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THE SENATE

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TWELFTH PARLIAMENT

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

ON

THE PETITION SUBMITTED BY THE WAJOMVU COMMUNITY, CONCERNING THE ALLEGED HISTORICAL LAND INJUSTICES INVOLVING PLOT NO. 162/V/M.N.CR 1070, IN MOMBASA COUNTY

JUNE, 2021

(2) Rt. Hon. Speaker
You may approve for tabling
05/07/21

(1) DCEG
Recommended & forwarded for processing for approval
02/07/21.

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List of Abbreviations/ Synonyms

CS	- Cabinet Secretary
EACC	- Ethics and Anti-Corruption Commission
MoLPP	- Ministry of Lands & Physical Planning
NLC	- National Land Commission

PREFACE

Mr. Speaker sir,

The Standing Committee on Land, Environment and Natural Resources is established pursuant to Standing Order 218(3) of the Standing Orders of the Senate. As set out in the Second Schedule, the Committee is mandated to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

A. Committee Membership

The Committee comprises of the following Members.

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

At the Sitting of the Senate held on 4th August, 2020 the Honourable Deputy Speaker of the Senate, reported to the Senate that a Petition has been submitted through the Clerk, by the Wajomvu Community, Mombasa County, concerning the alleged historical land injustices involving Plot No. 162/V/M.N.CR 1070, in Mombasa County.

The salient issues raised in the said Petition are as follows-

1. That the petitioners are amongst the 12 Swahili tribes and the earliest tribes to settle in Jomvu Kuu, Mombasa, approximately 800 years ago;

2. That in 1877, a Jomvu elder allocated Dr. Krapf a parcel of land to establish a church; however, when the land adjudication was done in 1923, the Methodist Church was allocated 150 acres of the Wajomvu Community land;
3. That recently, the Methodist Church has embarked on a sub-division exercise and sale of the land to third parties;
4. That the land is the ancestral land of the Wajomvu Community, who have been using the land for their livelihoods, cultural, and religious purposes, and that it is their route to Jomvu Maunguja, their fishing grounds and further that the community has no alternative land to settle on; and
5. That three years ago, the community submitted a memorandum on the matter to the National Land Commission (NLC), but to date, no response has been given.

The petitioners therefore pray that the Senate undertakes an inquiry into the matter, with a view to resettle the local community on their land.

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

Pursuant to Articles 37 and 119(1) of the Constitution, section 5(2) the Petition to Parliament (Procedure) Act and standing order 232 of the Senate Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioner within the prescribed period.

To enable a judicious disposal of the Petition, the Committee resolved to conduct an inquiry on the issues raised in the Petition. In this regard, the Committee invited the Petitioner to a meeting of the Committee for the Petitioner to elaborate further on the issues raised in the Petition and to supply supporting evidence on the same.

The Committee proceeded to invite the Cabinet Secretary, Ministry of Lands and Physical Planning and the National Land Commission on the aforementioned Petition.

ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Petitioners, Ms. Farida Karoney, EGH, Cabinet Secretary, Ministry of Lands and Physical Planning and Mr. Gershom Otachi, Chairperson, National Land Commission, for their submissions and contribution to the resolution of this matter.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Standing Committee on Lands, Environment and Natural Resources on the 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.

Signed: ..... **Date:** 11/6/2021

SEN. MWANGI PAUL GITHIOMI, M.P.
CHAIRPERSON, SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

CHAPTER I

INTRODUCTION

1. At the sitting of the Senate held on 4th August, 2020 the Honourable Deputy Speaker of the Senate, reported to the Senate that a Petition has been submitted through the Clerk, by the Wajomvu Community, Mombasa County, concerning the alleged historical land injustices involving Plot No. 162/V/M.N.CR 1070, in Mombasa County.

2. The salient issues raised in the said Petition are as follows-

(a) That the petitioners are amongst the 12 Swahili tribes and the earliest tribes to settle in Jomvu Kuu, Mombasa, approximately 800 years ago;

(b) That in 1877, a Jomvu elder allocated Dr. Krapf a parcel of land to establish a church; however, when the land adjudication was done in 1923, the Methodist Church was allocated 150 acres of the Wajomvu Community land;

(c) That recently, the Methodist Church has embarked on a subdivision exercise and sale of the land to third parties;

(d) That the land is the ancestral land of the Wajomvu Community, who have been using the land for their livelihoods, cultural, and religious purposes, and that it is their route to Jomvu Maunguja, their fishing grounds and further that the community has no alternative land to settle on;

(e) That three years ago, the community submitted a memorandum on the matter to the National Land Commission (NLC), but to date, no response has been given.

The petitioners therefore pray that the Senate undertakes an inquiry into the matter, with a view to resettle the local community on their land.

3. Pursuant to Standing Order 232(1) of the Standing Orders of the Senate, the Petition was committed to the Lands, 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 No. 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 (60) 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 No. 233 requires the Clerk to, within fifteen (15) 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 in 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 Petitioner at a meeting of the Committee held on 13th November, 2020.

3. Thereafter the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning and the Chairperson of the National Land Commission, who virtually appeared before the Committee on 24th February, 2021 and on 7th April, 2021.

4. The Committee further undertook a site visit on 19th February, 2021 as observed in the photos attached below.

County Visit Photos as the Committee collected views from the public







Presentation by the Petitioners and Community Representatives

Presentation by Imam

a) Jomvu people were the original inhabitants of the land in question and are able to trace their history to the 15th century;

b) Dr. Krapf asked for a place to put his materials to build a church in Rabai in the area;

c) The Wajomvu have been residents in the area for 700 years;

d) There are two sections of old graveyards, one for the community and one for those who passed away from diseases;

e) Jomvu people have welcomed many communities and lived in peace. However, their land has been taken such as the fishing rearing sites;

f) Their prayer is that all the historical land be returned to the Wajomvu people especially by the Methodist Church;

g) The Jomvu population has increased and there is no available land;

h) The police station was installed without public participation and put there to intimidate the Jomvu Community; and

i) Land should be allocated to the Jomvu community.

Presentation by Mr. Atseli Lamek- Human Rights activist, Jomvu Mission

a) In the past, there was no Jomvu Mission, it was Jomvu Kuu and Christians and Muslims lived in peace;

b) The Church Mission Society asked for land to put materials and they started allowing teachers to stay and teach the Jomvu elders. The Sultan of Zanzibar is the one who had sent the missionaries;

c) The Church later registered the land and displaced the community that originally donated the land;

d) The people who donated the land are now squatters in their ancestral land;

e) There exists a Court ruling by Justice Omollo; where the Church submitted different titles to the court;

f) The Church has done subdivisions and gotten 454 titles but none from the Jomvu Community is included;

g) They are selling the titles to third parties;

h) Jomvu community cannot afford the land nor the stamp duty required to have the land transferred to them.

i) Their Prayer is that the Committee stops the transfer of titles until the issue is resolved.

j) The police are harassing the youth and several of them have been taken to court.

Presentation by Teacher Sadiki

a) Jomvu was an entry point. The first arrival was Church missionary society by Dr. Krapf then, thereafter, the Methodist Missionary Society followed by Rebecca.

b) The Methodist Church wanted a place to put freed slaves. The land was allocated to build a school for the freed slaves;

c) Joshua Ikiao disrupted the plan on land allocation and the land was allocated to other communities; and

d) The community went to court and lost the case because they didn't have resources. Court ordered them to pay Kshs 12 million.

Presentation by an Elder

a) Land has been subdivided and coconut and mango trees cut down;

b) The new occupants of the land are supported by the police; and

c) There's police harassment for raising their issues.

Presentation by Bishop Charles Makonde - Coast Region Conference Methodist Church

a) Christians and Muslims have lived together for a long time;

b) In 1844, Dr. Krapf and Rebbman went to Rabai as missionaries. In 1857, Dr. Krapf was invited by the Methodist Church in England and had written about his mission in Rabat. He went and spoke to United Methodist Free Churches in England. Dr. Krapf proposed to collaborate with the Methodist Church. In 1860, the Church asked young people and Thomas Wakefield and Rev.Wulner to collaborate with the Methodist Church;

c) In 1862, they all went to Ribe and worked to free slaves. Rev. Wakefield's wife died, and he married a second wife called Esther who lived in Jomvu as part of the mission;

d) Land was put aside together with the British Consulate to put up a mission and a place for freed slaves;

e) An area called Mwagwanda was set aside for farming;

f) Methodist Coast Region Church Conference decided for land to be put aside by the Community. Shukla had a plan for the community to benefit from the land;

g) A caveat on the subdivision of the land was put and in 1903, there was an agreement between the Sultan of Mombasa and British Consultate, where

Wakefield bought the land. The book – *Twende Mbele pamoja* by Barbara Wakefield narrates the entire history.

Presentation by Methodist Trustee Church Member

a) The Coast Church Methodist Conference decided that the land should be subdivided and every person should have 1/4 acre.
b) Strangers entered the land and felled coconut, mango and fruit trees.
c) Out 564 acres the Jomvu people were only given 62 acres.

Committee interventions:

- The Committee required information on whether there were any Minutes from the Coast General Church Conference, that could be submitted;
- Who exactly bought and sold the land? The Committee was informed that the head of the Church at the time, Mr. Joshua Ntombura sold land to the Meru Community; and
- Noting that there are two maps passed by the court, which one is the correct one?

C. Responses by the Cabinet Secretary, Ministry of Lands and Physical Planning

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 1846AD, Dr. Kraph arrived at 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 further 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 a 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 to the petition

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.**

The case presented by the Petition is a 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.

D. Responses by the National Land Commission

This matter is listed as Historical Case No. NLC/HLI/565/2019 that has been prioritized for investigations, hearing and determination.

The Chairman of NLC together with the County coordinator 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 National Land Commission has received a HLI claim no. NLC/HLI/565/2019 for the above and has admitted it for investigation, hearing and determination. The Commission is in touch with the parties on the matter. The Chairman also engaged with the claimants together with the Senate Standing Committee on Lands, Environment and Natural Resources on 20th February 2021. During the visit, the Chairman of NLC accompanied by the County Coordinator, took note of and recorded the detailed statements and submissions by the Claimants.

The Commission has officially communicated to the Methodist Church seeking their position on the petition by Wajomvu Community (*copy of the letter attached*).

In addition to the other HLI cases, this claim has also been prioritized for hearing and determination and particularly the National Land Commission has scheduled to consider the Wajomvu claim within the next 8 weeks.

E. Responses by the Methodist Church of Kenya

Historical Background

The establishment of the mission station at Jomvu was initiated in 1878 by the then United Methodist Free Churches, the precursors of the present Methodist Church in

Kenya. The Church then acquired a sizable piece of land not only for evangelistic purpose but also for the settlement of slaves who were either running away from their masters and some that were rescued from the high seas. This was not the only, settlement by the Methodist Church but there were other settlements in Ribe and Mazeras (Ganjoni). The C.M.S. (Anglican) had another in Frere Town (Kisauni).

In order to ensure that this humanitarian mission was sustained for a long haul the pioneers, Thomas Wakefield and Thomas Carthew, bought land in these places as no land was given for free. The administrator of Jomvu settlement was Thomas Carthew who ensured that the ex-slaves, some of who had ran away from their masters were well treated. They were offered means of livelihood for them and their families by being allocated a piece of land to cultivate. This did not please their masters who tried to claim them back as part of their property and as a compromise, they decided to compensate their masters for the loss.

In 1888, the Methodist mission had paid 3300 Sterling Pounds for the land a huge amount of money at the time. The British Consul in Zanzibar encouraged the missionaries to purchase land in order that they would be safe from the land owners who acted under authority of the Sultan. The Imperial British East Africa Company who administered the territory for Britain oversaw the process was done legally and land titles were processed. The titles were later issued under the Colony and Protectorate of Kenya mandate.

By 1888, Thomas Carthew who was, the pastor and administrator of Jomvu community had more than 200 people who were residing in the Church land. Apart from the Church and his residence he built a school, for the children and a clinic for the community. Those who settled there were well aware they were living in the Church land. In 1923 a title was issued for PLOT NO. LR. 162/V/NIN.

In the year 2003 the Methodist Church in Kenya Registered Trustees Conference office, on its own volition, decided to subdivide their land at Jomvu Mission amongst its fellowship. The leadership at Jomvu M.C.K/Mombasa synod was mandated with planning on how the land would be shared. In a meeting held on 26th February 2011, the Committee agreed that all households would stand on a quarter acre while all those of 18 years whether female or male would each get an 1/8. The distribution was, therefore, done as parties had agreed.

The agreement, however, escalated into civil suits particularly when the Plaintiffs were called upon, vide a letter dated 5th November, 2011 to contribute money towards subdivision of the parcel. It should not be lost to this Honourable Committee, that the agreement between the church was mutually reached and was never repudiated.

Transactions on the Original Title

That, after the Plaintiffs failed to deposit the stated security by court, the Defendants (Methodist Church in Kenya) executed the orders of the court hence 456 Subdivisions. Most of the residents on the property already have their independent titles. The Church sold extra plots to willing buyers have already done their transfers. As things stand plot No. 162 is non-existent.

Litigation

Vide a plaint dated 8th November 2011, one, Akseli Lameck and 121 others filed suit at the High court in Mombasa, being HCC No. 589 of 2011, which was later transferred to the Environment and Land division of the said court to become Mombasa High Court ELC No 589 of 2011.

The Plaintiffs in the suit sought for orders, inter alia:

a) That a declaration that Methodist Church in Kenya's contractual agreement with them (Plaintiffs) be recognized to constitute a valid and enforceable contractual

agreement in law and that the church be compelled to execute transfer documents in favour of the plaintiffs and/or the Registrar of the High court Mombasa to execute the relevant documents upon failure of the church to do so;

b) An order against the Municipal Council of Mombasa to approve the proposed subdivision dated 10th July 2008 and an order directing the Registrar of titles, Mombasa to register and issue titles to the plaintiffs; and

c) A declaration that the Jomvu Mission non-residents and in particular Changamwe brethren, are not beneficiaries of the entire scheme and that any money collected from them by any of the defendants purportedly for allotment of land in Jomvu mission be refunded to them by the defendants.

On 16th December 2019, the Honorable court/ delivered its Judgement dismissing the Plaintiffs' suit and with costs. ***A copy of the relevant Judgement is annexed hereto and marked as 'JM -2".***

Without prejudice to the foregoing, the Honorable learned Judge decreed that the said Plaintiffs be assigned the respective subdivisions as per the approved plans but pegged the allocation on the plaintiff's relationship with the church, having found that indeed the L.R no 162/ V/MN was indeed lawfully owned by the Church. ***(A copy of the relevant Decree is attached hereto and marked as M-3.*** It is noteworthy stating that the decree has never been set aside by any court of Law.

From the said decision, the plaintiffs sought for a variation foregoing orders, more specifically, on the aspect of the security payable. Thereafter the Honourable learned ELC judge, Justice S. Munyao directed the Plaintiff's to have a stay of execution upon payment of Kenya Shillings one Hundred Thousand (Kshs.100,000/=) each in court within Forty-five (45) days of 23rd April, 2020. ***(A copy of the relevant ruling is annexed hereto and marked as 'M 4'.***

None of the Plaintiff's complied with the foregoing orders but they instead, opted to move this court again, in ELC CASE No. 78 OF 2021 seeking, inter alia, orders for a further stay of the orders of 23rd April, 2020, In the current suit, no orders exist as the same were never extended therefore lapsing.

THE SUBDIVISIONS AND/OR OWNERSHIP

The Church then, on 14th July, 1937 appointed the Methodist Missionary Trust Association to be the sole Trustee in place of the then governing body, Methodist Church Missions Kenya Trustees Registered.

The church equally has, over the years acquired various properties in Kenya salient amongst them, (within the coastal region) being –

i MOMBASA/BLOCK XV11/1027
ii MOMBASA/BLOCK/X11/194
iii KWALE/MNAZIN1/792
iv JOMVU/65VPLOT 11
v KWALE/MNAZIN1/935
vi MOMBASA/BLOCK XV11/1031
vii MOMBASA/TONONOKA/PLOT NO. IV/I
viii UPEONV12064
ix KWALE/5007/19
x KONGOWEA/MOMBASA/1494
xi MALINDI CR. NO, 13171 (ORIGINAL NO. 81)
xii GRON NO. CR 50035 REF 2009163/X11-C1
xiii MAZERAS -LR NO. 1270
xiv MSONGETIFU LR 1278
xv LR.161/MIKINDAN1-216 ACRES
xvi LR 654- MAGWANDA- 163 ACRES
xvii LR. 12085 - RIBE

xviii PLOT NO. 208 KIKOMANVMAKOBENI

xix PLOT. NO. 1314 MAANDANI/NYALENI

xx PLOT NO. 693 - PONGARI

xxi PLOT NO.857 CHONYI (MWARAKAYA- PINGILI)

xxii PLOT NO. 208- NYALONI- JIBANA- TSUNONI

xxiii PLOT NO. 24 - MWAKULIO ADJ. SEC

xxiv LR. NO. 1001/2- MAZERAS

xxv KILIF1/MTWAPA/4240

xxvi KILIF1/CHIKUU/542

xxvii MALINDI- LR. N01924

xxviii LAMU/ 4691/24/11

xxix LAMU/LAKE KENYATTA/1/246

xxx LAMU/LAKE KENYATTA/1/251

xxxi PLOT NO, 6711/2- MTOPANGA

xxxii PLOT. LR. NO. 5007/19

xxxiii HONGERA RD (HOUSE LR/NO.134)

xxxiv MOMBASA/BLOCK XV11/1027

xxxv KWALE LUKUNDU S.S/196

So far, as things stand, parcel LR. NO. 162/V/MN does not exist anymore as 456 subdivisions have been done and titles are already out in members and private purchasers own names.

The petitioners have miserably failed to allege anywhere in the petition whether the church fraudulently acquired the parcel and have failed to inform the commission of the effect of the foregoing litigation. The rule of equity is settled that, he who seeks equity must do equity.

The salient question the petitioners have further failed to address, is whether the right for the church to own property anywhere within the Republic of Kenya under article 40 of the Constitution has been removed from the Constitution overnight.

For almost Ten (10) years this case dragged in court, where were the Petitioners to join the suit?

We note with dismay that one of the complainants to the National Land Commission (NLC) is a former retired Reverend of the Methodist Church (Rev. Ronald L. Nzai) who was duly expelled from the Methodist Church in 2020 (as per the 2020 minutes of the Methodist Church in Kenya) after joining a splinter group. They have formed an amorphous group calling itself Methodist Church in Kenya Coast Region Conference Mombasa Synod. This group is not registered under any legal regime and out to create trouble to the mainstream church.

Before the subdivisions, the Church set aside enough land for social amenities e.g. land was set aside for a dispensary, police station, forestry, school and riparian land comprising of 13.75 acres. The total acreage left for subdivision was 50.8 acres. Contrary to what is alleged in the petition there is no blockage to fishing grounds or the jetty. No graveyard was touched by the subdivision. The Petition as a whole is a fallacy which is designed to taste the waters. It has no clear grounds to allege historical injustices. What currently forms JOMVU (Wajomvu) comprises of an entire Sub-County. If what is claimed in the Petition is to be true, then all those land owners within JOMVU must leave.

CHAPTER 5

COMMITTEE OBSERVATIONS

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

1. **LR. NO. 162/V/MN does not exist anymore as 456 subdivisions have been done and titles are already out in members and private purchasers own names.**

2. **This matter is listed as a Historical Case No. NLC/HLI/565/2019 that has been prioritized for investigations, hearing and determination by the NLC.**

3. **Fish landing sites and Jetty's may be currently blocked due to the impasse and a way forward needs to be agreed upon through the local administration.**

CHAPTER 6

COMMITTEE RECOMMENDATIONS

The Committee, having investigated the matter in accordance with its mandate under Standing Order 223 of the Senate Standing Orders recommends as follows -

1. **That the National Lands Commission expedites their investigation on the issue as a historical land injustice and give directions within three (3) months of tabling this Report.**

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.**

APPENDICES

ANNEX I: MINUTES OF THE MEETINGS

ANNEX II: SUBMISSIONS BY KEY 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

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. Mwaruma Johnes, MP
4. Sen. Ndwiga Peter Njeru, EGH, MP
5. Sen. Boy Issa Juma, MP

PRESENT

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

1. Sen. George Khaniri, MGH, MP
2. Sen. Gideon Moi, CBS, MP
3. Sen. (Dr.) Lelegwe Ltumbesi, MP
4. Sen. Sylvia Kasanga, MP

ABSENT WITH APOLOGY

- Member
- Member
- Member
- Member

IN ATTENDANCE

1. Ms. Veronicah Kibati
2. Mr. Victor Bett
3. Mr. Crispus Njogu
4. Mr. Yussuf Shimoy
5. Ms. Mitchell Otoro
6. Ms. Lucianne Limo
7. Ms. Sakina Halako
8. Mr. John Pere
9. Mr. James Kimiti
10. Mr. Naftali Ondiba
11. Mr. Benard Oteyo

SECRETARIAT

- Principal Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Legal Counsel
- Media Relations Officer
- Personal Secretary
- Sergeant-At-Arms
- Audio Recording
- Finance Officer
- 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 3RD SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON FRIDAY, 19TH FEBRUARY, 2021 AT JOMVU, MOMBASA COUNTY AT 10.00 AM.

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

IN ATTENDANCE

A. SENATORS

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

B. STAKEHOLDERS

1. Mr. Gerishom Otachi	- Chairperson, NLC
2. Mr. Nyankeruma	- Dep. Director Lands Ministry
3. Ms. Mary Njenga	- Snr. Sec. Interior Ministry
4. Dep. County Commissioner	

C. PETITIONERS AND THE GENERAL PUBLIC

(Members of the general public)

D. SECRETARIAT

1. Mr. Victor Bett	- Clerk Assistant
2. Mr. Yussuf Shimoy	- Clerk Assistant
3. Ms. Clare Kidombo	- Research Officer
4. Mr. Mitchell Otoro	- Legal Counsel
5. Mr. James Kimiti	- Audio Officer
6. Mr. Patrick Murindo	- Searjent at Arms
7. Mr. Naftali Ondiba	- Finance Officer

MINUTE SEN/SCLENR/13/2021: PRELIMINARIES

The meeting was called to order at 10.30 am by the Chairperson followed by a word of prayer by the Chairperson and the Local Community.

MINUTE SEN/SCLENR/14/2021: ADOPTION OF AGENDA

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

1. Preliminaries - *Prayer*
2. **Consideration of the 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;**
    - Collection of resident affected persons views
3. Any other Business;
4. Date of the next meeting;
5. Adjournment.

MINUTE SEN/SCLENR/15/2021: 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

- **Presentation by the Petitioners and Community Representatives**

Presentation by Imam

- Jomvu people were the original inhabitants of the land in question and are able to trace their history to the 15th century;
- Krapf asked for a place to put his materials to build a church in Rabai in the area;
- The Wa Jomvu have been residents in the area for 700 years;
- There are two sections of old graveyards, one for the community and one for those who passed away from diseases;
- Jomvu people have welcomed many communities and lived in peace, however, their land has been taken for example, fishing rearing sites;
- Their prayer is that all the historical land be returned to Jomvu people especially by the Methodist Church;
- The Jomvu population has increased and there is no available land;
- The police station was installed without public participation and put there to intimidate the Jomvu Community; and
- Land should be allocated to the Jomvu community.

Presentation by Mr. Atseli Lamek- Human Rights activist, Jomvu Mission

- In the past, there was no Jomvu Mission, it was Jomvu kuu and Christians and Muslims lived in peace;
- The church mission society asked for land to put materials and they started allowing teachers to stay and teach the Jomvu elders. The Sultan of Zanzibar is the one who had sent the missionaries;
- The Church later registered the land and displaced the community that originally donated the land;
- The people who donated the land are now squatters in their ancestral land;
- There exists a Court ruling by Justice Omollo; where the Church submitted different titles to the court;

- The Church has done subdivisions and gotten 454 titles but none from the Jomvu Community is included;
- They are selling the titles to third parties;
- Jomvu community cannot afford the land nor the stamp duty required to have the land transferred to them.
- Their Prayer is that the Committee stops the transfer of titles until the issue is resolved.
- The police are harassing the youth and several of them have been taken to court.

Presentation by Teacher Sadiki

- Jomvu was an entry point. The first arrival was Church missionary society by Dr. Krapf then thereafter the Methodist Missionary Society followed by Rebecca.
- They Methodist Church wanted a place to put freed slaves. The land was allocated to build a school for the freed slaves;
- Joshua Ikiao disrupted the plan on land allocation and the land was allocated to other communities;
- The community went to court and lost the case because they didn't have resources. Court ordered them to pay 12million.

Presentation by an Elder

- Land has been subdivided and coconut and mango trees cut down;
- The new occupants of the land are supported by the police;
- There's Police harassment for raising their issues.

