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SNA  
4/5/23

**REPUBLIC OF KENYA**

**THE NATIONAL ASSEMBLY**

**THIRTEENTH PARLIAMENT (SECOND SESSION)**


**PUBLIC PETITIONS COMMITTEE**

**REPORT ON -**

**(PUBLIC PETITION NO. 7 OF 2022)**

**BY HON. SAMUEL ATANDI, REGARDING PROBABLE LOSS OF INVESTMENTS IN CYTONN HIGH YIELD SOLUTIONS PLATFORM**

**APRIL, 2023**

 <b>THE NATIONAL ASSEMBLY</b> PAPERS LAID	
<b>DATE:</b> 04 MAY 2023	<b>DAY:</b> Thursday
<b>TABLED BY:</b>	Hon. Nimrod Mbei (Chairperson, Public Petitions Committee)
<b>CLERK-AT THE TABLE:</b>	Joyce Kemerele

**CLERK'S CHAMBERS  
DIRECTORATE OF LEGISLATIVE AND PROCEDURAL SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI**

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## CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on Probable Loss of Investments in Cytonn High Yield Solutions Platform. The petition was conveyed to the House pursuant to Standing Order No. 225 (2) (b) by the Speaker of National Assembly.

The Committee considered the Petition and observed that the Petitioners were investors in Cytonn Company Ltd who had invested in the Cytonn's Cytonn High Yield Solutions Platform. Cytonn Investments Ltd dealing capital investments and real estate placed adverts for one-bedroom apartments valued at Kshs. 7.8 million at a project named 'The Ridge' under LR NO. 28223/3, along Kiambu Road in Kiambu County.

It is worth noting that the Petitioners under off plan scheme purchased the proposed houses however, the company could not deliver the houses on time. The Committee admitted additional list of petitioners who had valid contracts with Cytonn.

In response to the prayers sought by the Petitioner, the Committee recommends a raft of recommendation's including a recommendation that the House considers allowing the Official Receiver to complete the process and realise funds to pay the creditor. The Committee also recommends that the Capital Markets Authority fast tracks the "*Alternative Funds Regulations*" for private Markets so as to seal loop holes by rogue operators. Additionally, the Committee recommends that the House considers amending the Capital Markets Authority Act CAP 485A to provide for an expanded market conducive environment for capital markets. This will help cushion investors specially those engaged in the real estate business. This can be done with the agenda of affordable housing in mind.

In conclusion the Committee recommends that the CEO of Cytonn be held personally liable for the loss of funds. The Committee recommends that he be investigated thoroughly and proper charges be preferred for him in the Court of Law.

The Committee wishes to thank the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support without which its work would not have been possible. The Chairperson expresses gratitude to the Committee Members for their devotion and commitment to duty during the consideration of this Petition.

On behalf of the Committee, I now wish to table this report before the House.



LSV  
**THE HON. NIMROD MBITHUKA MBAI, M.P.**  
**CHAIRPERSON, PUBLIC PETITIONS COMMITTEE**

## **PART ONE**

### **1. PREFACE**

#### **1.1 Establishment and Mandate of the Committee**

The Public Petitions Committee is established under the provisions of Standing Order 208A with the following terms of reference:

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and
- d) advising the House and reporting on all public petitions committed to it.

## 1.2 Committee Membership

The Public Petitions Committee was constituted in October 2022 and comprises of the following Members:

### **Chairperson**

Hon. Nimrod Mbithuka Mbai, M.P.  
Kitui East Constituency  
**United Democratic Alliance (UDA)**

### **Vice Chairperson**

Hon. Janet Jepkemboi Sitienei, M.P.  
Turbo Constituency  
**Independent**

Hon. Patrick Makau King'ola, M.P.  
Mavoko Constituency  
**Wiper Democratic Movement-Kenya (WDM-K)**

Hon. Edith Vethi Nyenze, M.P.  
Kitui West Constituency  
**Wiper Democratic Movement-Kenya (WDM-K)**

Hon. Ernest Kivai Ogesi Kagesi, M.P.  
Vihiga Constituency  
**Amani National Congress (ANC)**

Hon. Maisori Marwa Kitayama, M.P.  
Kuria East Constituency  
**United Democratic Alliance (UDA)**

Hon. Joshua Chepyegon Kandie, M.P.  
Baringo Central Constituency  
**United Democratic Alliance (UDA)**

Hon. John Walter Owino, M.P.  
Awendo Constituency  
**Orange Democratic Movement (ODM)**

Hon. Bernard Muriuki Nebart, M.P.  
Mbeere North Constituency  
**Independent**

Hon. Bidu Mohamed Tubi, M.P.  
Isiolo South  
**Jubilee Party (JP)**

Hon. Caleb Mutiso Mule, M.P.  
Machakos Town Constituency  
**Maendeleo Chap Party (MCCP)**

Hon. John Bwire Okano, M.P.  
Taveta Constituency  
**Wiper Democratic Movement-Kenya (WDM-K)**

Hon. Peter Mbogho Shake, M.P.  
Mwatate Constituency  
**Jubilee Party (JP)**

Hon. Sloya Clement Logova, M.P.  
Sabatia Constituency  
**United Democratic Alliance (UDA)**

Hon. Suzanne Ndunge Kiamba, M.P.  
Makueni Constituency  
**Wiper Democratic Movement-Kenya (WDM-K)**

### 1.3 Committee Secretariat

The Public Petitions Committee is facilitated by the following members of Secretariat:

