweni villagers how they would benefit from that new industrial development, He convinced and urged the villagers to accept the proposal that a Bata factory be built on their land and all affected homesteads would be compensated. VOI people were very loyal to the MP whom they also gave solid political support for over 20 years. He convinced the villagers that they would easily get employment, training, Electricity and water would be brought to the people alongside other basic facilities as well. It is here then the proposal was anonymously accepted by villagers and Mwamunga given a go ahead for the factory to be brought in Msambweni. {see letter by physical planner attached.}

On 20th December 1978 Bata shoe company ltd, was issued with a letter of allotment by the commissioner of land with clearly stipulated conditions. {attached}

On 1st January 1979 a Grant number CR 23979 was issued to Bata shoe company [k] ltd to put up a shoe factory on VOI plot 1956 / 506 also with the same conditions attached. {attached}

THE CONDITIONS INCLUDED THE FOLLOWING.

2. The grantee shall within a calendar months of the actual registration of the grant submit in triplicate to the local authority and the commissioner of lands plans including block plans showing the position of the buildings and a system drainage for disposing sewerage..... shall within 24 months of the said actual registration of the grant, complete the erection..... *if* default shall be in performance or observance of any of the requirements of this condition the commissioner of land or any one authorized by him on behalf of the president to reenter into and upon the land. And there upon the term herby created shall cease, but without prejudice to any right of action or remedy of breach dairy condition herein contained.

5. The land and the building shall only be used for **industrial purposes**. I.e. [Bata factory]

8. The grantee shall not sub divide the land without prior consent in writing from the commissioner of land.

9. The grantee shall **not sell, transfer, sublet, charge or part with possession of the land** or **any part thereof** 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.

IF THE COMMISSIONER OF LAND CONSENTED ANY OF THE ABOVE IT IS ERRONEOUS AND NOT IN ORDER OR GOOD FAITH. Msambweni had villagers living long before Bata came with a **FALSE FACTORY** strategy to acquire land from the innocent **TAITA** Natives.

Bata never built even a **PIT LATRINE** on this land from **1978** and till when they sold in **2011** thereof they did not even visit the site.

All the above conditions were **INTENTIONALLY NEVER** met by the Bata shoe company which resulted in to an **ABUSE / MISREPRESENTATION** to the Government and the people of Kenya through that **FALSE PROMISE**. We cannot accept such Misrepresentations in **FRAUD** and **LIES** to acquire our land and eventually get us evicted shamelessly. The people of Msambweni and other Kenyans are hereby asking. **WAS THIS A LAND CONMANSHIP ORGANISED SCAM BY BATA SHOE COMPANY AND ITS AGENTS AGAINST KENYANS ACCEPTABLE BY THE COMMISSION?**

NLC CHAIR HII NI MAMBO UNAWEZA FUTILIYA MBALI [BATA TITLE] NA WANANCHI WA VOI MSAMBWENI WAPIMIWE, NA SGR WALIPE PLOTI ZAO.

SGR VOI STATION, is on this land and this has brought a do or die speculation by SPARKLE LTD in where millions of Kenya shillings are.

ON 8 TH MARCH 2011, Bata shoe company k ltd, IRREGULARLY sold and transferred a densely populated Msambweni village plot **1956 / 506 to SPARKLE properties limited without shame and without taking in to account consequences thereof.**

THIS WAS A WELL CALCULATED SPECULATION DEAL, SOON AFTER, VOI SGR STATION HAS CUT ACROSS THE MSAMBWENI VILLAGE WITH MILLIONS OF KENYA SHILLINGS TO BE/ OR PAID [To the speculator/ ***sparkle ltd.***

THE BIG QUESTION IS, WHY BUY A DENSLY POPULATED LAND THEN SEEK EVICTION ORDERS AT THE COURT? NLC CHAIR, we hereby humbly request you to come to our rescue, why should we be subjected to court battles which we cannot afford or even gamble to win back our ancestral land.

AS AT NOW WE ARE ABOUT TO BE EVICTED AS PER THE ATTACHED DECREE, BY A MOMBASA HIGH COURT.

With the above scenario, it is quite evident that your voi Msambweni 500 families are on their ancestral land and in there almost **200** graves [**since 1960s**] and an ancient **Mosque / church** deserve your protection as well as full rights Theron. Why should a foreign investor come to Kenya and displace local community through falsehood? **SHAME ON BATA SHOE COMPANY. [A FOREIGN INVESTER???]**

We look forward to your favorable quick resolution before human life gets at risk.

for and on behalf of,

Voi Msambweni Village Committee.

Chairman.

ABBAS K MALISO KALELA. [0719654985]

REGISTERED

P.O. Box 23,
VOI.

SIR(S)/MADAM,

LETTER OF ALLOTMENT

I have the honour to inform you that the Government hereby offers you a grant of ..... shown edged red on the attached plan No. L.P. No. 97173/VII/1977 subject to your formal written acceptance of the following conditions and to the payment of the charges as prescribed hereunder:—

AREA: ....20..... hectares *or* ..... acres (approximately)

TERM: ....99..... years from the ...1/1/1979.....

STAND PREMIUM: Sh. ...8,000/=.....

ANNUAL RENT: Sh. ...1,600/=..... } Subject to adjustment 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 of the Laws of Kenya) and title will be issued under the Registration of Titles Act (Cap. 281).

SPECIAL CONDITIONS: See attached.

2. I should be glad to receive your acceptance of the attached conditions together with your cheque for the amount as set out below:—

	Sh.
Stand Premium	8,000/=
Rent from 1/1/1979 ..... to ...31st Dec.... 1979	1,600/=
Conveyancing Fees	350/=
Registration Fees	50/=
Rates, proportion of (provisional)	
Stamp Duty	350/=
Survey Fees	
Road and Road Drains	
Sewers	

Less Deposit

Sh.

If acceptance and [illegible] from the date hereof the [illegible]

If the above plot is still [illegible] exercise the greatest care to ensure that [illegible] 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 will be undertaken as soon as circumstances permit.

Your full name(s) in BLOCK LETTERS should be given for the purpose of the draft grant which will be submitted later for your acceptance. The attached special conditions are part of the offer and you are deemed to accept them as part of the offer.

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

([illegible])
for Commissioner of Lands

ENCL.

COPY TO:— [illegible] Ministry of Lands and Settlement, Nairobi.

The Director of Surveys, Nairobi.

The Town Clerk.

The Clerk to the Council, County Council of [illegible]

The District Commissioner.

The Town Planning Adviser, Nairobi.

The City Valuation Officer, City of Nairobi.

O/C Land Rents.

Rates Assistant.

The Accountant.

O/C Records.

Senior Plan Record Officer.

Plot File.

(T)

REPUBLIC OF KENYA

SDL 20
B 2/10/92

THE REGISTRATION OF TITLES ACT
(Chapter 281)

GRANT NUMBER L.R. 23979
ANNUAL RENT SHS. 1740/- (REVISABLE)
TERM 99 YEARS FROM 1.1.1979

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of Shillings eight thousand and seven hundred (Shs.8,700/-) by way of stand premium paid on or before the execution hereof THE PRESIDENT OF THE REPUBLIC OF KENYA hereby GRANTS unto BATA SHOE COMPANY (KENYA) LIMITED , a limited liability company having its registered office at LIMURU (Post Office Box Number 23)

(hereinafter called "the Grantee ") ALL that piece of land situate in Voi Township in Taita-Taveta District containing by measurement Fifty four decimal two six (54.26) hectares/~~acres~~ or thereabouts that is to say L.R. No. 1956/506 which said piece of land with the dimensions abuttals and boundaries thereof is delineated on the plan annexed hereto and more particularly on Land Survey Plan Number 107124 deposited in the Survey Records Office at Nairobi

TO HOLD

for the term of Ninety Nine (99) years from the first day of January One thousand nine hundred and Seventy Nine SUBJECT to *(a)* the payment in advance on the first day of January in each year of annual rent of (REVISABLE) Shillings One thousand seven hundred and fourty (Shs.1,740/-) *(b)* the provisions of the Government Lands Act (Chapter 280) and *(c)* the following Special Conditions (namely):

P.T.O

Form A (Inoffensive Industry)

SPECIAL CONDITIONS

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 in writing 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 calendar months of the actual registration of the Grant 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 buildings the Grantee proposes to erect on the land and shall within 24 months of the actual registration of the Grant 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 condition all buildings at any time erected on the land.

4. Should the Grantee give notice in writing to the Commissioner of Lands that [illegible] unable to complete the buildings within the period aforesaid the Commissioner of Lands shall (at the Grantee's expense) accept a surrender of the land comprised herein:

(i) Provided further that if such notice as aforesaid shall be given within 12 months of the actual registration of the Grant the Commissioner of Lands shall refund to the Grantee 50 per centum of the stand premium paid in respect of the land, or

(ii) at any subsequent time prior to the expiration of the said building period the Commissioner of Lands shall refund to the Grantee 25 per centum of the said stand premium. In the event of notice being given after the expiration of the said building period no refund shall be made.

5. The land and the buildings shall only be used for industrial purposes.

6. The buildings shall not cover more than 90 per centum of the area of the land or such lesser area as may be laid down by the Local Authority in its by-laws.

7. Accommodation not exceeding 100 square feet may be provided for a caretaker or night watchman or such lesser area as may be laid down by the Local Authority in its by-laws.

8. The land shall not be used for any purpose which the Commissioner of Lands considers to be dangerous or offensive.

9. The Grantee shall not subdivide the land without the prior consent in writing of the Commissioner of Lands.

10. 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. 7 has been performed.

11. 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 proportionate cost either pay (within 30 days of demand) or be refunded the amount by which the actual proportionate cost exceeds or falls short of the amount paid as aforesaid.

12. The Grantee shall from time to time pay to 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 certify

13. 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 [illegible] as the Commissioner may certify

2. The Grantee shall within 6 calender months of the actual registration of the grant submit in triplicate to the Local Authority and the Commissioner of Lands plans (including block plans showing the positions of the buildings and 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 said actual registration of the grant complete the erection of such buildings and the construction of the drainage system in conformity with 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 Land 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 authorised 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 condition all buildings at any time erected on the land.

4. Should the Grantee give notice in writing to the Commissioner of Lands that they/he/she/it is unable to complete the buildings within the period aforesaid the Commissioner of Lands shall (at the grantees expenses accept a surrender of the land comprised herein. PROVIDED FURTHER that if such notice as aforesaid shall be given within twelve months of the commencement of the term the Commissioner of Lands shall refund to the Grantee fifty per centum of the stand premium paid in respect of the land or (2) at any subsequent time prior to the expiration of the said building period the Commissioner shall refund to the Grantee five per centum of the said stand premium. In the event of notice being given after the expiration of the said building period no refund shall be made.

5. The land and the buildings shall only be used for a Bata shoe Factory and accomodation for a caretaker and night watchmen may be provided

6. The buildings shall not cover more than 90% per centum of the area of the land hereby allocated or such lesser area as may be laid down by the Local Authority in its by-laws.

7. The land shall not be used for the purposes of any trade or business which the Commissioner of Lands considers to be dangerous or offensive.

8. The Grantee shall not subdivide the land without prior consent in writing of the Commissioner of Lands.

.....

[illegible]
[illegible]
in writing of the Commissioner of Lands [illegible]
except in respect of a loan required for [illegible] purposes, will be
considered untill Special Condition [illegible] has been performed:

~~Provided that such consent shall not be required for the letting of individual shops, offices and flats.~~

10. The Grantee shall pay to the Commissioner of Lands on demand such sum as the Commissioner may estimate to be the proportionate cost of construction and the ascertainment of the actual proportionate cost either pay (within seven days of demand) or be refunded the amount by which the actual proportionate cost exceeds or falls short of the amount paid as aforesaid.

11. The Grantee shall from time to time pay to the Commissioner of Lands on demand such proportion for the maintaining all roads and drains serving or adjoining the land as the Commissioner may assess.

12. Should the Commissioner of Lands at any time required the said roads to be constructed to a higher standard the grantee shall pay to the Commissioner on demand such proportion of the cost of such construction as the Commissioner may assess.

13. The Grantee shall pay such rates, taxes, 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.

14. 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 of all descriptions, whether overhead or underground, and the grantee shall not erect any building in such a way as to cover or interfere with any existing alignments of main or service pipes or telephone wires and electrict mains.

15. The Commissioner of Lands reserves the right to revise the annual ground rental of Shs..... as per schedule payable hereunder after the expiration of the 33rd and 66th year of the term hereby granted. Such rental will be at a rate of 4 per cent of the unimproved freehold value of the land as assessed by the Commissioner of Lands.

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 265 OF 2013

SPARKLE PROPERTIES LIMITED.....PLAINTIFF

-VERSUS-

1. JOHANA NGAI
2. FATUMA MWAMBURI
3. SULEIMAN KIBOI MWANYAMBO
4. HAMISI KALELA
5. ALOIS MWAMBI
6. ASHA MWAKE
7. FATUMA KODI
8. BATA SHOE CO. LIMITED
9. THE ATTORNEY GENERAL (Sued on behalf of Commissioner Of Lands, Registrar Mombasa & National Land Commission).....DEFENDANTS

DECREE

Prayers sought in the main suit;

a) Permanent injunction restraining the Defendants whether acting by themselves, their employees, agents and/or servants and/or through any other manner whatsoever interfering with the suit property to wit Plot No. L.R.No. 1956/506 VOI situated at Voi Township in Taita Taveta County.

b) Mandatory injunction compelling the Defendants to demolish and or pull down structure erected on the suit property and give vacant possession to the Plaintiff.

c) That there be permanent injunction restraining the Defendants and/or their agents to allow them to occupy and construct the unoccupied space and proceed with construction forthwith.

d) General damages for trespass of land.

e) Cost of this suit and other incidentals thereon.

Prayers sought in the counterclaim filed on the 5th December 2013, Plaintiffs in the counterclaim pray for judgment against the Defendants jointly and severally and orders for;

a) Cancelation of the lease granted and registered on the 2nd October 1992 and 30th April 1993 comprised in L.R.No. 1956/506, CR.23979/1 an order reverting the land to its original owners under LR NDARA GROUP RANCH as SAGALA.NDARA "B"/"1".

b) An order nullifying the transaction between the 1st and 2nd Defendants for transferring 54. Ha comprised in the disputed land reference L.R 1956/506, CR 23979/1 and an order directing the 3rd Defendant to destroy the register in its entirety.

c) General and special damages against [illegible] for trespass and loss of jobs and development respectively.

d) A Permanent injunction restraining the Defendants jointly and severally from further trespassing, selling, sub-diving, surveying, constructing registering and or doing anything adverse that will interfere with the Plaintiff's title to the portion of land comprised in LR 1956/506 CR 23979/1.

e) Cost of the suit.

f) Interest on (c) and (e) from the date of judgment till payment in full.

g) Any other remedy the Honourable Court will deem fit to grant so as to meet the ends of justice.

UPON HEARING the main suit by Hon. Lady Justice Anne A. Omollo. THIS MATTER coming up for delivery of judgment by Hon. Justice Sila Munyao on the 24th of February 2020, in the presence of Mr. Otieno holding brief for Mr. Oloo for the Plaintiff, Mr. Ojwang' holding brief for Mr. Kadima for the 1st - 7th Defendants no appearance by the 8th and 9th Defendants. Judgment be and is hereby entered for the Plaintiff against the 1st - 7th Defendants jointly and severally thus,

IT IS HEREBY DECREED;

a) THAT permanent injunction restraining the Defendants whether acting by themselves, their employee, agents and/or servant and /or through any other manner whatsoever interfering with suit property to wit Plot No. LR. 1956/506 Voi situated at Voi Township in Taita Taveta County.

b) THAT mandatory injunction compelling the Defendants to demolish and or pull down structure erected on the suit property and to give vacant possession to the Plaintiff.

c) THAT there be a permanent injunction restraining the Defendants and/or their agents to allow them occupy and construct the unoccupied space and proceed with construction forthwith.

d) THAT general damages for trespass awarded at Kshs. 150,000/= payable by each Defendant to the Plaintiff giving a total summons of Kshs. 1, 050,000/= with interest from the date of filing suit until payment is made in full.

e) THAT costs of suit awarded to the Plaintiff.

GIVEN under my HAND and SEAL of this Honourable Court this 24TH day of FEBRUARY 2020

DEPUTY REGISTRAR
ENVIRONMENT & LAND COURT
MOMBASA

ISSUED at MOMBASA this 19TH day of August 2020

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MOMBASA

ELC CIVIL SUIT NO. 265 OF 2013

SPARKLE PROPERTIES LIMITED.....PLAINTIFF

-VERSUS-

1. JOHANA NGAI
2. FATUMA MWAMBURI
3. SULEIMAN KIBOI MWANYAMBO
4. HAMISI KALELA
5. ALOIS MWAMBI
6. ASHA MWAKE
7. FATUMA KODI
8. BATA SHOE CO. LIMITED
9. THE ATTORNEY GENERAL (Sued on behalf of Commissioner Of Lands, Registrar Mombasa & National Land Commission) .....DEFENDANTS

ORDER

(Before Justice Munyao Sila on the 22nd day of July 2020)

THIS MATTER coming up for RULING on the 22nd July 2020 and upon Hearing and Reading submissions by counsel for the Plaintiff and Counsels for the 1st - 7th Defendants.
IT IS HEREBY ORDERED;

1. THAT the application for stay pending appeal be and is hereby dismissed with costs.

2. THAT Plaintiff is at liberty to execute the judgment.

GIVEN under my HAND and SEAL of this Honourable Court this 22nd day of July 2020

HIGH COURT OF KENYA ENVIRONMENTAL AND LAND DIVISION MOMBASA

DEPUTY REGISTRAR
ENVIRONMENT & LAND COURT
MOMBASA

ISSUED at MOMBASA this 27th day of August 2020

PENAL NOTICE; *if any person(s) served with this Order disobeys the same he or she shall be cited for contempt and may be punished by a fine and/or imprisonment of six (6) months or both.*

→ 1978 Meeting

→ Villagers concent

→ Town Data Factory
Training Centre

→ Plot ET Mwanunga

→ Four years operation.

→ Bata left.

→ Plot ~~for~~ sold 2011-13

→ Densly Populated with settlements

→ Sparkle → speculation

→ Fraud deal.

→ SGR compensation
Plots allotments.

Chairperson: Hon. Florence Kajuju, MBS
Vice-Chairperson: Mr.Washington Sati
Commissioner: Mrs. Lucy Ndung'u,EBS,HSC

THE
COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"

Our Ref: CAJ/Pe/040/2414/20 – EMN
Your ref: TBA

5th October, 2020

The Chief Executive Officer,
National Lands Commission,
Ardhi House, Ngong Road
P.O. Box 44417 – 00100
Nairobi

Dear Sir,

RE: COMPLAINT BY ABAS K. MALISO

Kindly receive warmest compliments from the Commission on Administrative Justice (Office of the Ombudsman).

We are in receipt of a complaint from **Abas K. Maliso who** alleges that sometime in December, 1978, they were duped into surrendering their land for building of a Bata Factory. He said land was to be used for industrial purposes.

The complainant now alleges that the said land has been sold and that a whole community risks being evicted. Further details are as per the attached letter from the complaiant.

The commission has considered her complaint and is of the view that your office is best placed to address it and advise the complainants. By means of this letter the complainant is hereby **REFERRED** to your office for assistance.

We assure you of our highest regards.

Yours Sincerely,

VIOLA OCHOLA
FOR: COMMISSION SECRETARY/ CEO

(1)

MINISTRY OF LANDS AND SETTLEMENT

Telegrams: "URBANPLAN", Nairobi
Telephone: Nairobi 27461 Ext.
When replying please quote
Ref. No. PPD/64/V/127
and date

DEPARTMENT OF PHYSICAL PLANNING
SHERIA HOUSE
CITY SQUARE
P.O. Box 45025
NAIROBI

21st May, 1979

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

Att. Mr. S.M. Ngare

REF: BATA SHOE CO. LTD SITE - VOI

You are aware that a site of approximately 50 ha. was allocated to the Bata Shoe Company Kenya Limited at Voi (refer to yours 37173/VIII/191 of 20th November).

At the time of our site visit we noted that there were some Settlements existing on to the proposed site for the factory. It was therefore felt that compensation would have to be paid to the people currently living on the site for the improvements which they had carried out; since the land itself does not belong to them. This was quite agreeable to the representatives of the Bata Shoe Company with whom we visited the site on the 8th August, 1978.