Presentation by Bishop Charles Makonde- Coast Region Conference Methodist Church

- Christians and Muslims have lived together for a long time;
- In 1844, Dr. Krapf and Rebbman went to Rabai as missionaries. In 1857, Dr. Krapf was invited by the Methodist church in England and had written about his mission in Rabat. He went and spoke to United Methodist Free Churches in England. Dr. Krapf proposed to collaborate with the Methodist Church. In 1860, the Church asked young people and Thomas Wakefield and Rev.Wulner;
- In1862 they all went to Ribe and worked to free slaves. Rev. Wakefield's wife died and he married a second wife called Esther who lived in Jomvu as part of the mission.
- Land was put aside together with the British consulate to put up a mission and a place for freed slaves;
- An area called Mwagwanda was set aside for farming;
- Methodist Coast Region Church conference decided for land to be put aside by the Community. Shukla had a plan for the community to benefit from the land.
- Bishop Lawi put a caveat on the subdivision of the land and in 1903 there was an agreement between the Sultan of Mombasa and British Consultate, where Wakefield bought the land. The book - Twende Mbele pamoja by Barbara Wakefield narrates the entire history.

Presentation by Methodist Trustee Church Member

- The Coast Church Methodist Conference decided that the land should be subdivided and every person should have 1/4 acre;
- Strangers entered the land and felled coconut, mango and fruit trees
- Out 564acres the Jomvu people were only given 62acres.

Committee interventions:

- The Committee wanted information on whether there are any Minutes from Coast General Church conference, that can be be submitted;
- Who exactly bought and sold the land and was informed that head of the Church at the time, Mr. Joshua Ntombura has sold land to the Meru Community.
- There are two maps passed by the court, which one is the correct one;

Committee Resolution:
The Committee tasked the representative from the Ministry of Interior and coordination of National Government to ensure the issues on the police harassment in Jomvu is addressed at the top level.

Presentation by Ms. Mary Njenga
She asked for peace and promised to raise the issue of police harassment with the PS, Ministry of Interior, Mr. Karanja Kibicho.

Presentation by the Chairperson, NLC
Informed the meeting that he will look into the matter since it falls within historical land injustices and will make appropriate recommendations on solutions.

MINUTE SEN/SCLENR/16/2021: ANY OTHER BUSINESS
There was no other business discussed.

MINUTE SEN/SCLENR/17/2021: DATE OF NEXT MEETING
The meeting was adjourned at 1.30 pm and the date of the next meeting was to follow thereafter in Kwale County.

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

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

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

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.

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.

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

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.

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

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. <u>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;</u>

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

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.

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

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 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

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)**

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.

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

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

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.

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.

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

MINUTES OF THE 26TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 20TH MAY, 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. George Khaniri, MGH, MP	- Member
4. 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
4. Sen. Sylvia Kasanga, MP	- Member
5. Sen. Mwaruma Johnes, MP	- Member

IN ATTENDANCE

A. SENATORS

1. Sen. Michael Mbito, MP	- Senator, Trans Nzoia County

B. MINISTRY OF LANDS AND PHYSICAL PLANNING (MoLPP)

1. Hon. Alex Mbiu	- CAS, MoLPP
2. Mr. Kamau Maina	- Lands Administrator
3. Mr. Chacha Maroa	- Lands Registrar

C. PETITIONERS

1. Mr. Emel Sitienei	- Principal of the School
2. Mr. Stephen Mainga	- Dep. Principal
3. Mr. Peter Kebati	- Chair, Alumni Association
4. Mr. Otsula Robert	- PA, Principal Kitale School
5. Salim Mwidadi	- Jomvu
6. Ahmed Kombo	- Jomvu
7. Mwinyiusi Mzee Mwidadi	- Jomvu
8. Issa Mwidadi Salim	- Jomvu
9. Patience Muhambwa	- Jomvu
10. Joyce Rhai	- Jomvu
11. Ochieng' Githinji	- Jomvu

D. RESPONDENTS

1. Dr. Nathaniel Tum	- Private Developer, Kitale

E. SECRETARIAT

1. Mr. Victor Bett	- Clerk Assistant
2. Ms. Lucianne Limo	- Media Relations
3. Mr. James Kimiti	- Audio Recording

MINUTE SEN/SCLENR/148/2021: PRELIMINARIES

The meeting was called to order at 11.22 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/149/2021: 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 and Introductions*
2. Adoption of the Agenda
3. **Petition concerning the alleged historical land injustices involving Plot No. 162/V/M.N.CR 1070, in Mombasa County;**
    - Submissions by Ministry of Lands and Physical Planning
4. **Petition concerning the alleged illegal alienation of land belonging to Kitale School Primary by a private developer;**
    - Submissions by Ministry of Lands and Physical Planning
    - Submissions by Dr. Nathaniel Tum
5. **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.**
    - Submissions by Ministry of Lands and Physical Planning
6. Any other Business;
7. Date of the next meeting;
8. Adjournment.

MINUTE SEN/SCLENR/150/2021: <u>PETITION CONCERNING THE ALLEGED ILLEGAL ALIENATION OF LAND BELONGING TO KITALE SCHOOL PRIMARY BY A PRIVATE DEVELOPER;</u>

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

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.

- **Submissions by Dr. Nathaniel Tum**

Vide a letter Ref: SEN/DCS/LENR/2/2021/(19) dated 31st April, 2021, the Committee invited the accused, Dr. Nathaniel Tum who made the following submission -

1. THAT I received the above Petition dated 31/3/2021 by email on 1st of April 2021 and wish to address the complaints raised in the petition as follows: -
2. THAT I vehemently deny the allegation by the petitioner that here was an illegal alienation of land belonging to Kitale School and that I conspired with the Commissioner of Lands to alienate 1 acres of the school land.
3. THAT I obtained L. R. NO. KITALE MUNICIPALITY BLOCK 12/236 (formerly BLOCK 12/132) legally having followed all the due process of land ownership in Kenya.
4. THAT I applied for the land referred to above which was Government land together with other applicants being Ms. Halima Kokita of Kapenguria, Messrs Ken Kiptoo and Josephine Kerubo. I am also aware that the Anglican Church where Bishop Emmanuel Chemengich is overseeing and the AIC Church were also applicants for the said land.
5. THAT I am aware that the four of us Kiptoo & Kerubo, Halima and myself were successful each being allotted 1.357, 0.40 and 3.56 hectares respectively.
6. THAT pursuant to my application to be allocated L.R. NO> KITALE MUNICIPALITY BLOCK 12/236, I was issued with a letter of Allotment dated 29th September, 1994. (Annexed herein as NKT1).
7. THAT the letter of allotment was specific that the property was unserveyed.
8. THAT I have been paying rates to Trans Nzoia County for the property since 1994. (Annexed herein as NKT2 is a copy of receipt dated 6th December, 1994).
9. THAT I am aware that the Government has a right to allot land belonging to it and thus there was no illegality as I applied as an ordinary citizen and was allotted and fulfilled the requirements pertaining to the allotment including the payments of fees to the government and all the necessary rates and rents to the relevant authorities.
10. THAT I was issued with the Certificate of Lease on 6th December, 1994 with annual rent of Kshs.70,000. (Annexed herein as NKT3.)
11. THAT upon obtaining the above parcel and after of developing the same, Kitale

School complained through a letter to the ministry of lands that I have encroached into L.R. NO. KITALE MUNICIPALITY BLOCK 12/229.

12. THAT vide a letter dated 27th September 2007, I was requested to surrender the Certificate of Lease to the Commissioner of Lands for cancellation and replacement of a new certificate bearing the correct survey area. (Annexed herein as NKT4).
13. THAT I obliged to the request and vide a letter dated 24th February 2010, I was further requested by the Ministry of Lands to facilitate excision of the part touching Kitale school. (Annexed herein as NKT5).
14. THAT to honour the request, I visited the lands office where I met Mr. Kariuki J.K and voluntarily surrendered the certificate of lease for L.R. NO. KITALE MUNICIPALITY BLOCK 12/132.
15. THAT I was issued with a Surrender Certificate of lease dated 9th March 2010. (Annexed herein as NKT6 is a copy of the certificate.)
16. THAT vide a letter dated 23rd March 2010 the Commissioner of Lands was notified of the new certificate of lease from the Director of Survey. (Annexed herein as NKT7 is copy of the letter.)
17. THAT I was thus issued with a new number being L.R. NO. KITALE MUNICIPALITY BLOCK12/236. (Annexed herein as NKT8 is a copy of the Title.)
18. THAT the Petitioners have been shifting goal posts from encroachment issues to grabbing of their alleged land which forced the Commissioner of Lands to direct the Districts lands office vide a letter dated 8th June 2011 to solve the matter amicably between the Kitale school and myself. (Annexed herein as NKT9 is a copy of the letter.)
19. THAT a Technical Team was formed by the Chief Land Administration office to investigate the matter, which report found that; -

a) Both Tum and the school knew that the disputed land was government land.

b) The school applied to be allocated the land.

c) Tum also applied to be allocated the same land.

d) Tum was allocated the site and developed the same.

e) The site in dispute was formally the area which had encroached on the school compound.

f) Tum has surrendered the land which was in dispute and PIA NO.132 has been resurveyed as Block 12/229.

20. **THAT** the recommendation of the Technical Team referred to in paragraph 19, was that I retain the site block 12/236 that I have developed and the boundaries be maintained as they are on the ground as per the fencing. (Annexed herein as **NKT 10** is a copy of the Report dated 9th October 2012.)
21. **THAT** having being dissatisfied with the above report, Kitale School abandoned the negotiations and filed judicial Review No. 35 of 2011 where the court dismissed their application with costs. (Attached herein as **NKT11** is a copy of the ruling.)
22. **THAT** in its *Orbiter Dictum*, on page 14 of the ruling the court stated that there was undisputed documentary evidence by myself in the application to the Government to be allocated the vacant land.
23. **THAT** the Applicant in Judicial Review No. 38 of 2011 being Kitale school were dissatisfied with the decision and appealed to the Court of Appeal vide C.A No. 1 of 2013 which appeal was dismissed with costs.
24. **THAT** I have since developed my parcel of land where there is a large extensive service station, service by, supermarket and cafeteria. Other developments include a water plant, car wash and residential units at a total cost of Kshs.250 million.
25. **THAT** I am the lawful allotee and thus the legal owner of L.R. NO. KITALE MUNICIPALITY BLOCK12/236 measuring 3.56 ha.
26. **THAT** in reply to **paragraph 16 of the Petition,** Kitale school is being economical with the truth since when they started applying for the school title on 7/6/1993 to the Town Clerk, they were advised to forward their application to the Commissioner of Lands. The question of the school having 55 hectares did not arise. This is captured in the Report of Land Technical Team Trans Nzoia dated 9/10/2012 annexed as NKT10.
27. In **reply to paragraph 17 of the Petition,** the petitioners have not attached evidence of reservation and further the details of the said reservation be it the acreage and the extent of the reservation.
28. In **reply to paragraph 18 of the Petition,** the allegation of grabbing is malicious. The mentioned Part Development Plan (PDP) can only be viewed against subsequent applications and allocation processes for the land in question. I have

followed all due processes in the application and the significance of this document was not raised by the relevant government departments. I am only aware that the school applied and obtained a letter of allotment in 2nd July 1999 for 43.33 Ha as per the approved PDP KTL/10/96/100. **(NKT 10)**

29. In reply to paragraph 19 of the Petition on 13/9/93 during the School Executive Board Meeting, Minute No. EB/93/26 AOB School Land – it was agreed

30. In **reply to paragraph 20 of the** Petition, the statement is inconsistent as on 2nd July, 1999, the Commissioner of Lands issued a letter of allotment for the un-surveyed school plot measuring 43.33 ha as per the approved PDP No. KTL/10/96/100. In addition, the school accepted the offer by paying the lessor fee of Kshs.6,122/=. A survey was done and a lease prepared for a total area of 41.28 ha (102 acres). The exact size was established after the survey.

31. In **reply to paragraph 21 of the** petition, the Ministry of Education was in no position to excise private property under LR. No. Block 12/132 now Block 12/236.

32. In **reply to paragraph 23, 24, and 25 of the Petition,** I was chairman of the PTA of Kitale School in the 1980s and I am not aware of any time that I was requested to assist in acquiring to help in processing a title. I did not offer to assist as I was not an officer in the Ministry of Lands. My role at the time was that of the development of the school technical laboratory and the classrooms. This is a task I executed with excellence resulting in construction of the present lab and modern classrooms. I did fundraising and solicited funds from KPA, Railways, Kenya Seed Co etc. for purposes of the said buildings.

From the reports of Lands, Kitale School applied for the allotment for the school land on 15/7/1993 (Technical Report Page 2). The issue of trusteeship could not have arisen.

33. In **reply to paragraph 27 of the Petition** it is true that I was issued with a Title Deed in 1994, however, it is totally misleading to allege that I clandestinely applied for a private title from the land reserved as public land. There was nothing clandestine about the land as all legitimate procedures were followed.

34. In **reply to paragraph 28 of the Petition,** the allegation is not true. Following the issuance of the title in 1994, the Government surveyors beaconed the land and I fenced the land following the survey beacons and consistent with the title issued. There was no encroachment. (Annexed herewith is the Beacon Certificate **NKT**

13).

35. In **reply to paragraph 29 and 30 of the Petition,** the survey and the beaconing of the land was done may years back and not in March 2021 when this petition was done. I welcome any inspections to confirm the beacons and where they were fixed by the Government surveyors. I confirm that the fencing is within my boundary and I have no desire to encroach on school land.
36. In **reply to paragraph 31 of the Petition** I have no intention to encroach on school land as I am satisfied with my allotted portion.
37. In **reply to paragraph 33 of the Petition,** the statement in itself is prejudicial as I am the lawful owner of the above said parcel LR. No. Block 12/236.
38. In **reply to paragraph 36 of the Petition,** I confirm that my property has never housed a girl's dormitory. It is evident from a physical inspection that the sewer and the girl's dormitory are intact and within the school land. I have no intention of encroaching on the disused school sewer after a new sewer line was put up by the County Government which is now in use.
39. In **reply to paragraph 37 of the Petition,** I was not made party to this complaint.
40. In **reply to paragraph 38 of the Petition** I confirm that I left the chairmanship of Kitale School in the late 80s and I had no fiduciary duty as a trustee of the school during my allotment of the parcel of land in 1994. There was no conflict of interest.

The boundaries were clear and government surveyors were involved and the title issued by Commissioner of Lands following their rectification.

41. In **reply to paragraph 39 and 40 of the Petition** the title can never be cancelled by gazette notice or a ministerial order as indicated on page 22 of the court ruling in JR No.38 of 2011. The cancellation of title 12/132 was as a result of an incorrect survey and not as a result of encroachment of a ministerial order. It is for this reason that I was issued with a new title L.R. No. Block 12/236. As a result of this process, I lost one acre of land which formed part of LR No. Block 12/229 (Kitale School)

Note that the approvals for the re-survey were conducted in Trans Nzoia to obtain the consents from the various Heads of Departments

Thereafter the Director of Survey wrote to the Commissioner of Lands following the

completion of the re-survey of the said land indicating that the Registry Index map had been amended to reflect parcel No.236.

42. In reply to paragraph 41 of the Petition it is not true that I surreptitiously managed to get another title. It is true that due process was followed that a triangle which encroached the Kitale school and which was not fenced was not part of my property. It was not an encroachment by me but it was a survey error. Refer to Letter dated 27/9/2007 (Ref 160742) from the Ministry of Lands **(NKT 4)**
43. In **reply to paragraph 42 and 43 of the Petition** it is true that the matter went to the High Court in Kitale and the court confirmed that the property rights of Dr. Nathaniel Tum cannot be taken away by Judicial Review. The matter went further to the Court of Appeal which upheld the High Court decisions that the property belongs to Dr. Tum.
44. **THAT** my proprietary rights should be protected by the government since my title to LR. NO. KITALE MUNICIPALITY BLOCK 12/236 is a sacrosanct and indefeasible as provided in Article 40 of the Constitution.
45. **THAT** I was allocated LR. NO. KITALE MUNICIPALITY BLOCK 12/236 and lawfully acquired it as indicated in page 20 of the High Court ruling attached as NKT 7.
46. **THAT** I thus pray that the petition be dismissed as LR. No. KITALE MUNICIPALITY BLOCK 12/236 is distinct from LR. NO. KITALE MUNICIPALITY BLOCK 12/229 which belongs to the school.

The Committee noted the following interventions:

- *The Senator, Trans Nzoia County gave his disappointment with reference to the submissions made by the CAS, MoLPP in that it did not provide any way forward for the School; the Senator further noted that the school lost the cause as aresult of technicalities of representation at court.*
- *The Representative from the School Alumni informed the Committee that following the Dr. Nathaniel Tum's presentation that the school had begun the process of registration back in 1983 when he was the Chair of PTA at the school yet he claims not to be aware; he then excised part of the land for his own interests and later built a petrol station; further the Committee was informed that the court in the ruling advised that the remedy was not by way of judicial review and that only NLC and the Land and Environment court can review the matter.*
- *Dr. Tum informed the Committee that he left the school in the 1980's and later applied for a title deed in 1994.*

- *The CAS further assured the Committee that it will restrict the Title deed of the parcel of land until when the Committee completes its investigation onto the matter and a way forward provided by the NLC.*
- *The Committee further ruled that the next meeting on the agenda be held in the presence of NLC on 27th May, 2021.*

MINUTE SEN/SCLENR/151/2021: PETITION CONCERNING THE ALLEGED HISTORICAL LAND INJUSTICES INVOLVING PLOT NO. 162/V/M.N.CR 1070, IN MOMBASA COUNTY;

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

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.

The Committee noted the following interventions:

- *The Committee directed that the CAS further stops further transactions on the contested parcel of Land until the Committee concludes its investigations into the Petition.*
- *That as alleged by the Petitioners that there is an appeal process, yet the Methodist Church has continued selling the Land;*

MINUTE SEN/SCLENR/152/2021: 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;

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

The Committee admitted written Responses on the following Petition as submitted by the Ministry 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.

MINUTE SEN/SCLENR/153/2021: ANY OTHER BUSINESS
There was no other business discussed.

MINUTE SEN/SCLENR/154/2021: DATE OF NEXT MEETING
The meeting was adjourned at 1.00 pm and the date of the next meeting was to be held on thereafter.

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

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

MINUTES OF THE 28TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 27TH MAY, 2021 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

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

IN ATTENDANCE

A. SENATORS

1. Sen. Michael Mbito, MP	- Senator, Trans Nzoia County
2. Sen. Mohamed Faki, MP	- Senator, Mombasa County

B. MINISTRY OF LANDS AND PHYSICAL PLANNING (MoLPP)

1. Ms. Farida Karoney, EGH	- CS, MoLPP
2. Hon. Alex Mbiu	- CAS, MoLPP
3. Mr. Kamau Maina	- Lands Administrator
4. Ms. Caroline Menin	- MoLPP
5. Mr. Robert Nayankeruma	- MoLPP
6. Mr. Mark Ewoi	- Planning, MoLPP

C. NATIONAL LAND COMMISSION

1. Mr. Gerishom Otachi	- Chair, NLC
2. Ms. Esther Murugi	- Commissioner, NLC
3. Prof. J. Tuitoek	- Commissioner, NLC
4. Hezron Alela	

D. PETITIONERS

1. Mr. Emel Sitienei	- Principal of the School
2. Mr. Stephen Mainga	- Dep. Principal
3. Mr. Peter Kebati	- Chair, Alumni Association
4. Salim Mwidadi	- Jomvu
5. Ahmed Kombo	- Jomvu
6. Mwinyiusi Mzee Mwidadi	- Jomvu
7. Issa Mwidadi Salim	- Jomvu
8. Joyce Rhai	- Jomvu
9. Ochieng' Githinji	- Jomvu

E. RESPONDENTS

1.	Dr. Nathaniel Tum	- Private Developer, Kitale
2.	Bishop Joseph Ntombura	- Kenya Methodist Church
3.	Mr. Sonny Mwenda	- Advocate, Kenya Methodist Church

F. SECRETARIAT

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

MINUTE SEN/SCLENR/160/2021: PRELIMINARIES

The meeting was called to order at 11.13 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/161/2021: ADOPTION OF AGENDA

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

1. Preliminaries – *Prayer and Introductions*
2. Adoption of the Agenda
3. **Petition concerning the alleged historical land injustices involving Plot No. 162/V/M.N.CR 1070, in Mombasa County;**
    - Submissions by Ministry of Lands and Physical Planning
    - Submissions by National Land Commission
    - Submissions by Kenya Methodist Church
4. **Petition concerning the alleged illegal alienation of land belonging to Kitale School Primary by a private developer;**
    - Submissions by National Land Commission
    - Submissions by Ministry of Lands and Physical Planning
    - Submissions by Dr. Nathaniel Tum
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLENR/162/2021: <u>PETITION CONCERNING THE ALLEGED ILLEGAL ALIENATION OF LAND BELONGING TO KITALE SCHOOL PRIMARY BY A PRIVATE DEVELOPER;</u>

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

The Cabinet Secretary made reference to the presentation made by the CAS during the previous engagement with MoLPP on the matter.

- **<u>Submissions by National Land Commission</u>**

The Chair NLC submitted as follows;

1. Kitale primary (also referred to as either Kitale School or Kitale Academy) was established in 1929 as per the documentation provided by the School.

2. In a letter dated 14.9.1973 signed by the Director of Urban Rural Physical Planning indicated that Kitale Primary land as 55 Ha and proposed a public road reserve and open space of 2.44 Ha.

3. Planning: The site for Kitale School in Kitale Municipality was provided for in approved Development Plan Ref.10/72/7 on 17-1-1974. However, the acreage is not indicated.

4. Government subsequently re-planned the site resulting in the following Part Development Plans (PDPs)

   a) PDP Ref. No. KTL.10.92.15 approved on 20-8-1992 for proposed primary school with an acreage of 2.09 Ha. .- *Refer to attached Approved Plan Number 174.*

   b) PDP Ref. KTL. 10.94.111 approved in 23-12-1994 for proposed hotel use. (The acreage is not indicated) .- *Refer to attached Approved Plan Number 229.*

   c) PDP Ref. No. KTL. 10.96.100 approved in 23.11.1998 for existing Kitale Academy measuring approximately 43.33 Ha.- *Refer to attached Approved Plan Number 294.*

   d) It appears that one of the above subdivisions created Kitale Municipality Block 12/132 which was registered in favour of Nathaniel Tum.

5. Kitale primary states that it applied for allotment letter in a letter dated 7th June 1983 and a reminder on15th July 1985.

6. On 27th September 2007, the Commissioner of Lands wrote to Nathaniel K Tum asking him to return the title. The title was being recalled for "cancellation and replacement with a new certificate" since it had encroached into Kitale Academy. It seems the a re-survey was done to exclude school dormitory and the title corrected. A preliminary ground report by NLC shows that the School's septic tank is still on the private parcel. The basis of the request by the Commissioner of Lands to Tum was a complaint by the Kitale School that the School land had been encroached by a private developer and that the school developments were comprised in Tum's title.

7. The Minister for Lands vide gazette notice 5566 of 21st May 2010 revoked Nathaniel Tum's title. The gazette notice stated that the land had been reserved for public purpose. We did not find any evidence that the title for Kitale Municipality Block 12/132 was cancelled.

8. **Kitale High Court JR No 38 of 2011**: The School went to Court seeking an order to the commissioner of lands to allocate the land parcel which had been revoked. The court declined to determine the allocation validity issues but held that the gazette notice revocation procedure was un-procedural. The application by Kitale primary was dismissed and the court advised the school to seek lawful and procedural remedy in an appropriate forum. This led to Kitale

primary filing a case at the National Land Commission on 24th February 2020 to relook into the matter.

9. They state that the subject land was school land all along and it had been fenced. They state that they cultivated agricultural crops on the land to feed pupils and students. They allege that unknown to them Tum applied for allocation of part of the school land of 10 acres and got registered via parcel no Kitale Municipal Block 12/132.

Way Forward

a) The Ministry of Lands and Physical Planning may provide more information on the re-planning that became the basis for survey and subsequent registration of the school land and the land held by private developers.
b) NLC can relook at this matter.

- **Submissions by Dr. Nathaniel Tum**

Dr. Tum, reiterated the same as was raised during the previous meeting.

The Committee noted the following interventions:

- *The Senator, Trans Nzoia County gave his disappointment with reference to the submissions made by the CAS, MoLPP in that it did not provide any way forward for the School; the Senator further noted that the school lost the cause as aresult of technicalities of representation at court.*
- *The Representative from the School Alumni informed the Committee that following the Dr. Nathaniel Tum's presentation that the school had begun the process of registration back in 1983 when he was the Chair of PTA at the school yet he claims not to be aware; he then excised part of the land for his own interests and later built a petrol station; further the Committee was informed that the court in the ruling advised that the remedy was not by way of judicial review and that only NLC and the Land and Environment court can review the matter.*
- *Dr. Tum informed the Committee that he left the school in the 1980's and later applied for a title deed in 1994.*
- *The CAS further assured the Committee that it will restrict the Title deed of the parcel of land until when the Committee completes its investigation onto the matter and a way forward provided by the NLC.*
- *The Committee further ruled that the next meeting on the agenda be held in the presence of NLC on 27th May, 2021.*

MINUTE SEN/SCLENR/163/2021: PETITION CONCERNING THE ALLEGED HISTORICAL LAND INJUSTICES INVOLVING PLOT NO. 162/V/M.N.CR 1070, IN MOMBASA COUNTY;

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

The Cabinet Secretary made reference to the presentation made by the CAS during the previous engagement with MoLPP on the matter.