**Lead Clerk/Team Leader**

Mr. Samuel Kalama  
Principal Clerk Assistant II

Ms. Anne Shibuko  
**First Clerk Assistant**

Ms. Miriam Modo  
**First Clerk Assistant**

Mr. Willis Owino Obiero  
**Clerk Assistant III**

Mr. Shadrach Omondi  
**Legal Counsel II**

Ms. Patricia Gichane  
**Legal Counsel II**

Mr. Martin Sigei  
**Research Officer III**

Mr. Andrew Shangirai  
**Principal Sergeant at Arms**

Mr. Yezel Jilo  
**Sergeant at Arms**

Ms. Lilian Mburugu  
**Media Relations Officer**

## PART TWO

### 2. PETITION NO. 7 OF 2022 REGARDING PROBABLE LOSS OF INVESTMENTS IN CYTONN HIGH YIELD SOLUTIONS PLATFORM

#### 2.1 INTRODUCTION

1. Public Petition No. 7 of 2022 by Mrs. (Amb.) Josephine Awuor, Mrs. Caroline Atieno, and Mr. Omondi Abonyo who are investors in Cytonn Company Ltd regarding probable loss of investment in Cytonn High Yield Solutions Platform was presented to the House by the Hon. Samuel Atandi on 16<sup>th</sup> November, 2022.
2. A company named Cytonn Investments Ltd dealing in capital investments and real estate placed adverts for one-bedroom apartments valued at Ksh. 7.8 million at a project named '*The Ridge*' under LR NO. 28223/3, along Kiambu Road in Kiambu County.
3. Investors who opted for 'off-plan' arrangements started making their payments in 2017 and made continued making regular payments as and when required;
4. Despite the very little activity on site, Cytonn Investment Ltd through their representatives kept explaining to investors/depositors verbally that they were finalizing other developments;
5. Investors made an initial instalment of 10% of the sale value plus booking fee of Ksh. 50,000;
6. By year 2018, some investors/depositors who were paying by instalment had paid in excess of Kshs3.9 million during which time it seemed the company had started experiencing internal financial problems, since no construction ever started;
7. Those who feared for their investments and started asking for refunds were told they would incur a mandatory 10% loss on their deposits;
8. In September 2019, when many investors/depositors began seeking refund, the Company announced that it would put the money in its substituent platform, i.e. Cytonn High Yield Solution, for one year to earn interest at 18% and then start refunding;
9. In 2020, Cytonn Investments Management PLC began blaming COVID-19 pandemic interruption and promised to refund the investors in 2021, during which time they kept sending statements to show interest was being earned;

10. Later, an administrator was appointed and the Company continued to experience financial difficulty, and to-date nothing has come to fruition with regards to investors' money, nor had *the Ridge* project taken off;
11. Notwithstanding this challenge, the Company has ostensibly kept their posts alive on social media platforms on investment analysis to dupe the investors and unsuspecting Kenyans that it is liquid and in optimum operational capacity;
12. The Company has been trying to sell off some of its properties in vain and might thus dissolve with depositors' money;
13. Efforts to ensure the company honours the agreement with the investors have not been productive despite further engagement with the Capital Markets Authority (CMA);
14. To the best of the Petitioners' knowledge, the matter in respect of which this Petition is made is not pending before any Court of Law or Constitutional body.

## **2.2 PETITIONERS' PRAYERS**

### **2.2.1 The Petitioners prayed that the National Assembly through the Public Petitions Committee -**

15. Summons CMA to establish how they intend to operationalize the Investor Compensation Fund to grant compensation to investors who suffer pecuniary loss resulting from the failure of a licensed stockbroker or dealer to meet his contractual obligations as stipulated in section 18(1) of the Capital Markets Act,2012
16. Engages Cytonn Investment Ltd and its partners to clarify how they intend to fulfil their agreement with the investors/depositors of the aforementioned Ridge development project;
17. Holds the Chief Executive Officer (CEO) of Cytonn Investment Management PLC (Cytonn) as responsible for the mismanagement and secures the timely refund of investors'/depositors' money, and
18. Makes any other suitable recommendations it deems fit in addressing the issues raised in the Petition.

## PART THREE

### 3. STAKEHOLDERS' SUBMISSIONS ON THE PETITION

#### 3.1 THE PETITIONERS

19. Mrs. (Amb.) Josephine Awuor, Mrs. Caroline Atieno, and Mr. Omondi Abonyo and other investors appeared before the Committee on Wednesday, 14<sup>th</sup> December, 2022 and submitted as follows, that-

##### *3.1.1 The Structure of Cytonn Investments Management PLC*

20. Cytonn had two (2) unregulated companies (CHYS and CPN), 49 Special Purpose Vehicles (SPVs) regulated either by CMA or and 20 entities regulated by Retirement Benefits Authority (RBA), bringing the of entities under Cytonn to 71 entities.
21. Cytonn High Yield Solutions (CHYS) was registered in 2014. Following approval by the CMA, the company invited the public to invest with an interest of 13 per cent. Cytonn began to contravene certain sections of the Capital Markets Act, 2012 (the Act) by exceeding the number of people on private offers, and amounts required. The CMA sent alerts informing the Company that it was contravening the existing provision of law.
22. The SPVs were intended to get loans from CHYS and CPN and develop real estate projects which were *The Ridge* along Kiambu road. *The Alma* in Ruaka, and *Newtown* in Athi River. From proceeds of selling the housing units, Cytonn would pay back the CHYS and CPN for the entities to in turn to pay back creditors. Unfortunately, some of the projects did not even take off.

##### *3.1.2 Challenges that faced Cytonn Investments*

23. **Contravention of the Insolvency Act** - Cytonn went to court to seek insolvency after which an administrator was appointed by the court in October 2021 without informing creditors contrary to the Insolvency Act. The creditors in question were about 4,000 in number for both CPN and CHYS according to what they presented to court and about Kshs. 14 billion was owed to them.
24. **Failure by the Administrator to meet the needs of the investors** - the administrator appointed by the court served the interest of the company rather than of investors. Further, the company claimed that CHYS and CPN had no assets to pay the creditors, yet all the projects done were from the creditors' money. The CHYS and CPN gave money to SPVs under loan notes agreement where they were supposed to buy land, put up apartments, sell them and give money to creditors. The creditors therefore could not access their assets because they were managed by different legal entities

which they did not sign a contract with. However, all the SPVs were owned by the same directors of Cytonn.