Considerable time has now elapsed and the people now living in the area are anxious to know when they are going to be paid their dues. I have now received one of the people in my office seeking to know when they are going to be paid compensation and then they are going to be asked to move from the site. It is proper for those who live on the site in question to be given reasonable time to find an alternative area in which to live as a short notice is going to cause them too much suffering.

I am therefore requesting you to take up this matter with the Bata Shoe Company Limited in order to work out the details on how these people can be paid compensation.

(A.N. Shibira)
for: DIRECTOR PHYSICAL PLANNING

CC.
General Manager,
Bata Shoe Company,
P.O. Box 23,
LIMURU.

The District Commissioner,
Taita - Taveta District.

ANS/EWN:

(2)

(160)

MINISTRY OF LANDS AND SETTLEMENT

Telegrams: "LANDS"
Telephone: 27471-ext. .....
When replying please quote

DEPARTMENT OF LANDS
P.O. Box 30089, NAIROBI

Ref. No. 37173/VIII/191.
and date

20th December, 1978.

1391

The Managing Director,
Bata Shoe Co. Ltd.,
P.O. Box 23,
LIMURU.

LND. 22/A

DEPT: IB
F.N.A:

Sir,

Unsurveyed Site for Bata Shoe Company's Factory at Voi:

I enclose herewith a letter of Allotment containing my offer of the above referred site to your company for your necessary action. I would like to point out that in addition to the special conditions attached with the letter of Allotment, the offer is also subject to the following general conditions for which I shall require your Company's written agreement to comply with the conditions:-

(a) That access to the site shall be by T-junction from the main Nairobi - Mombasa road as shown;

(b) The Building line shall be at least 10m. clear from the road reserve;

(c) The developer shall undertake to provide acceleration lanes as the case may be according to the Ministry of Works Specifications;

(d) The access given shall at a future date be used by all the developers in the same locality;

(e) Keep off at least 20 metres from the power line.

Your early acceptance of the conditions of offer will be appreciated.

Yours faithfully,

Noted
11/I/79

S. M. NGARE
(S. M. Ngare)
for: COMMISSIONER OF LANDS:

SMN/JWK:

c.c.
The Permanent Secretary,
Ministry of Lands & Settlement,
NAIROBI.

The District Commissioner,
Taita Taveta District,
WUNDANYI.

The Director,
NAIROBI.

The Clerk to Council,
Taita-Taveta County Council,
P.O. Box 1066, - WUNDANYI.

Director of Physical Planni
P.O. Box 45025,
NAIROBI.

(3)

REPUBLIC OF KENYA

Telegrams: "Lands", Nairobi
Telephone: Nairobi 27471/Ext.

DEPARTMENT OF LANDS
P.O. Box 30089
NAIROBI

Ref. No. 37173/VIII/190

REGISTERED

The Managing Director,
Bata Shoe Co. Ltd.,
P.O. Box 23,
LIMURU.

20th December, 1978.

SIR(S)/MADAM,

LETTER OF ALLOTMENT

UNSURVEYED SITE FOR BATA SHOE CO. AT VOI

I have the honour to inform you that the Government hereby offers you a grant of UNSURVEYED PLOT shown edged red on the attached plan No. L.D. No. 37173/VII/147A subject to your formal written acceptance of the following conditions and to the payment of the charges as prescribed hereunder:—

AREA: 50 hectares *or* ..... acres (approximately)

TERM: 99 years from the 1/1/1979

STAND PREMIUM: Sh. 8,000/=
ANNUAL RENT: Sh. 1,600/=
} Subject to adjustment 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 of the Laws of Kenya) and title will be issued under the Registration of Titles Act (Cap. 281).

SPECIAL CONDITIONS: See attached.

2. I should be glad to receive your acceptance of the attached conditions together with your cheque for the amount as set out below:—

	Sh.
Stand Premium	8,000/=
Rent from 1/1/1979 to 31/Dec. 1979	1,600/=
Conveyancing Fees	350/=
Registration Fees	50/=
Rates, proportion of (provisional) On demand	-
Stamp Duty	180/=
Survey Fees On demand	
Road and Road Drains On demand	
Sewers On demand	
Less Deposit	
TOTAL Sh.	10,180/=

Receipt No. .....

P.T.O.

(4)

If acceptance and payment respectively are not received within 30(thirty) 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 will be undertaken as soon as circumstances permit.

Your full name(s) in BLOCK LETTERS should be given for the purpose of the draft grant which will be submitted later for your acceptance. The attached special conditions are part of the offer and you are deemed to accept them as part of the offer.

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

(S.M. [illegible])
for Commissioner of Lands

ENCL.

COPY TO:— P/S -Minitry of Lands oand Settlement, Nairobi.

The Director of Surveys, Nairobi.

The Town Clerk,

The Clerk to the Council, County Council of Taita Taveta

The District Commissioner, Taita Taveta

The Town Planning Adviser, Nairobi.

The City Valuation Officer, City of Nairobi.

O/C Land Rents.

Rates Assistant.

The Accountant.

O/C Records.

Senior Plan Record Officer.

Plot File.

To note please.

(5)

SPECIAL CONDITIONS

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 in writing by the Commissioner of Lands and 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 6 calender months of the actual registration of the grant submit in triplicate to the Local Authority and the Commissioner of Lands plans (including block plans showing the positions of the buildings and 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 said actual registration of the grant complete the erection of such buildings and the construction of the drainage system in conformity with 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 Land 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 authorised 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 condition all buildings at any time erected on the land.

4. Should the Grantee give notice in writing to the Commissioner of Lands that they/he/she/it is unable to complete the buildings within the period aforesaid the Commissioner of Lands shall (at the grantees expenses accept a surrender of the land comprised herein. PROVIDED FURTHER that if such notice as aforesaid shall be given within twelve months of the commencement of the term the Commissioner of Lands shall refund to the Grantee fifty per centum of the stand premium paid in respect of the land or (2) at any subsequent time prior to the expiration of the said building period the Commissioner shall refund to the Grantee five per centum of the said stand premium. In the event of notice being given after the expiration of the said building period no refund shall be made.

5. The land and the buildings shall only be used for a Bata shoe Factory and accomodation for a caretaker and night watchman may be provided

6. The buildings shall not cover more than 90% per centum of the area of the land hereby allocated or such lesser area as may be laid down by the Local Authority in its by-laws.

7. The land shall not be used for the purposes of any trade or business which the Commissioner of Lands considers to be dangerous or offensive.

8. The Grantee shall not subdivide the land without prior consent in writing of the Commissioner of Lands.

...../2

9. The Grantee shall not sell, transfer sublet, charge or part with possession of the land or any part thereof 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 untill Special Condition No.2 has been performed:

~~Provided that such consent shall not be required for the letting of individual shops, offices and flats.~~

10. The Grantee shall pay to the Commissioner of Lands on demand such sum as the Commissioner may estimate to be the proportionate cost of construction and the ascertainment of the actual proportionate cost either pay (within seven days of demand) or be refunded the amount by which the actual proportionate cost exceeds or falls short of the amount paid as aforesaid.

11. The Grantee shall from time to time pay to the Commissioner of Lands on demand such proportion for the maintaining all roads and drains serving or adjoining the land as the Commissioner may assess.

12. Should the Commissioner of Lands at any time required the said roads to be constructed to a higher standard the grantee shall pay to the Commissioner on demand such proportion of the cost of such construction as the Commissioner may assess.

13. The Grantee shall pay such rates, taxes, 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.

14. 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 of all descriptions, whether overhead or underground, and the grantee shall not erect any building in such a way as to cover or interfere with any existing alignments of main or service pipes or telephone wires and electrict mains.

15. The Commissioner of Lands reserves the right to revise the annual ground rental of Shs..... as per schedule payable hereunder after the expiration of the 33rd and 66th year of the term hereby granted. Such rental will be at a rate of 4 per cent of the unimproved freehold value of the land as assessed by the Commissioner of Lands.

(7)

11:06
0622

(T/

REPUBLIC OF KENYA

SDE 20
2/10/92

THE REGISTRATION OF TITLES ACT
(*Chapter* 281)

GRANT: NUMBER CR. 23979
ANNUAL RENT: SHS. 1740/- (REVISABLE)
TERM: 99 YEARS FROM 1.1.1979

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of Shillings eight thousand and seven hundred (Shs.8,700/-) by way of stand premium paid on or before the execution hereof THE PRESIDENT OF THE REPUBLIC OF KENYA hereby GRANTS unto BATA SHOE COMPANY (KENYA) LIMITED , a limited liability company having its registered office at LIMURU (Post Office Box Number 23)

(hereinafter called "the Grantee ") ALL that piece of land situate in Voi Township in Taita-Taveta District containing by measurement Fifty four decimal two six (54.26) hectares/acres or thereabouts that is to say L.R. No. 1956/506 which said piece of land with the dimensions abuttals and boundaries thereof is delineated on the plan annexed hereto and more particularly on Land Survey Plan Number 107124 deposited in the Survey Records Office at Nairobi

TO HOLD

for the term of Ninety Nine (99) years from the first day of January One thousand nine hundred and Seventy Nine SUBJECT to (*a*) the payment in advance on the first day of January in each year of annual rent of Shillings One thousand seven hundred and fourty (Shs.1,740/-) (REVISABLE) (*b*) the provisions of the Government Lands Act (Chapter 280) and (*c*) the following Special Conditions (namely):

[P.T.O.

(8)

FORM 4 *(Inoffensive Industry)*

SPECIAL CONDITIONS

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 in writing 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 calendar months of the actual registration of the Grant 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 buildings the Grantee proposes to erect on the land and shall within 24 months of the actual registration of the Grant 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 condition all buildings at any time erected on the land.

4. Should the Grantee give notice in writing to the Commissioner of Lands that it is unable to complete the buildings within the period aforesaid the Commissioner of Lands shall (at the Grantee's expense) accept a surrender of the land comprised herein:

(i) Provided further that if such notice as aforesaid shall be given within 12 months of the actual registration of the Grant the Commissioner of Lands shall refund to the Grantee 50 per centum of the stand premium paid in respect of the land, or

(ii) at any subsequent time prior to the expiration of the said building period the Commissioner of Lands shall refund to the Grantee 25 per centum of the said stand premium. In the event of notice being given after the expiration of the said building period no refund shall be made.

5. The land and the buildings shall only be used for industrial purposes.

6. The buildings shall not cover more than 90 per centum of the area of the land or such lesser area as may be laid down by the Local Authority in its by-laws.

7. Accommodation not exceeding 100 square feet may be provided for a caretaker or night watchman or such lesser area as may be laid down by the Local Authority in its by-laws.

8. The land shall not be used for any purpose which the Commissioner of Lands considers to be dangerous or offensive.

9. The Grantee shall not subdivide the land without the prior consent in writing of the Commissioner of Lands.

10. 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.

11. 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 proportionate cost either pay (within 30 days of demand) or be refunded the amount by which the actual proportionate cost exceeds or falls short of the amount paid as aforesaid.

12. The Grantee shall from time to time pay to 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.

13. 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.

REPUBLIC OF KENYA

DISTRICT OF TAITA

Locality Voi Town

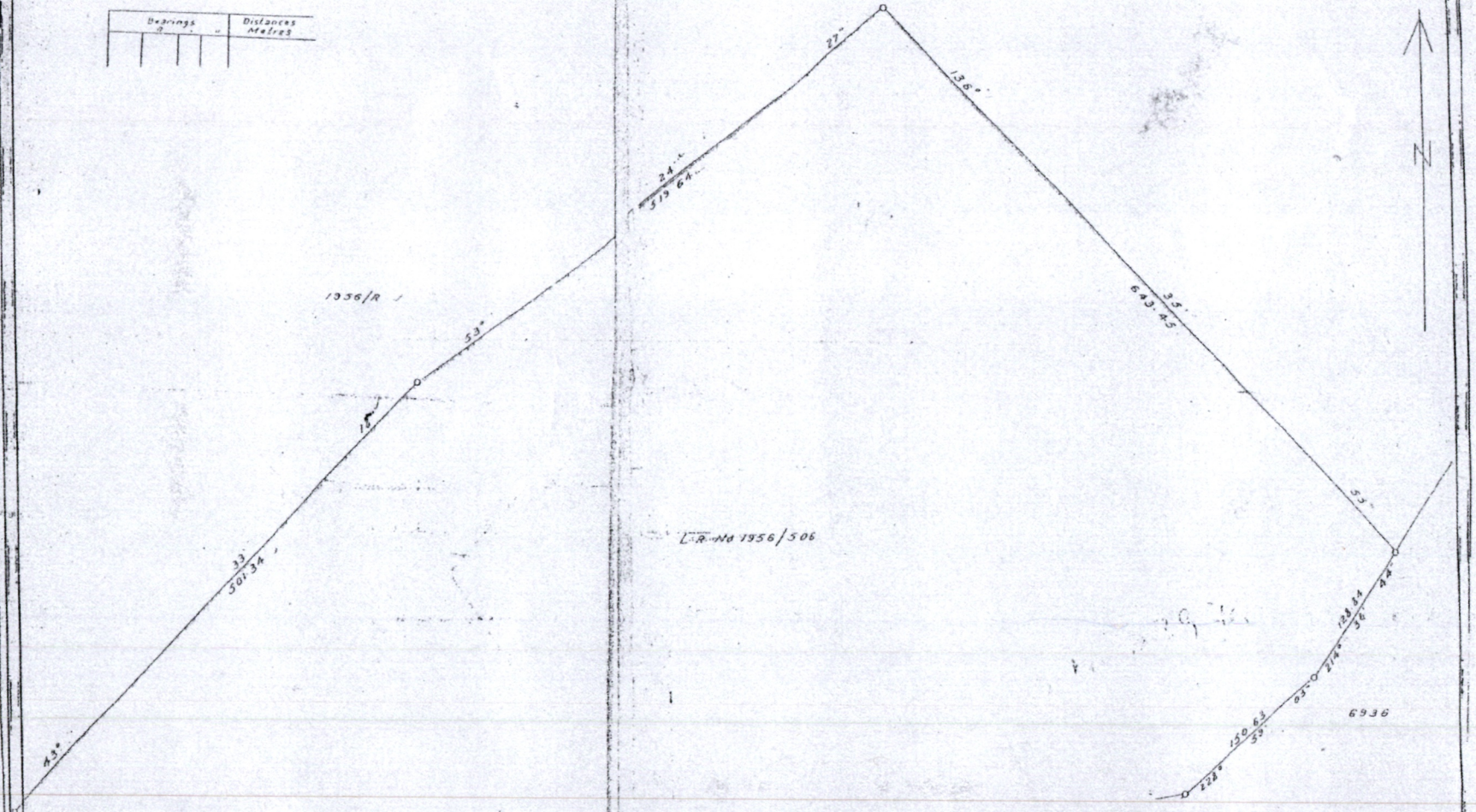
Reference Map South A 37 4
U R C

Bearings ° ' "	Distances Metres

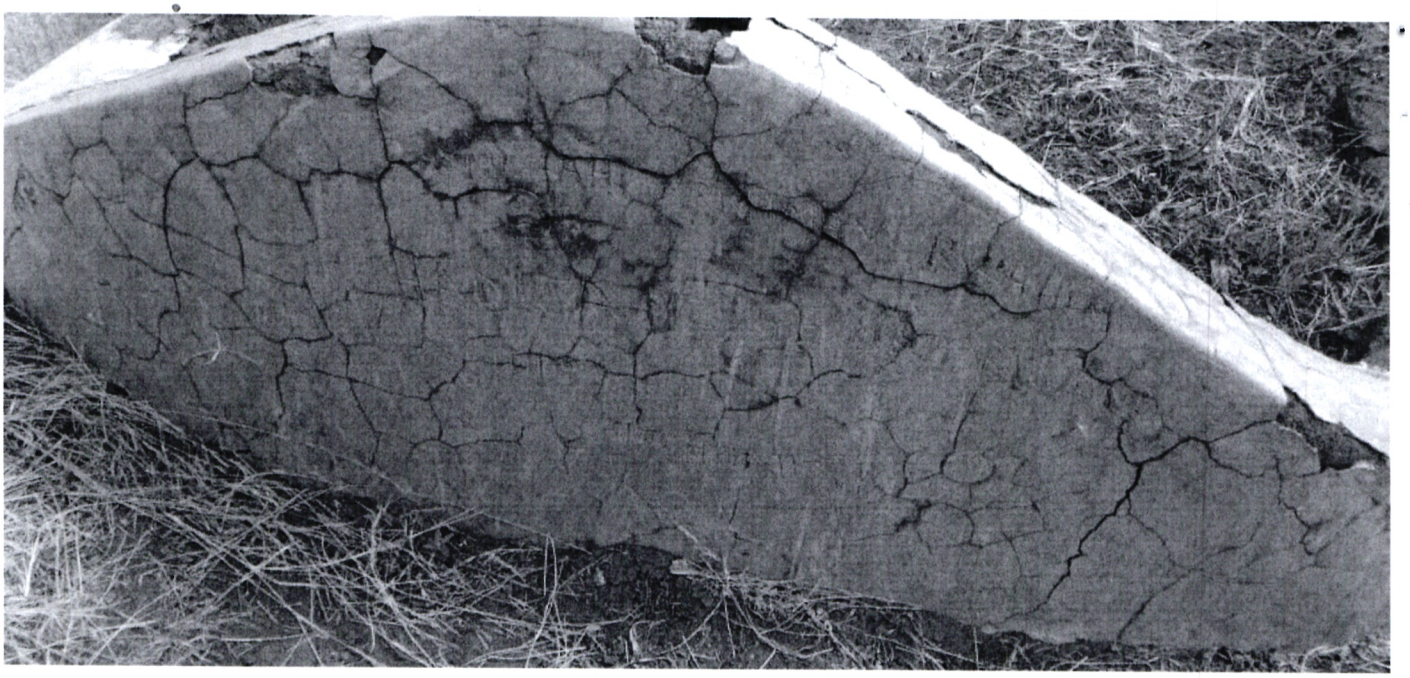
Land Reference No 1956/506

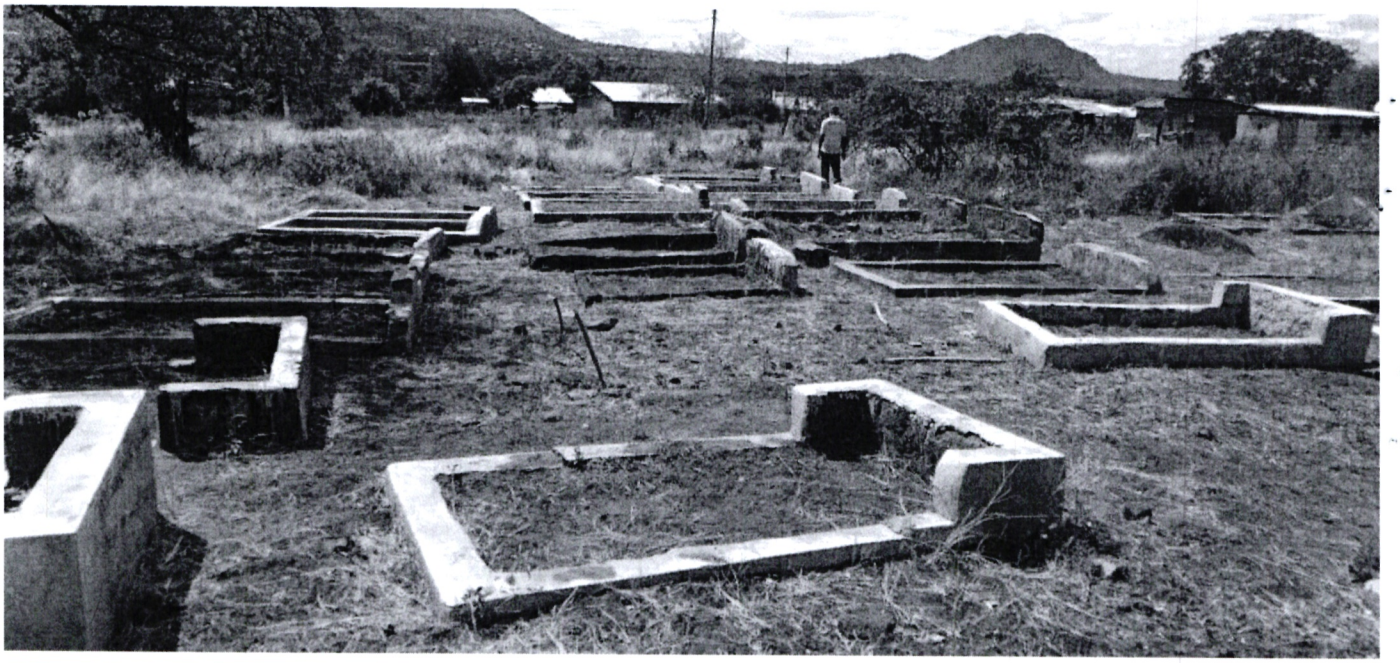
Orig. No.