- **Submissions by National Land Commission**

The Chair, NLC submitted as follows;

The National Land Commission has received an HLI claim no. NLC/HLI/565/2019 for the above and has admitted it for investigation, hearing and determination. The Commission is in touch with the parties on the matter. The Chairman also engaged with the claimants together with the Senate Standing Committee on Land, Environment and Natural Resources on 20th February 2021. During visit, the Chairman of NLC accompanied by the County Coordinator, took note of and recorded the detailed statements and submissions by the Claimants.

Hon Chair the Commission has officially communicated to the Methodist Church seeking their position on the petition by Wajomvu Community (*copy of the letter attached*).

In addition to the other HLI cases, this claim has also been prioritized for hearing and determination and particularly the National Land Commission has scheduled to consider the Wajomvu claim within the next 8 weeks

- **Submissions by Kenya Methodist Church**

They submitted as follows;

HISTORICAL BACKGROUND

The establishment of the mission station at Jomvu was initiated in 1878 by the then United Methodist Free Churches, the precursors of the present Methodist Church in Kenya. The Church then acquired a sizable piece of land not only for evangelistic purpose but also for the settlement of slaves who were either running away from their masters and some that were rescued from the high seas. This was not the only, settlement by the Methodist Church but there were other settlements in Ribe and Mazeras (Ganjoni). The C.M.S, (Anglican) had another in Frere Town (Kisauni).

In order to ensure that this humanitarian mission was sustained for a long haul the pioneers Thomas Wakefield and Thomas Carthew, bought land in these places as no land was given for free. The administrator of Jomvu settlement was Thomas Carthew who ensured that the ex-slaves, some of who had ran away from their masters. They were well treated and offered means of livelihood for them and their families by being allocated a piece of land to cultivate. This did not please their masters who tried to claim them back as part of their property. As aa compromise the missionaries decided to compensate their masters for the loss.

In 1888, the Methodist mission had paid 3,500 sterling pounds for the land a huge amount of money at the time. The British consul in Zanzibar encouraged the missionaries to purchase land in order that they would be safe from the land owners

who acted under authority of the sultan. The imperial British east Africa company who administered the territory for Britain oversaw the process was done legally and land titles were processed. The titles were later issued under the colony and protectorate of Kenya mandate.

By 1888, Thomas Carthew who was, the pastor and administrator of Jomvu community had more than 200 people who were residing in the Church land. Apart from the Church and his residence he built a school, for the children and a clinic for the community. Those who settled there were well aware they were living in the Church, land. In 1923 a title was issued for PLOT NO. LR. 162/V/MN.

In the year 2003 the Methodist Church in Kenya Registered Trustees conference office on its own volition decided to subdivide their land at Jomvu Mission amongst its fellowship. The leadership at Jomvu M.C.K/Mombasa synod was mandated with planning on how the land would be shared. In a meeting held on 26th February, 2011.

The Committee agreed that all households would stand on a quarter acre while all those of 18 years whether female or male would each get an 1/8. The distribution was therefore done as parties had agreed.

The agreement, however, escalated into civil suits particularly when the Plaintiffs were called upon, vide a letter dated 5th November, 2011 to contribute money towards subdivision of the parcel. It should not be lost to this Honourable committee that the agreement between the church was mutually reached and was never repudiated.

Transaction on the Original Title

That after the Plaintiffs failed to deposit the stated security by court, the Defendants (Methodist Church in Kenya) executed the orders of the court hence 456 Sub-divisions. Most of the residents on the property already have their independent titles. The church sold extra plots to willing buyers who have already done their transfers. As things stand plot No. 162 is non-existent.

Litigation

Vide a plaint dated 8th November, 2011, one, Akseli Lameck and 121 others filed suit in High court at Mombasa, being **HCC No. 589 of 2011,** which was later transferred to the Environment and Land division of the said court to become Mombasa High Court ELC No.589 of 2011. **A copy of the plaint and the defence is attached hereto and marked as M-1.**

The Plaintiffs in the suit sought for orders, *inter alia:*

a) *That a declaration that Methodist Church in Kenya's contractual agreement with them (Plaintiffs) be recognized to constitute a valid and enforceable contractual agreement in law and that the church be compelled to execute transfer documents in favour of the plaintiffs and/or the Registrar of the High court Mombasa to execute the relevant documents upon failure of the church to do so;*

b) *An order against the Municipal Council of Mombasa to approve the proposed subdivision date 10th July, 2008 and an order directing the Registrar of titles Mombasa to register and issue titles to the plaintiffs*

c) *A declaration that the Jomvu Mission Non-Residents and in particular Changamwe brethren are not beneficiaries of the entire scheme and that any money collected from them by any of the defendants purportedly for allotment of land in Jomvu Mission be refunded to them by the defendants.*

On 16th December, 2019, the Honourable court, delivered its judgement dismissing the Plaintiffs suit and with costs. **A copy of the relevant judgement is annexed hereto and marked as "M-2."**

Without prejudice to the foregoing, the Honourable learned Judge decreed that the said Plaintiffs be assigned the respective sub-divisions as per the approved plans but pegged the allocation on the plaintiff's relationship with the church, having found that indeed the L.R. No.162/V/Mn was indeed lawfully owned by the church. (A copy of the relevant Decree is attached hereto and marked as M-3. It is noteworthy stating that the decree has never been set aside by any court of Law.

From the said decision, the plaintiffs sought for a variation foregoing orders more specifically on the aspect of the security payable, hereafter the Honourable learned ELC judge, Justice S. Munyao directed the Plaintiffs to have a stay of execution upon payment of Kenya Shillings one Hundred Thousand (Kshs.100,000/=) each in court within Forty-five (45) days of 23rd April, 2020. **A copy of the relevant ruling is annexed hereto and marked as "M-4"**

None of the Plaintiffs complied with the foregoing orders but they instead, opted to move this court again, in ELC CASE No.78 of 2021 seeking, inter alia, orders for a further stay of the orders of 23rd April, 2020. In the current suit no orders exist as the same were never extended therefore lapsing.

The Sub-divisions and/or ownership

The Church then, on 14th July, 1937 appointed The Methodist Missionary Trust Association, to be the sole Trustee in place of the then governing body, **Methodist Church Missions Kenya Trustees Registered.**

The church equally has, over the years acquired various properties in Kenya salient amongst them, (within the Coastal Region) being: -

i. **MOMBASA/BLOCK XVII/1027**
ii. **MOMBASA/BLOCK/XII/194**
iii. **KWALE/MNAZINI/792**
iv. **JOMVU/654/PLOT II**
v. **KWALE/MNAZINI/935**
vi. **MOMBASA/BLOCK XVII/1031**
vii. **MOMBASA/TONONOKA/PLOT.IV/I**
viii. **UPEONI/12064**
ix. **KWALE/5007/19**

x. **KONGOWEA/MOMBASA/1494**
xi. **MALINDI CR. NO.13171 (ORIGINAL NO.81)**
xii. **GRON NO.CR 50035 REF 29163/XII-CI**
xiii. **MAZERAS – LR. NO.1270**
xiv. **MSONGETIFU LR. NO.1278**
xv. **LR.161/MIKINDANI-216 ACRES**
xvi. **LR.654 – MAGWANDA -163 ACRES**
xvii. **LR.12085 – RIBE**
xviii. **PLOT NO.208 KIKOMANI/MAKOBENI**
xix. **PLOT NO.1314 MAANDANI/NYALENI**
xx. **PLOT NO.693 – PONGARI**
xxi. **PLOT NO.857 – CHONYI (MWARAKAYA – PINGILI)**
xxii. **PLOT NO.208 – NYALONI – JIBANA – TSUNONI**
xxiii. **PLOT NO. 24 – MWAKULIO ADJ.SEC**
xxiv. **LR. NO.1001/2 – MAZERAS**
xxv. **KILIFI/MTWAPA/4240**
xxvi. **KILIFI/CHIKUU/542**
xxvii. **MALINDI – LR.NO.1924**
xxviii. **LAMU/4691/24/11**
xxix. **LAMU/LAKE KENYATTA/1/246**
xxx. **LAMU/LAKE KENYATTA/1/251**
xxxi. **PLOT NO.62/11/2 -MTOPANGA**
xxxii. **PLOT LR. NO.5007/19 – KWALE**
xxxiii. **HONGERA RD (HOUSE LR/NO.134)**
xxxiv. **MOMBASA/BLOCK XVII/1027**
xxxv. **KWALE LUKUNDU S.S/196**

So far as things stand parcel LR. No.162/V/MN does not exist anymore as 456 subdivisions have been done and titles are already out in members and private purchase own names.

The petitioners have miserably failed to allege anywhere in the petition whether the church fraudulently acquired the parcel and have failed to inform the Commission of the effect of the foregoing litigation. The rule of equity is settled that he who seeks equity must do equity.

The salient question the petitioners have further failed to address, is whether the right for the church to own property anywhere within the Republic of Kenya under article 40 of the Constitution has been removed from the Constitution overnight.
For almost TEN (10) YEARS this case dragged in court, where were the Petitioners to join the suit.

We note with dismay that one of the complainants to the National Land Commission (NLC) is a former retired Reverend of the Methodist Church in 2020 (as per the 2020 minutes of the Methodist Church in Kenya) after joining a splinter group. They have formed an amorphous group calling itself Methodist Church in Kenya Coast Region Conference Mombasa Synod. This group is not registered under any legal regime and out to create trouble to the mainstream church.

Before the sub-divisions, the church set aside enough land for social amenities e.g., land was set aside for a dispensary, police station, forestry, school and riparian land comprising of 13.75 acres. The total acreage left for sub-division was 50.8 acres.

Contrary to what is alleged in the petition there is no blockage to fishing grounds or the jetty. No graveyard was touched by the Sub-division. The Petition as a whole is a fallacy which is designed to taste the waters. It has bi clear grounds to allege historical injustice. What currently forms JOMVU (Wajomvu) comprises of an entire sub-County. If what is claimed in the Petition is to true, then all those land owners within JOMVU must leave.

Their humble opinion is that the petition is designed to drive a particular political agenda and should be dismissed henceforth.

MINUTE SEN/SCLENR/164/2021: ANY OTHER BUSINESS
There was no other business discussed.

MINUTE SEN/SCLENR/165/2021: DATE OF NEXT MEETING
The meeting was adjourned at 1.49 pm and the date of the next meeting was to be held on thereafter.

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

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

MINUTES OF THE 52ND SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON FRIDAY, 13TH NOVEMBER, 2020 VIA ZOOM ONLINE PLATFORM AT 3.00 PM.

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

IN ATTENDANCE

A. SENATORS

1. Sen. Mohamed Faki, MP	- Senator, Mombasa County
2. Sen. (Rtd. Justice) Stewart Madzayo	- Senator, Kilifi County

B. PETITIONERS - PETITION CONCERNING THE ALLEGED HISTORICAL LAND INJUSTICES INVOLVING PLOT NO. 162/V/M.N.CR 1070, IN MOMBASA COUNTY

1. Salim Mwidadi
2. Ahmed Kombo
3. Mwinyiusi Mzee Mwidadi
4. Issa Mwidadi Salim
5. Ngao Mwinyi Ngao

C. SECRETARIAT

1. Mr. Victor Bett	- Clerk Assistant II
2. Mr. Crispus Njogu	- Clerk Assistant II
3. Ms. Clare Kidombo	- Researcher
4. Ms. Mitchell Otoro	- Legal Counsel
5. Mr. Abdalla Mbore	- Sergeant-At-Arms
6. Mr. John Nganga	- Audio Recording
7. Mr. Naftali Ondiba	- Finance Officer

MINUTE SEN/SCLENR/286/2020: PRELIMINARIES

The meeting was called to order at 3.30 pm by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/287/2020: ADOPTION OF AGENDA

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

1. Preliminaries
2. Adoption of the agenda;
3. Meeting with Petitioners on the **Petition concerning the alleged historical land injustices involving Plot No. 162/V/M.N.CR 1070, in Mombasa County**;
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLENR/288/2020: MEETING WITH PETITIONERS ON THE PETITION CONCERNING THE ALLEGED HISTORICAL LAND INJUSTICES INVOLVING PLOT NO. 162/V/M.N.CR 1070, IN MOMBASA COUNTY

The Petitioners informed the Committee that Methodist Church was left as trustees of the said land by the colonialists.

The Church is allegedly split with two different factions leading to different Pastors selling the Land to non-locals yet the locals are claiming a share of the land they consider as their ancestral land.

All the Wajomvu Community requested is that the Committee assists them share the land with Methodist Church and the matter be treated as an historical land injustice.

The Committee thereafter resolved as follows:

- **To invite the Cabinet Secretary, Ministry of Land and Physical Planning**
- **To invite the National Land Commission**
- **Conduct a site visit to the contested parcel of land.**

MINUTE SEN/SCLENR/289/2020: ANY OTHER BUSINESS;
There was no other business discussed.

MINUTE SEN/SCLENR/290/2020: DATE OF NEXT MEETING;
The meeting was adjourned at 4.45 am and the date of the next meeting was scheduled for Saturday, 13th November, 2020 at 9.00 at the same venue.

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

SEN. PHILIP MPAAYEI, MP

VICE CHAIRPERSON

STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

PETITIONERS SUBMISSIONS

THE REPUBLIC OF KENYA
IN THE SENATE
PETITION OF WAJOMVU COMMUNITY

THE CLERK SENATE,
PARLIAMENT BUILDING,
NAIROBI.

THE HUMLE PETITON OF THE WAJOMVU COMMUNITY ON HISTORICL LAND INJUSTICES REGARDING PLOT NO. 162/V/M.N. CR 1070.

1. The Wajomvu Community located at Jomvu Kuu Village, Jomvu Kuu Ward, Jomvu Sub County, hereby Petition the Senate on the issue of ownership of Plot no 162/V/M.N. CR. 1070 located at Jomvu Kuu.

2. That your Petitioners are among the 12th Swahili Tribes and some of the earliest Tribes that settled in Mombasa around 800 years ago.

3. That on or about 1846 Dr. Kraph arrived on the East Africa Coast and settled at Rabai. Jomvu Kuu was the area where all travels to up Country started. Dr. Kraph traveled and settled in Rabai, where he established his Church.

4. That in 1877 through the benevolence of a Jomvu Elder by the Name Mwidani Dr. Kraph was given Land to established a Church in a predominately Muslim Community.

5. That the Area where the Church was built was a small Area. However when the adjudication was done in 1923, the Methodist Church was allocated 150 Acres of our Land.

6. That the Community has been using the land for farming and access to fishing sites for many years and part of it used as residence.

7. That recently the Methodist Church embarked on a sub-division scheme and sale of the land to third parties.

8. The land has been occupied by the Wajomvu Community all this time and has been held by the Community as its Ancestral land. The Community has no other alternative Land where it can go, and its historical injustices that the Colonial Administration committed on the Wajomvu Community by allocating 150acres of its Land to yet they had given a small portion to establish a Church.

9. That our fishing grounds/waters and jetty to travel to Jomvu Maunguja will be blocked.

10. That the Wajomvu Community graveyard will also be taken away.

11. That Important Cultural and Religious sites will be destroyed to the detriment of the Community.

12. That the Community is in danger of being disinherited, our village is in danger of being blocked.

13. That our farmlands are also likely to be taken away.

14. That the community sent a memorandum to the National Land Commission but its three years now with no response.

15. That there is no case Wajomvu Community has filed regarding the land in question.

16. That we pray that this Senate considers our Petition and grant us appropriate remedies.

PRAYERS

The Petitioners prays the Senate to set up inquiry of the historical injustice with a view to resettle the local community to their Land.

Dated at Mombasa 2nd July 2020.

MR. SALIM MWIDADI	ID NO. 4644996	.....
MR. MOHAMMED KOMBO	ID NO. 5378195	.....
MR. KASSIM MWIKAA	ID NO. 3153528	.....
MR. MWINYIUSI MWIDADI	ID NO. 1319563	.....

Attached documentary review

Anet 1.5. (1.)

medicines. The next day I was some [illegible] for many days after, suffered from severe pain in my stomach, in my back, between the shoulders, and in my lungs and throat. Thank God I am still alive, and in comparatively good health.

Thomas left the village and eventually chose the site for the new Mission.

----at Sigorso on the summit of a hill-range, breezy with a good extension of plain country at the base open to the sea, and the Sabaki river flowing in a winding course to the base. It is a highway from the Galla country to Malindi and other places on the coast and is regularly traversed by Gallas who pass the site every day. We cleared a good space in the forest and I left two Gallas to get on with the work, and Aba Shora, a Christian Galla, leaves Ribe shortly to return to the new Mission, to superintend the work, sow Indian corn and hold Sabbath services. His wife will join him after a little while.

The return journey was made by sea and Thomas reached Mombasa after an absence of four months. James Seden was waiting at Mombasa for him and they went up to Ribe together the following day, where Thomas was pleased to find Mr. Martin and Mr. Ramshaw, newly arrived from England. They were well and in good spirits, but Mr. Randall was compelled to return to England because his health had completely broken down.

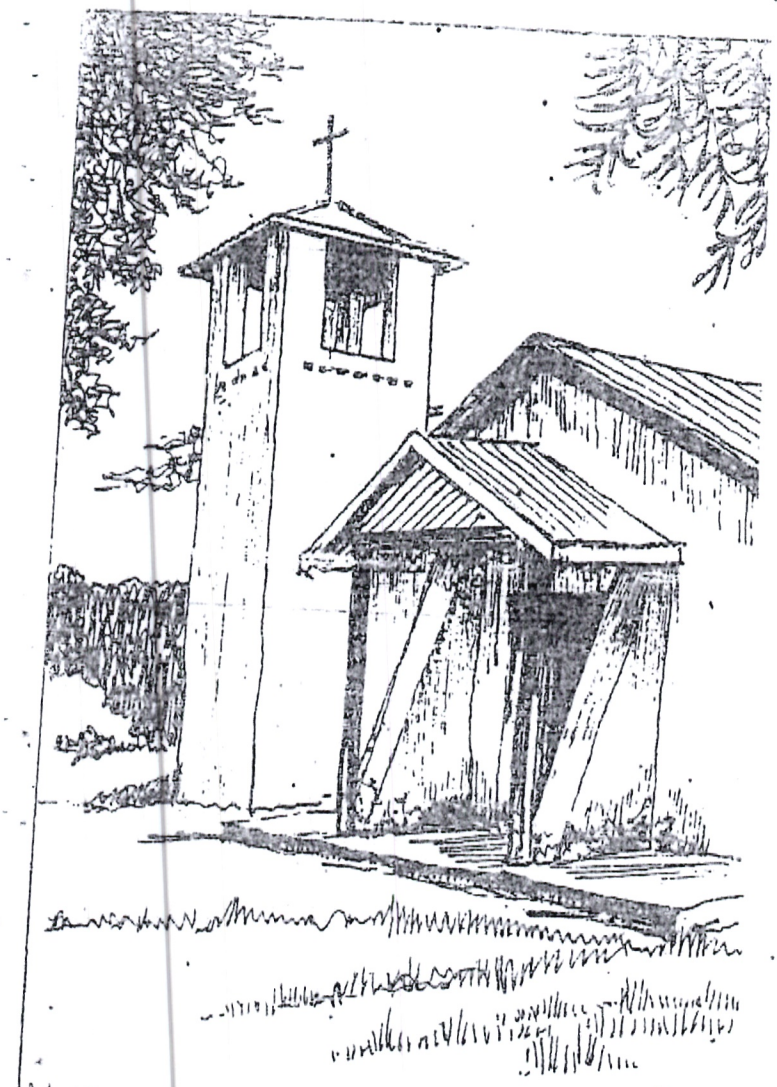
In February 1878, the first missionary meeting was held at Ribe to wish Godspeed to Aba Shora, his wife and infant daughter, before they traversed [illegible] Galla mission at Sigurso. A collection was taken and speeches and prayers were said. Aba Shora's wife was sad to leave behind her son aged twelve years, so that he could be taught a trade.

At Ribe, the work continued. Translation progressed, the Book of Daniel completed and the Gospel of Mark begun. A stone house was built and an iron house erected for Mr. Ramshaw and Mr. Martin. Mr. Ramshaw busied himself in the printing department and Mr. Seden superintended the school and the management of the agricultural work.

In 1878, there was an opening for the establishment of another mission at the Mohammedan town of Jomvu, about ten miles from Ribe, on the creek leading inland from Mombasa. A site was chosen and a chapel erected with a temporary teacher's house. There was a population of about eight hundred and the establishment of the Mission was due to the work of a man called Mwidani. Later, the Sultan of Zanzibar made a present of the land to the Mission and the Governor of Mombasa made a special journey to Jomvu to "enjoin upon the people respectful treatment of the missionaries". Shortly after, Mr. Seden was given permission to marry and his fiancee, Miss Jackson arrived safely in Zanzibar, where Thomas performed the marriage ceremony, after which all returned to Ribe, where Mrs. Seden began her work with the women and children.

In the spring of 1879, Thomas returned once more to England.

Annet 2



Methodist Church, Jomvu

Anex X-01 3

~~Re-inserted in Register Book.~~ No. 8261

LONY AND PROTECTORATE OF KENYA.

LAND TITLES ORDINANCE, 1908.

SCHEDULE I. FORM B.

CERTIFICATE OF OWNERSHIP.

I Phineas Ernest Wolffe, Ag. Recorder of Titles do hereby certify that Myee Kombo Bin Mwakifundi as trustee of the wakf of the graveyard of the wajomvu Kubwa is the proprietor of an estate in fee (together with the mineral Rights) (1) in that piece of land situate in the Province of Sejidie at Changamwe and which is demarcated and delineated on the plan No. 21106. deposited in the Office of the Recorder of Titles at Mombasa and thereon numbered 137 sec V and containing one point four acres. or thereabouts and subject to such mortgages and other interests (if any) as hereunder written. (2)

IN WITNESS whereof I have hereunto set my hand and seal this 26th day of November 1923.

Certificate Fees Shs. 10/-

Survey " Shs. 20/-

Fees remitted

[signature]

Ag. RECORDER OF TITLES

20/4/36

[signature] L. S.

Ag. RECORDER OF TITLES.

Mortgages and other interests above referred to:

DEPT. OF LANDS, E.A.P.

Land Registration Division, Coast Registry, Mombasa.

Presented 27/11/1923. Registered No. C.R. 7071/1

Time: 3 P.m.

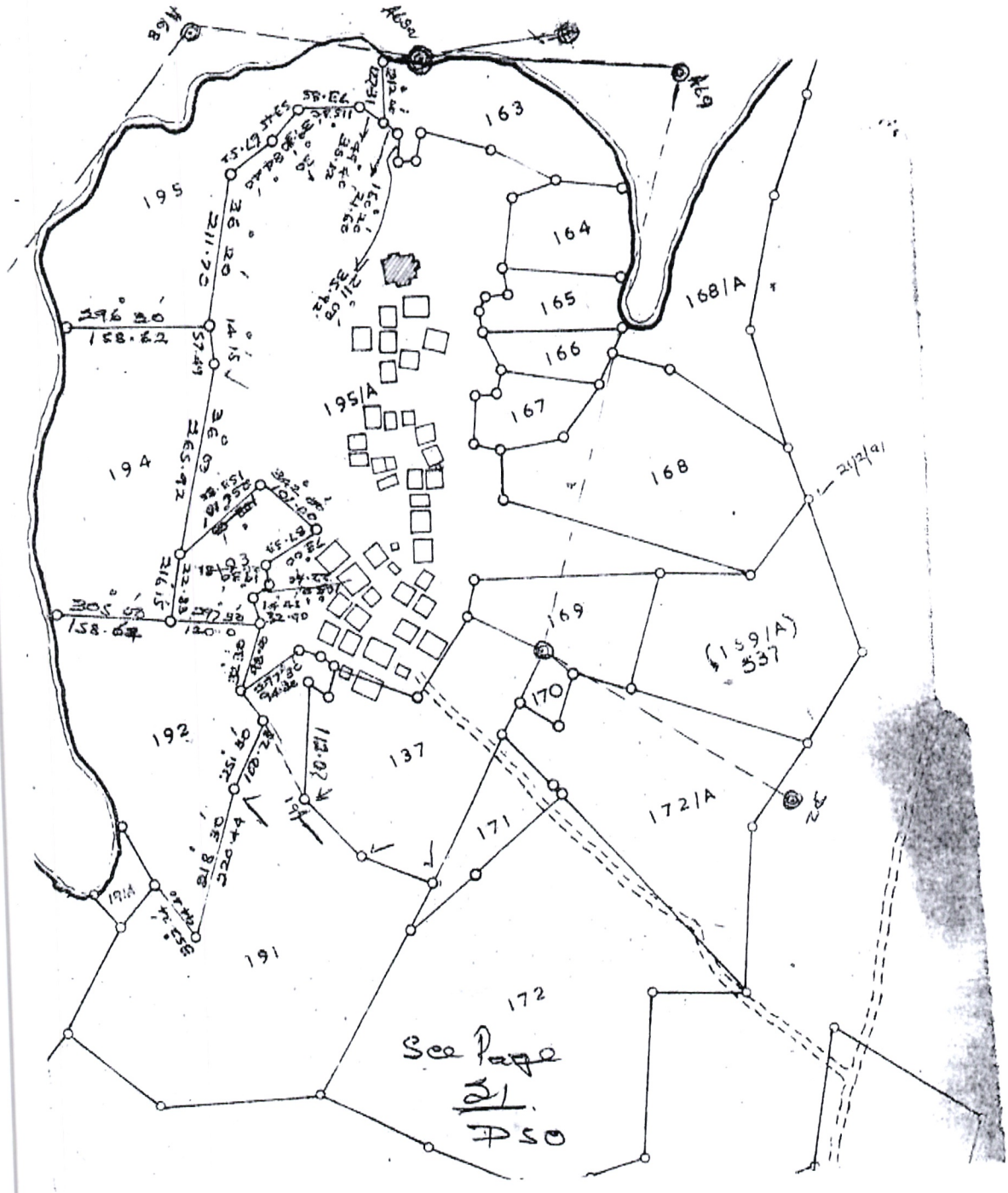
[signature]

Registrar of Titles

20 April 1936

NOTE.—(1) The words in brackets to be deleted if the land has been acquired from the Crown or otherwise with a reservation of minerals.