25. **Mischief in financial reporting** - There was mischief on the Financial Reporting of the company. The claim of facing financial problems during COVID-19 pandemic in 2020 was not true since they already had a negative working capital of Kshs. 5 billion in 2016. The Financial Statements of the company were erroneous, for example, a closing balance of Kshs. 5 billion in 2016 was recorded as one billion shillings of the opening balance in 2017 thus a loss of Kshs. 4 billion.
26. **Poor credit ratings** - A South Africa based audit company dealing with credit rating rated Cytonn and found the debt equity ratio of 86 per cent which was not good enough and recommended to them to diversify by getting long-term financing from international institutions which happened.
27. **Incomplete projects and loss of money** - since 2014, the Cytonn Investment Management Plc had commenced only eight projects, yet only one *The Amara* was largely complete. This was despite the company having about 49 SPVs suggesting that about 6 SPVs were doing a single project contrary to the agreement that an SPV does one project. According to the Petitioners, this bordered mischief and proved that the company was out to divert money. *The Amara* project had ten villas which were sold, and they made a loss of Kshs. 500 million. The Petitioners claimed that the loss can be attributed to the CEO owning a villa there and giving the landowner two villas. The Company engaged architects, designers, and other service providers who were paid huge sums of money despite the projects being incomplete.
28. **Contravention of guidelines** - The Company invested in areas not provided for in its guidelines, for instance, Cytonn Education Services, a plot in Westlands Estate bought by one of the directors, built a public road in Ruaka to access *The Alma*, botched purchase of land in Machakos and Rongai, amounts advanced to landowners, and purchase of shares in *Superior Homes*.
29. **The overriding role of the CEO** - The CEO had an overriding role in the company and real estate functions, for example, collecting money, looking for investments, developing property, marketing, consultancy, and legal services. This was orchestrated such that all these money would only get lost in the hands of the CEO.
30. **Non-applicability of the corporate guarantee** - the corporate guarantee that Petitioners believed would assist them when things go wrong was equally amended without their knowledge which bordered fraud.

31. The Petitioners further prayed that -

- a) the corporate guarantee of each of the investors' agreement be invoked.
- b) a forensic audit to unearth the mismanagement of funds be conducted by the Auditor General or the Financial Reporting Centre of the Central Bank of Kenya (CBK) in conjunction with the Directorate of Criminal Investigations (DCI).
- c) a corporate veil be lifted because all the 71 entities and Cytonn Investments Management Plc are legally registered.

### 3.2 SUBMISSION BY CYTONN INVESTMENTS MANAGEMENT

Mr. Edwin Harold Dayan Dande, the CEO of Cytonn appeared before the Committee on Tuesday, 21<sup>st</sup> February, 2023 and submitted as follows, that -

#### **Background of Cytonn Investments**

32. Cytonn Investment Management has the following arms -

- i. Investment management arm: Raises funds through a regulated channel where you can advertise but CMA has to sign that particular offering before you raise funds. Secondly, there is a private offering which has to be Kshs100,000 per individual which you cannot advertise hence you have to talk to an individual one on one to sign up.
- ii. Real estate development arm: The money raised is put in ten different projects including The Ridge which the Petitioners brought before the Committee and this could be confirmed by the Official Receiver.

33. in February, 2020, the SPVs suffered the strain after investors pulled out cash, thus the investment arm could not fund the real estate arm. In the real estate arm, investors stopped paying for their units because of uncertainty of COVID-19 therefore, these projects were unable to pay money back to the investment vehicle.

34. the underlying contract stated that in case of an event that is beyond control, specifically, *force majeure* then the company can tell the investors that they cannot withdraw their monies. The stoppage of withdrawal was approved by the Partnership Committee made up of investors themselves. The investors elected their representatives who agreed with the investment manager to stop the withdrawals and ask the investors to wait for restructuring of the portfolio, for example, sell some assets.

35. the monies were invested in a 10-acre piece of land at the corner of the Northern Bypass and Kiambu Road. The challenge was how to access funding to complete that particular project. The Company came up with an innovation to approach Kenyans directly to give them cash to continue that development. The model sought to acquire more funding from the capital markets than from the banks as the case in developed markets. However, CMA disowned the structure stating that you cannot get money directly from individuals.
36. The Ridge Project stalled in March 2020 due to COVID-19. The problem would have been addressed if the proposed funding mechanism would have proceeded but the CMA rubbished the funding mechanism. Cytonn got an injunction against the CEO of CMA. The investors have also gone to court and sent the particular portfolio to the Official Receiver whom Cytonn is working together with to resolve the matter with the Petitioner.
37. That the matter in respect to which the Petition was made has been before the High Court in Insolvency Petition E063 of 2021 since May 2021 up until a ruling was delivered on 6<sup>th</sup> January, 2023.
38. On whether Cytonn was allegedly luring unsuspecting investors and Kenyans to dupe them, the CEO stated that it was not true because the company only sell products in accordance with specific regulation of that particular product and the petitioners signed a sale agreement.
39. With regards to refund for the petitioners, the CEO stated that a letter of offer was clear that if the investor terminates the contract before the apartment was completed, they were to lose 10 per cent of their investment.
40. Regarding the allegation of selling off real estate projects to disappear with depositor's money, the CEO indicated that it was not true since all the assets were under court preservation order and they could not move without the Official Receiver's order and hence no property has been sold.
41. On how CHYS intended to honour contracts with the investors, the CEO stated that it was an ongoing exercise before the Official Receiver following a court order. With regards to mismanagement of investor funds by the CEO, the witness indicated that the funds were managed in strict conformity to the constitutive document including partnership agreement, investment policy statement and board of investors. The CEO stated that the allegation was not backed up by any documentary evidence before the Committee other than the fact that Cytonn invoked a *force majeure* clause in the contract.

42. On the transfer of Ms. Josephine Awuor from the Ridge Project to CHYS, the CEO submitted that she moved by herself and that Cytonn gave investors an opportunity to join any fund or project. However, once the project ran into trouble, she decided to move her investments from The Ridge into the investment fund which also ran into problems sooner and a signed copy of the transfer was attached.
43. Section 18(1) of the CMA Act only covers for failure in the event of a licenced stockbroker or dealer which the Ridge and CHYS were not. The CEO proposed that the remedy available to the Petitioners in law was the dispute resolution clause, which they had already invoked.
44. On insolvency of Cytonn, the CEO stated that the company continues to operate but it is not immune to challenges all other real estate developers are facing. That CHYS was insolvent but the group was not.

#### **Shareholders of Cytonn**

45. The company had a board of directors comprised of Mr. Edwin Harold Dayan Dande (CEO), Prof. Daniel Mugendi, PhD (Chairperson), Mr. Shaka Kwach, and Ms. Elizabeth Nkukuu.

#### **Contracts signed by the investors**

46. The CEO stated that the contracts clearly set out three criteria that the people had to attest to before signing up, which could not be bypassed before signing of the form. Further, the CEO stated that the investment committee was aware of the restructuring although not everyone could agree hence the suspension of withdrawal.