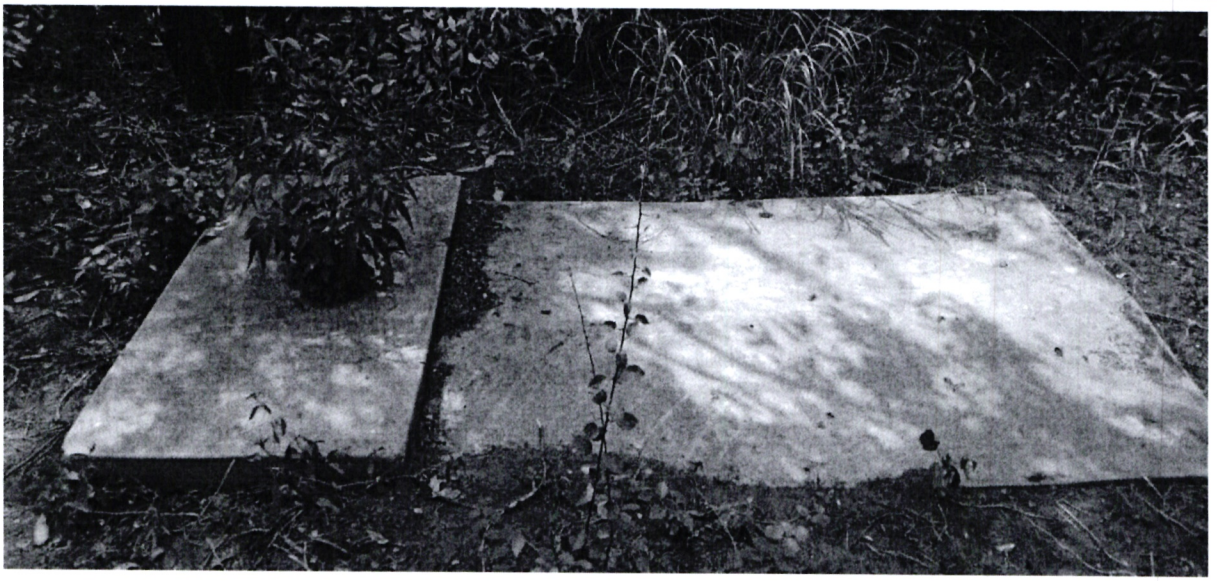
Area = 54.26 Ha. (Approx)

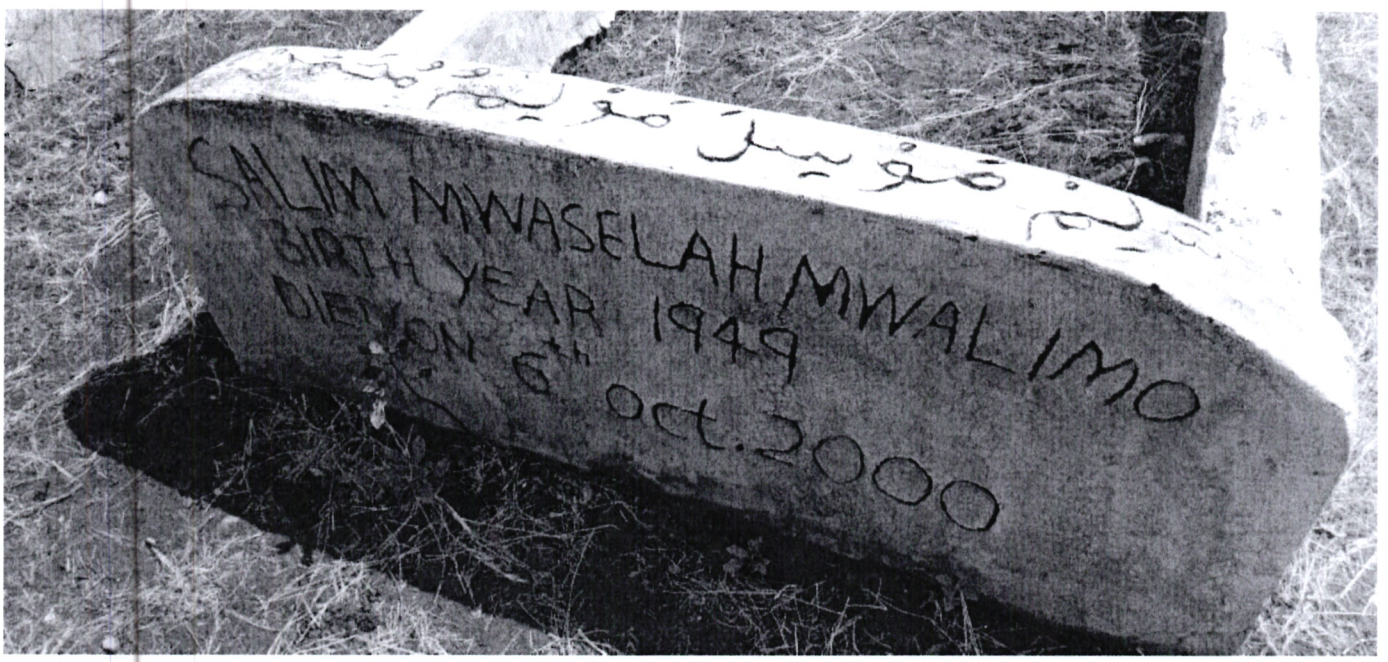


MSAMBWENI CEMETRY








SALIM MWASELAH MWALIMO
BIRTH YEAR 1949
DIED ON 6th Oct. 2000

SWALE. M. MWANGUO
DEAD ON 30th JUNE 2000

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

CIVIL CASE NO. 265 OF 2013

SPARKLE PROPERTIES LIMITED ..... PLAINTIFF

= VERSUS =

1. JOHANA NGAI
2. FATUMA MWAMBURI
3. SULEIMAN KIBOI MWANYAMBO
4. HAMISI KALELA
5. ALOIS MWAMBI
6. ASHA MWAKE
7. FATUMA KODI
8. BATA SHOE CO. LIMITED
9. THE ATTORNEY GENERAL (sued on behalf of Commissioner of Lands, Registrar Mombasa & National Land Commission) ..... DEFENDANTS

JUDGEMENT

1. Vide a plaint dated 21st November 2013 and filed in court on the same day, the plaintiff sued the 1st to 7th defendants. In her plaint, it is pleaded that the plaintiff was the registered owner of all that piece of land known as No. 1956/506, CR No. 23970 situated at Voi within Taita Taveta, measuring 54.26 hectares. The plaintiff states that after obtaining title she took charge of the suit property. However on 14th November 2013 when she visited the property with intention to take possession the defendants prevented her from accessing the property.

2. The plaintiff listed the particulars of the defendants illegalities and malice as follows:

(a) Claim to be entitled to the suit property when they knew very well that they were not legal and/or equitable basis of making the claim putting up houses, structures and/or fixtures on the property without the plaintiff's consent.

(b) Mobilizing local residents against the registered owner of the suit property.

(c) Branding themselves as owners when they knew or ought to have known very well that they were not the legal owners.

(d) Interfering with the rights of the registered owner when they knew or ought to have known it was wrong to do so.

(e) Taking the law of the land in their hands.

(f) Involving themselves in activities calculated at inciting the local residents against the plaintiff who is the registered owner of the property.

3. That as a result of the defendants' actions, the plaintiff suffered the following loss and damage;

(a) Failing to develop/invest on the suit property.

(b) Inability to develop suit property as a result of the dispute herein.

(c) Illegal construction/development by the defendants over the plaintiff's property.

(d) Having the property being wasted by the defendants' agents' asylums and/or agents.

(e) Unwarranted trespass by the defendants.

4. The plaintiff prays for judgment against the defendants for:

(a) Permanent injunction restraining the defendants whether acting by themselves, their employees, agents and/or servants and/or through any other manner whatsoever interfering with the suit property to wit Plot No. LR 19509/506 Voi situated at Voi Township in Taita Taveta County.

(b) Mandatory injunction compelling the defendants to demolish and or pull down structures erected on the suit property and to give vacant possession to the plaintiff.

(c) That there be a permanent injunction restraining the defendants and/or there agents to allow them to occupy and construct the unoccupied space and proceed with construction forthwith.

(d) General damages for trespass of land.

(e) Costs of this suit and other incidentals thereon.

5. The 1st – 7th defendants filed a joint defence and counter-claim on 5th December 2013. In the counter-claim they joined Bata Shoe Company hereinafter referred to as the 8th defendant and the Attorney General hereinafter referred to as the 9th defendant. The 1st – 7th defendants denied all the allegations contained in the plaint stating that the suit land has always belonged to the residents of Mwambiweni village registered for them by the colonial government as Native reserve for Segeju People and later registered as Ndara Group Ranch "B"/1 measuring 2215ha and title issued on 31st March 1982.

9. The 1st – 7th defendants further pleaded that Bata Shoe Company were given a restrictive grant to construct on part of the land the biggest shoe factory in Africa so as to create 4000 jobs and open up the area. They added that the grant was also limited by conditions 2, 8 and 9 as follows;

"2 The grantee shall within a calendar months of the actual registration of the grant submit in triplicate to the Local Authority and the Commissioner of Lands Plans including block plans showing the position of the buildings and a system drainage for disposing sewage ... shall within 24 months of the said actual registered of the grant complete the erection ... If default shall be in performance or observance of any of the requirements of this condition, the Commissioner of land or anyone authorized by him on behalf of the President to re-enter into and upon the land ... and there upon the term hereby created shall cease but without prejudice to any right of action or remedy of breach Dairy condition herein contained."

"8 The grantee shall not sub-divide the land without prior consent in writing of the Commissioner of Lands."

"9 The grantee shall not sell, transfer, sublet, charge or part with possession of the land or any part thereof 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."

7. The 1st – 7th defendants pleaded that the sale to the plaintiff was illegal and invalid for lack of sale agreement between the parties contrary to Section 6 of cap 23. They plead further that the sale was fraudulent for:

(a) *Failure to comply with the terms of the grant by the vendor and knowing the same to be so the plaintiff went ahead to purchase the land.*

(b) *Failure to enter into a valid Sale Agreement between the plaintiff and the vendor.*

(c) *Failure to show company resolutions of both companies authorizing sale and purchase of the disputed land.*

(d) *Purchasing the said land knowing the same to be inhabited by the defendants and others.*

8. The 1st – 7th defendant have denied the particulars of malice attributed to them and counter-claimed that the 8th defendant had no right under the lease to transfer any interest in the land to anyone. The 1st – 7th defendants therefore pray for judgment in their favour in the following terms;

(a) *Cancellation of the lease granted and registered on the 2nd of October 1992 and 30th April 1993 comprised in LR. 1956/506 CR. 2397/1, an order reverting the land to its original owners under LR. NDARA GROUP RANCH as SAGALA/NDARA "B"/"1".*

(b) *An order nullifying the transaction between the 1st and 2nd defendants transferring 54 Ha comprised in the disputed land reference LR. 1956/506 CR 2379/1 and an order directing the 3rd defendant to destroy the register in its entirety.*

(c) *General and special damages against the 1st and 2nd defendants for trespass and loss of jobs and development respectively.*

(d) *A permanent injunction restraining the defendants jointly and severally form further trespassing, selling, sub-dividing, surveying, constructing registering and or doing anything adverse that will interfere with the plaintiffs' titles to the portion of land comprised in LR. 1956/506 CR. 23979/1.*

(e) *Costs of this suit.*

(f) *Interest on (c) and (e) from date of judgment till payment in full.*

(g) *Any other remedy that the Honourable Court will deem fit to grant so as to meet the ends of justice.*

9. The 8th defendant filed his defence on 25th June 2014. The 8th defendant denies that the suit land has never belonged to the residents identified in the counter-claim as the same was allocated to the 8th defendant by the Government of Kenya through an open process. The 8th defendant avers that it was not given any restrictive grant as stated by the 1st – 7th defendants. The 8th defendant pleads it held a valid title before

the same was validly transferred to the plaintiff. That the 8th defendant's registration was not subject to a community agreement. She urged the 1st – 7th defendants claim as contained in the counter claim be dismissed.

10. At the close of the pleadings, parties offered oral evidence in support of their cases. The plaintiff called 3 witnesses; the 1st – 7th defendants called 1 witness; the 8th defendant called one witness while the Attorney General did not call any evidence.

11. **FRANCIS NGUTA MULIDAI** testified as **PW1**. He works as a manager for the plaintiff managing the suit plot for the last 4 years. **PW1** told court that a sale agreement is included in their supplementary list of documents. That the land was sold for Kenya Shillings Twelve Million (Kshs.12M) which was fully paid. That a consent to transfer from the 8th defendant to the plaintiff was obtained on 21st October 2010 and payment for registration made vide receipt number 122351 dated 4/11/2010. The certificate of title was issued to them on 9/3/2011.

12. **PW1** proceeded to present receipts for payments of land rents dated 14/1/2010. He also presented a certificate of search for Ndara B/1 to show that it is distinct from the suit title. **PW1** continued that the plaintiff is objecting to cancellation of her title because the land was purchased in an open manner. That the defendants are squatting on their land therefore not entitled to any compensation. That at the time of purchase, there were 60 households some of which have moved out but

currently there are over 300 squatters on the land. That the plaintiff has been unable to develop the land because of the presence of the squatters. The plaintiff is asking for the court's assistance.

13. In cross-examination, **PW1** said the plaintiff found out the conditions existing on the title one of which was to obtain a consent. That it is the 8th defendant who obtained consent to sell dated 7/11/2010 pursuant to an application dated 21/10/2010. That the letter from Obura Mbeche & Co. seeking for consent is dated 5/11/2010 and was received by the ministry on 9/11/2010. The certificate of title is having the same date the transfer was lodged i.e. 9/3/2011. That when they bought the land, there had been no construction by the 8th defendant.

14. In further cross-examination by the 8th defendant, **PW1** said that a sale agreement does not confer ownership until you get title. That condition No. 2 of the grant would have been fulfilled by the plaintiff. In cross-examination by Ms Waswa for A.G., **PW1** said the Government was not involved in the sale of the land to the plaintiff.

15. **Samamy Wambua Juma** testified as **PW2.** He is a government surveyor based in Wundayi survey office. PW2 said he is the author of the letter dated 16th September 2014 addressed to J.A. Abuodha & Co. Advocates. The letter asked him to verify whether Sagada Group Ranch was the same as the land No. 1956/506 and if there existed an overlap. **PW2** stated that he

visited the land with map for LR Ndara B1 and FR for LR No. 1956/506. He presented the two documents in evidence. That his observation was that the two parcels were 5.5kms apart separated by Ndara A adjudication section. According to him the two parcels are distinct and do not overlap. **PW2** further stated that in the survey report forwarded to the D.C regarding the boundaries of the suit land also confirmed there was no encroachment.

16. In cross-examination **PW2** said the suit plot and Ndara B/1 are on different map sheets and he only gave the report to answer what was asked. That what he did was not a survey but a re-establishment of whether the two plots were one and the same. In cross-examination by Mr. Gacau learned counsel for the 8th defendant, **PW2** added that any claims not raised during adjudication over 1956/506 were extinguished on registration. That the beacons for the suit plot were established in 1979.

17. **Mashru Jitendra Papatlal** testified as **DW3**. He produced the certificate of incorporation of the plaintiff (**Pex 2**) and postal search done in 18/11/2013 together with a receipt paid for it as **Pex 3**. That they saw an advertisement in the newspaper and asked PW1 to follow up. That PW1 met with the 8th defendant and that they also did due diligence during the sale transaction. PW3 produced the following exhibits;

(i) *Transfer document dated 8/3/2011 – Pex 4.*

(ii) *Copy of suit title – Pex 5.*

(iii) *Transfer of Company to themselves – Pex 6.*

(vi) *Sale of land agreement – Pex 7.*

(vii) *Land Control Board consent – Pex 8.*

(viii) *Rates clearance certificate – Pex 10.*

(ix) *Board resolution to file this case – Pex 11.*

(xiii) *Approved plans – Pex 12.*

18. PW3 stated that they intended to build a mall on the suit property and had already obtained approvals from the Voi County Council but they were repulsed by squatters. That currently there are many squatters on the land as the initial squatters are selling to other people. That the plaintiff still pays rates to the County as shown in the receipts produced as **Pex 14 (a) – (f)**. He asked the court to grant the orders of eviction and police protection.

19. **PW3** was examined on the absence of board resolution to purchase the land. PW3 agreed that the sale agreement is dated 2/11/2010 while the application for consent is dated 2/10/2010 but added that the person to answer to the issue of consent is the 8th defendant. In cross-examination by 8th defendant, **PW3** said the sale transaction between the plaintiff and 8th defendant was above board. That marked the close of the plaintiff's case.

20. The 6th defendant opened their case on 26th July 2018 with the evidence of Samuel Kariuki Mwangi who is the Land Registrar currently stationed in Mombasa. **DW1** said the suit plot was registered in their office as a new grant from the government in the year 1983. That this made it unavailable for allocation

under adjudication or community land as claimed in the counter claim. **DW1** said there is nothing in their record showing the suit land comprised part of the Sagala Group Ranch. That the 8th defendant was the first registered owner before a transfer to Sparkle Limited (the plaintiff). **DW1** said he had the deed file in support of this transfer. He confirmed the suit land now belongs to the plaintiff.

21. **DW1** added that he had a letter dated 4th December 1992 that gave details of the file in Nairobi held by the Commissioner of lands. The letter was produced as **Dex 3**. In his view, the claim by the 1st – 7th defendants lack merit. In cross-examination by Mr. Oloo learned counsel for the plaintiff, **DW1** stated that before allocation is made, a surveyor visits the land and prepares a ground report. According to him, there cannot be two titles covering the same area of land. That there was no breach by the 8th defendant before transferring the suit title to the plaintiff.

22. In further cross-examination by Miss Mayabi learned counsel for the 1st – 7th defendants; **DW1** stated that the suit title was a result of an allocation. That all correspondence regarding the allocation was held by the commissioner of lands and currently held by the National Land Commission in Nairobi. That the lease was subject to a special condition. **DW1** said that according to him, the consent was obtained. **DW1** could not explain the variance of dates in the application for consent i.e. 21/10/10 and 10/10/2010.

23. In re-examination on behalf of 8th defendant, **DW1** confirm the documents contained in the 8th defendant's list correspond with his file except the sale agreement. That under cap 281, there is no specific form for applying for consent. That an application cannot be rejected for want of form. That the land in question was government land and he had no records of agreement between the 1st – 7th defendants and the government. This marked the close of the 9th defendant's case.

24. **Johana Ngai** testified as **DW2**. He is the 1st defendant. **DW2** says that they have always lived on this land together with their fore fathers and he is surprised to be told that it is not their home anymore. **DW2** states that there are over 500 people with their families living on the land. That clan elders held talks with the 8th defendant to have a place to build a shoe factory after people saw the value in the proposals by the 8th defendant to undertake. That the 8th defendant after receiving the land did nothing except build the factory elsewhere. **DW2** referred to condition number 1 and 5 in the title. That for defaulting to comply with the special conditions, the land should revert back to them.

Condition 1: *"No buildings shall be erected on the land nor shall additions or external alterations be made to any buildings otherwise than inconformity with plans and specifications previously approved in 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".

5: *"The land and the buildings shall only be used for industrial purposes".*

25. **DW2** added that the survey report produced by **PW2** was not accurate as he did not show the map he used to prepare the report. That he sought the court's help so that they are not rendered homeless. He presented all the documents contained in their list as exhibits.