(2) If the land has been acquired from the Crown add "and subject to the provisions of the" (here specify the law under which the land has been acquired or by which the holding is governed.)


163
164
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172/A
(159/A)
537
See Page
21
DSO

EAST AFRICA PROTECTORATE.

PROVINCE OF SEYIDIE

DISTRICT OF MOMBASA

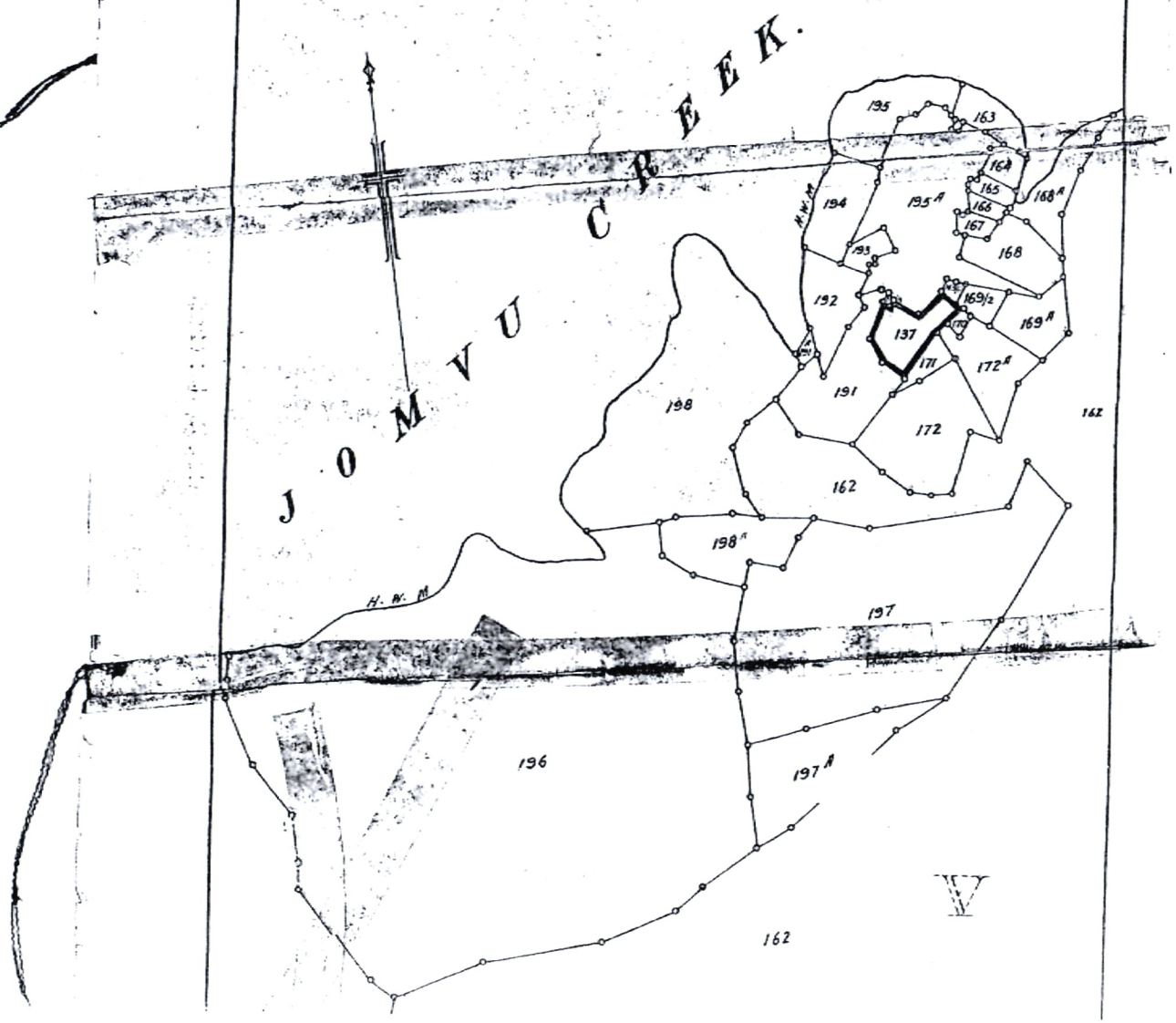
Locality, Changamwe - Mirihini

Scale - 1 in. 5000 or 416·66 Feet to 1 Inch

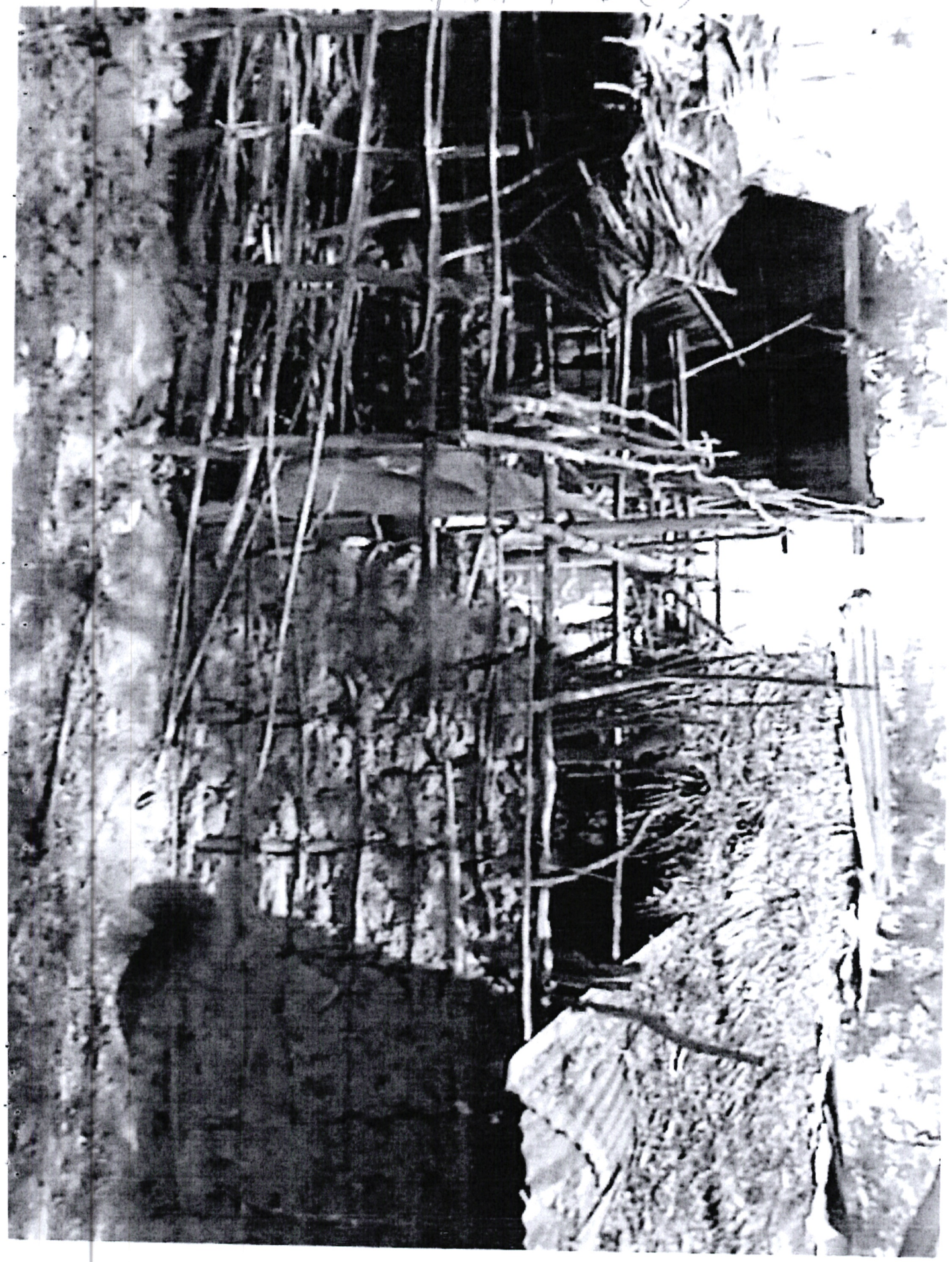
Land Office Reference No.

Re-Subdivision No.
of Subdivision No. 137
of Section No. X Mainland North
of Portion No. —
of Meridional District South. A-37 / V. IX. C

Area - 1·4 Acres (Approx)



Annex 6(3)



Annex 6 (1)



Annex 7(i)

67

MINISTRY OF LANDS

Telegrams:"

Telephone: 2312914

DEPARTMENT OF LANDS
P.O. BOX 80053
MOMBASA

Ref:TEMP. CF.24913

24th November 2011

Methodist Church in Kenya
Registered Trustees
P.o. Box 47330
NAIROBI

RE: SUBDIVISION
PLOT NO. 162/R/V/MN

I refer to your application in relation to the above mentioned proposal and wish to inform you that the same is hereby approved subject to the following:-

1. Surrender the existing Title in exchange of new titles for the subplots
2. Payment of enhanced rent as will be assessed by a Government valuer.
3. Submission of building plan for approval by this office before any development commences
4. Compliance with any other statutory provisions and regulations
5. Surrender of land meant for access road to the government free of cost.

Final approval will be granted upon receipt of your written acceptance to the above conditions

P.O. NGETE
FOR: DISTRICT LAND OFFICER
MOMBASA/KWALE

C.C.
District Physical Planning Officer,
MOMBASA
District Surveyor,
MOMBASA

=-6(b)

68

ORIGINAL

REPUBLIC OF KENYA

OFFICIAL RECEIPT A

Station MSA Date 1/11/2011

RECEIVED from METHODIST CHURCH IN KENYA

Shillings TWO HUNDRED AND SIX THOUSAND SEVEN HUNDRED FIFTY ONLY NIL

on account of SUBDIVISION & CERT. OF COMPLIANCE PLOT 162/R/V/MN

Vote Head M.O.L.

Sub-Head P/PLANNING

Item A1-A

Cash Cheque No. CASH

KSh. 206,750 =

A. 0-453-3070-

No. 3520204

Signature of Officer [illegible] Finance

FORM 6

GPK (SP) 7063 — 50r Bks. 02/2010

69

SALE No. _____

ORIGINAL

DEPARTMENT OF LANDS

FEE RECEIPT

2515783

Station Mub

10/8 20 12

Received from Methodist Church in Kenya

of

By Cash / Cheque the sum of

Shillings Ninety thousand four hundred only.

Cents

As per marginal statement nature of transaction

Sub div Approval fee

Title Number 162/V/MM

COMMISSIONER OF LANDS

NATURE OF FEE	Sh.	cts.
Certificate of Title / Registration / Search Certificate / Opening New Register / Attestation / Inspection / Copying	90400	—
Conveying/Preparation		
Survey Fees		
Rent		
Stand Premium		
Stamp Duty		
Land Adjudication Fees		
Deposits		
TOTAL KSh.	90400	—

70

ORIGINAL

No. _____

DEPARTMENT OF LANDS

FEE RECEIPT

Station MOR

2457090

18/11 20 11

	NATURE OF FEE	Sh.	cts.
Received from Methodist Church in Kenya	Certificate of Title Registration Search Certificate Opening New Register Attestation Inspection Copying	112500	—
	Conveying/Preparation		
By Cash / Cheque the sum of	Survey Fees		
Shillings One hundred and twelve thousand five hundred only	Rent		
	Stand Premium		
	Stamp Duty		
cents	Land Adjudication Fees		
As per marginal statement nature of transaction	Deposits		
Subdiv Cost			
Title Number 162/1/mn			
For COMMISSIONER OF LANDS	TOTAL KSh.	112500	—

Office
Of The Town Clerk
MUNICIPAL COUNCIL OF MOMBASA

FORM P P A 2 1410

Our Ref: **TP.6/S/123/2011** Application Reg. No. 09450

NOTIFICATION OF APPROVAL OF THE APPLICATION FOR DEVELOPMENT PERMISSION

1. *Subdivision*
2. Change of User
3. Consolidation
4. Change of use & Consolidation
5. Extension of use
6. Extension of Lease
7. Building Plan

To, *Methodist Church in Kenya*
P.O Box 47330
NAIROBI

Your application, numbered as above, submitted on **5th October, 2011** is seeking permission to **Subdivide** on Plot No. **162/R /V/MN** situated at **Jomvu, Off Msa Ribe Road** was approved by the 1st/2012 Town Planning Committee Meeting held on **26th January, 2012** under minutes No. **TPC. 1 /2012 (B)** subject to the following conditions:-

a) Submission of the requisite building plans for approval by the Council before any construction commences on the ground.
b) Subject to the comments provided by the Office of Director's of Surveying, Planning the Commissioner of Lands at the District Level.
c) The land not constituting part of the disputed utility/Private land.
d) Satisfying all other legal requirements of proposal.

Date: 27th *January, 2012*

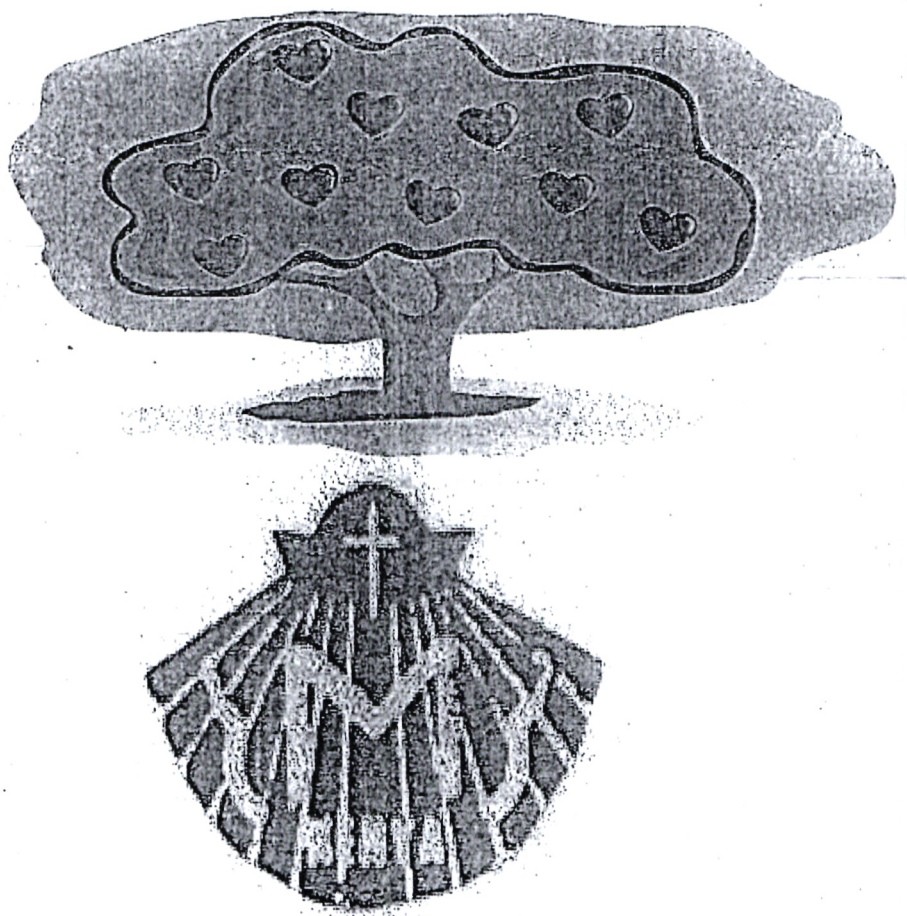
Signed: .....
DIRECTOR TOWN PLANNING & ARCHITECT
ON BEHALF OF TOWN CLERK

DIRECTOR
PLANNING & ARCH. DEPARTMENT
MUNICIPAL COUNCIL OF MOMBASA

Copy to: The Director of Physical Planning, NAIROBI
The Commissioner of Lands, NAIROBI.
The Director of Surveys, NAIROBI
The Land Registrar, MOMBASA

Annex 7 (2)

METHODIST CHURCH IN KENYA
MOMBASA SYNOD



METHODIST CHURCH IN KENYA
MOMBASA SYNOD
MINUTES AND RESOLUTION OF ANNUAL MEETING
YEAR 2010

THEME: Hope - The  **of the Soul**

TEXT: Acts 27:14-29; Hebrews 6:17-20



17A

i) *Bundini M. Academy*
Construction of eight classrooms was done.

f) *Bahakanda M. Church*
- A bigger Church building should be constructed.

g) *Mbuluni M. Church*
A temporary structure has been built for people to worship.

h) *Makamini M. Church*
A nursery school shall be started.

CHANGAMWE M. CHURCH

a) *Jomvu M. Church*
i) *Church Building*
Have purchased building materials for the construction of a new Church building.
ii) Demarcation exercise is in progress.
iii) SUMIT COMPANY applied for 50acres of land for lease at the rate of Ksh. 60,000/= per acre per month.
The Church gave only 15 acres and the lease to run for 15 years. (See Res. 2)

b) *Changamwe M. Church*
i) *Nursery School/Dressmaking & Knitting/Computer*
This Institution is doing well.
ii) *Title Deed*
The process is on.

c) *Port Reitz M. Church*
The Church pews have been bought
d) *Tsunza M. Church*
Finishing touches on the Church building construction is in progress.

KISIWANI CIRCUIT

a) *Mombasa Community Centre*
i) Student intake has increased through the national street rehabilitation programme.
ii) A well shall be dug. The hydrological water survey has been done and the results are positive.
iii) A Cafeteria has been established
iv) Have bought the following:-

- Welding Machine
- Five Plan Machine
- A Computer

MIN 6/4/10 - RECOMMENDATIONS TO (I) SYNOD (II) CONFERENCE FRON THIS MEETING

See resolutions.

MIN 7/4/10 – NOMINATION OF SECRETARY FROM THIS COMMITTEE FOR APPROVAL BY THE SYNOD

Mr. James B. Panga was nominated to be Secretary of this committee subject to approval by the Synod.

MIN 8/4/10 – ANY OTHER BUSINESS

1. Changamwe and Kisauni Circuits to put up Congregations at Miritini and Mshomoroni respectively.
2. The Synod to come clear on the membership of the Synod Rural and Urban Development Committee.

RESOLUTION

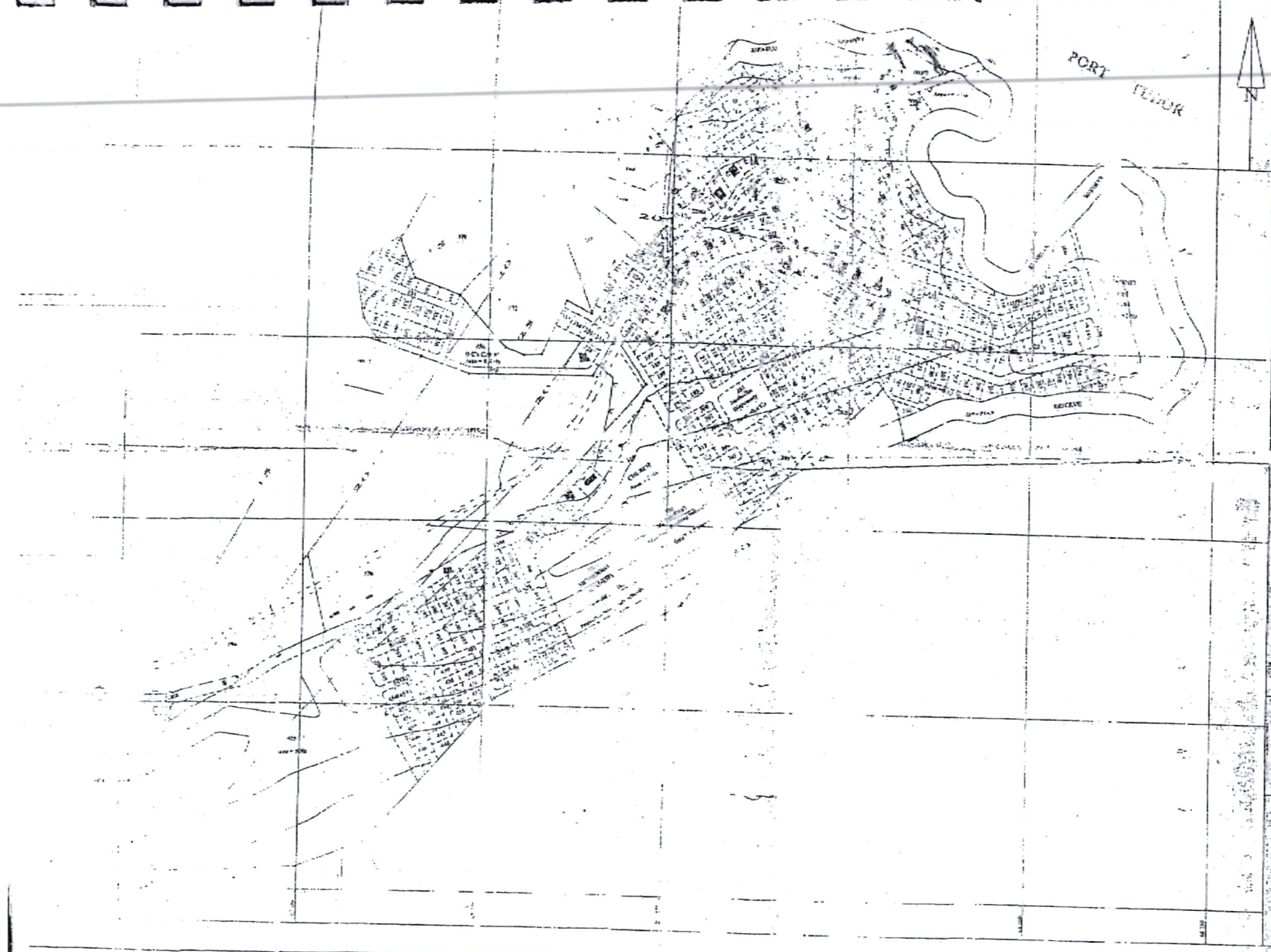
1. The Synod to revive Lungalunga Mission.

- Renovate the Manse and Church buildings
- Send an evangelist.

2. Jomvu M. Church to reconsider increasing the acreage to 30 as applied for so that it can increase its income.

3. The Synod to assist the Churches financially and in documentation to acquire Church Plots for the newly established Churches and also those that do not have Plots to build worshipping Centres.
4. Circuits and institutions are requested to give written reports to the Synod Rural and Urban development Committee Meetings.

The Meeting ended at 1.00 P.m. with a word of Prayer from Mr. Stephen Charo.



...BED S... ...ISION ... ...IE FO...
...ECTION V, MAIN... LAND NORTH, JOMVU...
DISTRICT.

THE METHODIST CHURCH IN KENYA
P.O. BOX 476330-00100,
NAIROBI.