#### **The role of the of CHYS and other SPVs**

47. That each real estate development is done in its own Special Purpose Vehicle. This is the ordinary way of doing the business. The entities are legitimate to bring people into the investment. The CEO undertook present a list of all the 40 SPVs and their purposes.

#### **The status and plans of refund to investors**

48. As to whether the company had plans to refund the investors; the CEO responded that they have not refunded yet but intended to do so. However, they were unable to refund at that moment since the same investors had an injunction against all the properties. Therefore, the preservation order stops sales but the company is working with the Official Receiver to address that.

**Products currently regulated by CMA**

49. The CEO stated that the regulated funds had no issues at all and the investors could withdraw their funds immediately.

**On the status of the real estate projects**

50. The success of the real estate projects, amount of money collected for the real estate from investors, the duration of completion. With regards to the success of the real estate projects, the CEO stated that projects like Amara Ridge was complete, sold and occupied. The Alma was still incomplete project but was in the final phase. That Cytonn raised Kshs. 10 Billion from the 4000 individuals. That the net worth of the company was about one billion Kenya shillings based on its assets and liabilities. With regards to the completion period, the CEO stated that it would take about three to four years for completion and refunds to the investors.

**Why Cytonn could not approach banks for funding the deficits**

51. As to whether the company has made the progress on the investments impossible as stated by the witness. The CEO presented that COVID-19 brought about illiquidity, which then brought about court cases, which ended up with preservation orders. Therefore, COVID-19 was the origin of the problem. Further, the CEO stated that due to the pandemic, they took pay cuts and even laid off people due to the stagnation of the projects and the circumstances of COVID-19.

**Whether the words “High Yield” in the investment lured investor**

52. As to whether the words “high yield” in the naming of the SPV lured unsuspecting investors. With regards to that, the CEO stated that it was a common name for used in asset class. That originally, they were referred to as Cash Management Solution but CMA wanted another name according to the nomenclature used for such investments and then approved CHYS.

**Whether the investors willing to lose the 10 per cent will be compensated**

53. As to whether the company would compensate the investors who were willing to lose their 10 per cent as per the agreement signed. The CEO stated that the 10 per cent was on the real estate side whereby investors are compensated subject to availability of funds. In this situation, the investors would have to wait according to the contract.

**Insurance for the investments**

54. The CEO stated that an investment company does not offer insurance products like insurance companies. Also, the cost of insurance cost would be too high. However, the investors were aware that the product was not insured.

### **Whether Cytonn continues to advertise their products**

55. On whether the company was still in the business and advertising for various products. The CEO stated that they have different Special Purpose Vehicles (SPVs) that are conducting their business uninterrupted. For example, their hospitality and pension fund business where they are signing up more people since they are separate businesses not involved in CHYS. However, the businesses which have an issue like CHYS and real estate, the company is no longer taking money after the preservation orders.

### **Proposals to address the issues in real estate development**

56. On the existing gaps that have caused the problems between Cytonn and its investors; the CEO stated that there is need for a regulatory framework establishing a regulator of the developers. Also, there is need for funding mechanism that allows use of title deeds to get relief from development banks.

## **3.3 THE CAPITAL MARKETS AUTHORITY**

Mr. Wycliffe Shamiah, the CEO of Capital Markets Authority accompanied by other officials appeared before the Committee on Tuesday 21<sup>st</sup> March 2023 and submitted as follows:-

57. CIMP was a group incorporated in Kenya offering products and services in regulated space through related parties and also in private markets which are unregulated. CIMP is not licensed by the (CMA).
58. CMA licensed Cytonn Asset Managers Limited (CAML), a company held 25% by CIMP as a fund manager in March 2018. Subsequently, CAML applied and was granted a REIT Manager's License in February 2019. CAML anticipated that upon licensing, it would manage the unregulated real estate business by Cytonn upon its conversion to a regulated business under Capital Markets (Real Estate Investment Trusts) (Collective Investment Scheme) Regulations, 2013.
59. As a licensed fund manager, CAML manages the Cytonn Unit Trust Scheme which has six registered collective investment funds under the Capital Markets (Collective Investment Scheme) Regulations, 2001 i.e.
- a) Cytonn Money Market Fund
  - b) Cytonn Equity Fund
  - c) Cytonn Balanced Fund
  - d) Cytonn Money Market USD Fund
  - e) Cytonn Africa Financial Services Fund
  - f) Cytonn High Yield Fund

60. The CMA observed a practice where most financial service institutions including its licensed entities were offering an unregulated cash management product that would pool funds from the public for a guaranteed return. This product was not within the mandate of CMA.
61. To curb associated risks, the CMA, issued a circular (Circular No. 8/2016) requiring all licensed intermediaries to cease and desist from offering and engaging in unregulated activities outside the perimeter of regulated products under the Capital Markets Act, Cap 485A of the Laws of Kenya.
62. During that period Cytonn was offering services suspected to resemble those that were being offered by licensees of CMA but without a license as stated above. This led to a protracted engagement between CMA and Cytonn culminating in the CMA requiring Cytonn to procure a license from the CMA if it wished to continue with the service. At the same time for products that seemed to mimic regulated products, Cytonn agreed to restructure those products to fit under the Capital Markets (Collective Investment Schemes) Regulations, 2001 and also apply for a fund manager license under the Capital Markets (Licensing Requirements) (General) Regulations, 2002.
63. CMA received an application from CAML, after compliance with the applicable regulatory requirements, CAML was granted a fund manager licence.
64. CHYS was an unregulated product with guaranteed returns, Cytonn was presenting CHYS as a private offer but upon scrutiny by the Authority it was determined to be a public offer especially due to the mode of its distribution which targeted the general investing public. This was contrary to the provisions of the *Capital Market (Securities) (Public offers, listings and Disclosure) Regulations, 2002* and specifically regulations 20 and 21. The Regulations provide that a private offer is that which is offered to not more than 100 persons or the securities are offered to the members of a club or association (whether or not incorporated and the members can reasonably be regarded as having a common interest worth each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer.
65. Due to the foregoing, CMA engaged CIMP on the conversion of unregulated CHYS to regulated fund. Cytonn applied for the registration of CYHF. To ensure a seamless transition, a road map for this conversion was developed. The Road map stipulated how the clients in the CHYS would convert into a regulated CHYF and the eventual wind up of CHYS. CHYF was registered by CMA on March 22, 2019.