26. In cross-examination, by Mr. Oloo learned counsel for the plaintiff. **DW2** said he is 63 years and began working in Nairobi in 1976. That he attended Voi Central School while living in Msambweni village and he has never been one of their administrators of the area. **DW2** said he had no agreement detailing the elders giving land to the 8th defendant. It is **DW2's** further evidence that Ndara "B" is for grazing hence paragraph 6 of their counter-claim has an error and where they live is not part of Ndara "B" registration area. Paragraph 6 read thus, *"The plaintiffs repeat and state that the disputed land was part of the larger parcel of land comprised in the native land reserve registered under Sagalla Group Ranch on behalf of the residents (community).*

27. **DW2** avers that the plaintiff came with bulldozers wanting to start building on the suit land but they were repulsed by the villagers as they did not know the 8th defendant had sold the

land. That Bata has a building on the suit land. DW2's stated that the newspaper cutting did not contain the plot number in dispute and they never bothered to find out more about the advertised land. They do not have a title to the land they are living on and they have not filed a suit for adverse possession. In further cross-examination by the 8th defendant, DW2 said he had not done a survey for comparison with the one produced. DW2 affirmed that he is not one of the leaders of Ndara Group Ranch neither did he have written authority to represent the villagers of Msambweni. That he had no report confirming Ndara B is for grazing while they reside on the suit plot.

28. In re-examination, DW2 states that paragraphs 14 & 19 (b) of their counter-claim details their claim against the Registrar. He admitted the land was given to the 8th defendant but the sale to the plaintiff was erroneous. That he did not participate in any of the meetings which resolved that the land be given to the 8th defendant. That the special conditions were given by the Government which the 8th Defendant violated. They do not have a title to their land because the area has not been demarcated. After several adjournments to call more witnesses, none was called and this evidence marked the close of the 1st – 7th defendant's case.

29. The 8th defendant presented their evidence on 6th December 2018. Prisca Chege gave the evidence as DW3 stating that she is the legal officer of the 8th defendant. She adopted her

Statement filed on 17th August 2015 as her evidence. DW3 stated that she was present when the Registrar and the surveyor gave their evidence. She referred to **Pext 5** which shows the land was a grant from the government to the 8th defendant. **DW3** referred to the sale agreement executed between the plaintiff and the 8th defendant. That consent to transfer was duly obtained through their then advocates Obura Mueche & Co. Advocates through an application letter dated 21/10/2010. That the letter of 5/11/2010 was just a reminder on the application. **DW3** averred that she had not seen any evidence produced by the 1st – 7th defendants that they owned the suit property. She urged the court to dismiss their claim. Four (4) of the 1st – 7th defendants present in court on this day declined to cross-examine the 8th defendant's witness. They said they wanted their advocate who was absent to ask the questions. This also marked the close of the 8th defendant's case.

30. The 1st – 7th defendants filed their submissions on 19th June 2019. The plaintiff filed hers on 26th April 2019; the 8th defendant filed hers on 18th June 2019 and the 9th defendant filed his on 10th July 2019. I have read and considered the submissions and will make appropriate references in the subsequent paragraph. The issues framed for determination are;

1) Whether or not the 8th defendant lack capacity to sell and transfer the suit land to the plaintiff for violating the conditions of the grant.

2) Whether or not consent to transfer was obtained.

3) Whether or not the suit land comprised part of Sagala Group Ranch.

4) Who should obtain positive judgment, the plaintiff or the 1st – 7th defendants?

5) Who bears the cost of the suit?

31. There is no dispute that the suit land title number 1956/506 CR 23979 on survey plan No. 107124 measuring approximately 54.26 Ha is currently registered in the name of the plaintiff. Before the registration of the plaintiff, it was owned by the 8th defendant who acquired title on 30th April 1993. The plaintiff's title is being challenged by the 1st – 7th defendants. The 8th defendant was the vendor while the 9th defendant's evidence confirmed the legal ownership of the 8th defendant and subsequently the plaintiff.

32. The 1st – 7th defendants challenged the sale to the plaintiff stating that it contravened conditions 2, 5, 8 and 9 of the grant which barred the 8th defendant from selling the land. The 1st – 7th defendants also pleaded and submitted that both the plaintiff and the 8th defendants did not provide company board resolutions permitting the sale/purchase transaction. On the first issue, the 1st – 7th defendants in their submissions paraphrased the contents of condition 8 and 9 which required

the grantee not to sub divide, sell transfer or sublet the suit land without the consent of the Commissioner of lands in writing. Condition No. 3 required the grantee to submit approval plans within 6 months of registration and develop the land within 24 months of its acquisition.

33. In adducing evidence to support these facts, the 1st – 7th defendants relied on the evidence of Johana Ngai together with the case law cited in the submissions. Mr. Ngai stated that the suit land was community land which the elders agreed to give the 8th defendant on condition that he built the biggest shoe factory in Africa to offer employment to the community and others. That the 8th defendant never fulfilled this promise/condition.

34. The witness in cross-examination said he never attended the meeting of the elders which resolved to give the 8th defendant the Land. He has also never been engaged as a local administrator. For the averment that the suit land was community land, before allocation to the 8th defendant, the 1st – 7th defendants had the burden to prove this fact. The evidence adduced fell short of discharging this burden.

35. Further, the 1st – 7th defendants stated that condition No. 8 and 9 of the grant was breached. However there was produced in evidence two letters dated 21/10/2010 and 5/11/2010 addressed to the Commissioner of lands seeking consent to transfer the property to the plaintiff. There was also produced a letter of consent issued by the Commissioner of land dated

11/12/2010. The Land Registrar who testified as DW1 told the court that he had the entire deed file which contained the letter of consent obtained by the 8th defendant. The file also had copies of documents forwarded by the Commissioner of Lands for the issuance of title to the 8th defendant.

36. DW1's evidence answers the 1st and second issue on whether the 8th defendant had capacity to sell the suit land. In the cases cited by the 1st – 7th defendants more particularly the case of ***Embakasi Properties Limited Vs Safe Cargo Limited & 2 Others***, the question that was for determination on using the land within 24 months from the date of registration and in default the Commissioner of Lands or any person authorised by him on behalf of the President would be permitted to re-enter upon the land. The 1st – 7th defendants did not present evidence of such authority given by the Commissioner or his successor in law, the National Land Commission to re-enter the land. At paragraph 29 & 30 of the said Case support the plaintiff's case when, the trial Court said thus,

> "29 **It is true that the plaintiff was guilty of latches by not developing the said land. By the time they were ready to develop the land in 1998 the 24 months period to develop the same had lapsed. Yes, the plaintiffs may have been guilty of latches but the Commissioner of Lands, as stated earlier, did not take any action. The land had never been forfeited by the Commissioner of Lands and or the Government of Kenya. The**

Commissioner of Lands was entitled to enter onto the said land but did not do so.

30 It has been further established in evidence that the first defendant had no legal authority to possess, occupy, construct and or carry on business on LR.9042/290. A cause of action does exists against the first defendant"

37. The third question is whether this land comprised part of the Sagala Group Ranch and or Community land. The evidence adduced and not controverted was that the land was an allocation from the government. As stated in the evidence of DW1, the allocation remains lawful. There has been no evidence led to show that before the allocation, the suit land was community land. PW2's testimony clearly stated that the suit land is distinct from Ndara "B"/1 title. That the two plots are approximately 5 km apart. He presented his reports to corroborate his evidence. PW3 also produced a certificate of official search for Ndara "B"/1. The evidence of PW2 & 3 clearly show there is no nexus created by the 1st – 7th defendants to support their averment that the suit land comprised part of the bigger Msambweni village.

38. The final issue is who has proved her/their case as between the plaintiff and the 1st – 7th defendants? The plaintiff produced several documents to show how they acquired the land. The documents produced include certificate of title issued to her on 9/3/2011; transfer executed by the 8th defendant; rate

clearance certificate and a sale agreement. The 8th defendant confirmed selling the land to the plaintiff. The 9th defendant further confirmed registering the transfer between the plaintiff and the 8th defendant. The plaintiff also produced their approved plans to develop the land issued by the County Council of Voi.

39. The 1st defendant in his evidence confirmed that the plaintiff was chased away from the suit land when she took bulldozers to clear the land for purposes of development. The 1st – 7th defendants have also not denied that they are residing on the suit land. Having failed to establish the basis of their occupation of the suit land give credence to the plaintiff's claim of trespass; prayer for damages and eviction orders. Consequently without repeating what is already set herein above, I come to the conclusion that the plaintiff's case is proved as against the 1st – 7th defendants. I also find that the 1st – 7th defendants failed to prove their case as pleaded in the counter-claim and the same is dismissed.

40. In light of the above, I enter judgment for the plaintiff against the 1st – 7th defendants jointly and severally for;

(a) Permanent injunction restraining the defendants whether acting by themselves, their employees, agents and/or servants and/or through any other manner whatsoever interfering with the suit property to wit Plot No. LR. 1956/506 Voi situated at Voi Township in Taita Taveta County.

(b) Mandatory injunction compelling the defendants to demolish and or pull down structures erected on the suit property and to give vacant possession to the plaintiff.

(c) That there be a permanent injunction restraining the defendants and/or there agents to allow them to occupy and construct the unoccupied space and proceed with construction forthwith.

(d) General damages for trespass awarded at Kshs.150,000/- payable by each defendant to the plaintiff giving a total sum of Kshs.1,050,000 with interest from the date of filing suit until payment is made in full.

(e) Costs of the suit awarded to the plaintiff.

Dated and signed at Busia this 27th day of January, 2020.

A. OMOLLO

JUDGE

Delivered and Read at Mombasa this..... day of..... 2020

MUNYAO SILA

JUDGE

In the Presence of:

Counsel for the Plaintiff: .....

Counsel for the Defendants: .....

STAKEHOLDER'S SUBMISSIONS

NATIONAL LAND COMMISSION

RESPONSE TO PETITIONS AND STATEMENTS REFERRED TO THE SENATE STANDING COMMITTEE ON LAND ENVIRONMENT AND NATURAL RESOURCES

REPORT BY:

GERSHOM OTACHI BW'OMANWA
CHAIRMAN

12th FEBRUARY, 2021

DRAFT REPORT

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1.PETITION BY RESIDENTS OF NGAREMARA IN ISIOLO COUNTY ON THE ALLEGED ILLEGAL ENCROACHMENT OF THEIR COMMUNITY LAND BY THE SCHOOL OF ARTILLEY(KENYA DEFENCE FORCES)

Honourable Chair,The Commission wishes to respond as follows:

The Gazette Notice No. 3210 dated October 31, 1977 reserved land for Kenya Defence Forces in Isiolo, Samburu and Turkana (the Gazette Notice is marked **Annexure 1**).

Vide a Letter of Allotment Ref. 189464/II dated July 12, 2018 , the National Land Commission allocated land measuring 3,764 Hectares to the Cabinet Secretary for National Treasury to hold in trust for Kenya Defence Forces School of Artillery.

Honorable Chair, Ngaremara adjudication section does not overlap with the land reserved for the Kenya Defence Forces and all parcels of land set aside for the Kenya Defence Forces has been surveyed.

2.STATEMENT REQUESTED BY SENATOR HALAKE ABSHIRO,MP ON 24TH SEPTEMBER,2019 ON THE EVICTION NOTICE SERVED ON RESIDENTS OF ISIOLO COUNTY BY THE STATE DEPARTMENT OF DEFENCE TO PAVE WAY FOR THE EXPANSION OF THE KENYA DEFENCE FORCES (KDF)TRAINING CAMP

Honorable Chair,the Commission responds as follows:
Reservation of the land for Kenya Defence Forces in Isiolo, Samburu and Turkana was done vide Gazette Notice No. 3210 dated October 31, 1977 (a copy of the Gazette Notice is marked **Annexure 1**).
The Kenya Defence Forces (KDF) School of Infantry in Isiolo currently occupies land registered as L.R. Number 27155 measuring approximately10,665 Hectares.
Colonial government set apart land(Holding area and quarantine) for the department of livestock for the land that was designated as crown land.MoD identified the land in 1979/1980,took possession and established a camp.a letter of allotment was issued in 2000 and the land was surveyed in 2004 and title issued in 2006.
From the foregoing, it is clear that the reservation was done in 1977 and the question of compensation does not arise.

Honorable Chair,
The issue of the eviction notice issued by the Government in September last year is the subject of litigation before a Court of Law at Meru as case ELC 25 of 2019 where the applicant is Joseph Loruyaei and others -vs- CS Defence,CS Interior,CS Lands,County Commissioner Isiolo,County Government of Isiolo and the AG..
The Court issued conservatory Orders in October,2019 restricting the Respondent from evicting the Applicants pending interpartes hearing.

3.STATEMENT REQUESTED BY SENATOR FATUMA DULLO,MP ON 27TH NOVEMBER ,2019 CONCERNING THE NOTICE BY THE MINISTRY OF LANDS AND PHYSICAL PLANNING SEEKINGTO OPEN UP LAND IN ISIOLO COUNTY FOR ADJUDICATION UNDER LEGAL NOTICE NO.150 OF AUGUST,2019

The petitioner has requested that in its statement, the Committee should;

1) State what informed the Ministry's decision in issuing the gazette notice which in effect will lead to the conversion of communal land into private land despite there being a number of contentious land related disputes in the County yet to be resolved.
2) Explain why the Ministry decided to exclude the Kenya Defense Force's School of Infantry and Combat Engineering from the adjudication process knowing very well that there is a court order in place stopping the Kenya Defense Force from carrying out any survey in the contentious area until the dispute is settled.
3) Explain why the Ministry of Lands and Physical Planning is attempting to convert land lying along the LAPSSET corridor and Isiolo Resort into public land knowing very well that the said land has its rightful owners who are yet to be compensated.
4) Explain whether in issuing the legal notice the Ministry of Lands and Physical Planning sought and received approval from the County Government who are the legal custodians of unregistered community land.
5) Explain why the Ministry of Lands and Physical Planning failed to undertake public participation, engage with all leaders and other stakeholders before issuing the gazette notice knowing clearly that the communities' interests must be protected at all times; and
6) State whether the legal notice issued by the Ministry of Lands and Physical Planning was in accordance with the law and in adherence with the principles of openness, accountability and the confines of public participation.

Honourable Chair, National Land Commission wishes to respond as follows:

The Cabinet Secretary Ministry of Lands and Physical Planning declared parts of Isiolo County as adjudication areas vide Legal Notice No. 150 of September 3,2019. The areas with concentration of human settlement are to be registered under the Land Adjudication Act cap 284, while the grazing lands are to be registered under the Community Land Act ,2016.

This legal notice was however amended vide Legal Notice No. 1 of January 10, 2020. This was after the County Assembly Housing and Urban Development Committee held consultative meetings between November 8 and 16, 2019 and proposed the widening of the applicable area.

The amended notice occasioned increases in the items as shown in the table below;

NO	ITEM	LN No. 150 of September 3, 2019	LN No. 1 of January 10, 2020
1.	Adjudication Sections	4	36
2.	Township Blocks	9	16
3.	Certificate of Leases	7,500	17,050
4.	Projected Title Deeds	10,250	25,250

Source Ministry of Lands and Physical Planning

The gazettement of the County to be an Adjudication area is an issue that will best be addressed by the Ministry.

The reason for excluding land for Kenya Defence Forces is that the land for Kenya Defence Forces in Isiolo among other places was done vide Kenya Gazette Notice No. 3210 of 31 st October 1977. The Commissioner of Lands issued a letter of allotment to the Department of Defence for land parcel measuring 10,209 hectares for School of Infantry Cantonment. Consequently, title was issued to the Permanent Secretary to the Treasury as trustee of the Kenya Defence Forces. The Land Adjudication Act Cap 284 cannot be applied to a titled area.

The residents of the Burat wards did protest the allocation and have since filed a case in court. The case was filed by Joseph Lorunyei Kuwam and six others against the Cabinet Secretaries of Defense, Lands and Interior& Coordination of National Government, the Attorney General and others in Petition No. 25 of 2019 in the Environment and Land Court at Meru.This case is still live in court.

The LAPSETT corridor land was gazettted on October 21, 2016 vide the Kenya Gazette Notice Vol. CXVIII-No.129. The acquisition of land within the LAPSSET corridor, Isiolo Resort City and Isiolo International Airport is the mandate of the National Land Commission and the LAPSSET Corridor Development Authority.The acquisition of the corridor process will is conducted under the procedures of compulsory land acquisition and those affected will be compensated.

Honourable chair,

The gazettement of Isiolo as an adjudication area does not extinguish the rights of Isiolo residents to pursue compensation for land that has been gazetted for other uses within the County.

4.PETITION SUBMITTED BY THE RENDILLE AND SAMBURU COMMUNITY REPRESENTATIVES CONCERNING THE ALLEGED ACQUISITION OF KARARE AND MARSABIT COUNTY BY THE KENYA DEFENCE FORCES.

Hon chair,
The Commission wishes to respond to the petition as follows:

Background

The Commission wishes to bring to the attention of this esteemed Committee that there is an active Court matter at the Meru Environment and Land Court - Constitutional Petition No 4 of 2020, filed **by the Rendille Professionals Association and local elders on behalf of the Community regarding the allocations of the land parcels by the County Government of Marsabit** challenging the constitutionality of the process applied by the Department of Defense with regard to their interest in the subject land.

However the Commission wishes to briefly outline process the Ministry of Defence followed to acquire the land

1. The Ministry of Defence made a decision to establish a military barracks in Marsabit for security reasons and on 16th March 2012 made a formal request to be allocated land in Karare, Marsabit County. On 8th June 2015, the County Council of Marsabit formally allocated 2,500 Ha in Kubi Kalo. The processing of ownership of the land was overtaken by events following the coming in place of devolved governments in 2013.
2. On 18th June 2019, Ministry of Defence made a formal request to the County Government for allocation for land in Marsabit.
3. On 22nd July 2019, the County Government of Marsabit formally allocated land in Karare (5,000 Ha); Haiya (10,000 Ha) and Odda military camp (242 Ha). On 22nd August 2019 the department of defense requested the National Land Commission for allotment letters for the parcels of land. The Commission informed Department of Defence in a letter dated 4th November 2019, that it could not issue allotment letters because the land was community land. **It turns out that this may not have been the correct position.**

On January 16 th. ,2020,MOD &CGM resolved to subject the land allocations to a Public Participation process as advised by the National Land Commission. Subsequently Public Participation and Validation exercise for the land allocations was conducted from 21 to31 January 2020 in Marsabit County. The exercise considered critical factors such as human settlements, grazing areas, water catchment areas and conservation of biodiversity and among others in choosing the ideal location for the KDF Camp.

The Public Participation exercise was carried out successfully by the Joint MOD,KWS,CGM team(Comprising of all stakeholders),County Leadership,MPs, MCAs and members of the local community across the areas expected to host MOD facilities. The local community participated

in the exercise and assisted representatives from the MOD to identify the suitable locations.

The petitioners are contesting the process followed in the allocation of Community Land at Karare ward.

The coordinates of the 5,000 Ha parcel of land allocated in Karare by the County Government of Marsabit is:-

STN	Eastings	Northings
A	376583	248844
B	374070	248821
C	370311	251031
D	366218	250703
E	366957	244713
F	373812	244527
G	373800	245810
H	376328	245840

When the above coordinates were plotted on the map it fell within the Marsabit National Reserve (Annex 1).

Conclusion

The contested parcel of land in question is part of the Marsabit National Reserve sitting next to the Marsabit National Park and not Community Land as alleged by the petitioners.

5.PETITION CONCERNING THE ALLEGED EXCHANGE AND FINAL TRANSFER OF TITLES FOR PARCELS OF LAND KNOWN AS LARI NYAKINYUA SOLAI FARM(LOCATED IN SOLAI,NAKURU COUNTY)AND RIYOBEI FARM LIMITED(LOCATED IN GILGIL,NAKURU COUNTY)

Prayer of the petitioner is

That Senate investigates the matter and comes up with appropriate recommendations to ensure that the exchange of title deeds process is expedited and land ownership and utilization rights and interests restored and safeguarded by eviction of illegal occupants

The commission wishes to respond as follows:

The dispute between the two land buying companies dates back to the mid-seventies when Lari Nyakinyua first bought 8000 acres of land in Solai.

The following is the profile of the two land buying companies:

LARI NYAKINYUA FARMERS COMPANY LTD

This was women land buying company from Lari, Kiambu County popularly known as NYAKINYUA. The company bought 8000 acres of land in (Solai) Rongai Sub – County in the early seventies.