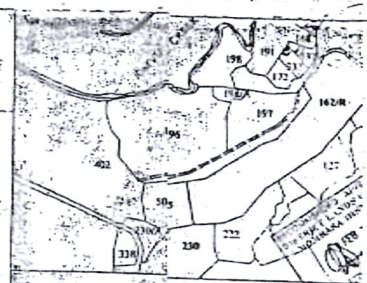
Sign ...
CHAIRMAN BOARD OF

LEGEND

Provisional data only, subject to survey
Data obtained from FIR 14/41,17/83,177/69,2 2/79,303/100,...
Area of plot No. 8689 = 54.92 Ha (Approx)
Area of each subplot (with structure) = 0.1Ha (approx)
Area of other subplots = 0.05Ha.(approx)or as ...
Area of road reserve = 8.5 Ha. (Approx).
Area of riparian reserve = 5.5 Ha.
User to remain same.

7(3)

SCALE: 1 : 2500



BLOCK DIAGRAM SCALE 1 : 10000

PREPARED BY:

A. A. MADDY
ARCHIPLAN ANALYSIS
P.O. BOX 83777-80100
MOMBASA.

Dr...
Sign...

APPROVED BY

DIRECTOR

TOWN CLERK MOMBASA MUNICIPAL COUNCIL

Anex 8 (1)

MEMORANDUM ON COASTAL STRIP ENQUIRY
Submitted by the JOMVU SOCIAL CLUB
To: SIR JAMES ROBERTSON.

WE wish to inform you that the Jomvu tribesmen were the first people to come and settle in Mombasa. It was they who called Mombasa by its ancient name of Mvita.

IT is now the seventh century since their settlement and before them Mombasa was barren inhabited by birds and wild animals.

THEY originated from Jeda, in Arabia and arrived at Junda near Kisauni a few miles North of Mombasa. Their leaders were MWIDANI BIN MWINDADI, HAMISI BIN MWINYI HAJI and MWINDADI BIN MWINYI. After arrival at Junda they crossed the sea and came to the Island of Mombasa. A few centuries later, other people began to arrive including several -- Sultans. These Sultans who were very friendly came from Arabia.

IT WAS very many years later that the Wa-Jomvu's made treaties with the then Sultan of Zanzibar. This was a friendly treaty to protect the Wa-Jomvus in time of war. There were frequent wars for instance with the Portuguese and others.

THE Sultan later entered into Treaty relationship with the British. This was done through fear partly created by the cunning of the British. The British then wanted to lease the port of Mombasa.

THE Sultan in that state of mind feared that the European powers might amalgamate and attack him.

THE now famous 1895 Treaty was then drawn.

WE therefore ask you to consider our case seriously and ask the Sultan if he can no longer protect and guide our country, it is time he returned it to us, the Wa-Jomvu. He must return it to our hands just as we gave it to his predecessors. No other people have any right in Mombasa except us. We have considerable evidence to prove this.

Finally we support the policy of the Coast Peoples Party.

Dated at Mombasa this 15th day of October, 1961.

Signed by the Representatives of the Jomvu Social Club.

Khashia Abubakar
.....
Khashia Abubakar

[signature]
Ahmed bin Mohamed
.....

[signature]
Mzee Mohamed
.....

I saw the signature of Mombasa

Annex 2 (2)

NOTE OF A MEETING BETWEEN SIR JAMES ROBERTSON AND A DELEGATION FROM JOMVU HELD AT GOVERNMENT HOUSE, MOMBASA, AT 11.15 A.M. ON FRIDAY, 20TH OCTOBER.

PRESENT.

Mr. Mzee bin Mwidadi.
Mr. Mwingi Haji bin Mzee.
Mr. Khamis Mohamed.
Mr. Ashia Abubakar.
Mr. Ahmed Mohamed.

Sir James Robertson (Commissioner).
Mr. W.T. Hull (Secretary).

The delegation said that they were elders of the Jomvu people, who lived in three villages, of about 3,000 people, west of Mombasa. They earned their living from farming and by making pottery. Although they supported the policies of the Coast People's Party, they had come to see SIR JAMES ROBERTSON as individuals; they wanted to give evidence because they were an important section of the Coastal tribes. The delegation said that their people first came to the Coast over 1,000 years ago from Saudi Arabia, and that when the Sultan of Zanzibar came and later the British, they had agreed to live under their protection. Now that the British were thinking of leaving, they wanted some form of autonomy and protection for their lands, which they felt rightsly belonged to them.

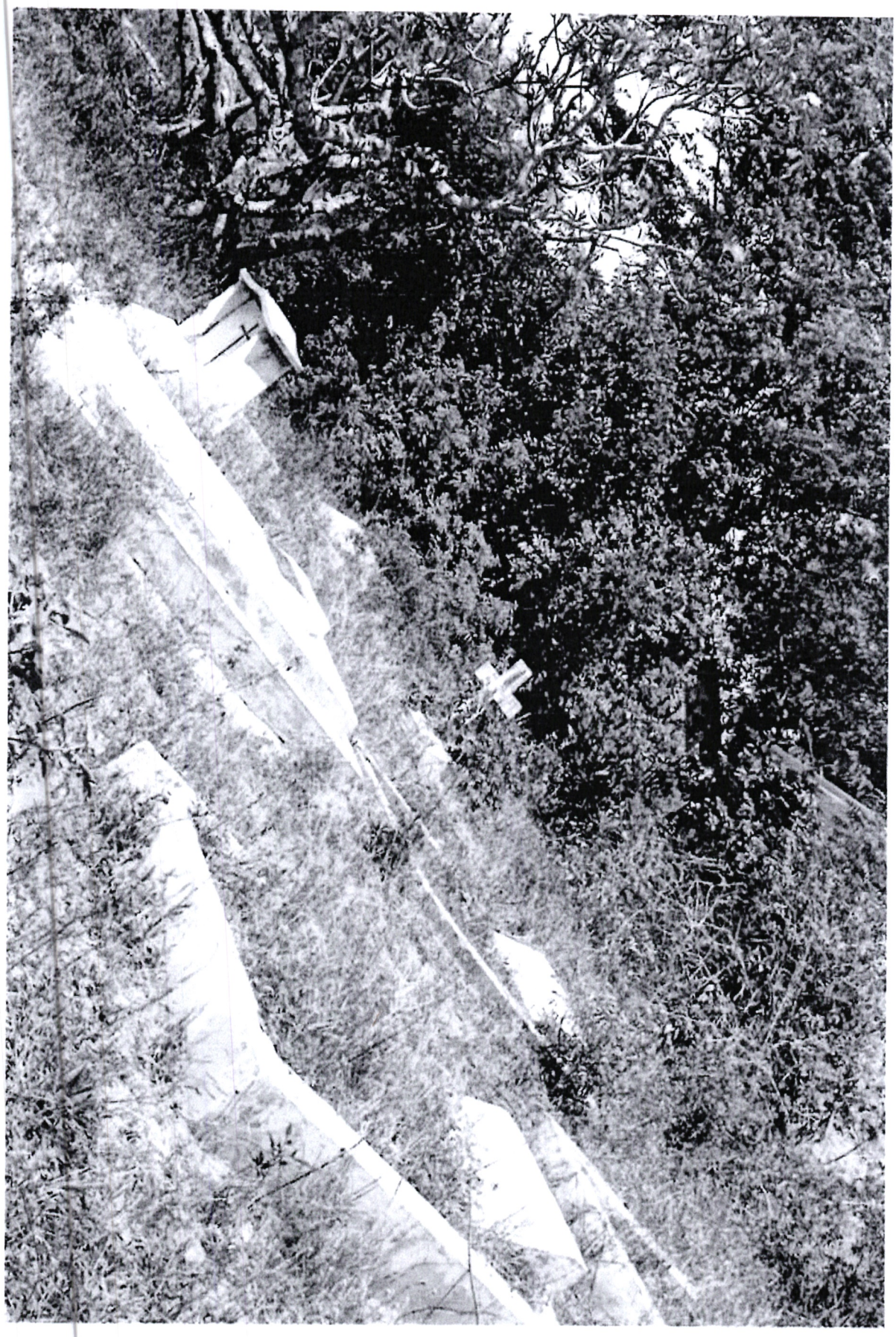
SIR JAMES said that he had read their letter which they sent to him earlier, and that he understood what they wanted. He had been glad to see the delegation and he thanked them for coming to give him their views in person.

Annex 9 (1)



Annex ④ 9, (3)





Attack 10 (1)

Annex 10 - (2)

Annot 10-(B)

Anex 11-(1)





Annex 12 - (1)

Annex - 10 - (4)



Anex 13 (1)

Annex 14 ©

REPUBLIC OF KENYA
IN THE NATIONAL LAND COMMISSION
MEMORANDUM OF WAJOMVU COMMUNITY

MEMBERS OF THE BOARD
1-Mwinyusi Mzee Mwinyusi Mwidadi
2-Salim Mwidadi Salim Mwidadi
3-Ali Bakari Shee
3-Mohamed Ahmed Mwijaa Ahmed
4-Mohamed Mzee Mwihija
5-Shenga Omar Shenga
6-Fairuz Juma Kaloo
7-Khamis Said
8-Mwinyi Matano Hassan
9-Mohamed Abdallah Dalok
10-Abdullah Mwidadi Salim
11-Sauda Kibwana Shejumaa
12-Uba Rashid Kibwana
13-Ngao Mwinyi Ngao
14-Salim Muungwana
15-Fakii Haji
16-Issa Mwidadi Salim
17-Mwanajuma M Mwidadi
18-Shafi Mbarak
19-Ahmed Mohamed Maftuu
20-Omar Mohamed Mwijaa

1-Introduction

a-Wajomvu community; The Wajomvu are among the Swahili 12 tribes **[ITHNAASHARA TWAIFA]**, some of the earliest inhabitants of the Mombasa County. They made entry into Mombasa around 800 years ago and established settlements at Junda Mombasa then Mvita at Aldina high school area, then Kwa Sheikh or Kwa Shee [Mikindani], after which they divided into three groups, some shifted to Jomvu Kuu and some to Maunguja and others remained in Kwa Sheikh.

When the Shiraz dynasty was destroyed by the Portuguese in the 14th century the Wajomvu were living in those three villages -Kwa Shee, Maunguja and Jomvu kuu. [Reference -Chijomvu and Chingare by Mwinyinguti. During the Mazrui period from 1735 to 1837 the Wajomvu were living in above mentioned villages. [Annexure Reference; Lambert, the Swahili Community of Mombasa].

Under Busaidi rule (1837-95) they were in the same villages. Seyyid Said died in the year 1856
[*The Journal of African History Vol. 9, No. 1 (1968), pp. 35-56 by F. J. Berg*]

b-Dr Krapf; There was no record of any Christian presence in Mombasa after the Arab regained control of Mombasa from the Portuguese. In the year 1844 Sultan Sayyid Said gave him a permit to start a missionary station at the coastal city of Mombasa. Johann Ludwig Krapf and Johannes Rebmann established a mission station at Rabai, a short distance inland from Mombasa in the same year. In the 1853 he travelled back to Europe and came again in the year 1862. In 1878 he established a mission station at Jomvu Kuu. N.B.It was during the year 1908 that the title was issued to the United Methodist Church Mission.
[An overview of Johann Landwing Kraf's Life and Work]

c-Mwidani; His real name is DANI. He came from Tanzania and changed his name to Mwidani. He started living at Rabai. Then he came to Jomvu with his daughter IMA. He is the person who helped Dr Krapf to establish mission stations in Rabai and Jomvu kuu, eventually he converted into Christianity. The late Mwidadi Salim Mwidadi[village elder jomvu kuu btw 1980-1996] told Peter Frank in-interview in the year 1992, that the real name of Mwidani is DANI. He came from Tanzania and settled at Rabai before the coming of Krapf, then he came to Jomvu with his daughter her real name is unknown but he gave her a Jomvu name IMA. The Respective Mwidadi Salim Mwidadi told peter frank that Mwidani is not Midani bin Mwidadi. There is no record that shows that Mwidani was from the six clans of Wajomvu as follow
[i]Clan of Mkwaja/Mwakande –mbari ya Ngao
[ii] Mwinyihamisi bin Mwinyihaji –mbari ya mshenga wa chini
[iii] Mwidadi bin Mwinyihaji –Mshenga wa juu
[iv] Mwikaa bin Hasan

2-Jurisdiction

The National Land Commission was established by constitution of Kenya Article 67. Among the reasons is to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices. Article 67 of the Constitution of Kenya 2010 gave the commission power to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress. Therefore our position is that the National Land Commission has power to intervene on our issues.

3-Grounds

a-That the land is not enough to accommodate the increased population of the community. It should be noted that the community with a population of more than 3000 is now squeezed in a small area of only7.5 acres

b- That Wajomvu have been staying in the said land even before Arabs, Portuguese and British.

c- That In 1908 Dr Kraph was issued with a title deed of approximately 135 acres. These 135 acres included our father's Farms, Grave yards, Fish landing sites, Shrines and even the first school of Jomvu at Kwafara.

d-That the missionary being European Used unfair means to issue a title deed in the year 1908, thus the Sultan of Zanzibar refused to sign the said title to Methodist church.

e-That; the title was issued without knowledge of the legal owners and this appears to be historical injustice.

f-That the said Mwidani was not the member of the community nor did he get authority from the community to alienate any portion of the community land to any person.

g-That the Civil suit Number 589 of 2011 doesn't relate to the subject matter.

4-History of our land

a- Jomvu Methodist Church Plot No VNM/162 [162/V/MN Jomvu Kuu]

i- Dr. Kraph approached the Wajomvu people and requested to be given a piece of land which he could build a Church and a vicars house on land not exceeding one acre. The elders of the Wajomvu people declined to give him land inside the village, however through Mwidani they agreed to give him permission to establish his Church out of the Village. After building the church he with the help of a Tanzanian man called Mwidani whose real name was Dani they brought with them some workers or helpers from western Kenya and Rabai areas of the coast province, some were from Malawi and Mwanza mainly from Rabai and Duruma. They began living and settled around the Church. The Wajomvu community co-existed with the new comers without any problem as this was not a major concern.

b- In 1908 Dr Kraph was issued with a title deed of approximant 151 acres. These 151 acres included Farms, Grave yards, Fish landing sites, Shrines and even schools of Wajomvu. This fact was unknown to the inhabitants as they continued accessing their land without any problem.

c- It is after many years that the Wajomvu people came to realize that the land which they deemed theirs is no longer theirs and that they are known as trespassers. It has come to our attention that the land is now owned by the Methodist Church of Kenya. How, when and Why is what we need the National land commission to tell us.

b- **196/V/MN Kenya Port Authority [Cargo]**
Historically there are more 8 Shambas of Wajomvu include graves

c- 168/V/MN, this is a crown land.

d-**Other as 164/V/MN, 169/V/MN, 169/V/MN and 192/V/MN** grabbed from our community in the year 1908 by Hindus and now are absentee landlords.

4-Facts
a- It is clear and evident that over the course of the 18th century, the policy of pushing us off our land started by Krapf in Rabai. Dr. Krapf came to Jomvu in the year 1877 and through Mwidadi asked permission from the elders to establish a

mission station at Ziwani Jomvu but no one among the elders accepted his request. He therefore promised Mwidadi to give him some money if he will manage to pursue the Jomvu elders to have a piece of land for him to build the said station. Eventually Mwidani without consulting other elders gave Krapf a plot to build a church. In 1908, the Methodist church expanded the said piece of land to 151 acres.

b- The history is clear that the said Mwidani has no clan in Jomvu is a Tanzania man.[***the founding of Rabai a Swahili chronicle by Midani bin Mwidadi edited by LYDON HARRIES M.A Ph.D. page 141 [khabari za kale za Wajomvu]]***

c-Mr Krapf through the Tanzania man seized our land from us, to increase mission Methodist activities and to establish settlement. Our fathers came to discover sometimes in the year 1920 that our lands have been systematically taken away from us, it was the beginning of vicious disputes between us -as the original owners, and the neighbours in the colonial government to date. Mr Krapf started living in Rabai in the year 1846 and he came to Jomvu in the year 1877 for a small piece of land to establish a mission station. **[*the growth of Islam the Mijikenda of the Kenya coast 1826-1933 page 80]***

c- According to the Wakefield the governor of Mombasa, an Arab refused to affix his signature to the title deed. **Annexure marked**..... ***the growth of Islam the Mijikenda of the Kenya coast 1826-1933 page 80.***

d- In an effort to reverse our lands, sometimes in August, 2006 a memorandum from our community intended to be presented to **H.E THE PRESIDENT AND COMMANDER-IN-CHIEF OF THE ARMED FORCES OF THE REPUBLIC OF KENYA, HON. MWAI KIBAKI**. The said memorandum was prepared by the delegation of 14 people -8 elected office bearers and 6 member of board of trustees. In the same indicates that the land is not enough to accommodate the increased population of community. [***Memorandum presented to H.E the president and Commander-in-chief of the armed forces of the Republic of Kenya. Hon. Mwai Kibaki by Wajomvu welfare association***].

e- In the 2013 a letter dated 2nd May was sent to Arseli Lameck to have an agreement to jointly pursue the subject with a view of avoiding conflict between two communities ***[a letter dated 2nd May 2013].***

f-A brief memorandum was presented to Kenya Land Commission with its supporting documents on 24/09/2012 at SAIROCK HOTEL. Picture marked;

[*Land Advocacy Project Conference–coast@prideinn Sairock Hotel24/09/2012*].

h- In a letter dated 8th March 2012 signed by the chairman the National land admits that the said lands are issues for determination.

3-Conclusion & Prayers

The right to property is sacrosanct and as such, that right is vigorously protected in this country under the Constitution therefore the Wajomvu community have had their protection to right to property infringed as per Article 40(1) of the Constitution of Kenya 2010 and Article 14 of the African Charter on Human and People's Right. Therefore, seeking redress through the National Land Commission whose authority is derived from Article 67(1) to look into historical injustices and among its functions under Article 2(e) is to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices. The National Land Commission Act also establishes this authority of the Commission under Section 5(e) of the Act. The Act grants the Commission with the powers to conduct the necessary land historical injustices. Therefore, our position is that the National Land Commission has power to intervene on our issues. We sort the help of the NLC instead of violence. Section 15 of the National Land Commission Act defines historical Injustice and sets the criteria that leads to that said injustice. The Wajomvu community meet this criteria as established in Section 15 of the said Act6

REASONS WHEREFORE, the Wajomvu community pray for;
a- That the selling and disposal not be done until hearing and determination of this issue.
b-That the National Land commission do investigation over above mentioned plots.
c-That the hearing be fixed urgently
d-That 2/3 Jomvu Methodist Church Plot No VNM/162 [162/V/MN Jomvu Kuu] be given back to Wajomvu community.
e-That Plot 196/V/MN Kenya Port Authority [Cargo], 164/V/MN, 169/V/MN, 169/V/MN and 192/V/MN be given back to
the community.
f-That 168/V/MN crown land be allocated to a hospital for the community.

g-That the National Land Commission be pleased to issue an order to stop Kenya Port Authority to demolish houses built on plot 196/V/MN Kenya Port Authority [Cargo] pending for hearing and final determination of this Memorundum.

WAJOMVU COMMUNITY
P.O.BOX 98494
MOMBASA

TEL; 0720175154

DATED THIS 25TH APRIL 2019

SIGNED

MWINYUSI MZEE MWIDADI- CHAIRMAN

For and on behalf of the Wajomvu community of Mombasa County

OTHERS

Salim Mwidadi Salim,
P.O Box 98494-80100,
14th August, 2020,
Mombasa.

Ministry of Sports, Culture and The Arts,
Kencom House,
P. O. Box 49849-00100,
Nairobi, Kenya.

Dear Sir/Madam

RE: REQUEST FOR INTERVENTION ON SPORTS GROUND GRABBING

On behalf of Wajomvu community, I hereby write to call for an urgent intervention on a wrongful subdivision of plot number **162/V/M.N. CR 6348** in Jomvu kuu village, Jomvu kuu ward of Jomvu constituency in Mombasa county, where the subdivision is being done in exclusion to reserve our ancestral sports ground. The ground has been used for decades by the community to carry out their sports and cultural activities and part of it is reserved as graveyard where our great grandfathers have been buried. This subdivision has threatened to destroy these ancient graves and we find this unpleasing as a community.

Many generations have used this ground to mention the few famous teams such as Liton Fc, Dyton Fc, Amani Fc, Umoja Fc, Simba Fc and Young Stars Fc, which were well known to the history of Mombasa. The same sports ground is currently being used by Kwafara Fc, Bondeni Fc and Aljaufy Fc, and through these precious talented teams we humbly request you to come to the rescue and protect this sports ground.

We look forward to your quick respond to this matter and any assistance will receive from your office will be highly appreciated.

Best regards,

Salim Mwidadi
Jomvu kuu village elder

Mzee Mbuga
Kwafarah village elder

RECEIVED
25 AUG 2020

COUNTY GOVERNMENT OF MOMBASA
RECEIVED
20/8/2020

Cc
Ministry of sports, Mombasa County Government.

Inserted in Register Book. No. [illegible]

THE COLONY AND PROTECTORATE OF KENYA

LAND TITLES ORDINANCE, 1908

SCHEDULE I. FORM B.

CERTIFICATE OF OWNERSHIP

I, Phineas Ernest Wolffe, Ag. Recorder of Titles do hereby certify that The United Methodist Church Missions

is the proprietor of an estate in fee (together with the mineral Rights) (1) in that piece of land situate in the Province of Seyidie at Changamwe and which is here [illegible] and delineated on the plan No. 16 deposited in the Office of the Recorder of Titles at Mombasa and thereon numbered 162 Sec V and containing one hundred and fifty one acres or thereabouts and subject to such mortgages and other interests (if any) as hereunder written. (2)

In Witness whereof I have hereunto set my hand and seal this 20th day of October 1924

Certificate Fees Sh. 3.02/-

Survey " Sh. 3.16/-

[signature] L.S.

Ag. Recorder of Titles

FEES PAID

[signature]

7/10/24

(2) Mortgages and other interests above referred to:

DEPT. OF LANDS, N.A.P.

[illegible]

Date 27/10/23

Time 9 Ms.

[signature]

Certificate of Incorporation issued under the Laws (Perpetual Succession) Ordinance to METHODIST CHURCH MISSIONS KENYA, REGISTERED (with other Courts) [illegible]

[signature]

1020

IN FOLLOWING [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

AL1 (b)

REPUBLIC OF KENYA

REGISTRATION OF TITLES ACT

(CHAPTER 281)

CERTIFICATE OF POSTAL SEARCH AS ON 3/11/2011

PLOT NUMBER:	162/V/MN
TITLE NUMBER:	CR 6348
AREA:	151 ACRES
TENURE:	FREEHOLD
REGISTERED OWNER:	METHODIST CHURCH IN KENYA TRUSTEE REGISTERED
ENCUMBRANCES:	CAVEAT DATED 27TH JULY 1974 BY REGISTRAR OF KENYA CLAIMING OWNERSHIP BY ACQUISITION OF 0.71 OF ACRES OF THE LAND

REGISTRAR OF TITLES.

REPUBLIC OF KENYA

REGISTRATION OF TITLES ACT

(CHAPTER 281)

CERTIFICATE OF POSTAL SEARCH AS ON 2/11/2011

PLOT NUMBER:	505/V/MN
TITLE NUMBER:	CR 14323
AREA:	15.28 ACRES
TENURE:	FREEHOLD
REGISTERED OWNER:	MUNICIPAL COUNCIL OF MOMBASA
ENCUMBRANCES:	NIL

REGISTRAR OF TITLES.

2 X

100 A (1)

REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT

(CHAPTER 281)

CERTIFICATE OF TITLE: NUMBER C.R.14323

I HEREBY CERTIFY that MUNICIPAL COUNCIL of Mombasa a local authority duly constituted under the Provisions of the Local Government Regulations 1963 in the Republic of Kenya of P.O. Box 90440 Mombasa pursuant to a Transfer registered as Number C.R.6348/4 is now the registered proprietor for an estate in fee simple of ALL that piece of land situate in the Mombasa Municipality in the Mombasa District containing by measurement fifteen decimal two eight (15.28) acres or thereabouts that is to say Subdivision No. 505 (Original No.162/1) of Section V Mainland North of Meridional District South A 37 8 as delineated on Land V IV C Survey Plan Number 82571 annexed to the said Transfer SUBJECT however to the Acts Special Conditions and Encumbrances specified in the Memorandum hereunder written.

IN WITNESS whereof I have hereunto set my hand and seal this 11th day of July One thousand nine hundred and Seventy three.

REGISTRAR OF TITLES.

M E M O R A N D U M

1. The Land Titles Act (Chapter 282 (Except Part III thereof)
2. The Registration of Titles Act (Chapter 281)
3. The easement protected by a Caveat registered as Number C.R. 6348/3.