66. The roadmap was not implemented as agreed prompting the Authority to issue a directive vide a letter dated January 4, 2020 for CHYS to cease operation by January 31, 2020. Cytonn threatened to sue the Authority and issued a demand letter demanding withdrawal of the Authority's directive. After several engagements with Cytonn, the Authority reviewed its earlier directive and granted Cytonn a three-month extension to allow for the transition of the CHYS to CHYF via a letter dated January 20, 2020. Upon lapse of the extended period, Cytonn failed to affect the transition. CIMP and Cytonn related persons have filled several matters in court challenging various directives and mandate of the Authority.

#### **Application of Investor Compensation Fund (ICF)**

67. The Investor Compensation Fund is established under Section 18 of the Capital Markets Act. Section 18 of the Capital Markets Act provides as follows:

*“There shall be established a Fund to be known as the Investor Compensation Fund for the purposes of granting compensation to investors who suffer pecuniary loss resulting from the failure of a licensed stockbroker or dealer, to meet his contractual obligations and paying beneficiaries from collected unclaimed dividends when they resurface.”*

68. Regulation 64 of the Capital Marketing (Licensing Requirements) (General) Regulations 2002, provides that:

*“(1) Every buying or selling stockbroker or dealer that is a trading participant of a securities exchange shall contribute to the Compensation Fund such amount as shall be prescribed from time to time by the Authority.”*

69. Further, Regulation 69 requires that investors shall apply to the Authority for compensation from the Compensation Fund in cash or securities equal to the net loss following a pecuniary loss due to the failure of a stockbroker, dealer or an investment bank carrying out stock broking business or dealing operations, to meet its contractual obligations.

70. Based on the above provisions, investors in the CHYS are not entitled to benefit from the Investor Compensation Fund in case they suffer loss of their investment.

### 3.3 THE OFFICIAL RECEIVER

Mr. Mark Gakuru, the Official Receiver accompanied by other officials appeared before the Committee on Tuesday 21<sup>st</sup> March 2023 and submitted as follows: -

71. The Official Receiver was appointed as Liquidator of Cytonn High Yield Solutions and Cytonn Real Estate Project Notes by an Order of the Court dated 6<sup>th</sup> January, 2023.
72. While issuing the Liquidation orders, the Court also granted Preservation orders over assets identified as: Alma, Appleton/Miotoni, Riverun, Ridge and Taraji.
73. The Official Receiver ascertained the partnership records of the two entities in liquidation and confirmed the following:
  - a) **Cytonn High Yield Solutions LLP (CHYS)**  
In accordance with records held at the Companies Registry, the Partners are; Cytonn Investments Management PLC & and Edwin Harold Dayan Dande, while the Manager is Patricia Njeri Wanjama.
  - b) **Cytonn Real Estate Project Notes LLP (CPN)**  
In accordance with records held at the Companies Registry, the Partners are; Cytonn Investments Management PLC and Cytonn Real Estates LLP, while the Manager is Edwin Harold Dayan Dande.
74. Regarding progress made on the Liquidation progress, the Official Receiver was in the process of reviewing the documentation filed and are also in the process of ascertaining the assets and liabilities of the LLPS. This will be done by admitting proof of debt forms from creditors and ascertaining the legitimacy of all claims.
75. From preliminary perusal of the records submitted, the following are the Special Purpose Vehicles (SPVs) affected in relation to the above LLPS in liquidation:
76. **Cytonn Investment Partners 15 (Superior Homes)** - A financing agreement between CHYS and Cytonn Investment Partners 15 was entered into in January 2017, with an agreement to borrow Kshs 500 million shillings to acquire and facilitate the acquisition of shares in Superior Homes Kenya Limited.

CHYS only financed for a purchase of shares worth Kshs,250 million being 12.5% stake in Superior Homes Kenya Limited. The Shareholders of Superior Homes have proposed a buy back of the said shares and we are in the process of conducting a valuation to ascertain the current value and later realize the shares.

77. **Cytonn Investment Partners 16 – Kilimani Properties-** This is a 4-acre parcel of land along Argwings Kodhek road in Kilimani area of Nairobi County. The property is unencumbered. The Official Receiver has requested for the Title documents in relation to the parcels and was yet to receive feedback on the same. Funds were borrowed from CHYS and another project, “*the Ridge*” to acquire the property.

78. **Cytonn Integrated Projects – The Alma (46 Acres) Ruaka-** To finance the SPV, a financing agreement was entered into between LLP 16 and CHYS to borrow a principal sum of up to Kshs 3.0 billion. We are yet to ascertain how much was drawn down from CHYS following this agreement.

SBM Bank Limited is a secured creditor in relation to this property and there are other purchasers with varying interests on the property.

79. **Cytonn Investment Partners 10 – Taraji Heights 3 acres, Ruaka Kiambu-** To facilitate the acquisition of the land and financing the development of LLP 10, the LLP entered in a financing agreement with CHYS in April 2016 to make available for the SPV Kshs 2.0 billion; and Cytonn Real Estate Project Notes (CPN) in December 2017 to make available a facility to the LLP of Kshs 2.0 billion. We are yet to ascertain how much was drawn down from CHYS and CPN following this agreement.

There were other purchasers with varying interests on the property which are yet to be verified.

80. **Cytonn Investment Partners 11 – the Ridge – 9.9 acres, Ridgeways, Kiambu County-** To finance the SPV, a financing agreement was entered into between Cytonn Investment Partners 11 and CHYS to borrow a principal sum of Kshs 2.0 billion to acquire and facilitate the purchase of the land and finance the project in June 2016 and later in November 2017, entered in financing agreement of Kshs 1.0 billion with CPN.

The Official Receiver was yet to ascertain how much was drawn down from CHYS and CPN following this agreement. There are other creditors against this SPV including TAALERI & Cytonn High Yield Fund, which we are yet to verify their claim.

81. **Cytonn Investment Partners 20 – Cysuites (serviced apartments, Wetlands) -** To acquire the property and do renovation works to upgrade, Cytonn Investment Partners 20 got into a financing agreement with CHYS to avail a facility of up to Kshs 1.0 billion at a rate of 21.0% p.a. We are yet to ascertain how much was drawn down from CHYS following this agreement.