The women group Lari Nyakinyua while organizing to settle their members at the 8000 acre farm, members of the local community moved in and occupied the land forcefully to date denying the buyers an opportunity to settle.

At the advent of multi – politics in Kenya it was agreed by the leaders to compensate the Lari NYAKINYUA women with an alternative parcel equal to their original land but in a different Sub – County, now Gilgil **OLJORAI ADC FARM**.

RUYOBEI FARMERS COMPANY LIMITED

This is a registered land buying company formed by a community from Solai in Rongai Sub – County Nakuru County with the intention to buy land for its members.

A majority of their members moved into the land bought by LARI NYAKINYUA in Solai in 1992 when a decision was made to compensate members of LARI NYAKINYUA,following a series of meetings held by leaders from Nakuru and Lari, Kiambu.This led to the signing of the titles exchange agreement between the two land buying companies to bring to an end several years of long standing conflict between the two.

AGREEMENT

On 24th April 2003, the directors of the two companies signed an agreement to exchange Title deeds to end the many years of conflict. This was not possible due to internal conflicts between the directors of the two land buying companies among themselves fighting for leadership and other interests.Lari Nyakinyua Land buying

company had two factions and Solai Ruyobei too had the same and both dispute ended in court.

The directors who signed were;

Lari nyakinyua

a. John Nganga
b. Samuel Macharia
c. Hannah Muturi

Ruyobei

a. Morogo Chebet
b. Olari Chebet
c. Richard Bunditich
d. Musa Toroitich
e. Daniel ario

The Governor Nakuru County in a letter REF: NO. NCG/S/LND/VOL. II/09 dated 25th November, 2014 requested National Land Commission to expedite the matter of the two farms since it was becoming a security threat. On 9th December 2014, National Land Commission wrote a letter to the Governor from the perspective of the Commission, the exchange never materialized at that time due to the following reasons;

- Lari Nyakinyua still holds the title for Solai Farm which was invaded by Ruyobei members.
- Ruyobei Farmers Limited still holds a Title for Oljorai and are in court with Oljorai squatters and a faction of directors.
- Oljorai farm is in court being sued by Solai farmers Co. LTD.

Subsequently, the High Court in Nakuru ELC COURT Civil Case No. 87 of 2007,whose parties are **Nduguia Ole Osano** Vs two others (a) **Lands Limited** (b) **Solai Ruyobei Farm Limited** ruled in favor of SOLAI RUYOBEI FARMERS CO. LTD towards the end of 2019.

The 8000 acres of OLJORAI FARM is currently occupied by over 10,000 squatters for close to 30 years now. This is the same farm the High court ruled in favor of SOLAI RUYOBEI FARMERS CO. LTD which was supposed to be exchanged to LARI NYAKINYUA.

In early 2020 the parties reported back to the Commission that following the Court Decision , they were willing to proceed with the exchange with the assistance of the

provincial administration. They were to report back on the progress and the Commission awaits the report.

6.PETION SUBMITTED BY THE WAJOMVU COMMUNITY ,MOMBASA COUNTY ,CONCERNING THE ALLEGED HISTORICAL LAND INJUSTICES INVOLVING PLOT NO.162/V/M.NCR 1070 IN MOMBASA COUNTY

Hon Chair,The Commission respond as follows:

This matter is listed as a historical no.NLC/HLI/565/2019 that has been prioritized for investigations, hearing and determination.

The Chairman of NLC together with the County Co-ordinator joined the Senate team on Friday 19th February 24, 2021 on a visit to the ground and obtained first – hand information on the matter.

7.PETITION SUBMITTED BY RESIDENTS OF MKAMENYI VILLAGE IN VOI SUB COUNTY OF THE TAITA TAVETA COUNTY.THE ALLEGED ENCROACHMENT OF LAND BELONGING TO MKAMENYI RESIDENTS BY VOI POINT LIMITED IN TAITA TAVETA

The above mentioned parcel measuring approximately 1953 hectares is situated within Voi town in the county of TAITA TAVETA. This parcel was allocate to VOI SISAL ESTATES through a grant No C.R 51725 registered at the Mombasa land registry. For a term of 99 years, effective 1.1.1993. This allocation was as a result of surrender registered in the Governments Land Titles Registry at Mombasa as C.R No. 8814/37.

The land mentioned above is Land registered under **(CAP 281) Registration of Titles Act (repealed)**. And is therefore under the custody of **Mombasa Lands Registry**. The parcel was later transferred to VOI PLANTATIONS LIMITED, who charged the parcel to Diamond Trust Bank Kenya Limited For KSH. 3,000,000,000/= and USA $ 5,000,000/=. Voi sisal estate later transferred the above parcel to Voi point limited at a consideration of Kenya shillings 1,002,0000,000/= (one billion and two million shillings)., and charged to DIAMOND TRUST BANK KENYA LIMITED for Ksh. 4,800,000,000/=

The county Government of Taita Taveta, has objected to the Transfer and Subdivision of the parcel, on allegations that they are aware that the lease earlier granted had expired, and that certain individuals had managed to renew the lease without seeking their

approval. Allegations which have since been proved as untrue by the Land Registrar Mombasa.

Voi point limited has subdivided part of the parcel into various portions, **LR NO. 28683/27** measuring approximately 20.23 Hectares which was transferred to Mkamenyi society of Voi point with the intention to settle squatters residing within the parcel in an area known as Mkamenyi. All the above mentioned transactions were lodged at the Mombasa Land Registry.

It seems Mkamenyi squatters are claiming a larger share of land (i.e 35 acres given against 150 acres claimed) hence the dispute.

The company engaged the services of a private surveyor since this is a private matter .

The Commission's mandate in this matter is limited as the property in issue is private land. The Commission is , however, ready to assist or lead in an ADR mechanism that may be considered with a view to resolving the dispute.

8.PETITION BY RESIDENTS OF MSAMBWENI VILLAGE IN VOI SUB COUNTY OF TAITA TAVETA COUNTY ON THE IMPENDING EVICTION BY A PRIVATE COMPANY.

Prayer of the petitioner is that Senate carries out investigation to establish the following

a) How it was possible for the Commissioner of Lands to allow Bata Shoe Company to transfer its lease grant to Sparkle Properties Limited in total disregard of the terms and conditions of the grant which opposed the same.
b) How it was possible for Bata Shoe Company to sell the land to Sparkle Properties Limited at Kshs.12million and yet it had not done any development on it.
c) Recommend that appropriate action be taken against the Commissioner of Lands for colluding with Bata Shoe Company to transfer Msambweni residents land to Sparkle Properties Limited despite there being terms and conditions against the same.
d) Recommend that the Ministry of Lands acquires the disputed land and settles the residents on it through compulsory acquisition
e) Takes any other action it deems fit to ensure that the residents of Msambweni live in peace as before

Hon Chair,The Commission wishes to respond as follows:

The disputed parcel is situated within Voi Township and borders Ndara A Adjudication Section and Kaloleni Majengo Squatter Upgrading Scheme. The parcel is registered at the Mombasa Land Registry Under Cap 281(Registered Titles Act) now repealed as L.R No. 1956/506 C.R. No 23979 on Survey plan No. 107124 measuring approximately 54.26 Ha.

This parcel was allocated to BATA SHOE COMPANY LIMITED who intended to construct a shoe factory, and was issued with title deed on 30th April 1993. BATA SHOE COMPANY later sold the parcel to SPARKLE PROPERTIES LIMITED at a consideration of Kshs.12,000,000. The transfer was lodged on 21st March 2011 and a new title issued to sparkle properties limited as the proprietor.

The proprietor upon receiving title to the land discovered that squatters had moved in and constructed residential houses, they also prevented the owner from taking possession or accessing the property. This prompted her to move to the Environment and Land Court at Mombasa through Civil Case No.265 of 2013.

Sparkle properties Limited
VS

1. Johana Ngai
2. Fatuma Mwamburi
3. Suleiman Kiboi Mwanyambo
4. Hamisi Kalela
5. Alois Mwambi
6. Asha Mwake
7. Fatuma Kodi
8. Bata Shoe Co.Limited
9. The Attorney General

On 27th January, 2020 the Hon Judge A.Omollo delivered his ruling by entering Judgment for the plaintiff against the 1-7th defendants jointly and severally for:

a) Permanent injunction restraining the defendants whether acting by themselves; their employees, agents and/or servants and/or through any other manner whatsoever interfering with the suit property to unit L.R 1956/506.
b) Mandatory injunction compelling the defendants to demolish and or pull down structures erected on the suit property and to give vacant possession to the plaintiff.
c) That there be a permanent injunction restraining the defendants and/or their agents to allow them to occupy or construct the unoccupied space and proceed with construction forthwith.

d) General damages for trespass awarded at Ksh.150,000 payable by each defendant to the plaintiff giving a total sum of Kshs 1,050,000 with interest from the date of filing suit until payment is made in full.
e) Costs of the suit awarded to the plaintiff.

OPINION

It is the opinion of the Commission that, the issues raised by the petitioners are matters which were fully ventilated Civil Case No.265 of 2013.
The possible action the residents can take is to file an appeal against the judgment and seek further redress on the matter.
Any possible redress must be considered against the Court Decision.

9.SEN. ANWAR LOITIPTIP, MP, SENATOR, LAMU COUNTY ON ALLEGED ENCROACHMENT OFSEN. ANWAR LOITIPTIP, MP, SENATOR, LAMU COUNTY ON ALLEGED ENCROACHMENT OF LAKE KENYATTA RIPARIAN LAND

i) State whether Lamu County followed due process in licensing Lake Kenyatta Beach Management Unit which has been given the responsibility of managing areas of the beach reserved for hippopotamus to graze as well as recreational areas for fishermen and public
ii) Explain whether Lamu County authorized demarcation of the aid area and subsequently allocated the beach area to Lake Kenyatta Beach Management Unit
iii) State whether the title deeds for the land in question which are in the hands of Lake Kenyatta Beach Management Unit are genuine, and if so, did NLC conduct due diligence before issuance of the same
iv) Explain what measures the Ministry of Lands is putting in place to ensure that areas around water bodies used as grazing area for wildlife are protected

Honourable Chair, the Commission wish to respond as follows:

The area in question is the riparian land along Lake Kenyatta within Lake Kenyatta I Settlement Scheme established in1974. Lake Kenyatta Beach Management Unit (LKBMU) was registered in 2008 to manage fishing operations in the area and has been operating since then. The lake is a vital source of water and fish, biodiversity habitat and eco-tourism attraction. The fisheries department was one of the functions whose governance was devolved from the National government and placed to the county

government by the Constitution, 2010. LKBMU is therefore currently under the County Government of Lamu.

There have been disputes between the LKBMU and the local community regarding encroachment of the riparian land falling in the zone covering Plots Nos.1609, 1610, 2570, 2568, 5722 and the high-water mark. The zone in contention is swampy and partly covered with thick natural vegetation.

The dispute is mainly attributed to the fact that the entire external boundary of the riparian is not physically marked nor surveyed. The Lake Kenyatta catchment area is not registered or gazetted.

Honourable Chair, we propose-

i. Mapping out the catchment/lake boundaries by the relevant ministries
ii. Gazettement of this ecologically sensitive area
iii. Multi sectoral Protection and management of the catchment area by the relevant MDAs and County government of Lamu

10.STATEMENT BY SEN.ANUAR LOITIPTIP,MP,ON 24TH SEPTEMBER 2020 REGARDING THE ALLEGED DISPLACEMENT OF SQUATTERS FROM HIDABWO AREA IN LAMU COUNTY

Displacement of squatters in Hidabu Area of Lamu island.

By the Senator for Lamu County, Hon. Anwar Loitiptip.

i. Explain the circumstances surrounding the ownership of the parcel of land in Hidabu Area, Lamu County, and state the genuine owners of the said parcel of land.

ii. State who is behind the demarcation of the said piece of land and evicting persons who have occupied and settled on the said piece of land since 1998.

iii. State whether Lamu County Government authorized the allegedly illegal demarcation of the piece of land.

iv. Explain measures the Ministry of Lands and the National Land Commission have put in place to protect persons who have enjoyed quiet possession of the said piece of land for a period exceeding 12 years and ensure they are not going to be rendered squatters by rogue land grabbers allowed to own the land through adverse possession.

RESPONSE

Hidabu is an informal squatter settlement within Lamu Island specifically within registration section Lamu/Block II. The area comprises of several government reserved land and registered private parcels.

The County government of Lamu engaged a private survey firm, Spatial Milestone (K) Ltd, to survey the squatted area. The project is ongoing and at planning stage, so far capturing over 300 squatters. Some of the squatters in the settlement have permanent buildings and others semi-permanent structures built over diverse dates.

The table below, give an impression of the current status of the affected plots.

	Plot No.	Size (Ha)	Ownership	Ground Occupant
1	Lamu/Block II/126	2.97	Government of Kenya	• County Commissioner's residence • LAWASCO, KPLC sub-station, KBC mast, Radio Rahma mast. • Lower part settled by over 30 squatters.
2	Lamu/Block II/127	4.86	Government of Kenya	• Public Works and Housing offices • Probation office • Churches (5 No) • Lower part settled by over 120 squatters
3	Lamu/Block II/128	5.06	Government of Kenya	• King Fa had Hospital (Public). • Lower part has over 60 squatters.
4	Lamu/Block II/129	6.14	Government of Kenya	• King Fa had Hospital; Mosque (1 No) • Lower part settled by 50 families(squatters)
5	Lamu/Block II/345 Lamu Block II/348 Lamu/Block II/350	0.10 0.10 0.10	Kilim Ltd	Have on-going investigation by DCI Lamu between the owner and squatters. • Parcel 345 has a well dug by area MCA. • Plot 348 has 2 permanent houses by squatters, while 350 has some recently erected posts.

The government agencies such as the hospital, housing and Interior occupying the reserved plots assert that they require the land for future public purposes.

Proposal

i. Stakeholder consultative meeting involving area leadership, county government and relevant national government departments to review and provide solution.

ii. Those on private land to negotiate with the land owners.

Honourable Chair; the above are the answers to the various issues raised, which we respectfully submit.

Dated at Nairobi this 23rd day of February 2021 .

GERSHOM OTACHI BW'OMANWA
CHAIRMAN

REPUBLIC OF KENYA
MINISTRY OF LANDS AND PHYSICAL PLANNING

RESPONSES TO THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

Honourable Chair,

Pursuant to a letter Ref. SEN/DCS/LENR/2/2021/(2) dated February 11, 2021, the Senate Standing Committee on Land, Environment and Natural Resources invited the Cabinet Secretary Ministry of Lands and Physical Planning to respond to -

1. Petition concerning the alleged exchange and final transfer of titles for parcels of land known as Lari Nyakinywa Solai Farm (located in Solai, Nakuru County) and Riyobei Farm Limited (located in Gilgil, Nakuru County.
2. Petition submitted by the Rendile and Samburu Communities representatives concerning the alleged acquisition of Karare land in Marsabit County, by the Kenya Defence Forces.
3. Petition submitted by the Wajomvu Community, Mombasa County, concerning the alleged historical injustices involving Plot No. 162/V/ M.N. CR 1070, in Mombasa County.
4. Petition submitted by the residents of Mkamenyi Village in Voi sub-county of Taita Taveta County on the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County.
5. Petition submitted the residents of Msambweni Village in Voi sub-county of Taita Taveta County, concerning the alleged impending evictions of Msambweni residents by a private company.
6. Statement requested by Sen. Anwar Loitiptip, MP on September 24, 2020, regarding alleged displacement of squatters from Hidabwo area in Lamu County.
7. Statement requested by Sen. Anwar Loitiptip, MP (Lamu County) on alleged encroachment of Lake Kenyatta Riparian Land.

Response

Honourable Chair, I wish to respond as follows-

i) **Petition concerning the alleged exchange and final transfer of titles for parcels of land known as Lari Nyakinywa Solai Farm (located in Solai, Nakuru County) and Riyobei Farm Limited (located in Gilgil, Nakuru County**

Honourable Chair,

Fredrick Kahia Thugi, Joseph Kamau Ngugi, Veronica Wanjiru Chege, Peter Muchume Gachii and James Ngugi being members of Nyakinyua Solai Farm Limited have presented the petition dated February 2019. The petitioners claim that their group purchased 8000 hectares of land in Solai, Nakuru County in 1980 that is now known as Lari Nyakinyua Solai Farm. A second group by the name Ruyobei Farm Limited also purchased 8000 hectares of land in Gilgil, Nakuru.

The petitioners claim that the two groups entered into a deed of exchange agreement signed on April 24, 2003 in a process spearheaded by the late retired president Daniel arap Moi. A second agreement on the same was signed on the same date before the then Gilgil District officer. According to the petitioners, the parties signed a third agreement on August 11, 2003 to authorize the groups to enter and subdivide their respective new parcels. Despite the agreements signed by the parties, transfer of title over the properties has not been effected to date.

The petitioners state that a meeting between the two groups and the National Land Commission was convened on October 26, 2016 at the Solai Farm. The purpose of the meeting was for the Commission to obtain confirmation of members of Nyakinyua Solai Farm Limited that they had authorised Ruyobei Farm Limited to proceed to subdivide the Lari Nyakinyua Solai Farm. This was confirmed at the meeting paving way for the subdivision. The Commission promised to convene a similar meeting at the Gilgil Ruyobei Farm. The meeting is yet to be set up.

The petitioners claim that their members have been prevented from accessing Ruyobei Farm by illegal occupants who have settled on the land. They claim that efforts to have the matter addressed by the National Land Commission have been futile. They have therefore presented the petition to request Senate to intervene and resolve the matter.

Response

Honourable Chair, I wish to respond as follows-

The subject parcels of land are –

a) **Ruyobei Farm (Approximately 8019 Acres)**

i) Land Reference No. 20229/1 measuring approximately 8019 Acres is situated in Gilgil, Nakuru County and is registered in the name of Solai Ruyobei Farm Limited. The parcel was until December 8, 1995 owned by Lands Limited who transferred it to Solai Ruyobei Farm Limited for Kshs. 24,000,000. **(Annexure1)**

b) **Nyakinyua Farm (Approximately 7978 Acres)**

ii) Land Reference No. 8435 measuring approximately 2211 Acres is situated in Solai, Nakuru County and registered in the name of Lari Nyakinyua (Solai Farm) Limited. The parcel was until February 15, 1980 owned by Kenya Motor Holdings Limited who transferred it together with Land Reference No. 2680 and 7364 to Lari Nyakinyua (Solai Farm) Limited for Kshs.6,000,000. **(Annexure 2)**

iii) Land Reference No. 2680 measuring approximately 4910 Acres is situated in Solai, Nakuru County and registered in the name of Lari Nyakinyua (Solai Farm) Limited. The parcel was until February 15, 1980 owned by Kenya Motor Holdings Limited who transferred it together with Land Reference No. 8435 and 7364 to Lari Nyakinyua (Solai Farm) Limited for Kshs.6,000,000. **(Annexure 3)**

iv) Land Reference No.7364 measuring approximately 857 Acres is situated in Solai, Nakuru County and registered in the name of Lari Nyakinyua (Solai Farm) Limited. The parcel was until February 15, 1980 owned by Kenya Motor Holdings Limited who transferred it together with Land Reference No. 2680 and 8435 to Lari Nyakinyua (Solai Farm) Limited for Kshs.6,000,000. **(Annexure 4)**

The parcels have been subject of litigation in various court cases as shown in **Annexure 5.**

We are aware that the National Land Commission has been involved in resolution of the dispute. We therefore invite the Committee to engage the Commission to provide more information on the case.

ii) **Petition submitted by the Rendile and Samburu Commuities representatives concerning the alleged acquisition of Karare land in Marsabit County, by the Kenya Defence Forces**

Honourable Chair,

The petition dated April 29, 2020 concerning acquisition of Karare land by the Kenya Defence Forces has been presented by the Rendille Professional Association on behalf of residents of Rendille and Samburu communities residing in Kaware Ward, Marsabit County. The petitioners claim that the Rendille and Samburu communities in Marsabit County object to the compulsory acquisition of 2,500 acres of land in Kaware by the Kenya Defence Forces (KDF). They claim that the KDF expressed interest on the land in 2019. The petitioners' objection to the compulsory acquisition is based on the following-

i) The land is the communities' only fertile land and the only viable grazing area
ii) Karare ward being a water catchment area for the pastoral communities of Karare, Songa, Loglogo, Kamboye, Laisamis, Kargi and Korre communities plays a central role in the viability of pastoralism. A total of 98, 000 people and approximately 450,000 livestock depend on the ecosystem for their livelihoods
iii) The land is a sacred place for most cultural and religious ceremonies such as circumcision
iv) It is a major and only source of red ochre nalkaria hills which is sacred to the community
v) The land is a pathway for collection of Silaley gum used in circumcision and religious ceremonies
vi) It is also a source of Ibaa/sticks for use in Rendille/Samburu circumcision ceremonies
vii) It is a source of sagaram to feed livestock in a highly pastoral community
viii) The excision of the 2,500 acres of land some of which is protected forests and which is the only dependable dry season grazing area will lead to overuse of rangelands, environmental degradation, human-wildlife conflict and human- human conflict.