LAND TITLES REGISTRY MOMBASA—KENYA
REGISTRATION OF TITLES ACT
REGISTERED AS No. C.R. 14323/1
Presented 11-7-1973
Time 10.29 AM
Registrar of Titles

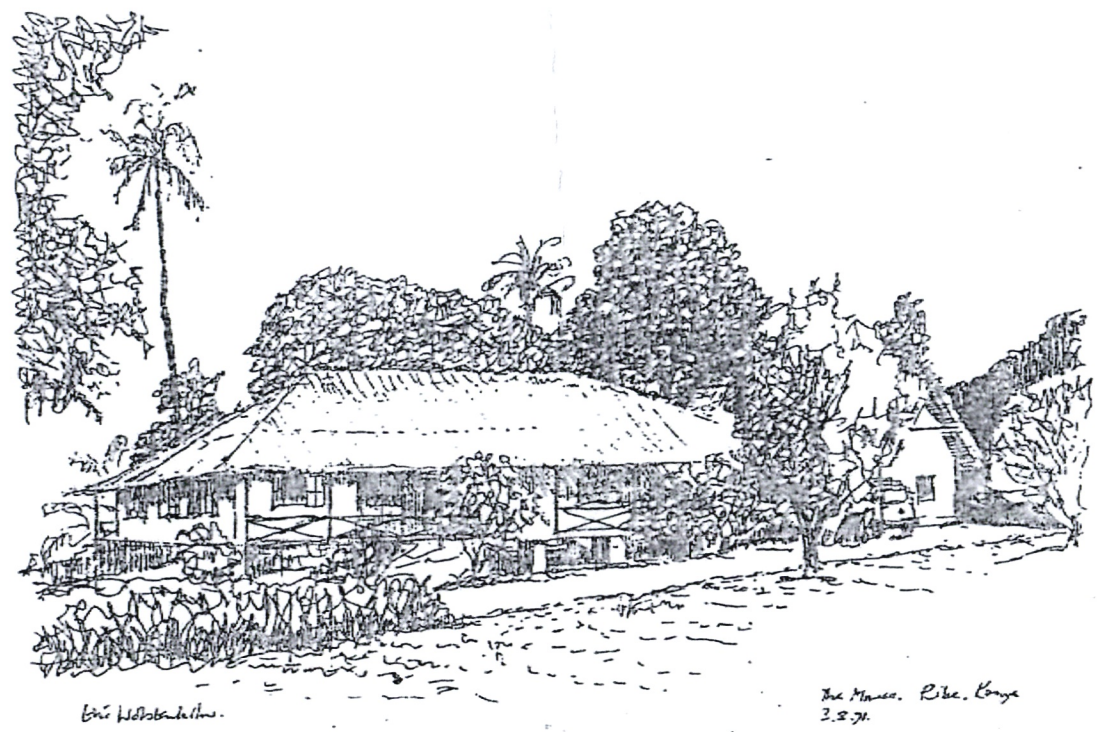
3 4

Kingdom Overseas', the Home Organisation Secretary wrote:

Jesus is Lord of the Church. He reigned and he ruled in the long years when there was little visible growth; He used the faithful service of His servants in the lean years. he directed the revival movement with its emphasis on conversion and life in the power of the Spirit as it came over the hills into Kenya in advance of the testing fires of the Mau mau. He wills that the community movement into the church and the revival movement should exist together in the life of the Church today. Our sufficiency is in Him.

In the words of Kathleen Richardson:

They have something to teach us and there is much we need to share with each other.



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

6th April, 2021

RESPONSES TO THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES ON STATEMENTS REQUESTED BY MEMBERS

1. Petition 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 responds as follows:

The Commission is in receipt of a Historical Land Injustices Petition whose contents can be summarized as follows;

- That Wajomvu people made their entry into Mombasa around 800 years ago.
- That they settled in three villages i.e in Jomvu kuu, Maunguja and Kwa Shee
- That during the Mazurui period from 1735 and 1837 and Busaidi rule (1837 - 1895) they were in the same villages.
- That in 1844 Sultan Sayyid Said gave Dr Krapf permit to start a missionary station in Mombasa. In 1878 he established a mission station at Jomvu kuu
- That in 1908 a title was issued to the Methodist Church Mission at Jomvu against the will of Wajomvu
- That the title had an acreage of 151 acres which included the Wajomvu farms, graves, shrines and fish landing sites
- That the Wajomvu came to realize later that their land now belonged to the Methodist Church and that they were now being referred to as trespassers
- That the Methodist Church around 2008 started to subdivide the land
- That the Wajomvu claim that powerful people are using the police to harass them with the aim of silencing them

During visit to the site by the Senate Committee in February 2021, the Chairman of NLC accompanied by the County Coordinator, took note of and recorded the detailed statements and submissions by the Claimants.

Action

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

2. Petition submitted by residents of Voi Sub County on Alleged impending evictions of Msambweni residents by a private company.

Hon Chair,The Commission responds as follows:

The Petitioners' prayer is that the land initially given to Bata Shoe ltd (later sold to Sparkle properties ltd) be returned to the residents of Msambweni.

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, 000,000.00. 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.

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.150,000.00 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 Petitioners allege that the land was already settled by them in 1978 when the land was given to Bata shoe company and that the residents were to be compensated when the factory would be built. However, the factory was not built and they continued living on the land to date.

Sparkle properties ltd has threatened to evict the petitioners from the land.

The Petitioners have filed an appeal no 42 of 2020 against the decision of Civil Case No 265 of 2013 and the matter is pending hearing and determination.

Suggested way forward

The role of NLC is limited given that this is private land, and there is a Court decision that is currently on Appeal.

However, if parties are in agreement, an Alternative Dispute Resolution process can be initiated to address the issues broadly.

Besides, the Ministry of Lands may also consider enquiring into the aspect of compliance by the lessee with the condition of lease.

3.Illegal alienation of land belonging to Kitale Primary School by a private developer.

The commission requests for three more weeks to complete investigations into this matter and propose possible remedies.

4.Alleged delayed adjudication and the settlement of squatters on Machungwani land in Taita Taveta County after expiry of lease.

Hon Chair,The Commission responds as follows;

The Petitioners pray that adjudication be initiated as soon as possible.
It was alleged that the lease to the land expired in 2013. The land is heavily settled with a number of villages. There is also a vast wetland within the land.
The previous owner (Basil Criticos) did not attend the meeting although it appears that he has attempted to come back to the land.

Suggested Way forward

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.

5. Illegal encroachment of land covering villages of Pangani, Nyatha, Kaisari, Mavuno, Poromoko and Widho in Lamu County

Hon Chair, The Commission respond as follows:

The commission requests for more time to complete investigation on this matter.

Honourable Chair, I submit;

GERSHOM OTACHI BW'OMANWA

CHAIRMAN

Dated April 6, 2021

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

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO 589 OF 2011

1. AKSELI LAMECK
2. JOAB MUYA
3 SAUMU JOAB
4. LIVINGSTONE CHIVATSI
5. ANNE CHIVATSI
6. HELLEN BEN
7. THOMAS SADIKI
8. JOYCE SADIKI
9. FREDRICK MUYA
10. ALICE MENZA
11. PATIENCE MUHAMBWA
12. LAZARO KAMWENDO
13. KADIDE LAZARO
14. SAMUEL LUSINA
15. LORNA LUSINA
16. AGNES MWARUA
17. BEATRICE RAI LUVUNO
18. MARIA SADIKI
19. EDDAH DADDO
20. MATANO BENJAMIN
21. MATANO MGONGO
22. JUMA DAVID
23. LIZZIE KAKENGA
24. CHARO GILBERT
25. KALUME ALBERT MLEWA
26. MARY KAKENGA
27. JOSIAH KOMBO
28. EUNICE KOMBO
29. JOSEPH KOMBO
30. CLARA GILBERT
31. LUCAS MGANDI JIRA
32. JOSPHENE MGANDIO JIRA
33. STANELY TUNGWA
34. REHEMA STAMELY
35. BAGALA TUNGWA
36. VILLANS BAGALWA
37. KEA SOLOMON
38. GEORGE GONA
39. HABEL NYAE
40. HANNAH MWARUWA
41. ROBERT MABANDA
42. MARY CHIGAMBA
44. LUCAS MGANDI MBOVU
45. MARIAM MGANDI MBOVU
46. MARIAM ZACHARIA MBOVU
47. BETTY JOHN JOAB
48. TOM JOHN JOAB
49. BETTY MAISHI
50. EMMAH AKSELI
51. HARRISON MASEMO
52. ROSE MASEMO
53. ELISHA KAPALA

PLAINT.

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54. MORRIS MASAMAKI
55. MAJALIWA ANDREW KAPERAH
56. FREDRICK KAPALA
57. GRACE CHIVATSI
58. MWARUWA MOSES
59. ELIJA MWAKIDOFU
60. EDDAH KAKENGA
61. SADIKI MASEMO
62. JOYCE RAI
63. JOHN MADU
64. GORGE RAI
65. ELISHA KATANA
66. NANCY GEORGE
67. BILLY MAISHI
68. WILLIAM MATANO
69. ELIJAH MWARUWA
70. EMILY ELIJAH MWARUWA
71. JOHN KAMWENDO
72. FLORENCE JOHN KAMWENGO
73. JOSEPH MASEMO
74. LOICE TUMAINI
75. JEFA GILBERT
76. MARY JEFA
77. HENRY KAPALA
78. MUENDA HENRY
79. NJERI CHARO
80. GILBERT KAPALA
81. GILBERT MLEWA
82. JAMES NDORO
83. LUCAS MGANDI MALEMBI
84. CAROLYNE MGANDI MALEMBI
85. WILLIAM MUYA
86. SARAH MUYA
87. EZEKIEL GEORGE
88. FREDIRCK MUYA
89. BREDA FREDICK
90. JULIET KATANA
91. ESTHER NYANVULA
92. EMILY NDORO
93. RUTH SALAMA MUHAMBWA
94. HANNA JESIA MUHAMBWA
95. THOMAS BORA MUHAMBWA
96. JANE KATEI
97. GILBERT KATEI KATANA
98. WINNIE MAKU RAI
99. MAGRET NICARO
100. LINNAH MBEYU
101. MWAJUMA JOHANNES
102. BEATRICE MWAJUMA
103. MOSES MWARUWA
104. BEATRICE TABU MLEWA
105. HENRY KAPALA MLEWA
106. SOPHIE MGONGO
107. CLARAH KADO ALBERT
108. KAPERA SERA TABU
109. NELLY DAVID MUGONGO
110. LUCY MAUA DAVID
111. ALICE JUMWA MENZA
112. HARRIET MEDZA MENZA

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113. EDDAH NAZI MENZA
114. JOSEPH KAKENGA (SHEVO)
115. LIZZ MUPHA
116. EDWARD KYIGAMBA KAKENGA
117. BENJAMIN JUMA
118. MASEMO MATANO WILLIAM
119. LIZZY MUPA MASENO
120. JOHN KATEI
121. PRISCILLA MUYA
122. JANE HAJIRA MUHAMBWA.....PLAINTIFFS

Plaint

=VERSUS=

1. METHODIST CHURCH IN KENYA TRUSTEES
2. SUPRITENDANT MINISTER FOR CHANGAMWE CIRCUIT REV. JOSHUA M'IKIAO
3. CHAIRMAN JOMVU METHODIST CHURCH MR. RICHARD NYAWA
4. JOHN MATOLE MWERO
5. ANTHONY SALIMINI
6. CHARITY BAYA
7. MUNICIPAL COUNCIL OF MOMBASA
8. THE REGISTRAR OF TITLES, MOMBASA.....DEFENDANTS

PLAINT

1. The Plaintiffs are all adults of sound mind residing on LR 162/V/M.N. Jomvu Kuu popularly known as The Jomvu Mission. Their address for the purposes of this suit shall be care of Messers FADHIL & KILONZO ADVOCATES, LEGAL MANSION, 2ND FLOOR, NKRUMAH ROAD, P.O. BOX 3060-80100, MOMBASA.

2. The 1st Defendant is the Methodist Church of Kenya Trustees sued in their capacity as the custodians of the permanent Assets of the Methodist Church in Kenya. (Service of Summons shall be effected through the Plaintiffs' Advocates offices).

3. The 2nd Defendant is the head of the Methodist Church in Kenya at Changamwe circuit. (Service of Summons shall be effected through the Plaintiffs' Advocates offices).

4. The 3rd Defendant is an adult male of sound mind and Chairman Jomvu Methodist Church working for the spiritual welfare of the faithful of the Methodist Church in Kenya at Jomvu. (Service of Summons shall be effected through the Plaintiffs' Advocates offices).

5. The 4th Defendant is the former Church Secretary of the Methodist Church in Kenya at Jomvu. (Service of Summons shall be effected through the Plaintiffs' Advocates offices)

6. The 5th Defendant is an adult male of sound mind and a previous Church hand chairman of the Methodist Church in Kenya at Jomvu. (Service of Summons shall be effected through the Plaintiffs' Advocates offices).

7. The 6th Defendant is an adult female of sound mind and the current Secretary of the Women's fellowship, at the Methodist Church in Kenya at Jomvu and a former Church Secretary of the Methodist Church in Kenya at Jomvu. (Service of Summons shall be effected through the Plaintiffs' Advocates offices).

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The 7th Defendant is the Municipal Council of Mombasa a Corporate body duly established under the Local Government Act Chapter 265 of Laws of Kenya. (Service of summons shall be effected through the Plaintiffs' Advocates Offices).

9. The 8th Defendant is the Registrar of Titles, Coast Province and is sued in his capacity as the custodian of and governing authority of Coast Lands Records within the Coast Province of the Republic of Kenya. (Service of summons shall be effected through the Plaintiffs' Advocates offices)

10. At all material times prior to this suit, the 1st Defendant was the registered proprietor of all that parcel of Land known as Land Reference No. 162 of Section V Mainland North situate at Jomvu Kuu and popularly known as Jomvu Mission measuring approximately 135 (One Hundred and Thirty Five) acres or thereabouts.

11. The Plaintiffs aver that at all the material times they had been congregate of the Jomvu Methodist Church and the Jomvu Mission Residents since times of its existence.

12. The Plaintiffs aver that since times immemorial LR 162/V/M.N had always been occupied by the Jomvu Residents and in particular their forefathers who are buried in all that parcel of Land known as LR No. 162/V/M.N.

13. The Plaintiffs aver that they had been paying land rates to the Municipal Council of Mombasa and as of today no arrears are accruing.

14. The Plaintiffs aver that they have always been in the management of the Jomvu Methodist Church and in the management of all that parcel of land known as LR No. 162/V/M.N. through their Democratically Elected Land Committee.

15. The Plaintiffs aver that the 1st Defendant requested them to contribute subdivision fees to assist in the subdivision of all that parcel of land known as LR 162/V/M.N. in Jomvu Kuu.

16. The Presiding Bishop on the 5th November 2003 approved the subdivision and allocation of L.R. 162/V/M.N. to the Jomvu Mission Residents and gave them the responsibility of paying Land Rates and the go ahead with subdivision of all that parcel of land known as LR No. 162/V/M.N.

17. The presiding Bishop authorised the Jomvu Mission Residents to look for a surveyor of their own which they did and on 10th July 2008 a physical development was prepared.

18. That by the conduct of the 1st Defendant to transfer the responsibility, management and control of LR No. 162/V/M.N. to the Plaintiffs, made the Plaintiffs believe that they now own LR No. 162/V/M.N. and that conduct itself conferred ownership of the proprietary rights to the Plaintiffs and formed a valid Agreement enforceable in law.

19. By virtue of that conduct, the Jomvu Methodist Congregation, who are the Jomvu Mission Residents did collect funds amongst themselves, forwarded the said funds to the Church for record purposes and which funds were used to clear the Land Rates at Municipal Council of Mombasa that act by itself re-confirmed the earlier agreement by conduct.

20. The Defendants have negated into their agreement and have now refused to honour the physical development plan dated 10th July 2008.

21. That Plaintiff's claim against the Defendants is for specific performance by way of enforcing the subdivision and issuance of title documents to the Plaintiffs without any conditions.

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22. The Plaintiffs state that there is no other suit pending and there has been no previous proceedings in any Court of Law between the Plaintiffs and the Defendants over the same subject matter herein.

23. The cause of action arose within the jurisdiction of this Honourable Court.

REASONS WHEREOFRE: the Plaintiff prays for judgment against the Defendants for:-

a) A declaration that the 1st Defendant's Contractual agreement by conduct of the 1st Defendants to the Plaintiffs be recognized as to constitute a valid and enforceable contractual agreement in law and the 1st Defendants be compelled to execute Transfer documents in favour of the Plaintiffs and/or Registrar of the High Court of Kenya Mombasa to execute the relevant documents upon failure of the 1st Defendant to do so.

b) An order that the subdivision carried as per Draft Physical Development dated 10th July 2008 be declared valid and to be enforced safe for any amendment by the Physical Planning Department in regard to public services utilities.

c) An Order against the Municipal Council of Mombasa to approve the proposed subdivision dated 10th July 2008.andf an Order directing the Registrar of Titles Mombasa to register and issue titles to the Plaintiffs

d) A declaration that the Jomvu Mission non Residents and in particular the Changamwe brethrens are not beneficiaries of the entire scheme and that any money collected from them by any of the Defendants purportedly for allotment of land at Jomvu Mission be refunded to them by the Defendants.

e) Costs and incidental to this suit.

f) Any other relief that this Honourable Court may deem fit to grant.

DATED at MOMBASA this 7th day of NOVEMBER 2011.

FADHIL & KILONZO
ADVOCATES FOR THE PLAINTIFFS

DRAWN & FILED BY:-

FADHIL & KILONZO
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MOMBASA

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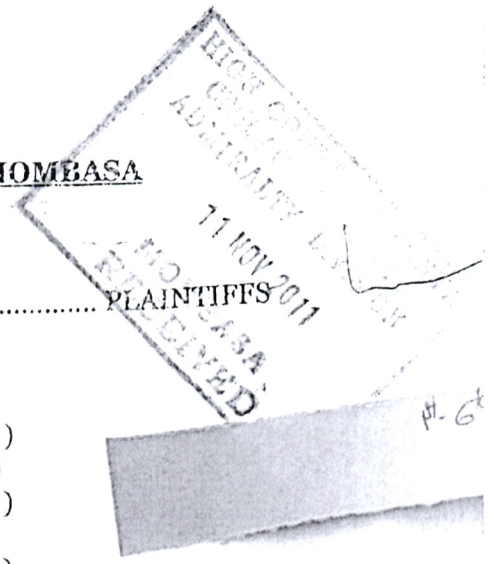
REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CIVIL SUIT NO. 589 OF 2011



AKSEL LAMECK & 121 OTHERS ..... PLAINTIFFS

- VERSUS -

1. METHODIST CHURCH IN KENYA TRUSTEES)
2. SUPRITEDANT MINISTER FOR CHANGAMWE) CIRCUIT, REV. JOSHUA M'IKIAO)
3. CHAIRMAN, JOMVU METHODIST CHURCH, MR. RICHARD NYAWA)
4. JOHN MATOLE MWERO)
5. ANTHONY SALIMINI)
6. CHARITY BAYA)
7. MUNICIPAL COUNCIL OF MOMBASA)
8. THE REGISTRAR OF TITLES, MOMBASA) ..... DEFENDANTS

DEFENCE OF THE 1ST TO 6TH DEFENDANTS AND COUNTER-CLAIM

1. The 1st to 6th Defendants deny paragraph 1 of the plaint. The Plaintiffs are persons who reside in 58 semi-permanent structures on a very small portion of the 1st defendant's property known as LR No. 162/V/MN with the permission of the 1st defendant. Hereinafter the said LR No. 162/V/MN is referred to as the suit property. They fall under two categories. The first category are Christians who are members of the 1st defendant, a body corporate, whilst the second category is of persons who do not belong to the 1st defendant's Jomvu Church popularly known as Jomvu Mission.

2. In addition to the plaintiffs, the 3rd defendant, his brother, Elijah Mrisa the 5th respondent and their respective families, reside in some of the 58 semi-permanent structures pleaded in paragraph (1) above. the said 3rd defendant, his brother, the 5th defendant and their respective families respect the 1st defendant's right over the suit property and it's authority in the running and management of the 1st defendant's Jomvu Congregation known as the Jomvu Mission.

3. Further to paragraph 1 above, the 1st – 6th defendants aver that the plaintiffs are individuals who have organized themselves with a view to opposing the 1st defendant's plans of utilizing its said property, L.R No. 162/V/MN which is 151 acres and claim an interest in the same. Their leader is the 1st plaintiff who is a former member of the General Service Unit.



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4. The 1st to 6th defendants further aver that the 1st defendant is a body corporate whose correct name is Methodist Church in Kenya Trustees Registered. It is incorporated under the Trustees (Perpetual Succession) Act, Cap 164 Laws of Kenya. Its popular name is Methodist Church in Kenya whilst its abbreviation is MCK.

5. The 1st to 6th defendants deny paragraph 3 of the Plaint. They aver that according to its Constitution which is also known as Standing Orders, the 1st defendant is divided into Provinces which are known as Synods. The 1st defendant has 10 Synods of which one is the Mombasa Synod.

6. The 1st – 6th defendants further aver that the Synods of the 1st defendant are in turn divided into districts known as Circuits. The Circuits are in turn sub-divided in to Congregations. The 1st defendant's Mombasa Synod has the following Circuits:
   i. Changamwe Circuit
   ii. Mazeras Circuit
   iii. Kisiwani Circuit
   iv. Kisauni Circuit
   v. Mamba Circuit
   vi. Kinango Circuit
   vii. Kwale Circuit

7. The first – 5th defendant's further aver that, as pleaded in paragraph 6 above, LR No. 162/V/MN is in the Changamwe Circuit of the 1st defendant's Mombasa Synod and further that on the said suit property stands a church at which the plaintiff and its other loyal members worship as a congregation of the 1st defendant.

8. The Chief Executive of the Methodist Church in Kenya is the Presiding Bishop of the day. In the administration of the 1st defendant, the Presiding Bishop is assisted by a Conference Secretary who is in essence the Deputy Presiding Bishop. Before he was elected the Presiding Bishop, Rev. Dr. Stephen Kanyaru M'Impwii, the current Presiding Bishop, had served as the conference secretary for 7 years. The head of the Synod, in the 1st defendant, is the Synod Bishop whilst the church minister in charge of Circuit is known as a Superintendent Minister. At all material times, the Church on LR No. 162/V/MN was served by church Ministers attached to Changamwe Circuit and the synod Bishop of Mombasa Synod is Rhopus Mzungu under whom the congregation of the suit property falls.

9. The 1st to 6th Defendants further aver that Congregation on LR No. 162/V/MN was at all material times run and/ or managed by a main committee of 27 elected members who in addition served in sub-committees, which assist the main committee. At all material times the

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sub-committees included a Lands Sub-Committee which was Chaired by the 5th Defendant.

10. The 1st to 6th Defendants further aver that at all material times, the 1st Defendant was the Registered Proprietor, within the meaning of section 23 of the Registration of Titles Act, Chapter 281 Laws of Kenya, of LR No. 162/V/MN popularly known as Jomvu Mission, 151 acres in area. The 1st – 6th defendants further contend that by virtue of its legal status as the proprietor of the suit property, the 1st defendant has exclusive possession of the suit property including the small portion of the same on which stands the 58 semi-permanent structures and that the plaintiffs and other residents of the Jomvu Mission are licensees whose license is terminable upon being given a reasonable notice of termination. The 1st to 6th Defendants further aver that at all material times, it is the 1st Defendant which has paid to the Municipal Council of Mombasa the rates payable in respect to the property.

11. Further to paragraph (10) above, the 1st to 6th Defendants aver that on the said LR No. 162/V/MN popularly known as Jomvu Mission are the following developments:

    a) a church on half an acre; this serves the members of the 1st defendant both residents and non-residents who choose to worship there;
    b) a primary school known as Kwa Jomvu Primary School;
    c) a Nursery school;
    d) fifty Eight (58) semi-permanent structures; these are the homes of both the plaintiffs and the loyal members of the 1st defendant pleaded in paragraph (2) above; some of the 58 structures are thatched with corrugated iron sheets whilst others are thatched with makuti; the 58 semi-permanent structures are scattered over an area of about two (2) to five (5) acres;
    e) a grave yard or burial place.

12. Further to paragraph (2) above, the 1st to 6th Defendants further aver that the residents in the fifty eight (58) structures fall under two classes. The first class is of the descendants of freed slaves whom the 1st Defendant licensed to occupy. The second class is of people from different parts of the country who have been given accommodation by the descendants of the slaves. These belong to the Giriama, Duruma, Rabai, Ribe, Kambe, Kamba, Luhya, Meru, Kikuyu, Somali, Pokomo, and Orma Communities from Kenya. There are also some citizens from Malawi and Tanzania.

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13. The 1st to 6th Defendants admit that the 2nd Defendant is the Superintendent Minister of the Changamwe Circuit under which the Jomvu Mission falls.

14. The 1st to 6th Defendants also admit paragraphs 3, and 4 of the Plaint.

15. The 1st to 6th Defendants deny paragraph 5. As pleaded above, at all material times, the 5th Defendant was the Lands Chairman of the Lands Sub-Committee of the Jomvu Mission Committee constituted to oversee Land matters affecting the said LR No. 162/V/MN.