Additionally, the LLP has borrowed Kshs 75.8 million from other SPV which was to be verified.

Cytonn Investment Partners 20 also took over a liability of USD 3,600,000.0 from the previous ownership, charged to the title by Kenya Commercial Bank.

82. **Cytonn Investment Partners 18 – Applewood – Miotoni Karen-** To fund the project, the SPV entered into a financing agreement in August 2017 with CHYS to borrow Kshs 1.0 billion to finance land purchase and begin construction of the project, and later, in November 2018 agreed to be financed by CPN, with an agreement to borrow Kshs 2.0 billion. We are yet to ascertain how much was drawn down from CHYS following this agreement.

It has been reported that there are encumbrances registered against the title, with a caution dated 13th March 2020 by Pankaj Natwarial Nathwani, Mitaj Natwarial Nathwani and Sejal Manish Kanani claiming a lender's interest pursuant to a Deed of pledge dated 4<sup>th</sup> September 2018, Statutory Declaration dated 13th March 2020 and informal charge dated 1<sup>st</sup> September 2018.

83. **Cytonn Investment Partners 5 Riverun – Kiambu-** The Riverrun project was a Joint Venture between Laban Muiruri and Cytonn Investment Partners 5. To facilitate the land acquisition and financing the development project, **Cytonn Investment Partners 5** entered into a financing agreement with Cytonn High Yield Solutions (CHYS) to make available to the borrower (LLP 5) a facility of up to Kshs 2.0 billion in 2016. Additionally, later in May 2018, Cytonn Real Estate Project Notes LLP (CPN) agreed to lend Riverrun a facility of up to Kshs 100.0 million, to also facilitate the development of the project. We are yet to ascertain how much was drawn down from CHYS following this agreement.

The Joint Venture Partner, Laban Muiruri sought to exit the JVA leading to negotiations between the two partners on how to settle the matter. An amicable agreement was reached in November 2022. We are following up on the adoption of this settlement agreement to

84. **Cytonn Investment Partners 4 and Mystic Plains – 1000 acres, Athi river-** This was a joint venture between Cytonn Investment Management and a family referred to as the Mutuas that sat on a 1,000 acres' piece of land to form the Mystic Plains LLP.
85. To facilitate the purchase of the portion of the property, LLP 4 entered into a financing agreement with Cytonn High Yield Solutions, with an agreement to borrow up to Kshs 2.0 billion in July 2015. We are yet to ascertain how much was drawn down from CHYS following this agreement.

### 3.4 SITE VISITS

#### The Alma

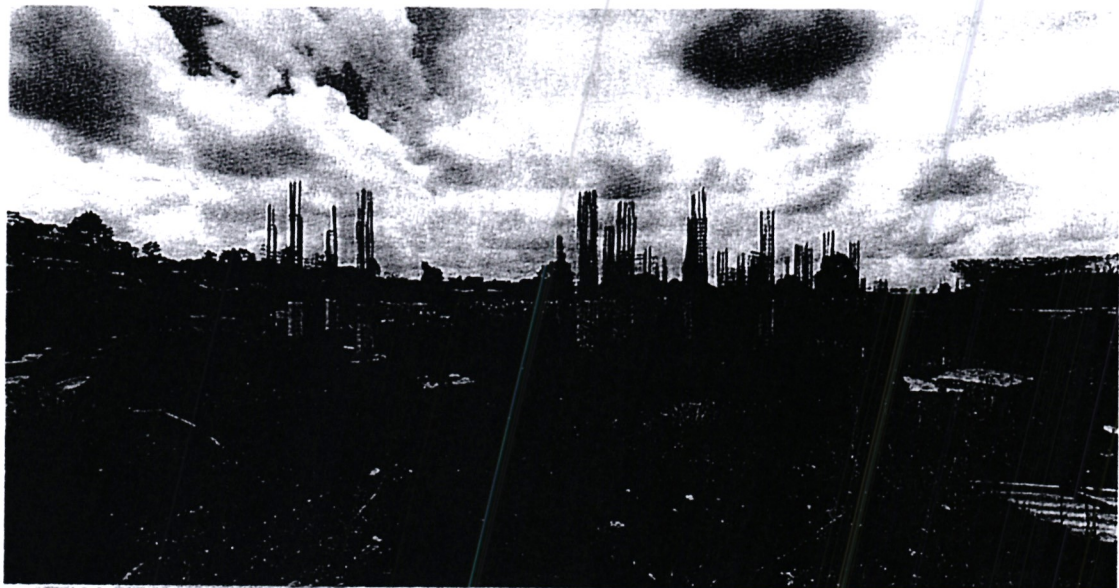
86. *The Alma* is a residential development in Ruaka. The development has nine (9) blocks with four hundred and seventy-seven (477) units. Construction is partly finished, with the part of the property handed over to the investors being 100 percent occupied. The property comprises of four (4) phases, it has a commercial centre, shopping centre, Day care centre, and Gym and Aerobics area.
87. The title of *Alma* property is still held by the Financiers as meeting the loan obligations has been a challenge. The Director explained that Cytonn had sought that the court lifts preservation orders so as to finish sale of the units and realize the value of the property to completion.





### **The Ridge**

88. *The Ridge* was intended to be a comprehensive and luxurious mixed-use development located in Ridgeways, Nairobi and sits on 9.9 acres of land. The Committee experienced initial challenges in accessing the site since the contractor did not grant access. Later after consultation with the management of Cytonn, access was granted.
89. The ground had a show house, site house and trenches that were intended to form part of the foundation. The Committee learnt that works had not continued owing to termination of the contract in the year 2020. This was as a consequence of non-payment of dues owed by Cytonn Investments.
90. The petitioners to the National Assembly were investors in this particular project.
91. Some of the investors who purchased land from *The Ridge* were transferred to the complete sections of *the Alma* as a form of negotiation.