The petitioners claim that several meetings have been held between the communities' elders, County Commissioner and the KDF in which the communities proposed alternative land in Kubi Kalo for acquisition but the same was declined by the KDF. They are aggrieved that the process of compulsory acquisition is ongoing despite their protests.

The communities are apprehensive that that they could lose their land and their rights under the Constitution due to their minority status and weak representation in government. They aver that they have already lost 150,000 acres to the Lake Turkana Wind Power project, which was also compulsorily acquired despite their objection.

The petitioners therefore filed the petition to request the Senate to-

a) visit Karare community of Marsabit County to establish the facts of the case as soon as possible
b) make appropriate recommendations to the Cabinet Secretary Ministry of Interior and Co-ordination of National Government based on the findings
c) give opportunity for the petitioners to further present the memorandum orally to the Senate

Response

Honourable Chair, I wish to respond as follows-

The KDF Strategic Defence Plan of 2018-2027 projected the expansion of the Kenya Army and redeployment of Formations to various parts of the Country with a sizeable force earmarked for deployment in Marsabit County. In pursuance to that strategic defence plan, the Ministry of Defence started the process of acquisition of land in Marsabit County with an intention to have military footprint in the northern region to deter/prevent constant incursion by the Ethiopian National Defence Forces and also support the Strategic Defence Plan in order to facilitate KDF achieve its mandate as provided for in Article 241(3) of the Constitution of Kenya.

In early 2012, the Ministry of Defence began formal engagements with the County Council of Marsabit for allocation of land in the County. This resulted in the allocation of 2,500 hectares of land in Kubi Kalo to Ministry of Defence on January 8, 2013. However, with the establishment of the County Government of Marsabit under the new constitutional dispensation, the allocation was rescinded and the Ministry of Defence was advised to restart the process of acquisition.

On January 10, 2019, the process was re- started with consultative meetings between Ministry of Defence and County Government of Marsabit led by the Chairman, Committee on Military Land & H.E Governor of Marsabit with all elected leaders including MPs, MCAs and CECMS. The leaders from Marsabit County agreed to allocate 5,000 hectares in Karare for the construction of Ministry of Defence camp and 10,000 hectares in Haiya for training.

The meeting further directed that a joint technical committee be formed to identify the suitable locations for deployment and training area. The joint technical committee met and worked as per the mandate given during the meeting. A detailed joint reconnaissance conducted between January 2-4, 2019 and May 29 to June 1, 2019 identified the actual locations. Following the engagements, the Ministry of Defence was formally allocated 5,000 hectares & 10,000 hectares of land in Karare and Haiya areas of the County respectively.

On January 16, 2020, the Ministry of Defence and County Government of Marsabit resolved to subject the land allocations to a public participation process as advised by the National Land Commission. Subsequently, the public participation and validation exercise for the land allocations was conducted from January 21-31, 2020 in Marsabit County. The exercise considered critical factors such as human settlements, grazing areas, water catchment areas and conservation of biodiversity and among others in choosing the ideal location for the KDF Camp.

The public participation exercise was carried out successfully by the Joint team comprising Ministry of Defence, Kenya Wildlife Service, County Government of Marsabit, county leadership including Members of Parliament, Members of the County Assembly and members of the local community across the areas expected to host the Ministry of Defence facilities. The local community participated in the exercise and assisted representatives from the Ministry of Defence to identify the suitable locations.

During the process of public participation the locals requested the allocation of Karare land to Ministry of Defence be reviewed downwards from 5,000 hectares to 2,500 hectares. The land is currently in the process of being planned, surveyed and titled in favor of Ministry of Defence. The Ministry is already in occupation of the two parcels of land allocated to them by the County Government of Marsabit.

There is a Court case filed by the Rendille Professionals Association and local elders on behalf of the Community regarding the allocations of the land parcels by the County Government of Marsabit.

Honourable Chair,

We invite the Committee to engage Ministry of Defence and the County Government of Marsabit for more information on the matter.

iii) **Petition submitted by the Wajomvu Community, Mombasa County, concerning the alleged historical injustices involving Plot No. 162/V/ M.N. CR 1070, in Mombasa County**

Honourable Chair,

Salim Mwidadi, Mohamed Kombo, Kassim Mwikaa and Mwinyiusi Mwidadi petitioned the Senate on behalf of Wajomvu Community from Jomvu Kuu Village, Jomvu Kuu Ward in Jomvu Sub County presented the petition dated July 2, 2020 regarding ownership of Plot No. 162/V/M.N. CR. 1070 situated in Jomvu Kuu.

The petitioners claim that they are among the 12 Swahili tribes to settle in Mombasa approximately 800 years ago. They claim that on or about 1846, Dr. Kraph arrived on the East African Coast and settled in Rabai. That in 1877 through the benevolence of a jomvu elder by the name Mwidani, Dr. Kraph was given land to establish a church in the predominantly muslim community. According to the petitioners, the community donated a small area where the Methodist church was built. However, when land adjudication was undertaken in 1923, the church was allocated 150 acres of their land.

The petitioners claim that the community has occupied the land as their ancestral land over the years and has been utilising the same for farming, fishing and residential purposes. They complain that the Methodist church embarked on a subdivision and sale of the land to third parties. They are apprehensive that they will be displaced and have no alternative land. According to the petitioners, their case is an historical injustice that the colonial government committed on the community. They submitted a memorandum to the National Land Commission on the issue three (3) years ago but there has been no response from the Commission. The petitioners therefore request the Senate to intervene with a view to undertake an inquiry into the historical injustice claim.

Response

Honourable Chair, I wish to respond as follows-

According to records held by the Ministry, Plot No.162/V/M. N. CR 1070 was registered on October 27, 1923 in the name of the United Methodist Church Mission. The certificate of ownership No. 7540 was registered under title No. CR.6348 for the area measuring 151 acres. The registered proprietor later changed their name to Methodist Church Missions Kenya trustees registered in 1958 and later to Methodist Church in Kenya Trustees Registered.

On June 14, 1973, the Methodist Church in Kenya Trustees Registered transferred a portion of land to Municipal Council of Mombasa. The said subdivision MN/V/505 measuring 15.28 acres was registered on July 11, 1973 and assigned title No. CR 14323. The remainder thereof measuring 135.72 acres is held by the Methodist Church in Kenya Trustees Registered. A copy of the official search is marked **Annexure 6.**

Honourable Chair, the case presented by the petition is an historical injustice claim The National Land Commission is seized of the matter recorded as Historical Case No. NLC/HLI/565/2019. We invite the Committee to engage the Commission for appropriate redress.

iv) **Petition submitted by the residents of Mkamenyi Village in Voi sub-county of Taita Taveta County on the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County**

Honourable Chair,

The petition is dated August 7, 2020 and has been presented by Joseph M. Njuguna, Francis Mwasho, Juma Mwamburi, Saumu K. Mwamburi, Hassan Kiboko, Glady Juma and Julius Mwasenzi on behalf of residents of Mkamenyi village, Voi sub-county in Taita Taveta County.

From the petition, Mkamenyi village borders Voi Sisal Estate, which was initially *'gifted'* to a retired British soldier by the name Lezen in 1920 by the colonial government, for a period of 99 years. The petition states that the land was surrendered to the government in 1980 and was reallocated to Voi Sisal Estate Limited in 2012. It was transferred to Voi Point Limited in 2019.

The petitioners claim that between 1900 and 1930, the management of the sisal estate requested Mkamenyi elders to allow them to use part of their land located close to the river to install a water pump, farm food for their farmworkers and conduct agricultural research. By 1960s, the residents needed their land back to accommodate the growing population. However, according to the petitioners, the sisal estate refused to hand over the land and instead colluded with the police to extend the boundaries into the residents' homes and put the land under sisal plantation.

The petitioners state that they have engaged this Committee together with the Ministry of Lands and Physical Planning and the county leadership with a view to get back the land. On October 29, 2019, the management of Voi Point Limited invited their representatives to a meeting where they were informed that the company would surrender 35 acres to settle their 28 families. The proposal was however not amenable to the residents since they occupied 150 acres.

The residents are aggrieved that Voi Point Limited proceeded to survey the land without their involvement or the county government and processed a group title for the residents. The company invited the residents to a meeting on August 26, 2020 to issue the title document but they declined. It is claimed that the group title had names of persons who do not live in Mkamenyi. That, only six families residents of Mkamenyi are listed on the title. The petitioners state that efforts to resolve the issues with relevant authorities have been futile. They therefore request the Senate to-

i) investigate the case
ii) recommend that the Ministry of Lands and Physical Planning initiate an all inclusive, open and transparent process of giving the residents of Mkamenyi adequate land.

Response

Honourable Chair, I wish to respond as follows-

According to our records, the land in question measures approximately 1953 hectares and is situated within Voi town in Taita Taveta County. A chronology of ownership of the parcel is as follows-

i. The subject land was originally LR No. 4637 registered as Grant No. C.R. 8814. It was granted to the British East Africa Corporation Limited in 1923 for a term of 99 years from January 1, 1923 to January 1, 2022. The grant was initially issued for agricultural purpose only but the user was later extended to include a petroleum service station.
ii. The Grant was transferred to Voi Sisal Estates Limited on August 6, 1947 and on March 25, 2011 it was surrendered to the Government to pave way for its extension of the term. (A copy of the surrendered Grant C.R. 8814 is annexed herewith marked **Annexure 7**).
iii. The Grant was extended for a further term of 99 years commencing January 1, 1993 at an annual rent of Kshs.353.795 (revisable). The parcel was registered as Grant No. C.R. 51725, LR No. 28683 measuring approximately 1953 Hectares. The land was granted to be utilized for agricultural purposes and residence for the grantee. (A copy of the Grant No. C.R. 51725 is annexed marked **Annexure 8**).
iv. On February 23, 2012 the land was transferred to Voi Plantations Limited for USD.1,855,670 and charged to Diamond Trust Bank of Kenya Limited for Kshs.300,000,000 and USD.5,000,000. On December 29, 2017 a further charge to Diamond Trust Bank of Kenya Limited for Kshs.150,000,000 was registered.

v. On December 29, 2017 a second further charge for Kshs.1,079,737,000 and a third further charge for Kshs.1,189,511,500 was registered in favour of Diamond Trust Bank of Kenya Limited. A fourth further charge for Kshs.4,218,875,000 was registered on December 29, 2017.

vi. On October 1, 2014 the National Land Commission awarded Voi Plantations Limited Kshs.359,531,100 in respect of the land acquired for the development of the Mombasa-Nairobi Standard Gauge Railway. The area of land acquired measured approximately 14.9621 Hectares. (A copy of the Award is marked **Annexure 9**).

vii. On February 13, 2019, all the charges were discharged and the land transferred to Voi Point Limited for Kshs.4,000,000,000. A charge to Diamond Trust Bank of Kenya Limited for Kshs.4,000,000,000 and a further charge to the same bank for Kshs.800,000,000 were registered on the same date. A copy of the official search is marked **Annexure 10**.

Honourable Chair,

viii. On February 6, 2020, the County Government of Taita Taveta approved the subdivision of the land into 28 portions of various sizes for agricultural use. A copy of the notification of approval **(Annexure 11)** and certificate of subdivision **(Annexure 12)** are annexed herewith. The subdivision was approved on the condition that the company was to surrender Plot No. 25 (L.R. No. 28683/27) measuring approximately 13.68 Hectares for Mkamenyi Squatter Settlement as per the copy of the provisional approval marked **Annexure 13**. Voi Point Limited accepted the conditions of the provisional approval as shown in the copy of the acceptance letter marked **Annexure 14**.

ix. On February 27, 2020 new Certificates of Title were issued for L.R. Nos. 28683/4 to 28683/31 the resultant subdivisions of L.R. No. 28683.

x. The Charge in favour of Diamond Trust Bank of Kenya Limited was registered against all the resultant subplots of L.R. No. 28683 apart from L.R. No. 28683/27 that the bank issued a discharge.

xi. On June 25, 2020, the County Government of Taita Taveta approved the subdivision and change of user of L.R. No. 28683/9 into 52 subplots (A copy of the notification of approval **(Annexure 15)**. The subdivision was conditional upon surrender of 10% of the total acreage for public utility and use. The subdivision was also approved by the Voi Land Control Board as shown in **Annexure 16**.

Honourable Chair,

L.R. No. 28683/27 measuring approximately 35 acres is the portion that Voi Point Limited reserved for the settlement of the squatters. According to our records the plot is still registered under Voi Point Limited. Given that this land is private land, we advise that the squatters to engage Voi Point Limited on their grievances

v) **Petition submitted the residents of Msambweni Village in Voi sub-county of Taita Taveta County, concerning the alleged impending evictions of Msambweni residents by a private company**

Honourable Chair,

The petition dated September 10, 2020 was presented by residents of Msambweni village, Voi sub-county in Taita Taveta County. They claim to be living in fear of eviction by a private developer (Sparkle Properties Limited) from a parcel of land registered as No.1956/506, C.R No. 23979 measuring 54.26 hectares where they claim to have resided since1938.

According to the petitioners, their elders accepted a request by Bata Shoe Company to put up a factory on the subject land in 1978 on the premise that the factory would create employment for the community. A 99-year lease running from January 1, 1979 was granted on conditions, inter alia, that the land was to be used for a factory and that the company would not subdivide, sell, transfer or sublet the land.

Bata Shoe Company did not develop the land as agreed and in 2013 transferred the land to Sparkle Properties Limited for construction of a shopping mall in disregard of the conditions of the lease. The petitioners claim to have resisted the development, which prompted Sparkle Properties Limited to file a case court (ELC No. 265 of 2013) seeking to evict them. The court rendered its judgement on the case on February 24, 2020 allowing the eviction order sought by Sparkle Properties Limited. The court also ordered the residents of Msambweni to pay damages for trespass amounting to Kshs.1,050,000.

The petitioners are apprehensive that 3,500 people will be rendered homeless if the court orders are executed. They claim that efforts to resolve the matter with relevant authorities have not been successful and have thus engaged the Senate to intervene.

Response

Honourable Chair, I wish to respond as follows-

The subject parcel of land is situated within Voi Township and borders Ndara A adjudication section and Kaloleni Majengo Squatter Upgrading Scheme. The parcel is registered at the Mombasa Land Registry under the Registered Titles Act, Cap. 281 *(repealed)* as L.R No. 1956/506 C.R. No 23979 on Survey plan No. 107124 measuring approximately 54.26 hectares.

This parcel was allocated to Bata Shoe Company Limited who intended to establish a shoe factory on the land, and was issued with title deed on April 30, 1993. Bata Shoe Company later sold the parcel to Sparkle Properties Limited at a consideration of Kshs.12,000,000. The transfer was lodged on March 21, 2011 and a new title issued to sparkle properties limited as the proprietor **(Annexure 17)**.

The proprietor upon receiving title to the land discovered that squatters had moved in and constructed residential houses, they also prevented the owner from taking possession or accessing the property. This prompted the company to move to the Environment and Land Court at Mombasa, Civil Case No.265 of 2013 (Sparkle properties Limited -vs- Johana Ngai & 8 Others)

On January 27, 2020 the court rendered Judgment on the case as follows-

a) Permanent injunction restraining the defendants whether acting by themselves; their employees, agents and/or servants and/or through any other manner whatsoever interfering with the suit property to unit L.R 1956/506.
b) Mandatory injunction compelling the defendants to demolish and or pull down structures erected on the suit property and to give vacant possession to the plaintiff.
c) That there be a permanent injunction restraining the defendants and/or their agents to allow them to occupy or construct the unoccupied space and proceed with construction forthwith
d) General damages for trespass awarded at Ksh.150,000 payable by each defendant to the plaintiff giving a total sum of Kshs.1,050,000 with interest from the date of filing suit until payment is made in full.
e) Costs of the suit awarded to the plaintiff.

The issues raised in the instant petition were adequately canvassed in the suit. **(Annexure 18)**

vi) Statement requested by Sen. Anwar Loitiptip, MP on September 24, 2020, regarding alleged displacement of squatters from Hidabwo area in Lamu County

Honourable Chair, I wish to respond as follows-

The Hon. Sen. Anwar Loitiptip, MP has requested the Cabinet Secretary to-

i. Explain the circumstances surrounding the ownership of the parcel of land in Hidabu Area, Lamu County, and state the genuine owners of the said parcel of land
ii. State who is behind the demarcation of the said piece of land and evicting persons who have occupied and settled on the said piece of land since 1998
iii. State whether Lamu County Government authorized the allegedly illegal demarcation of the piece of land
iv. Explain measures the Ministry of Lands and the National Land Commission have put in place to protect persons who have enjoyed quiet possession of the said piece of land for a period exceeding 12 years and ensure they are not going to be rendered squatters by rogue land grabbers allowed to own the land through adverse possession.

Response

Honourable Chair, I wish to respond as follows-

In response to questions (i), (ii), (iii) and (iv), I wish to respond as follows:

Hidabu area is an informal squatter settlement within Lamu Island specifically within registration section Lamu/Block II. The area comprises of several Government reserved land and registered private land parcels. Some of the squatters in the settlement have permanent buildings and others semi-permanent structures built over time. The attached plan marked **annexure 19** give an impression of the status and layout of the area.

The County Government of Lamu engaged a private survey firm, Spatial Milestone (K) Ltd, to survey the squatted area The project is ongoing and at planning stage, so far capturing over 300 squatters.

Ownership

	Plot No.	Size (Ha)	Ownership	Ground Occupant
1	Lamu/Block II/126	2.97	Government of Kenya **(Annexure 20)**	• County Commissioner's residence • LAWASCO, KPLC sub-station, KBC mast, Radio Rahma mast. • Lower part settled by over 30 squatters.
2	Lamu/Block	4.86	Government of	• Public Works and Housing offices

	II/127		Kenya **(Annexure 21)**	• Probation office • Churches (5 No) • Lower part settled by over 120 squatters
3	Lamu/Block II/128	5.06	Government of Kenya **(Annexure 22)**	• King Fahad Hospital (Public). • Lower part has over 60 squatters.
4	Lamu/Block II/129	6.14	Government of Kenya **(Annexure 23)**	• King Fahad Hospital; Mosque (1 No) • Lower part settled by 50 families (squatters)
5	Lamu/Block II/345 Lamu Block II/348 Lamu/Block II/350	0.10 0.10 0.10	Miliki Ltd **(Annexure 24)**	Have on-going investigation by DCI Lamu between the owner and squatters. • Parcel 345 has a well dug by area MCA. • Plot 348 has 2 permanent houses by squatters, while 350 has some recently erected posts.

The government agencies such as the hospital, housing and Interior occupying the reserved plots assert that they require the land for future public purposes.

vii) Statement requested by Sen. Anwar Loitiptip, MP (Lamu County) on alleged encroachment of Lake Kenyatta Riparian Land

Honourable Chair,

The Hon. Sen. Anwar Loitiptip, MP has requested the Cabinet Secretary to-

i) State whether Lamu County followed due process in licensing Lake Kenyatta Beach Management Unit which has been given the responsibility of managing areas of the beach reserved for hippopotamus to graze as well as recreational areas for fishermen and public

ii) Explain whether Lamu County authorized demarcation of the aid area and subsequently allocated the beach area to Lake Kenyatta Beach Management Unit

iii) State whether the title deeds for the land in question which are in the hands of Lake Kenyatta Beach Management Unit are genuine, and if so, did NLC conduct due diligence before issuance of the same

iv) Explain what measures the Ministry of Lands is putting in place to ensure that areas around water bodies used as grazing area for wildlife are protected

Honourable Chair, I wish to respond as follows:

A response to the Statement requested by the Hon. Senator was forwarded vide a report dated January 5, 2021. A copy of the report is marked **Annexure 25.**

Honourable Chair, I submit.