16. The 1st to 6th Defendants deny paragraph 6 of the Plaint. They aver that the 6th Defendant, a female adult, is the former Secretary of the Jomvu Mission.

17. The 1st to 6th Defendants admit paragraphs 8 and 9 of the Plaint.

18. The 1st to 6th Defendants deny paragraph 10 of the Plaint. As pleaded above, at all material times, the 1st Defendant was the registered proprietor of the suit property which is 151 acres in area.

19. The 1st to 6th Defendants deny paragraph 11 of the said Plaint and aver that although resident in the 58 structures, the following are not members of the 1st defendant and its Jomvu mission situated on the suit property; the 1st , 3rd, 5th, 17th, 20th, 31st, 34th, 38th, 39th, 42nd, 44th, 45th, 47th, 58th, 59th, 64th, 66th, 67th, 69th, 77th, 79th, 80th, 87th, 90th, 93rd, 94th, 96th, 97th, 101st, 102nd, 103rd, 113th, 114th ,115th, 116th, 120th and 122nd Plaintiffs. The 1st – 6th defendants further contend that the non-members of the 1st defendant operate outside the constitution of the 1st defendant and consequently are not entitled to enjoy the rights conferred by its constitution.

20. The 1st to 6th Defendants deny paragraph 12 of the Plaint and aver that:

a) the 1st Defendant acquired the suit property on 20th October 1923;

b) upon its acquisition of the same, the 1st Defendant licensed freed slaves and their families to live on a portion of the suit property;

c) s ince acquisition of the same, the 1st Defendant has licensed homeless members of the Kenyan communities and citizens of Malawi and Tanzania, pleaded above, and their families, to live in the 58 semi-permanent structures.

The 1st – 6th Defendants admit that there is a burial place on the suit property as pleaded in paragraph 12 of the Plaint.

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21. The 1st to 6th Defendants deny paragraph 13 of the Plaint and aver that in 2003, the 1st Defendant conceived a development plan in respect of the said suit property. The said plan was described in a rudimentary form in a letter dated 5th November, 2003, addressed to its Coastal Region Property Steward, Mr. Stephen Z. Arome. At the trial, the 1st – 6th defendants shall produce the same for its tenor and effect.

22. The plan pleaded in paragraph (21) above included identifying landless residents to whom it would give title to plots for residents if they wished to own them and met conditions which the 1st Defendant imposed. To implement the plan, the suit property was to be resurveyed and different portions set aside for different purposes. The 1st Defendant resolved that pending the grant of titles to the deserving residents who satisfied its conditions, it would require all the residents on its, suit, property to pay rent for the use of the land, which rent would take the form of paying rates due from the suit property. according to the said plan, all the residents of the Jomvu Mission, be they Church or non- church members, 18 years and above, were eligible for the ownership of plots if they accepted the 1st Defendants conditions. The 1st -6th defendants further aver that according to its plan pleaded above, its coast region steward was to assist Church leaders in Jomvu Mission to identify a surveyor who would assist with its plans.

23. The 1st to 6th Defendants deny paragraph 14 of the Plaint. As pleaded above, they aver that at all material times, the Jomvu Mission/Church had a management committee of 27 persons of whom 7 seven served in the lands sub-committee namely; the 2nd to 6th Defendants, Mr. Mturi Samson and Mr. Thomas Sadiki.

24. The 1st to 6th Defendants deny paragraph 15 of the Plaint. They aver that the 1st Defendant requested the Jomvu Congregation to start arranging to consider a proposal for ownership under conditions imposed by it of plots on which the residents were residing. The 1st Defendant has developed its plan and submitted it to the 7th Defendant for approval. From a part of the suit property, the 1st Defendant has created 450 plots on which it proposes to settle deserving and genuine residents. On 18th September 2011, the 1st Defendant developed proposed letters of allotment to be used by the residents who wished to be considered for ownership of the said 450.

25. The 1st to 6th Defendants further aver that without the authority and knowledge of the 1st Defendant, the Plaintiffs formed an organization to prepare to own plots, developed a purported plan for acquiring Titles carved from the suit property and purported to submit it to the Municipal Council of Mombasa for approval. The 1st to 6th Defendants further contend that under both the Physical Planning Act, and the Local Government Act, it is only a proprietor of land who can submit to

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the 6th Defendant a plan for approval and consequently the purported plan developed and submitted to the 6th Defendant, by the Plaintiffs, is null and void. The 1st to 6th defendants further contend that in Kenyan Land Law, one can acquire rights to land through either purchase, gift or the operation of the law and further that the plaintiffs have not acquired any interest whatsoever in the suit property.

26. The 1st to 6th Defendants deny paragraphs 17, 18, and 19 of the Plaint. They contend that under the Rule in **Commissioner of Lands *versus* Hussein (1968) EA 585**, a person acquires an interest in land only upon taking possession of the parcel of land concerned with consent of the owner and upon an expectation created or encouraged by the owner, lays out money upon the land to give effect to the expectation or promise made. The 1st to 6th defendants aver that, as pleaded above, none of the residents of the Jomvu Mission was invited to the suit property by the 1st defendant and further that the Plaintiffs have not, and cannot, satisfy conditions for acquiring interest in the suit property.

27. Further to paragraph 20 above, the 1st to 6th Defendants deny that they have either made any agreements with the Plaintiffs as pleaded in the Plaint.

28. Further to paragraphs 20 and 21 above, the 1st to 6th Defendants deny that the Plaintiffs are entitled to either the remedy of specific performance or to any relief under the said Rule in **Commissioner of Lands *versus* Hussein (1968) EA 585**.

29. Further to paragraph 28 above, the 1st to 6th defendants contend that the doctrine of specific performance applies to contracts of purchase of land and that the 1st defe ndant has not entered into a contract for purchase of any portion of the suit property with any of the plaintiffs.

30. The 1st to 6th Defendants admit paragraphs 22 and 23 of the Plaint.

REASONS WHEREFORE the 1st to 6th Defendants pray that this suit be dismissed with costs.

COUNTER-CLAIM

31. By way of counter-claim, the 1st to 6th Defendants repeat paragraphs 1 to 29 above.

32. The 1st to 6th Defendants aver that by purporting to survey the suit property, developing a plan to acquire portions of the same without approval or knowledge of the 1st Defen dant, submitting it to the 6th Defendant, and filing this suit, the Plaintiffs have challenged the 1st

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Defendants title and their conduct constitutes sufficient cause for the revocation of their individual licenses to live on the suit property and the 1st Defendant has consequently revoked the said licenses. The 1st to 5th Defendants further contend that upon revocation of the Plaintiffs' licenses, they have become trespassers and the 1at Defendant is entitled to an order for vacant possession of the same.

REASONS WHEREFORE the 1st to 5th Defendants pray for judgment against the Plaintiffs for:

a) An order that the Plaintiffs give vacant possession for the portions of the village they are in possession of;
b) The costs of this suit.

DATED at NAIROBI this 11th day of November 2011

KAMAU KURAI & KIRAITU
ADVOCATES FOR 1st – 6th DEFENDANTS

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TO BE SERVED UPON
FADHILI & KILONZO
ADVOCATES
LEGAL MANSION
NKRUMAH ROAD
P.O. BOX 3060-80100
MOMBASA

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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

ELC CASE NO. 589 OF 2011.

AKSELI LAMECK & 121 OTHERS.....PLAINTIFFS

VERSUS

METHODIST CHURCH IN KENYA TRUSTEES & 7 OTHERS.....DEFENDANTS

DECREE

CLAIM FOR;

1. THAT a declaration that the 1st Defendant's Contractual agreement by conduct of the 1st defendant to the plaintiffs be recognized to constitute a valid and enforceable contractual agreement in law and the 1st defendants be compelled to execute transfer of documents in favour of the plaintiffs and /or Registrar of the High Court of Kenya, Mombasa to execute the relevant documents upon failure of the 1st defendant to do so.
2. THAT an order that the subdivision carried as per Draft Physical Development dated 10th July 2008 be declared valid and to be enforced save for any amendment by the Physical Planning Department in regard to public services utilities.
3. THAT an order against the Municipal Council of Mombasa to approve the proposed subdivision dated 10th July 2008 and an order directing the Registrar of Titles Mombasa to register and issue title to the plaintiffs.
4. THAT a declaration that the JOMVU Mission non – residents and in particular the Changamwe brethren are not beneficiaries of the entire scheme and that any money collected from them by any money collected from the by any of defendants purportedly for allotment of land at Jomvu Mission be refunded to them by the defendants.
5. THAT costs and incidental to this suit.
6. THAT any other relief that this Honourable Court may deem fit to grant.

THIS MATTER coming up for judgment dated and signed by Hon. Lady Justice Anne. Omollo on 5/12/2109 and delivered by Hon. Justice Sila Munyao on the 16th of December 2019. In the presence of Mr. Jumbale for the Plaintiff, Mr. Siminyu for 1 – 6th defendants, Mr. Kibara for the 7th Defendant, the A.G. for the 8th defendant,

IT IS HEREBY DECREED,

1. THAT the plaintiffs' suit be and is hereby dismissed in its entirety and they shall pay costs of the suit to all the defendants.

GIVEN under my HAND and SEAL of this Honourable Court on the 16th of December, 2019.

HIGH COURT OF KENYA ENVIRONMENTAL AND LAND DIVISION MOMBASA

DEPUTY REGISTRAR
ENVIRONMENT AND LAND COURT
MOMBASA

ISSUED at MOMBASA this 12TH day of August 2020.

PENAL NOTICE: "Take note any party served with this order but does not obey is liable for prosecution for contempt of court and upon conviction may be imprisoned up to six (6) months and/or fined and or face both court sanctions as the court may deem fit and appropriate."

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ODUOR SIMINYU & COMPANY ADVOCATES

M. O. Oduor, BAL, LLB (Hons), Dip Ksl
Oduori Siminyu, Bcom, LLB, Dip Ksl

FURAHA PLAZA
3RD FLOOR
NKURUMAH ROAD
P.O. BOX 42847-80100
MOMBASA
TEL: 0202660921
Email: oduorokumuadvocates@gmail.com

Our Ref; OSA/MSA/2021

5th May, 2021

TO
THE LAND REGISTRAR
MOMBASA COUNTY
MOMBASA.

Dear Sir/Madam,

RE: METHODIST CHURCH IN KENYA – JOMVU ON PROPERTY INITIALLY KNOWN AS PLOT NO. LR 162/ V/MN

The establishment of the mission station at Jomvu was initiated in1878 by the then United Methodist Free Churches, the precursors of the present Methodist Church in Kenya. The Church then acquired a sizable piece of land not only for evangelistic purpose but also for the settlement of slaves who were either running away from their masters and some that were rescued from the high seas. This was not the only, settlement by the Methodist Church but there were other settlements in Ribe and Mazeras (Ganjoni). The C.M.S. (Anglican) had another in Frere Town (Kisauni).

In order to ensure that this humanitarian mission was sustained for a long haul the pioneers Thomas Wakefield and Thomas Carthew, bought land in these places as no land was given for free. The administrator of Jomvu settlement was Thomas Carthew who ensured that the ex-slaves, some of who had ran away from their masters. They were well treated and offered means of livelihood for them and their families by being allocated a piece of land to cultivate. This did not please their masters who tried to claim them back as part of their property. As a compromise the missionaries decided to compensate their masters for the loss.

In 1888, the Methodist mission had paid 3500 sterling pounds for the land a huge amount of money at the time. The British consul in Zanzibar encouraged the missionaries to purchase land in order that they would be safe from the land owners who acted under authority of the Sultan. The Imperial British East Africa Company who administered the territory for Britain oversaw the process was done legally and land titles were processed. The titles were later issued under the Colony and Protectorate of Kenya mandate.

Scanned with CamScanner

By 1888, Thomas Carthew who was, the pastor and administrator of Jomvu community had more than 200 people who were residing in the Church land. Apart from the Church and his residence he built a school, for the children and a clinic for the community. Those who settled there were well aware they were living in the Church, land.

In the year 2003 the Methodist Church in Kenya Registered Trustees conference office on its own volition decided to subdivide their land at Jomvu Mission amongst its fellowship. The leadership at Jomvu M.C.K/Mombasa synod was mandated with planning on how the land would be shared. In a meeting held on **26th February, 2011**, the Committee agreed that all households would stand on a quarter acre while all those of 18 years whether female or male would each get an **1/8**. The distribution was therefore done as parties had agreed.

On **9th November, 2011**, a suit was filed at Mombasa High Court by over 122 plaintiffs. The suit was defended as it went through the legal process. Each party had an opportunity to present its case before the Honourable court.

On **16th December, 2019** the court delivered it's Judgement in which the Plaintiffs case was dismissed. The court subsequently granted the Plaintiffs a conditional stay which they failed to comply with and upon expiry of the period, the church had no option but to execute the Judgement. Majority of the membership of the church on the property received allotment letters from the church except a few who rejected and whose allotment letters are held with the surveyor.

So far as things stand parcel **LR. NO. 162/V/MN** does not exist anymore as 456 subdivisions have been done and titles are already out in members own names.

It is important to <u>NOTE</u> that of the Petitioners herein none of them is a Christian when the land is actually occupied by Christians and furthermore being private property since 1923.

For almost **TEN (10) YEARS** this case dragged in court, where were the Petitioners to join the suit.

Without much ado this petition is designed to drive a particular political agenda and should be dismissed henceforth.

Thank you in advance.

FOR; ODUOR SIMIYU & COMPANY ADVOCATES,

ODUOR SIMIYU & CO
ADVOCATES
P.O. BOX 12847 - 80100
MOMBASA

ODUORI SIMIYU

Scanned with CamScanner

NATIONAL LAND COMMISSION

Our Land, Our Wealth, Our Heritage

OFFICE OF THE CHAIRMAN

Website: www.landcommission.go.ke
Telephone : Nairobi 020-8000242
Email:infor@landcommission.go.ke
When replying please quote:

ACK GARDEN ANNEX BUILDING
1ST NGONG AVENUE
P. O. BOX 44417-00100
NAIROBI

Ref: NLC/MOMBASA/1

20th May, 2021

Bishop. Joseph Ntombura
Presiding Bishop
Methodist Church in Kenya
P.O. Box 47633 – 00100 Nairobi, Kenya
Tel: 020-2403438
NAIROBI

Dear Bishop Ntombura,

WAJOMVU COMMUNITY HISTORICAL LAND INJUSTICE CLAIM- MN/V/162

The National Land Commission (NLC) is mandated under Article 67 of the Constitution as read together with Section 5 (1) (e), 6 and 15 of the National Land Commission Act 2012 to receive, admit and investigate all Historical Land Injustice (HLI) complains and recommend appropriate redress.

The Commission is in receipt of a HLI claim with respect to MN/V/162 which is a property associated with the Methodist Church, Mombasa Synod. Further, there is a live petition relating to the claim in the Senate Standing Committee on Land, Environment and Natural Resources and a subsequent complaint registered to the Commission on Administrative Justice by Wajomvu Community.

The purpose of this letter is to request you to apprise the NLC on your position on the matter to enable the Commission act appropriately within its mandate.

Attached find a copy of correspondences for your reference.

Yours Sincerely,

Gershom Otachi Bw'Omanwa
CHAIRMAN

Encl.

THE REPUBLIC OF KENYA
IN THE SENATE
PETITION OF WAJOMVU COMMUNITY

THE CLERK SENATE,
PARLIAMENT BUILDING,
NAIROBI.

THE HUMBLE PETITON OF THE WAJOMVU COMMUNITY ON HISTORICAL LAND INJUSTICES REGARDING PLOT NO 162 V/M/N/ CR 1070.

1. The Wajomvu Community located at Jomvu Kuu Village, Jomvu Location, Jomvu Ward, Jomvu Sub County, hereby Petition the Senate on the issue of ownership of Plot no 162 V/M/N/ CR. 1070 located at Jomvu Kuu.

2. That your Petitioners are among the 12 Swahili Tribes and some of the earliest Tribes that settled in Mombasa around 800 years ago.

3. That on or about 1846 Dr. Kraph arrived on the East Africa Coast and settled at Rabai. Jomvu Kuu was the area where all travels to up Country started. Dr. Kraph traveled and settled in Rabai, where he established his Church.

4. That in 1877 through the benevolence of a Jomvu Elder by the Name Mwidani Dr. Kraph was given Land to established a Church in a predominately Muslim Community.

5. That the Area where the Church was built was a small Area. However when the adjudication was done in 1923, the Methodist Church was allocated 150 Acres of our Land.

6. That the Community has been using the land for farming and access to fishing sites for many years and part of it used as residence.

THE REPUBLIC OF KENYA
IN THE SENATE
PETITION OF WAJOMVU COMMUNITY

7. That recently the Methodist Church embarked on a sub-division scheme and sale of the land to third parties.

8. The land has been occupied by the Wajomvu Community all this time and has been held by the Community as its Ancestral land. The Community has no other alternative Land where it can go, and its historical injustices that the Colonial Administration committed on the Wajomvu Community by allocating 150acres of its Land to yet they had given a small portion to establish a Church.

9. That our fishing grounds/waters and jetty to travel to Jomvu Maunguja will be blocked.

10. That the Wajomvu Community graveyard will also be taken away.

11. That Important Cultural and Religious sites will be destroyed to the detriment of the Community.

12. That the Community is in danger of being disinherited, our village is in danger of being blocked.

13. That our farmlands are also likely to be taken away.

14. That the community sent a memorandum to the National Land Commission but its three years now with no response.

15. That there is no case Wajomvu Community has filed regarding the land in question.

16. That we pray that this Senate considers our Petition and grant us appropriate remedies.

THE REPUBLIC OF KENYA
IN THE SENATE
PETITION OF WAJOMVU COMMUNITY

PRAYERS

The Petitioners pray that the Senate undertakes an inquiry into the historical injustice with a view to resettle the local community to their Land.

Dated at Mombasa 2nd July 2020.

MR. SALIM MWIDADI **ID NO. 4644996** .....

MR. MOHAMMED KOMBO **ID NO. 5378195** .....

MR. KASSIM MWIKAA **ID NO. 3153528** .....

MR. MWINYIUSI MWIDADI **ID NO. 1319563** .....

METHODIST CHURCH IN KENYA

TEL: 0717 973754 / 0722 400 369
Email: ronaldnzai@gmail.com

3/3/2021

NATIONAL LAND COMMISSION
REGISTRY
04 MAR 2021
RECEIVED
P.O. Box 44417, NAIROBI

The National Lands Commission
Mr. Gershom Otachi Bw'omanwa

Chairman,

I bring you greetings of peace and prosperity from Jomvu Methodist Mission Community, on behalf of the church and the entire Jomvu Community would like to register our thanks to your office and the Senate Assemble land committee for coming down to Jomvu and careful listen the cry of historical injustice caused by the Methodist Church in Kenya Nairobi Office.

On Sunday 28/2/2001 at 2.00 pm the Jomvu people organized an interdenominational service and the item prayer was to ask God to intervene the situation in a peaceful way to avoid ethnic clashes.

Sir, enclosed find documents from Jomvu for references.

A copy of caveat was forwarded to you by Bishop Makonde

May God bless you

Yours in His service

NATIONAL LAND COMMISSION
RECEIVED
05 MAR 2021
CHAIRMAN
P.O. Box 44417 - 00100 NAIROBI

Rev. Ronald L Nzai
Mombasa Synod Bishop
0717973754

METHODIST CHURCH IN KENYA

COAST REGION CONFERENCE

TEL: +254 704 204 370/+154 702 167 148/+254 725 224 800
P.O BOX 79 80105, KALOLENI, GIRIAMA
Email: coastregionconference@gmail.com

16/10/2020

TO: The Director of Land Survey

FROM: The office of the President, Methodist Church in Kenya-

Coast Region Conference.

Dear Sir,

REF: DISPUTE SUB-DIVISION JOMVU METHODIST MISSION LAND:

PLOT REGISTRATION NO.162/V/MAINLAND NORTH.

The parcel of land mentioned above was bought by a white missionary Rev. Thomas Wake field in the late 1800, the founder of the Methodist church in Kenya and East Africa General under the United Methodist Mission churches.

The primary aim was to settle down free slaves and also other church development project to empower the community.

The sub-division of the parcel of land has raised contested dispute between the residents and the Methodist church in Kenya trustees. We kindly advise your office to make haste intervention before the situation worsen.

Yours In His Service

METHODIST CHURCH IN KENYA
19 OCT 2020
P.O. BOX 79 KALOLENI
COAST REGION CONFERENCE

Rev. Dr. Tsuma Mutua Chidongo
Conference Secretary

Methodist church in Kenya

Coast Region conference

METHODIST CHURCH IN KENYA

COAST REGION CONFERENCE
MOMBASA SYNOD
TEL: 0717 973754 / 0722 400 369
Email: ronaldnzai@gmail.com

31st AUG 2020

County Commissioner
Mombasa County
Dear Sir,

RE: DISPUTED SUB-DIVISION JOMVU METHODIST MISSION LAND: PLOT REGISTRATION NO.162/V/MAINLAND NORTH

I bring you greetings of peace and prosperity from Jomvu Methodist Mission Community which is in your administrative jurisdiction. The parcel of land mentioned above was bought by a white missionary Rev.Thomas Wakefield in the late 1800, the founder of the Methodist Church in Kenya and East Africa General under the united Methodist mission churches. The primary aim was to settle down free slaves and do other church development projects to empower the community, The Jomvu Mission land therefore belongs to the Jomvu Methodist community.

Over the years, the community has enjoyed living peacefully with freedom of doing personal and communal development projects without experiencing violence or controversy from any individual or parties. For the years they got settled, they had their social and church freedom until when a contested dispute mounted, caused by unconscious church administration that did not consider public participation with regard to the sub-division of the land. The Jomvu Methodist community comprise members of low class level, vulnerable ,elderly people that live in abject poverty.The Mombasa Synod Bishop Rev.Joshua Ikao and some Methodist cartels saw poverty as an entry point to the subject Jomvu Methodist Mission Community to spiritual psychological and social torture by causing threats that the land belong to the Methodist Church in Kenya Trustees and that they do not have a right to say anything.The community was aware about MCK Trustees being steward of the property, to make sure that there was protection of the land from intruders

Earlier than this during the term of Rev.Dr.Stephen Kanyaru,the church intended to sub-divide the land for profitable living among Jomvu Methodists,a resolve that was accepted by the community.The idea was accepted because it involved public participation,after which they made contributions to hire a registered surveyors Mr.Athuman.The process was concluded in 2008.

However,this process was interfered with by a minister Rev.Joshua Ikiao Stationed in Changamwe Circuit who had personal interest and his cartel regarding the land crafty changed the (already concluded)initial physical plan of ¼ acres per person to an 1/8 for each

household.This was a well –archesrated scheme between him and his cartels. Eventually this propelled a contested disagreement between the Jomvu support to recouncile the two

parties,this is when Jomvu Methodist Mission community decided to file a court case on 09/11/2011 to seek for justice.

Jomvu MCK members could not have gone to court if the connectional office had come to listen to their plight. From then on Jomvu Methodist Mission members have suffered high level of frustraction for a land they have know to be their home,their birth right and burial site where also their forefather such as Rev.George Kombo rests with a leadership that has not changed hands for over ten years,that breaches the standing order of the Methodist Church in Kenya that require church leadership for two terms of two years each.This was done so through dictatorship. Against this situation is the current frustrating position that is occasioned by the controversial court ruling in favour of the church that granted the Methodist Bishop Rev.Joshua Ikao the leeway to now sub-divide the land as he desires. It is a shame that he distributed letters stamped by the presiding Bishop claiming these were official documents from land office.The Jomvu Methodist Mission Community did not agree to allocate pieces of land to outsiders because there is no land committee at Jomvu. This is fraud and shall not be accepted.Currently Jomvu Mission members are encountering worst situations than What their forefathers experienced.

1. There is destruction of crops such as coconut trees,mango trees,orange trees,there is no Agricultural assessment that was make to compensate of these damages.
2. There is attempt to destroy houses that they struggle to build for many years .
3. There is 24 hrs presences of police that continue to harass innocent members.
4. Majority who are illegal allocated pieces of land are from one ethnic that might trigger anger, which is a propellant of violence and cause ethnic war.
5. A petrol BOM was thrown to Mr. Solomon Somon's house where his properties were destroyed by fire and this accident was reported to police and the first suspects are known but no action has been taken,instead Mr.Solomon Somo was arrested by police and put in police custody for the whole day in the office of DCI at Mikindani police station. This is an indication that Mr. Solomon Somo's life among others is in danger.
6. The Jomvu Methodist Mission Comminity currently live in fear and their future is total in dark because of the current situation they ate facing as if they are not Kenyans.
7. We find this to be unacceptable especially from a religious institution and leadership.