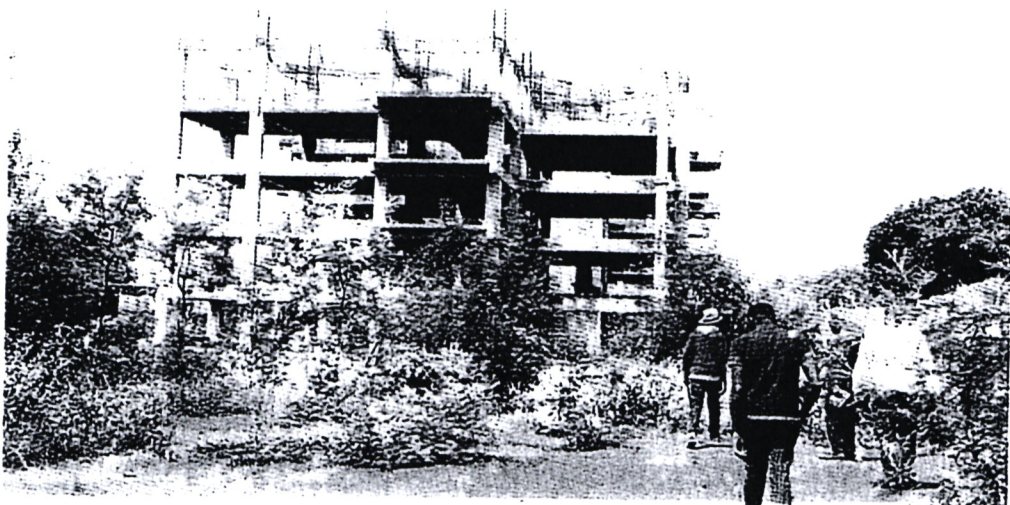
### **River Run Estates**

92. *River Run Estates* is a master-planned development to be undertaken on a 100-acre parcel, formerly a coffee farm on the leafy Ruiru slopes. This sloppy terrain is complimented by a retaining dam stretching over 8 km along the parcel's peripheral and a river cutting across a section of it. The development was intended to comprise of residential, commercial and recreational spaces.
93. There was only a site House at the parcel of land as the project had stalled since 2020.



### Taraji

94. *Taraji Heights* is a comprehensive mixed-use development own by Cytonn located in Ruaka only 30 minutes from the Nairobi CBD. The development comprises 2-, 3- and 3-bedroom apartments with a DSQ, a retail facility, a private clubhouse with a swimming pool, gym and spa and well-manicured gardens. The project sits on a 2.8-acre piece of land and is valued at Kshs. 2.0Billion but the said development has stalled. The development is among the Cytonn investments under receivership and the court issued preservation orders to that effect.





### **Kilimani**

95. This is a 4-acre parcel of land along Argwings Kodhek road in Kilimani area of Nairobi County. The property is unencumbered and valued at 4.3 Billion. The Official Receiver has requested for the Title documents in relation to the parcels and was yet to receive feedback on the same. Funds were borrowed from CHYS and another project, "*the Ridge*" to acquire the property. The said property has no charge and has a *Title* under Cytonn Properties which therefore means the property has not been charged by any institution as at the time the preservation orders were issued by the court. The property is one of Cytonn's investments under receivership.



## COMMITTEE OBSERVATIONS

From submissions, hearings and evidence adduced by the Petitioners and other witnesses, the Committee observed -

**THAT –**

96. More than four thousand (4,000) investors had invested in the Cytonn investments Ltd and had grievances against the company. In addition to the three original Petitioners, the Committee admitted additional list of Petitioners who had valid contracts and agreements with CIMP.
97. The proprietors of CIMP had registered different and numerous entities namely Cytonn High Yields Solutions (CHYS) and CPN among others. These two entities received money from the investors and later transferred the money to forty-nine (49) SPVs which were subsidiaries to Cytonn.
98. Monies collected from investors were transferred to SPVs under loan notes agreements. These SPVs were then supposed to buy land, put up apartments, sell them and give money to creditors.
99. The investors had no access to their investments as they were managed by different entities which they had no contract with.
100. The entities and the SPVs under Cytonn Investments Management were owned by the same directors and owners of Cytonn Investment Management.
101. In accordance with the CMA Act and Regulations, Cytonn Investment Management had issued to the market both regulated and unregulated products. The regulated products had no issues, meaning investors therein could withdraw their funds whenever they wished while the unregulated products were uninsured.
102. Investors were issued a corporate guarantee on their investment however the same could not be invoked.
103. Cytonn Investment Management PLC continues to engage in extremely aggressive advertising and marketing using words, statements and phrases that could be construed to be so enticing and luring to unsuspecting Kenyans to buying or taking up the products so advertised or marketed without sufficient notice and information contrary to consumer protection laws.
104. In accordance with its mandate of curbing associated risks in the market, the Capital Markets Authority (CMA) issued a Circular (Circular No. 8/2016) requiring all licensed intermediaries to cease and desist from offering and engaging in

unregulated activities outside the perimeter of regulated products under the Capital Markets Act, Cap 485A of the Laws of Kenya.

105. CMA engaged Cytonn requiring it to procure a license to allow it to operate the service and products that falls within the purview of the Capital Markets (Collective Investment Schemes) Regulations, 2001 and also apply for a fund manager license under the Capital Markets (Licensing Requirements) (General) Regulations, 2002. To this end, Cytonn did not procure the required licences.
106. Cytonn High Yields Solution (CYHS) was an unregulated product with the promise of guaranteed returns contrary to the provisions of the *Capital Market (Securities) (Public Offers, Listings and Disclosure) Regulations, 2002* and specifically Regulations 20 and 21. The Regulations provide that -
- “a private offer is that which is offered to not more than 100 persons or the securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer)”*.
107. CMA engaged CIMP on the need to convert the unregulated CHYS to a regulated fund i.e. Cytonn High Yield Fund (CYHF), which they applied for the registration and registered by CMA on March 22, 2019.
108. A road map for the conversion was developed, where the clients in the CHYS would convert into a regulated CHYF and the eventual wind up of CHYS. However, the same was not implemented as agreed prompting the CMA to issue a directive vide a letter dated January 4, 2020 for CHYS to cease operation by January 31, 2020. CIMP threatened to sue the Authority and issued a demand letter, seeking withdrawal of the Authority’s directive. After several engagements with CIMP, the Authority reviewed its earlier directive and granted CIMP a three-month extension to allow for the transition of the CHYS to CHYF via a letter dated January 20, 2020. Upon lapse of the extended period, CIMP failed to effect the transition. CIMP related persons have filed several matters in court challenging various directives and mandate of the Authority.
109. Section 18 of the Capital Markets Act and Regulation 64 of the Capital Marketing (Licensing Requirements) (General) Regulations 2002 provides that investors in Capital Markets products and/or services are entitled for compensation from the Fund if they suffer pecuniary loss resulting from the failure of a licensed stockbroker or dealer, to meet his contractual obligations and paying beneficiaries

from collected unclaimed dividends when they resurface. The investors in CHYS are not liable for compensation from the fund as the product is unregulated.