Dr. Nicholas Muraguri
PRINCIPAL SECRETARY

February 24, 2020

COUNTY GOVERNMENT OF TAITA TAVETA
OFFICE OF THE GOVERNOR

RESPONSE TO PETITIONS

A. ENCROACHMENT OF LAND BELONGING TO MKAMENYI RESIDENTS BY VOI POINT LTD

Background

The basis of Mkamenyi community's petition is that they are victims of historical injustice. Evidence of community's residence on the land are ancient graves, dwellings and artefacts that point to human habitation on the said land for over 100 years (the community has resided on the land since 1890). Currently, the entire Mkamenyi land has been encapsulated by what is known as Land Registration No. 28683 measuring approximately 4800 Acres. The owner being Voi Plantations Ltd (Voi Point Ltd).

When Voi Plantations Ltd. lease expired in 1993, (original number being L/R No. 4637) it was expected that the land would revert back to the community. Having failed to obtain approval for lease renewal from the then Municipal Council of Voi, the Plantation obtained extension for the lease in a manner that is believed to be irregular. Never the less, the community has continued to reside on their land as squatters. Recently Voi Point Ltd (current owners of the land) offered to allocate the community 35 Acres of land, which they later on, owing to pressure from the community and the government, increased to 150 Acres, which, again is not what the community is asking for.

The community's prayer is that Voi Point Ltd. allocates them at least **2000 Acres.** It is also the community's prayer that the entire 4800 Acres will ultimately be returned to them as the rightful owners of the land.

County Government's position

i. There is need for thorough investigations into the circumstances leading to renewal of lease on L/R No. 4637 (original number) and the recent subdivision and sale of Land Registration No. 28683 (new number).

ii. Voi Point Ltd should allocate the people of Mkamenyi at least **2000 Acres** pending the outcome of investigations on matters under caption (i) above.

B. IMPENDING EVICTION OF MSAMBWENI VILLAGE RESIDENTS BY A PRIVATE COMPANY

Background

Msambweni neighborhood in Voi hosts approximately 3500 people. Just like in Mkamenyi, residents of Msambweni are victims of historical injustice and institutional malfeasance. The land the residents of Msambweni reside on was initially occupied by their kin as farmland. The land was, in the late 1970s, allocated to Bata Shoe Company for purposes of establishing a shoe making factory with strict conditions that the land should not be sold, transferred or its use changed.

Other than failing to put up the factory, Bata Shoe Company sold the land to a private company, **Sparkle Properties Ltd**, in contravention of conditions accompanying the letter of allotment. It is the private company (Sparkle Properties Ltd) that obtained eviction orders from high court in 2020 so as, not only to evict Msambweni residents, but also to be paid Ksh 1,050,000/= (One Million, Fifty Thousand Shillings only) in compensation by the hapless residents.

Be it as it may, this is no longer a Land administrative or management issue, rather it is a legal matter that can only be dealt with legally-through the courts. Being a legal matter, the most promising remedy is for the community is to appeal the Court's decision. Once the court sets aside the orders, it will then be possible for new evidence (of technical nature which was not considered by the Court) to be adduced in order to defeat the earlier ruling. The other alternative, though unpopular, is for the community to mobilize resources of their own and buy the land from the company. However, the most convenient (with justification) option is for

the government to acquire the land from the current registered owner and settle the residents.

County Government's position

i. The residents of Msambweni cannot and must not be moved out. It is too late in the day for the title holders to claim the land. The residences have settled on the land for decades, put up permanent dwellings, public utilities such as schools, social halls, places of worship, etc. It will be immoral to evict the residents.

ii. The land was acquired from the residents fraudulently. The residences had donated the land to Bata Shoe company to build a shoe factory in the area. The shoe factory was never built. So, the residences have a right to reposes their ancestral land. That is what they are trying to do-to reclaim the land from fraudsters.

C. LAND OWNERSHIP DISPUTE BETWEEN MWAKITAURESIDENTS AND ISANGA IWISHI GROUP RANCH

Background

Isanga Iwishi Group had attempted to evict approximately 10,000 residents of Mwakitau location from what was until recently known as Isanga Iwishi Group Ranch. Bura/ Isanga Iwishi/18 was registered in 1984 and measures approximately 5992.2 Ha. The community challenged registration/issuance of title deed to the group in court first in 1984 and then in 1999 on grounds that the ranch was established in an area that they were residing on since 1920 without their involvement as residents of the area. In both cases the community lost the case against the group. The last time the court ruled in favor of the group ranch was in 2008 at the High Court in Mombasa (Misc. Civil Application No. 255 of 2000). To forestall the eviction, however, the County government obtained orders to stop the planned eviction until an ownership case is heard and determined. The matter is still in court.

The Mwakitau community argues that they want the areas they have occupied for over 100 years be converted to a settlement scheme and issued with individual title deeds. While the community may invoke provisions of Limitations of Actions Act on Adverse Possession, they have the option of either appealing the 2008 High Court ruling (they have ruled out this option citing the high costs involved) or taking advantage of the new window obtaining under the Community Land Act so that they become members of Isanga Iwishi Community. Thereafter, being members of the Isanga Iwishi, they may call a meeting of the assembly as per section 23 of the Act and pass a resolution by majority vote to subdivide the land and acquire individual titles.

In the meantime, the County government in collaboration with the Ministry of Lands and Physical Planning is implementing the Community Land Act, 2016 which will ensure that Mwakitau residents became members of Isanga Iwishi Community. On 05th March, 2021 residents convened the Assembly meeting and elected Community Land Management Committee. The next step shall be to formalize the arrangements by registering the Isanga Iwishi Community. Mwakitau community will then automatically become members of Isanga Iwishi as per the Community Land Regulations, 2017, Paragraph 4 of the Third Schedule.

County government's position

i. The government acknowledges the fact that the people of Mwakitau have lived in the area for years as a Community and, therefore, are part and parcel of Isangaiwishi and must be recognized and registered as members of Isangaiwishi community land with all rights.

ii. Mwakitau town settlement established before the first World War must not be interfered with.

Ultimately, the legal mandate on Land Adjudication and Settlement rests with national government Ministry of Lands and Physical Planning and to some extent National Land Commission and not the County government. The county government's role is facilitative. Once we receive a communication from The National Land Commission on the way forward, we shall take necessary action. The County government is ready to facilitate and fast track adjudication/settlement process.

County Government's position

i. The lease on Land Parcel L. R/No. 5827 should not be renewed.

ii. The people have settled on the land for over 20 years, invested their time and resources on the farms making Machungwani the food basket of Taita/Taveta and the coastal region at large. It is only fair, therefore, that they are allocated the farms.

I submit,

Signed.....

H. E. GRANTON G. SAMBOJA

GOVERNOR

Date 17th May 2021

NATIONAL LAND COMMISSION

RESPONSE TO PETITIONS AND STATEMENTS REFERRED TO THE SENATE STANDING COMMITTEE ON LAND,ENVIRONMENT AND NATURAL RESOURCES

REPORT BY:

GERSHOM OTACHI BW'OMANWA

CHAIRMAN

2021

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RESPONSES TO THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES ON STATEMENTS REQUESTED BY MEMBERS

Honourable Chair,

The Committee requested the Chairman National Land Commission to respond to the following:

1. Petition submitted by the Residents of Msambweni Village in Voi Sub-County of Taita Taveta County, concerning the alleged impending evictions of Msambweni residents by a private company

a) Explanation on the circumstances that led the Commissioner for Lands to change the conditions of lease;

b) Submit relevant documentation and evidence of correspondence that led to the change of the lease conditions;

c) Proposals on the best way of assisting the people of Msambweni to get back their land.

2. Petition submitted by the Residents of Msambweni Village in Voi Sub-County of Taita Taveta County, concerning the alleged impending evictions of Msambweni residents by a private company

a) Explanation on who was compensated for the aforementioned parcel of land compulsorily acquired by Kenya Railways, during the construction of the Standard Gauge Railway, providing the amount compensated;

b) If compensation has not been done, then the payment be held until the dispute has been sorted out; and

c) Explanation on the possibility of using Settlement Fund Trustees (SFT) in attempting to resolve the impasse affecting the people of Msambweni.

3. Petition on the alleged delayed adjudication and the settlement of squatters on Machungwani land in Taita Taveta County after expiry of lease, and

a) Explanation and relevant documentation on the current status of the lease for Machungwani Farm and whether there have been efforts by the Previous Lessee to renew the Lease; and

b) Status of the persons currently farming and residing in the aforementioned parcel of Land.

Honourable Chair, the Commission wishes to respond as follows:

1.Petition submitted by the Residents of Msambweni Village in Voi Sub-County of Taita Taveta County, concerning the alleged impending evictions of Msambweni residents by a private company

a) Explanation on the circumstances that led the Commissioner for Lands to change the conditions of lease;
On the above subject matter, National Land Commission is unable to explain the circumstances that led to variation of the lease conditions because the records are held by the Ministry of Lands and Physical Planning who are in a better position to explain the same.

b) **Submit relevant documentation and evidence of correspondence that led to the change of the lease conditions**
Based on the response to (a) above ,the commission has no documentary evidence in support of the variation to the lease conditions

c) Proposals on the best way of assisting the people of Msambweni to get back their land.
The people of Msambweni can negotiate with the land owner perhaps using a government Arbitrator such as National Land Commission to chart a better way that will yield a win win situation for both parties.

2)Petition submitted by the Residents of Msambweni Village in Voi Sub-County of Taita Taveta County, concerning the alleged impending evictions of Msambweni residents by a private company

a) **Explanation on who was compensated for the aforementioned parcel of land compulsorily acquired by Kenya Railways, during the construction of the Standard Gauge Railway, providing the amount compensated**;
Msambweni village was one of the residential areas of Voi town that were affected by land acquisition for the Construction of Nairobi – Mombasa Standard Gauge Railway (phase 1) pursuant to a request by Kenya Railways Corporation. The section affected lie near and almost parallel to the Nairobi – Mombasa road South of Voi town.

The village is part of the land L.R. NO. 1956/506 registered in the name of Sparkle properties limited but which initially was owned by Bata Shoe Company hence popularly known as Bata area.

The notice of intention to acquire land for the project was published in Kenya Gazette notice No. 4096 20th June, 2014. Inquiry was held as scheduled on 28th August 2014 at Voi County Commissioner's Office. The registered owner of the Land appeared at the

inquiry and presented their claim to compensation for the Land. At the same time, Msambweni residents who were in occupation presented their claim to compensation for land and improvements. While the ownership of improvements was determined on the ground for the respective developers/occupants, no ownership documents were presented for land.

The subject parcel was listed in a subsequent addendum vide Gazette notice no. 5040 and its inquiry was published in gazette notice no. 6205 of 5th September, 2014. The area acquired out of the subject parcel is **16.893 ha** for both the railway line and part of the Voi station.

However, during the inquiry it became evident that there was an ongoing Court case between the registered land owners and the occupants of the land. This was listed as ELC civil suit no 265 of 2013; Sparkle Properties Limited Vs Johana Ngai and others.

In 2020 the Commission received a Court ruling confirming that Sparkle properties limited were the rightful owners of the disputed parcel pursuant to which the Commission issued an award of **Kshs.192, 015,974.00.**

Upon conclusion of the inquiry in line with section 113 of the Land Act 2012, the Commission subsequently issued awards for interests determined on the land and improvements. However, payment for land has not been done pending conclusion of the Court case. Awards for the improvements were issued, accepted and paid for and a list of the persons compensated is as follows;

#	PARCEL NO.	PAYEE	AMOUNT	KRC PAYMENT
1	BATA	JACOB KARUTI IMUNYA	908,040.00	Payment 001
2	BATA	FREDRICK NJUMWA NYAMBU	922,300.00	Payment 001
3	BATA	GLADNESS WAKIO MSAFIRI	745,775.00	Payment 001
4	BATA	GRACE WANJALA MWADIME	1,518,862.50	Payment 001
5	BATA	FESTUS KATITU BAYA	74,750.00	Payment 001
6	BATA	ELIZABETH MARGRET KIMBAYA	215,280.00	Payment 001
7	BATA	JAMILA WAKIO ALI	1,948,445.00	Payment 008
8	BATA	HENRY MBOCE NJUGUNA	51,750.00	Payment 001
9	BATA	WALTER KALENDO	1,856,560.00	Payment 003
10	BATA	EVANSON MWACHIA MALOMBO	498,180.00	Payment 001

11	BATA	JASPHER PETER TATUA MAMBORI	866,122.50	Payment 001
12	BATA	ASHA MWAKE NDOLONGA	397,440.00	Payment 001
14	BATA	JOHNSON WAKISE MWANJALA	268,812.00	Payment 001
15	BATA	SAIDI MWALUMA NDOLONGA	23,000.00	Payment 001
16	BATA	ADIJA NDUNDA NDOLONGA	386,400.00	Payment 001
17	BATA	FATUMA CHAO NDOLONGA	1,245,450.00	Payment 001
18	BATA	HAMISA KALELA NYOKA	1,303,065.00	Payment 001
19	BATA	WILSON MWANDOE	182,160.00	Payment 001
20	BATA	ABADIAH MAKANYO MWANGOO	432,860.00	Payment 001
21	BATA	HAMFREY BUNYALI KESEKWA	811,842.50	Payment 001
22	BATA	JACKTON MWAWASI WAMADA	1,311,000.00	Payment 001
23	BATA	KASSIM MUNYIKA	712,080.00	Payment 001
25	BATA	FESTUS MAGHANGA	742,325.00	Payment 001
26	BATA	BERNARD SHAKI MWAPULA	354,545.00	Payment 001
27	BATA	HEMEDI MWAKULOMBA HAMISI	367,540.00	Payment 001
28	BATA	HAMISI M.MWAKICHONDA	537,050.00	Payment 008
29	BATA	BAKARI MWALIMU NYOKA	658,605.00	Payment 001
30	BATA	HALIMA MALISO	560,970.00	Payment 017
31	BATA	KHADIJA MALISO	321,540.00	Payment 008
32	BATA	MUSA MWAMBURI MALISO	1,577,800.00	Payment 008
33	BATA	ABASI KIMBIO MALISO	74,980.00	Payment 001
34	BATA	HANIVA MASHAKA MAGANGA	373,750.00	Payment 001
35	BATA	HAMISI KILUNCHU IDDI	363,400.00	Payment 001
36	BATA	COLIN MZEE MWAFUGA	278,300.00	Payment 004
37	BATA	ALOISE JUMA WERE	182,390.00	Payment 001
38	BATA	MUSA MWAMBURI MKWALE	1,028,330.00	Payment 001
39	BATA	RAMA MWALIMU KALELA	1,074,100.00	Payment 001

40	BATA	EDITH MWAKABA	292,675.00	Payment 001
41	BATA	JOSEPH MWAKSHIN LEO	274,160.00	Payment 001
42	BATA	SANDRA MWARABU	1,630,470.00	Payment 001
43	BATA	VERITY WINIFRED MKABILI	115,000.00	Payment 004
45	BATA	MATANO KATEMBO	3,251,855.00	Payment 003
46	BATA	RUSSIANAH NAFULA NYANGE	51,290.00	Payment 004
47	BATA	ROSE ELEEN WANJALA	2,222,375.00	Payment 001
48	BATA	JOEL SIO MANAMBO	156,227.50	Payment 001
49	BATA	ZACHARIA M. MWALUDA	28,750.00	Payment 001
50	BATA	JULIUS MTWANGUO KIMONGE	113,850.00	Payment 001
51	BATA	ISAAC JEREMIAH MBOGO	2,798,295.00	Payment 001
52	BATA	NAHASHON KISOCHI HARIDON	2,778,400.00	Payment 003
53	BATA	KASYOKI SYULU	1,758,120.00	Payment 001
54	BATA	SYLVESTER MAGHANGA MUGENDI	1,122,515.00	Payment 001
55	BATA	BEATRICE MBATHA MTEPE	40,250.00	Payment 001
56	BATA	JOHN MBURU WACHIRA	62,560.00	Payment 001
57	BATA	OMAR MWAMBOLE MWALUMA	1,017,405.00	Payment 001
58	BATA	JIMNAH THIONGO KARIUKI	1,247,750.00	Payment 001
59	BATA	ANNA MESI MBASHU	23,000.00	Payment 001
60	BATA	MARK MWAURA KINUTHIA	23,000.00	Payment 005
61	BATA	JOHN MWAKATINI TUGU	1,467,745.00	Payment 001
62	BATA	EMMANUEL HAMISI MBOGA	5,324,270.00	Payment 001
63	BATA	PATRIC WANDANA	369,150.00	Payment 001
64	BATA	SCOLAH MASHAKA CHAU	868,020.00	Payment 001
65	BATA	ERNEST MWAKIO	2,141,990.00	Payment 001
66	BATA	ELIZABETH ANYANGO PALO	1,470,275.00	Payment 001
67	BATA	ERIC WAFULA OKUMU	443,440.00	Payment 001

68	BATA	KENYOLD WANYAMA	40,250.00	Payment 001
69	BATA	BICKSON MBWANGI MWAKUDUA	304,520.00	Payment 001
71	BATA	AMINA WAUDA LAMECK	1,523,865.00	Payment 001
72	BATA	MADINA MAPEM ETHOKON KIRIAM	507,437.50	Payment 001
73	BATA	PAUL NJOROGE	3,510,835.00	Payment 001
74	BATA	JENIPHER MESI NYAMBU	1,751,500.00	Payment 001
75	BATA	RAPHAEL SHUMA	27,500.00	Payment 001
76	BATA	MARY ADHIAMBO MANGO	892,170.00	Payment 005
77	BATA	MWANAISHA ABDALLAH MOHAMED	2,452,375.00	Payment 001
78	BATA	KHAMISI JUMA FADHILI	1,869,555.00	Payment 001
79	BATA	JAPHET KIMBIO MWANGANYI	1,528,350.00	Payment 001
80	BATA	SALIM MOHAMED YUNIS	2,007,900.00	Payment 001
81	BATA	HARRISON MAHUTHU MIRANJI	611,167.50	Payment 001
82	BATA	SHABAN MALISO MWAMBURI	2,589,800.00	Payment 001
83	BATA	JEREMIAH MBINGU	237,590.00	Payment 001
84	BATA	HAMILTON MBOGO	929,660.00	Payment 003
86	BATA	ELIAS KIMWAGA MTIGO	588,167.50	Payment 001
87	BATA	VALLERY MBORI WAMAZA	277,840.00	Payment 001

b) If compensation has not been done, then the payment be held until the dispute has been sorted out;

The Commission issued awards for interests determined on the land but none was paid for the land pending conclusion of the Court case. However awards for improvements on the land were issued and paid for. Compensation is yet to be paid out to the land owner; this is undergoing due diligence and receipt of funds for disbursement to be done. It is important to note that this dispute having been processed in Court, payment can only be stopped if there are further Court orders on the same or a stay. The Commission is yet to receive any of these

C) Explanation on the possibility of using Settlement Fund Trustees (SFT) in attempting to resolve the impasse affecting the people of Msambweni.

The right to shelter is enshrined in article 53 (1) of the Constitution of Kenya and so is the protection of right to property in article 40 (1). These appear to be competing rights in the instant petition. If the right to property were to be upheld and enforced, the Government may opt to cushion its citizens through the Settlement Fund Trustee through the Ministry of Lands and Physical Planning.

However, only the Board of Trustees for the Land Settlement Fund(LSF) can comment on the possibility of using the fund to resolve the impasse affecting the people of Msambweni in Voi.

3. Petition: Alleged delayed adjudication and the settlement of squatters on Machungwani land in Taita Taveta County after expiry of lease.

3.1 (a) Explanation and relevant documentation on the current status of the lease for Machungwani Farm and whether there have been efforts by the Previous Lessee to renew the Lease.