110. During the pendency of the Petition before the Committee, Liquidation Orders against certain entities - CHYS and CPN under Cytonn Investment Management PLC were issued by the Courts whereupon an Official Receiver was appointed. The Order was made against among other properties, the Ridge, which is at the heart of this Petition. The Committee also noted that CHYS and CPN were subject of the orders.

## PART FOUR

### 4. ANALYSIS OF ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION

Upon hearing from the Petitioners and other witnesses, the Committee makes determination on prayers sought in the Petition as follows:

Prayer No. 1: *summon the Capital Market Authority (CMA) to establish how they intend to operationalize the Investor Compensation Fund to grant compensation to investors who suffer pecuniary loss resulting from the failure of a licensed stockbroker or dealer to meet his contractual obligations as stipulated in Section 18(1) of the Capital Markets Act*

111. The Committee -

- a) Summoned the CMA and notes that the Investor Compensation Fund is operational under the CMA Act CAP 485A and the attendant Regulations.
- b) CYHS was an unregulated product with promise of guaranteed returns by Cytonn.
- c) Cytonn has not converted CYHS to CYHF as advised by CMA where the clients in the CHYS would convert into a regulated CHYF and eventually benefit from the Investor Compensation Fund in case of pecuniary loss.
- d) Section 18 of the Act and Regulation 64 of the Capital Marketing (Licensing Requirements) (General) Regulations 2002 provides that investors in Capital Markets products and/or services are entitled for compensation from the Fund if they suffer pecuniary loss resulting from the failure of a licensed stockbroker or dealer, to meet his contractual obligations and paying beneficiaries from collected unclaimed dividends when they resurface. The investors in CHYS are not liable for compensation from the fund as the product is unregulated.
- e) Further, Regulation 69 requires that investors shall apply to CMA for compensation from the Compensation Fund in cash or securities equal to the net loss following a pecuniary loss due to the failure of a stockbroker, dealer or an investment bank carrying out stock broking business or dealing operations, to meet its contractual obligations. **Therefore, investors in the CHYS are not entitled to benefit from the Investor Compensation Fund in case they suffer loss of their investment.**

Prayer No. 2: *engages Cytonn Investment Ltd and its partners to clarify how they intend to fulfil their agreement with the investors/depositors of the aforementioned Ridge development Project*

112. The Committee -

- a) Summoned the CEO, Mr. Edwin Harold Dayan Dande, Cytonn and noted his willingness to complete the projects subject to the lifting of the Preservation Orders by the Court.
- b) Noted that the products by Cytonn - Cytonn High Yields Solution (CYHS) and CPN are unregulated products under the Act.
- c) Cytonn Investment Management PLC has not converted CYHS to CYHF as advised by CMA where the clients in the CHYS would convert into a regulated CHYF.
- d) During the pendency of the Petition before the Committee, Liquidation Orders against certain entities - CHYS and CPN under Cytonn were issued by the Courts whereupon an Official Receiver was appointed. The Order was made against among other properties, *The Ridge*, which is at the heart of this Petition. Therefore, the court process on liquidation be allowed to proceed to its logical conclusion. **This will allow the realization of funds to compensate the investors. Therefore, the Committee recommends that the Official Receiver speeds up the process of liquidation and report to the National Assembly within six (6) months from the date of adoption of this report.**

Prayer No. 3: *holds the Chief Executive Officer (CEO) of Cytonn as responsible for the mismanagement and secures the timely refund of investors'/depositors' money*

113. The Committee -

- a) Noted under the leadership of the CEO Mr. Edwin Harold Dayan Dande, Cytonn and his partners failed, neglected and/or refused to facilitate the conversion of CYHS to CYHF as advised by CMA where the clients in the CHYS would convert into a regulated CHYF.

- b) Noted that under the leadership of the CEO Cytonn and his partners failed to register the products in accordance with the CMA Act.
- c) Noted that under the leadership of the CEO Cytonn and his partners failed to apply sound corporate governance techniques and strategies on the investment portfolios.
- d) The CEO of Cytonn, Mr. Edwin Harold Dayan Dande be held personally liable for the loss of investors' money. **Therefore, the Committee recommends that, the Directorate of Criminal Investigations undertakes thorough investigations into the following -**
  - i.) **affairs of Cytonn particularly on the matters raised in this petition and proffer criminal prosecution against any person found culpable;**
  - ii.) **the relationship between officials of Cytonn and the CMA between the period of 2015 and 2021;**
  - iii.) **The business dealings of the 49 SPVs including their assets and liabilities if any; and**
  - iv.) **The business dealings of Mr. Edwin Harold Dayan Dande including his assets and liabilities.**

**Prayer No. 4:**            *make any other recommendation the committee deems fit in the circumstance of the matters raised in the petition*

114.            The Committee recommends that -

- i.) The Capital Markets Authority fast tracks the “*Alternative Funds Regulations*” for private Markets so as to seal loop holes by rogue operators.
- ii.) The House amends the Capital Markets Authority Act to provide for an expanded market conducive environment for capital markets.

**PART FIVE**

**5. COMMITTEE RECOMMENDATIONS**

Pursuant to the provisions of Standing Order 227, the Committee recommends that: -

- i.) The Official Receiver speeds up the process of liquidation and report to the National Assembly within a reasonable time.
- ii.) The Capital Markets Authority fast tracks the "*Alternative Funds Regulations*" for private Markets so as to seal loop holes by rogue operators.
- iii.) The House amends the Capital Markets Authority Act CAP 485A to provide for an expanded market conducive environment for capital markets.
- iv.) Pursuant to the provisions of Standing Order 208A (2) (c), the findings arising from the consideration of the petition be debated by the House.



for.

**THE HON. NIMROD MBITHUKA MBAI, M.P.**  
**CHAIRPERSON, PUBLIC PETITIONS COMMITTEE**

DATE.....28/05/2023.....