3.2 Appearance by NLC before the Senate on April 7, 2021

Hon Chair, the National Land Commission appeared before the Senate Standing Committee on Land on April 7, 2021 and gave the following response with respect to the above petition;

"The Commission will seek to establish the status of the lease with the Ministry of Lands and Physical Planning to determine the way forward. Possible reservation of the land for settlement may be recommended to the Settlement Fund Trust if the expiry of the lease is confirmed and the Conditions in section 13 of the Land Act (relating to pre-emptive rights) have been complied with,"

3.3 Request by the Senate on April 7, 2021

After the presentation, the Senate asked the Commission to provide detailed information with respect to the Status of the lease for this land.

Hon Chair we provide the following history and chronology of the events regarding the status of the lease of LR No 5827.

3.4 Available records show that LR No. 5827 measuring 2970 acres was registered in the name of Basil Criticos under leasehold tenure for 99 years from January 1, 1914 **(Annex 1 and Annex 2)**. Therefore, the lease expired on January 1, 2013.

3.5 On November 20, 2012 Walker Kontos advocates for Basil Criticos applied to the Town Council of Taveta for extension of lease on LR No 5827 by filing the relevant forms for Development permission **(Annex 3).** Incidentally, in February 8, 2012 the Government through the Permanent Secretary in the office of the Deputy Prime Minister and Minister of local Government had directed County Councils to **"stop processing of land leases until the National Land Commission, and the appropriate County Government mechanisms are in place" (Annex 4).** There appears to have been no activity on this matter until 2014.

3.6 On October 1, 2014 the Deputy Governor and CEC Lands, Taita Taveta County wrote to the County Assembly (Ref Way forward on Parcel Land ref. Number 5827 - Taveta owned by Basil Criticos) giving directions which in substance recommended non renewal of the lease but allocating it to the those in occupation. The letter also acknowledged that Basil Criticos occupied 45.96 Ha **(Annex 5).** The County Assembly agreed with the directions given by the County Government as indicated in a letter dated June 30, 2020 from Clerk of the County Assembly of Taita Taveta **(Annex 6).** The letter indicates that the resolution of the County Assembly was passed on December 4, 2014.

3.7 Petition Civil Case No. 576 of 2012.

In a Judgement by Justice E O Obaga dated March 12, 2020; paragragh 11 states that **"On 1st April 2018, the County Government of Taita Taveta held a meeting where the issue of renewal of the petitioner's lease was deliberated upon and approved. A notification of approval of the extension was subsequently issued on 17th April 2019 and a letter written on the same day to the National Land Commission stating that the County Government had no objection to renewal of the lease" (Annex 7).**

A copy of the minutes of the above referred meeting are annexed **(Annex 7a).**

3.8 On April 17, 2018 the CECM in charge of Lands, Environment and Natural Resources, Taita Taveta wrote to the Commission partly stating that **"We recommend the renewal of the parcel of land L.R. No. 5827 approximately 2970 acres in Machungwani area in Taita Taveta" (Annex 8)**. Attached to the referred letter was FORM P.P.A.2 **(Annex 9).** A follow-up letter by Walker Kontos was made in February 2020 which is the basis of the ground report referred to in paragraph 3.9 (b) below.

3.9 (b) Status of the persons currently farming and residing in the aforementioned parcel of Land

In July 2020, NLC prepared a ground status report of the parcel and the findings are summarized below.

3.10 A large section of the parcel lies on the right hand side as one travels along the murrum road heading towards Kimorigo area. A small section is on the left hand side extending up to the Machungwani water canal near Kiwalwa. **There are semi-permanent residential developments and temporary structures which appear to have been constructed in the last 5-7 years**. The more developed area lies between the Eldoro-Mschekesheni junction up to the water canal in Kiwalwa. There are temporary farm boundaries made by the encroachers. The main crops found on the farm include oranges, bananas, mangoes, beans cassava and coconut. Irrigation water is obtained from the Machungwani water canal. The marshy/swampy area is found midway between Kiwalwa and Kimorigo is scarcely built due to flooding in the wet season but used to graze livestock in the dry season.

3.11 There is an old staff camp and an office near Kiwalwa which was built by the immediate lease holder. It is alleged that the camp was abandoned in sometimes in 2013 after members of the public invaded the land after expiry of the lease. The lease holder has availed approximately 100 acres to the prisons department for farming. The department uses it to grow maize, tomatoes, kales and fish farming.

3.12 Status and way forward

a) The renewal of lease for LR No 5827 is pending at the National Land Commission has not been processed. In considering the application for renewal of lease, the Commission will take into account the provisions of section 13 of the Land Act 2012.

b) The Ministry of Lands and Physical Planning may also provide more information on this land based on the records in their possession.

Honourable Chair I Submit

12/5/2021

GERSHOM OTACHI BW'OMANWA

CHAIRMAN

REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING

RESPONSES TO THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

Honourable Chair,

Pursuant to your letters Ref. SEN/DCS/LENR/2/2021/ (17) dated March 23, 2021 and Ref. SEN/DCS/LENR/2/2021 (23a) dated April 30, 2021, the Committee invited the Cabinet Secretary Ministry of Lands and Physical Planning to respond to the following:

1. Petition submitted by the Wajomvu Community, Mombasa County, concerning the alleged historical injustices involving Plot. No. 162/V/M.N, C.R. 1070 in Mombasa County
2. Petition concerning the alleged illegal alienation of land belonging to Kitale Primary School by a private developer
3. Petition on the alleged delayed adjudication and the settlement of squatters on Machungwani land in Taita Taveta County after expiry of the lease
4. Petition on the alleged illegal encroachment of land covering the villages of Pangani, Nyatha, Kaisari, Mavuno, Promoko and Widho in Lamu County by Witu Livestock Cooperative Society
5. Petition submitted by the residents of Msambweni Village in Voi Sub-County of Taita Taveta County concerning the alleged impending evictions of Msambweni residents by a private company
6. Petition submitted by the residents of Mkamenyi Village in Voi sub-county of Taita Taveta County on the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County

Honourable Chair, I wish to respond as follows:

1. **Petition submitted by the Wajomvu Community, Mombasa County, concerning the alleged historical injustices involving Plot. No. 162/V/M.N, C.R. 1070 in Mombasa County.**

Honourable Chair,

A response to the petition was presented to the Committee in the meeting held on February 24, 2021. The Petitioners were absent and the Committee deferred consideration of their petition. The response is listed as item no. 3 in our report dated February 24, 2021 attached marked **annexure 1**.

2. Petition concerning the alleged illegal alienation of land belonging to Kitale Primary School by a private developer

Honourable Chair,

Rt. Rev. Dr. Emmanuel Chemengich on behalf of the Kitale Primary School Alumni Association, the school Parents and Teachers' Association (PTA) and the Board of Management presented the petition concerning the alleged illegal alienation of public land belonging to Kitale Primary School.

According to the Petitioner, the school was allocated 55 Hectares of land reserved vide an approved Development Plan of 1973. Two (2) Hectares were surrendered to improve the turn-off to the Kitale-Webuye road between 1974 and 1978. The school applied for the title in 1983 and Mr. Nathaniel Tum who was the then chairperson of the school's PTA and a member of the Board of Management offered to assist in processing the same. The title deed was issued in 2010 for a parcel of land measuring 41.28 Hectares.

The Petitioner claims that Mr. Tum fraudulently acquired title in his name for a portion of the land belonging to the school which was registered in 1994 as Block 12/132 measuring 4 Hectares where he has constructed a petrol station.

The matter was reported to the Commissioner of Lands and the title was cancelled vide a Gazette Notice published on May 10, 2010. The case is also featured in the Report of the Commission of Inquiry into the Illegal/ Irregular Allocation of Public Land (the Ndungu Commission report) which recommended that the land be reverted to the school.

However, the Petitioner claims that Mr. Tum obtained a new title for the parcel of land in 2013 registered as Block 12/236. The case was also lodged with the National Land Commission. The Commission visited the school in September 2019 and in February 2020 but the matter has not been resolved. The petitioner therefore requests the Committee to investigate the matter with a view to providing a solution on how the said public land can be recovered.

Honourable Chair, I wish to respond as follows:

Prior to 1990, the Government reserved land for public institutions through letters of reservation. A letter of reservation was issued for unsurveyed plot.

Later on, the Government began reserving land for public institutions by issuing letters of allotment.

We have not been able to trace the letter of reservation issued to Kitale Primary School. A letter Ref. DURP/10/1/161 dated September 14, 1973 signed by the then Director of Urban and Rural Physical Planning addressed to the school indicates that approximately 55 Hectares was reserved for the school **(annexure 2)**. The Kitale Town Development Plan (DP) of 1973 shows the reservation for Kitale Primary School marked as 2_7 **(annexure 3).**

From our records, the School applied for processing of the title vide a letter dated October 7, 1993. They also applied for allocation of an adjacent land, which they claimed to have been utilising for at least 10 years **(annexures 4).**

A Part Development Plan (PDP), Departmental Reference No. KTL.10/96/100 was prepared for the school and approved in 1998 with Approval No. 294 **(Annexure 5).** A comparison between the Development Plan of 1973 and the PDP of 1998 shows a variance in orientation of the parcel.

On July 2, 1999, the Commissioner of Lands issued an allotment letter Ref. 20089/XXXIV/106 of July 2, 1999 for the un-surveyed school plot measuring 43.33 hectares. Survey was done and a Lease prepared for a total area of 41.28 Ha (102 acres).

On June 14, 2010, the parcel was registered as Kitale Municipality Block 12/229 in favour of The Permanent Secretary to the Treasury of Kenya as Trustee to Kitale School **(annexure 6).** As per the title, the school land measures approximately 41.28 Hectares.

Kitale Municipality Block 12/236 (formerly 132)

According to our records, Nathaniel K. Tum was allocated Uns. Hotel Site-Kitale Municipality measuring approximately 4 Hectares for a 99-year term commencing September 1, 1994, vide letter of allotment Ref. 20089/XXXIV/1 of September 29, 1994 **(annexure 7).** A certificate of lease was issued on December 6, 1994 for Kitale Municipality Block 12/132.

In 2007, the District Surveyor discovered that the land parcel Kitale Municipality Block 12/132 had encroached into Kitale Primary School Land (Kitale Municipality Block 12/229) and thereby requested the Commissioner of Land to compel the owner of Kitale Municipality Block 12/132 to surrender the title for necessary corrections (**annexure 8**).

The Ministry therefore requested Mr. Tum to surrender his Certificate of Lease for cancellation and issuance of a new lease bearing the correct survey area **(annexure 9).** The Certificate of Lease Kitale Municipality Block 12/132 was cancelled vide gazette notice No. 5560 of May 21, 2010 **(annexure 10).**

The land allocated to Mr. Tum was re-surveyed and the Registry Index Map amended. The area reduced from 4 Hectares to 3.560 Hectares and a new parcel No. Kitale Municipality Block 12/236 was issued **(annexure 11)**. On March 1, 2013 Nathaniel K. Tum was registered as the proprietor of Kitale Municipality Block 12/236 and a certificate of lease issued **(annexure 12).**

Honourable Chair,

According to the petitioners, the dispute between the school and Mr. Nathaniel Tum is before National Land Commission. According to our records, the Ethics and Anti-Corruption Commission is also handling the matter. The Ministry will liaise with the respective agencies with a view to resolving the matter.

3. Petition on the alleged delayed adjudication and settlement of squatters on Machungwani land in Taita Taveta County after expiry of the lease

i) Explanation and relevant documentation on the current status of the lease for Machungwani Farm and whether there have been efforts by the previous lessee to renew the lease

ii) Status of the persons currently farming and residing in the aforementioned parcels of land.

Honourable Chair,

The Petition dated February 12, 2020 was presented by representatives of Machungwani Squatters residing on Machungwani land (measuring 2970 acres) situated in Mboghoni Ward in Taveta Constituency of Taita Taveta County, claimed to be their ancestral land.

The Petitioners claim that the community bequeathed the land to a British soldier, one Captain Morgan in 1914. They claim that the lease was thereafter transferred to George Criticos who later transferred the land to his son, Bazil Criticos. The Petitioners allege that the Criticos family utilise a small portion of the land and that the area residents with the consent of the owner occupy the remaining portion. According to the Petitioners, Bazil Critos in his campaign for election as Member of Parliament, allowed the residents to occupy the land.

The Petitioners are aggrieved that whereas subject lease expired in January 2012, both the National and County Governments have been reluctant to adjudicate the land in favour of the residents who have invested heavily on the land. They have therefore filed the Petition to seek appropriate redress from the Committee.

Honourable Chair, I wish to respond as follows:

According to our records, the land is registered as L.R No.5827 (I.R 1056). It is situated in Taveta Sub-County in Taita Taveta County and measures approximately 2970 Acres.

The parcel was first registered in the name of East African Estates Limited on February 26, 1925 on a 99-year lease with effect from January 1, 1914. The parcel has been transferred severally overtime. It was last transferred to Basil Criticos on February 23, 2010. The lease expired on January 1, 2013. A copy of the title is marked **annexure 13.**

Honourable Chair,

The Ministry is aware an application for the renewal of lease has been lodged with the National Land Commission **(annexure 14).** In light of the foregoing, the issues raised by the Petitioners are best handled by the National Land Commission and the Taita Taveta County Government in line with the provisions of Section 13 of the Land Act, 2021 and the Land Regulations, 2017.

4. Petition on the alleged illegal encroachment of land covering the villages of Pangani, Nyatha, Kaisari, Mavuno, Promoko and Widho in Lamu County by Witu Livestock Cooperative Society

Honourable Chair,

The Petition dated February 15, 2021 was presented by representatives of White House Progressive CBO comprising squatters residing in various portions of land within Pangani, Nyatha, Kaisari, Mavuno, Poromko and Widho villages of Mavuno Sub-Location in Lamu County.

The Petitioners claim that the squatters have been residing on the subject land parcels from 2011. They have established a school thereon and the Government has since posted teachers. They claim that Witu Co-operative Society Ranch has encroached on the land causing conflict with the squatters. Efforts to have the issue resolved by the County Government of Lamu have failed. They have therefore filed the Petition to request the Committee to:

i) Investigate the matter to ascertain ownership of the parcels of land in the area
ii) Compel the County Government of Lamu to demarcate the said land and issue titles to the squatters
iii) Prohibit Witu Co-operative Society Ranch from making further demands to the squatters residing on the land

iv) Visit the County to understand the land issues therein

Honourable Chair, I wish to respond as follows:

According to our records, the subject land is registered as L.R.No.1405/1 measuring approximately 639.783 Acres. The land was registered as M.I. Folio 72/17 in favour of Henry Eric Burnier on February 28, 1966 as shown in **annexure 15.**

Mr. Henry Eric Burnier surrendered the land to the Government as a gift and the transfer was registered as M.I. Folio 72/18 on May 12, 1966 in favour of the President of the Republic of Kenya as shown in **annexure 16.**

From our records, the land is reserved for settlement of squatters. In 1983, the Ministry received an application for allocation of the land from Witu Livestock Development Centre but the request was declined for this reason **(annexures 17)**

The Ministry will embark on plot demarcation survey and squatter verification programme for settlement of ground occupants during the 2021/2022 financial year.

5. Petition submitted by the residents of Msambweni Village in Voi Sub-County of Taita Taveta County concerning the alleged impending evictions of Msambweni residents by a private company

i) Explanation on the circumstances that led the Commissioner of Lands into changing the conditions of the lease
ii) Submit relevant documentation and evidence of correspondence that led to the change of the lease conditions
iii) Proposals on the best way of assisting the people of Msambweni to get back their land

Honourable Chair,

A response to the petition was presented to the Committee in the meeting held on February 24, 2021. The response is listed as item no. 5 on Page 11 in our report dated February 24, 2021 marked **annexure 1**.

Honourable Chair,

In response to Questions **(i) and (ii)** I wish to respond as follows;

The subject parcel was originally Government land. The Commissioner of Lands allocated it to Bata Shoe Company Limited and was registered on April 30, 1993 as CR 23979. A copy of the Grant is marked **annexure 18.**

The conditions for the lease are contained in the Grant. The relevant conditions of the lease are the Special Conditions; No. 2 on development of the property within 24 months of registration of the Grant; No. 5 on the user for the property and Nos. 9 & 10 restricting transfer of the property unless Special Condition No. 2 is fulfilled.

The Commissioner of Lands gave consent for the transfer of the property to Sparkle Properties Limited despite Special Condition No. 2 being unfulfilled. Bata Shoe Company transferred the property to Sparkle Properties Limited vide a transfer lodged on March 21, 2011.

The question of the propriety of the title held by Sparkle Properties Limited has been subject of litigation in Environment and Land Court, Mombasa, Civil Case No. 265 of 2013. The Court considered the circumstances of the transfer with regard to the Special Conditions Nos. 2, 9 and 10 and upheld title as per the judgment marked **annexure 19**.

Honourable Chair, in response to **Question (iii),** I wish to submit as follows;

The Ministry has noted the plight of the Petitioners who are facing imminent evictions. We shall engage the Land Settlement Fund Board of Trustees to consider their case for resettlement.

6. Petition submitted by the residents of Mkamenyi Village in Voi sub-county of Taita Taveta County on the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County

i) **Explanation on the current status of the lease for Voi Point Limited, given the ongoing subdivision of the land into small parcels implying change of use for the land**
ii) **Relevant documentation with attachments on the approval of the change of user from agricultural land to commercial land**
iii) **Provide the transfer documents and correspondence between the Ministry of Lands and Physical Planning, the County Government of Taita Taveta and Voi Point Limited**
iv) **Proposals on how to assist the Petitioners in obtaining more land noting that twenty-eight (28) families living within Voi Point Limited were allocated thirty-five (35) acres of land**

Honourable Chair,

A response to the petition was presented to the Committee in the meeting held on February 24, 2021. The response is listed as item no. 4 on page 8 in our report dated February 24, 2021 marked **annexure 1**.

In response to Questions (i), (ii) (iii) and (iv) I wish to respond as follows;

i) **Explanation on the current status of the lease for Voi Point Limited, given the ongoing subdivision of the land into small parcels implying change of use for the land**

In the report submitted on February 24, 2021, the Ministry reported that the County Government of Taita Taveta approved the subdivision of the land L.R. No. 28683 into 28 portions of various sizes for agricultural use on February 6, 2020. The subdivision was approved on the condition that Voi Point Limited was to surrender Plot No. 25 (L.R. No. 28683/27) measuring approximately 13.68 Hectares for Mkamenyi Squatter Settlement. Voi Point Limited accepted the conditions of the provisional approval. New Certificates of Title were issued for L.R. Nos. 28683/4 to 28683/31 the resultant subdivisions of L.R. No. 28683 On February 27, 2020.

It was also reported that on June 25, 2020, the County Government of Taita Taveta approved the subdivision of L.R. No. 28683/9 into 52 subplots. The subdivision was conditional upon surrender of 10% of the total acreage for public utility and use.

Honourable Chair

I wish to add that the County Government of Taita Taveta also approved the subdivision of L.R. No. 28683/12 (22 subplots) and L.R. No. 28683/20 (147 subplots) on June 25, 2020. The subdivisions were conditional upon surrender of 10% of the total acreage for public utility and use.

Copies of the PPA 2 forms, Land Control Board consents, approvals by the Ministry and other relevant correspondence for the subdivisions are marked **annexures 20.**

Voi Point Limited is yet to present to the Ministry the deed plans for all the sub-plots to facilitate preparation of the title documents.

ii) **Relevant documentation with attachments on the approval of the change of user from agricultural land to commercial land**

Honourable Chair,

The approvals obtained from the County Government were for the subdivisions only. The County Government has not given approval for change of user on any of the sub plots. We had erroneously reported that an approval for change of user had been granted for L.R No. 28683/9.

iii) **Provide the transfer documents and correspondence between the Ministry of Lands and Physical Planning, the County Government of Taita Taveta and Voi Point Limited**

Honourable Chair,

As earlier indicated, Voi Point Limited is yet to present to the Ministry the deed plans for the sub plots to facilitate preparation of the title documents for the transfers, if any.

iv) Proposals on how to assist the Petitioners in obtaining more land noting that twenty-eight (28) families living within Voi Point Limited were allocated thirty-five (35) acres of land

Honourable Chair,

In the meeting with the Committee on February 24, 2021, the Ministry undertook to refer the matter to the Land Settlement Fund Board of Trustees for consideration of acquisition of additional alternative land for settlement of the squatters. We shall report on the progress once the Board convenes.

Honourable Chair, I submit.

Farida Karoney, EGH
CABINET SECRETARY

May 11, 2021