THE JOMVU METHODIST MISSION COMMUNITY DEMAND

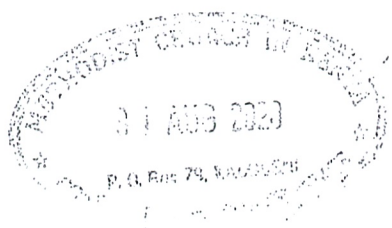
1. The Jomvu Methodist Mission Community demands from your office withdrawal of police officers Jomvu Methodist Mission area because they intimidate and make the people restless and live in fear in twenty hours.
2. The Methodist Church in Kenya Presiding Bishop and his agents to with immediate effect obey the current court order and makes sure that all activities on the ground are halted and be forced to engage in peaceful dialogue with the members of Jomvu Methodist Mission Community until the matter is resolved peacefully to avoid Ethnic clashes.

3. The following church ministers and leaders who are presiding Bishop's Agents,Rev.Joshua 'Ikiao,Rev.Gitonga,Mr.Nyawa,Mr.Salimini,John Mwenda,Joseph Kimathi and Henry Gitonga to be stopped with immediate effect from pastoring Jomvu Methodist Church members because they have caused much pain and suffering to the innocent Jomvu people.
4. Sir,Jomvu Methodist Mission community being in your administrative jurisdiction may need your office to take decisive action for the matter to be resolved in an amicable and peaceful way possible. The Jomvu Methodist mission committed and the entire Mombasa Community people are proud of your strong committed and democratic leadership.

May God bless you, the Mombasa County during such a period when our life style has abruptly changed to the corona virus pandemic. Stay safe, by washing your hands regularly, sanitize and keep social distance.

Thank you in advance
Yours in His service

Bishop Ronald Nzai
Mombasa synod



CC:

The Regional Commissioner - Coast Region
Regional Police Commander - Coast Region
County Police Commander - Mombasa County
Deputy County Commissioner- Jomvu

Sub-County Commander of Police

OCS - Mikindani Police Station
IPOA - Mombasa Office
H.E Allii Hassan Joho - Governor,Mombasa county
Members of Parliament - Jomvu Constituency
MCA - Jomvu Kuu Ward
CICC Director - Mombasa Office
NCCK Chairman - Coast branch
MHUR Office - Mombasa

Attached copies

1. Court Order - ELC Case No.78 of 2020
2. Illegally allotment letters
3. List of Jomvu Community Members
4. Letter of the Presiding Bishop's-Rev.Dr. Stephen Kanyaru

METHODIST CHURCH IN KENYA

MOMBASA DISTRICT

TEL: 0712-[illegible]
Email: [illegible]

[illegible]
P.O. BOX [illegible]
MOMBASA, KENYA

TO: CHURCH SECRETARY MOMBASA
C/O MOMBASA METHODIST CHURCH
MOMBASA

Dear Sir/Madam

RE: ALLOCATION OF PLOT ON SUBDIVISION OF PLOT NO. MN/[illegible]/[illegible]

I have to be [illegible]

1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible]

[illegible]

[illegible]

[

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 78 OF 2020

SOLOMON SOMO & 120 OTHERS ..... PLAINTIFFS/APPLICANTS

VERSUS

1. THE BOARD OF TRUSTEES.
METHODIST CHURCH IN KENYA ..... 1ST DEFENDANT
2. REGIONAL POLICE COMMANDER.
COAST REGION ..... 2ND DEFENDANT

ORDER

(IN CHAMBERS BEFORE HON. JUSTICE C.K. YANO ON 14TH JULY, 2020)

UPON READING the Notice of Motion application dated 13th July, 2020 filed under certificate of urgency Under Article 1,2,19(1)(3)20,23,27,28, of the Constitution, Under Order 40 Rule 1, Order 51 Rule 1 of the Civil Procedure Rules, Section 1(a) and (b), 3A and 63(c) and (e) of the Civil Procedure Act and all other enabling provisions of the law) and all other enabling provisions of the law and UPON READING the supporting Affidavit of Solomon Somo dated 13th day of July, 2020 and annextures thereto:

IT IS HEREBY ORDERED:-

1. THAT the Application is certified urgent to be heard ex-parte in the first instance and service in the first instance be dispensed with.
2. THAT a temporary injunction is issued in the interim to restrain the Defendants/Respondents, their servants, agents or otherwise and persons under their direction or instructions from subdividing, allocating and or alienating the suit property known as PLOT No. 162/V/MN/, Title No. C.R No. 6348 pending *inter-partes* hearing and determination of this Application
3. THAT the Applicants to serve the application on the respondents for *inter-partes* hearing on 17th September, 2020.

GIVEN under my Hand and Seal of this Honourable Court, on this 14th day of July, 2020.

DEPUTY REGISTRAR
ENVIRONMENT AND LAND COURT

ISSUED at Mombasa this 16th day of July 2020

PENAL NOTICE: If any person served herewith and required to comply with this order fails, that person shall be held to be in Contempt of Court and shall be liable to fine and imprisonment.

Date: 16/7/20

THE KENYA POLICE

CHARGE SHEET

Police 5

OB 40/20/07/2020

Police Case No 343/219/2020
Date to Court: 21/07/2020
Court File No ..102/120.....

Christian Name in Full	Surname or Father's	Identity Certificate No.	Sex	Nationality Or	Apparent Age	Address (include district and location where applicable)
SOLOMON SOLO	LAMECK	NILL	M	Kenyan	A	JOMVU MISSION

Charge	**INCITEMENT TO VIOLENCE CONTRARY TO SECTION 96(a) OF THE PENAL CODE.**
Particulars of offence	**SOLOMON SOLO LAMECK**. On the 19th day of July, 2020 at Jomvu Mission area in Jomvu Sub-county, within Mombasa County, jointly with others not before court, without lawful excuse uttered **"NITAHAKIKISHA TUMECHOMA NYUMBA YA RICHARD"** words which indicated or implied that you were to burn down the house of Richard, an act which was calculated to lead to damage or destruction of a house, the property of **RICHARD NYAWA GEORGE.**

	Date of arrest	With or without warrant	Date apprehension report to court	Bond or bail and amount	Is application made for summons to issue		
YES	20/07/2020	W/O	21/07/2020	IN CUSTODY		//	

Remanded or adjourned to	
Complainant and address	**RICHARD NYAWA GEORGE C/O JOMVU MISSION**
Witnesses	1.RICHARD NYAWA GEORGE 2. MARTHA NYAWA 3.OTHERS TO STATE
Sentence Court and date	....if fine paid..... Before CM'S MOMBASA ON 21/07/2020

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
KILINDINI Plaza, 4th Floor
CHIEF MAGISTRATE COURT
21 JUL 2020
APPROVED
P. O. Box 80896-80100, MOMBASA
Tel: (041) 2222011, MOI AVENUE

.....

Sub-county Criminal Investigations Officer Jomvu

COUNT II

CHARGE

FAILING TO MAINTAIN A PHYSICAL DISTANCE OF NOT LESS THAN ONE METER FROM ANOTHER PERSON IN A PUBLIC PLACE CONTRARY TO RULE 6(1) (a) AS READ WITH 6(3) AND RULE 11 OF THE PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) RULES 2020

PARTICULARS OF THE OFFENCE

1. **SOLOMON SOMO LAMECK**: On the 19th day of July, 2020, at Jomvu Mission area in Jomvu Sub-county within Mombasa County, with others not before court you were found in a public place without maintaining a physical distance of not less than one meter from each other.

COUNT III

CHARGE

ENGAGING IN A PROHIBITED GATHERING CONTRARY TO RULE 7(1) AS READ WITH RULE 11 OF THE PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) RULES 2020

\PARTICULATRS OF THE OFFENCE

1. **SOLOMON SOMO LAMECK**: On the 19th day of July, 2020 at 1130hrs, in Jomvu Mission area within Jomvu Sub-county in Mombasa County, you jointly with others not before court engaged in a prohibited gathering during the restricted period by engaging in a public baraza.

DIRECTORATE OF CRIMINAL INVESTIGATIONS

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
KILINDINI Plaza, 4th Floor
CHIEF MAGISTRATE COURT
24 JUL 2020
APPROVED
P. O. Box 80896-80100, MOMBASA
Tel: (041) 2222011, MOI AVENUE

Mr. Stephen Z. Arome
P. O. Box 98195
MOMBASA

Dear Mr. Arome

RE: JOMVU AND MAZERAS CHURCH PLOTS

Greetings to you in the precious name of Jesus Christ.

I write to remind you of the fact that for many years, the Methodist Church in Kenya has been paying land rates for the Church Plots named above. This is a serious matter and the situation must be reversed to that people living in these two areas may be allocated their own plots. The Methodist Church

in Kenya does not have the finances to continue paying for land rates. The beneficiaries must now be ready to take responsibility. This is an old problem which must be resolved with the assistance of all those men and women who live on those plots. During meetings with Church Leaders on 11th and 12th October 2003 at Wesley Church and Mazeras Church respectively, the Presiding Bishop made it clear that December 31st 2004 should be the dead-line for people to decide to own their pieces of land.

In view of all these facts, I write to request you to urgently follow-up this matter with a view to resolving it once-and-fir all.

1. That you initiate meetings with Church Leaders first at both Jomvu and Mazeras, to conscientize the Church leadership on the urgency of this matter and chart the way forward as we seek to eliminate the squatter problems.
2. That the second level of meetings should be for the Church Leaders and entire community at each of the two places named above. Involve the Administration in these meetings.
3. That you assist the Church Leaders to identify a surveyor who will do professional survey work inorder to allocate individuals and families to their own plots.
4. That each individual or family allocated to a plot must pay survey fees for their own plots.
5. That ownership of Title will be joint. Thus the Title will bear the name of the Alotee and the Methodist Church in Kenya.
6. That individuals who decline to pay survey fees may be left out of this arrangement.
7. That all the remaining pieces of land will be owned solely by the Methodist Church in Kenya.
8. All Methodist men and women are encouraged to take advantage of this offer before the expiry of the stipulated deadline which as of now is 31st December 2004.

We do hope that his arrangement will be workable as we seek to avoid a situation where our people will continue to live like squatters.

Kindly keep us posted on all further developments in regard to this matter.

Yours faithfully

Rev. Dr. Stephen Kanyaru M'Impwii
Presiding Bishop
METHODIST CHURCH IN KENYA

CC: Conference Secretary

METHODIST CHURCH IN KENYA

JOMVU MISSION

LIST OF PLOT BENEFICIARIES

1. CHRISTOPHER KAZUNGU TUNGWA
2. SAMUEL JEFFA KATEI
3. JOSEPH KAKENGA (EDDA)
4. JOHN DAVID KAMWENDO
5. SUNDAY EDWARD
6. ELIJAH MWAKIDOFU
7. RICHARD NYAWA GEORGE
8. ELISHA KATANA GILBERT
9. JOYCE RAI
10. AKSELI LAMECK
11. SILAS SOLOMON MENZA
12. EDDAH NAZI KAKENGA
13. GRACE NADZUA NDEGWA
14. ANTHONY SALMIN KAMENGA
15. ANDREW KOMBO KAPERA
16. ELISHA KAPALA
17. HARRISON JOSEPH MASEMO
18. JOB JOHN
19. MARY MWAMBAO RIA
20. CHRISTOPHER KAZUNGU ZAKARIA
21. CHIRIRO BECHAKA MWIJUMA
22. LUCAS MGANDI ZAKARIA
23. ROBERT MABAMDA MOSES
24. ELIJAH MRISA GEORGE
25. CHINYAVU SHEHE RAI
26. HANNAH MAUA MWARUWA
27. GEOTGE GONA
28. HABEL NYAE RAI
29. JOYCE TATU RAI
30. EDWARD CHIGAMBA KAKENGA
31. STANLEY MATSAHU TUGWA
32. JOHNSTONE BAGALA TUGWA
33. LUCAS JIRAH MAGANDI
34. JOMVU WOMEN FELLOWSHIP
35. KADZO GILBERT
36. KALUME ALBERT
37. JOSIAH KOMBO KAKENGA
38. SOPHIE DAVID MGONGO
39. WILLIAM MATANO DAVID
40. MARIA SADIKI
41. WILLY MWANGOA RAI
42. NZAME MWAMGULO MKUZI
43. LIZZY MUPA GIGAMBA
44. HENRY BENJAMIN MATANO
45. LAZARUS KAMWENDO
46. ALICE MENZA THOMAS
47. PATIENCE MUHAMBWA
48. SAMUEL LUSINA
49. THOMAS SADIKI
50. ROSE DAMA MUYA
51. CHARLES ATHUMAN BENJAMIN
52. WILLIAM MUYA
53. SAMUEL ETALE
54. LIVINGSTONE CHIVASTI NGOMA
55. JOAB MUYA
56. BENJAMIN KIBWANA
57. EDDAH NAZI NOSORO
58. BENJAMIN JUMA MASEMO

MUNICIPAL LAND RATES CONTRIBUTORS

59. LIZZY MAPENZI HARRISON
60. GRACE NADZUA NDEGWA
61. ESTHER SADIKI
62. BETTY MAISHI
63. PATIENCE MUHAMBWA
64. ELIJAH MRISA GEORGE
65. SALMIN KAKENGA ANTHONY
66. JASIAH KOMBO KAKENGA
67. SAMUEL LUSINA
68. EDDAH KAKENGA

MCK CHANGAMWE

69. ISAAC MURUIKI
70. JOSEPH KIMATHI
71. JOHN MWENDA
72. LAWRENCE M. INOTI
73. JOHNSON MURITHI
74. CHARLES MARETE
75. JULIOUS ANAMPIU
76. ELIJAH MWADIME
77. JAMES NGONI

78. MUNJURI IKIAMBA
79. NICHOLAS MURITHI
80. JOHN M. MUNORU
81. STANLEY MUREITHI
82. JULIUS MURIUNGI
83. ERUSTUS MUTHURI INOTI
84. HENRY KADALA GILBERT
85. GEORGE CHARO MLENA
86. NJERI CHARO
87. PRUDENCE NAZI MWAMBUI
88. LYDIA KAZUNGU
89. TUNGWA KAZUNGU
90. MRS JEFFA
91. LOICE KAKENGA
92. HARRY KAKENGA
93. FLORENCE KANWENDO
94. MARY SANDAY
95. EMILLY ELIJAH
96. NELLY MLONGO NYAWA
97. JAMES NDORO NYAWA
98. MARBEL NYAGNESO NYAWA
99. JANE KATGI
100. ALBERT MLEWA
101. JAMES NDORO
102. GEORGE SHEHE RAI
103. JOHN MADU
104. WINNIE MAKU RAI
105. EMMAH AKSELI
106. LAMEOK AKSELI
107. WILFRED WAZIRI SOLOMON
108. ALICE BOMBO SILAS
109. MASUMBUKO SOLOMONI
110. ADAM SILAS SOLOMON
111. MAPENZI HARRISON
112. VICTORIA KITIDAYA
113. LUCY MAUA HARRISON
114. SADIKI HARRISON
115. PAUL CHAI MUNGA
116. SAMMY NASORO CHIRATSI
117. COLLINGS NDEGWA CHIVASTI
118. NELLY SALMIN MASHAKA
119. CHARITY CHADDI BAYA
120. JOSEPH KAKENGA SALMIN
121. MAUA S. KASICHANA
122. KOMBE S. BAYA
123. NELLI MASHAKA KOMBO
124. MARTIN MAJALIWA KADERA
125. SERAH TABO KOMBO
126. CLARA SADA KOMBO
127. MORRIS MASAMAKI KOMBO
128. ESTHER KAPALA
129. JULIET KAPALA
130. LINNAH KAPALA
131. FREDRICK KAPALA MANDELA
132. MEGGIE KAPALA
133. KAPALA
134. ROSE MWIKALI SIMBA
135. JOSEPH MASEMO KAKENGA
136. WILLIAM MATANO MASENO
137. LIZZY NWAPA MASEMO
138. BETTY JOB
139. CHRISTOPHER KAKUNGU JOB
140. TOM KAMAU JOB
141. MWAJUMA JOHANESS
142. FRANCIS JOHNESS
143. OSCOR ESUKU JOHANESS
144. LEE JIRAH CHIGAMBA
145. TUNGWA CHIGAMBA
146. JOHNSTONE BALALA ZAKARIA
147. MARIAM MGANDI MWANDESE
148. HELLEN KADZA GONA
149. MOSES MWARUWA MABANDA
150. HANNAH MABANDA
151. DORRIS MWACHAI CHAI
152. CHARLES TSUMA MRISA
153. CHARLOTTE UMAZI MRISA
154. GEORGE SHEHE MRISA
155. ESTHER NYEVU MRISA
156. MARTHA KINYAVU MRISA
157. JAMES NDORO MRISA

158. ROBERT MRISA
159. PRISALLA GONA
160. MISITI GONA
161. MARY GONA
162. BEFRICE MWIJUMA GONA
163. SERAH NDZALAMBI
164. EZEKIEL JTO
165. EMMAH KIDZALA
166. PRISCAH
167. FRANCIS CHENGO
168. ESTHER MBEYU
169. MICHAEL MWARUWA
170. MWANATUMU
171. MOSES MWARUA MATANO
172. ELIJAH MWAKIDOFU MATANO
173. HANNAH MWAKIDOFU ELIJAH
174. NANCY GEORGE RAI
175. NURU BOMBO MASUMBUKO
176. WINNIE MAKU MASUMBUKO
177. BORN SOLOMON MASUMBUKO
178. JANET MASUMBUKO
179. MONICA KIGAMBA
180. LIZZIE MAPAKIGAMBA
181. MARIA KIKAMBA
182. JOSEPH KAKENGA KAGAMBA
183. REHEMA MWATSAHU
184. VILLANS BAGALA
185. JOSEPHINE MGANDI JIRA
186. FRANCIS JIRA
187. ESTHER NYAMBULA JIRA
188. YAYA GILBERT
189. GEORGE CHARO KATEI
190. HILTON KATIE
191. ELISHA KATANA GILBERT
192. KANGU GILBERT
193. CAROLINE DAMA
194. ANNAH ALBERT
195. HENRY KAPALA ALBERT
196. SALOME NZALE MLEWA
197. LILLY MLEWA
198. TABU ALBERT MLEWA
199. ALBERT MLEWA
200. KACHE ALBERT
201. CLARAH KADZO ALBERT
202. EUNICE MWAKA KOMBO
203. JOSEPH KAKENGA KOMBO
204. PAULINE KAKENGA
205. WILLIAM MATANO KOMBO
206. LIZZIE MUPA KOMBO
207. NELLY MASHAKA KOMBO
208. KELVIN CHARO KOMBO
209. MARY MKARTE KAKENGA
210. LINNAH MBEYU MASEMO
211. HARRY MASEMO
212. WILLIAM MATANO
213. LIZZIE MUPA
214. SHEVU
215. NELLY DAVID MGONGO
216. SERAH TABU KAPERA
217. LUCY MAUA DAVID
218. JUMA BENJAMIN DAVID
219. PETER MKHAMA (S/O MAUA)
220. SOPHIE MATANO
221. FAIDA MATANO
222. EDDAH DADO
223. BILLY MAISHI
224. DICKSON SADIKI THOMAS
225. KOMBO THOMAS S/O MARIA
226. JUMA SADIKI
227. ANDRETTA NYEVU SADIKI
228. MARY TAMASHA
229. MARGARET SADIKI
230. CHARLOTTE GEORGE RAI
231. BEATRICE LUVUNO GEORGE
232. UHURU- GEORGE RAI
233. RIZIKI RAI GEORGE
234. FUADI S/O LUVUNO
235. HAMISI MWARUWA
236. DENNIS MWARUWA DZAYA
237. PURITY TIMAINI DZAME

238. EDWARD KYIGAMBA MALEMBI
239. CHRISTOPHER KAZUNGU MALEMBI
240. LUCAS MGANDI MALEMBI
241. CAROLINE MAGANDI MALEMBI
242. BENJAMIN JIRA
243. MARY MALEMBI
244. LIZZIE MUPA MALEMBI
245. KADIDA LAZARO
246. GILBERT LAZARO
247. NGOA LAZARO
248. EMILY LAZARO
249. UCHI LAZARO
250. ROBERT SOMEO CHIVATSI
251. JANE SOMEO
252. EDDAH SOMEO
253. THOMAS MENGA
254. HARRIET MWENDE
255. ALICE CHICHI
256. EDDAH DADO MENZA
257. WILLY MUYA MENZA
258. HAPPY CLARA SADA
259. PATIENCE MUHAMBWE
260. RUTH SALAMA MUHAMBWE
261. THOMAS BORA MUHAMBWE
262. HANNA JESIA MUHAMBWE
263. LORNA LUSINA
264. MONICA LUZINA
265. JOYCE LUSINA
266. AGNES LUSINA
267. SAMMY LUSINA MANGI
268. JOYCE SADIKI
269. ESTHER SADIKI
270. WILLIAM KOMBO SADIKI
271. ZAWADI SADIKI
272. LUCY MAUA SADIKI
273. MAGGIE NCARO KIBWANA
274. MOUREEN KIBWANA
275. KAGOMA KIGWANA
276. JOYCE ETALE
277. JOSEPH MUHAMBWA ETALE
278. ANNAH OMUCHESIA ETALE
279. ROBERT SOMEO ETALE
280. PRISCILLA ETALE
281. JANE HAJILA ETALE
282. SERAH MUYA
283. JAMES DIMBWA
284. PRICILLA MUYA
285. EDWARD KIGAMBA ZAKARIA
286. ESTHER NYAMVULA TUNGWA
287. CAROLINE KARWITHA
288. ESTHER CHIPANGA MBWIGA
289. ELISHA NDENGE SAMSON
290. FRANSCIS MUTHEE NDEREBA
291. DAVID KIRIMI KARANGANIA
292. FERDINARND TSUMA MWANZA
293. JOSEPH KAPERA MAZERA(S/O FAIDA)
294. CHARLOTTE KIWELE NDEGE
295. MTURI SAMSON MTURI
296. PATRICK MUTWIRI KIMATHI
297. MORRIS MUGUNA NKONGE
298. ANNE MWANGOLO JILANI
299. JOHN MATOLE MWERO
300. FRANCIS M. MWAGAYA
301. LUCAS MWERO MATOLE
302. GEORGE M. MWACHAMBI
303. PATIENCE M. UCHI
304. HAMPHREY DZORO MATOLE
305. LIVIGSTONE M. JUMA
306. EMILY MOSE MATOLE
307. EMMA THOMAS MENZA
308. RAMA THOMAS
309. GILBERT KATEI KAPALA
310. WILLIAM SOLOMON KEAH
311. SAMMY JEFFA DANIEL
312. REUBEN NYALE
313. MANASES BOSHA
314. JANE K. MARETE
315. J. MURIUNGI
316. ALISON NKOMBWA
317. DAVID CHEPKWONY

318. SILAS MUZUNGU
319. JAMES MATHIU
320. MBONA KURU INVST (LTD)
321. CALVIN WANGIO
322. MWEGATI TRANSPORTERS
323. PURITY KIRUMBA KITHINJI
324. JERUSHA MWARI
325. SAMSON MUTURI
326. JOSEPH MUTHAMIA
327. JOEL KINYUA
328. JOHN MWENDA
329. JOSEPH KIREMA
330. SOLOMON LAMECK
331. LUTHER K. LAMECH
332. MARTHA K. NYAWA
333. TIMNA A. GATOBU
334. BONNY GATOBU
335. MARGRET MALEMBI
336. THOMAS MUTSINZA
337. RACHAEL ZAKARIA
338. CONTANCE NYAWA
339. MRS MATANO KOMBO
340. DORAH MOSES
341. SALOME MBEYU KAKENGA
342. ROSE M. KAKENGA
343. EDDAH NAZI JOSEPH
344. DANIEL JEFFA
345. JAPHET JEFAH MOMBO
346. JOSEPHENE CHARO GEORGE

Out of 454 people only 69 plots allocated to Jomvu residents and the rest plots were allocated to nun residents at Jomvu

MINISTRY OF LANDS AND SETTLEMENT

Telegrams: "Lands", Mombasa
Telephone: Mombasa 311201, Ext 3004
When replying please quote
Ref No 24913
and date

DEPARTMENT OF LANDS
P.O. Box 80053-80100
MOMBASA
12th April 20 06

Jomvu Kuu Villagers
P O Box 98494
MOMBASA

RE : PORTION OF LAND ON PLOT NO 161/V/MN - JOMVU KUU

I refer to your letter dated 14th February 2006 in connection with the above.

Please note that it is not ; possible for me to know the exact area where you are settled as per my plans.

Please seek the services of a surveyor who will pinpoint the area settled so that I can take further action to assist you.

S M OSODO
for DISTRICT LAND OFFICER

C.C.

The Commissioner of Lands
P O Box 30089
NAIROBI

The District Commissioner
MOMBASA

JOMVU KUU VILLAGERS
P.O. BOX 98494
MOMBASA
Tel: 0720908022

14th Feb. 2006.

TO
THE COMMISSIONER OF LANDS
P.O. BOX ~~MOMBASA~~ NAIROBI
KENYA

REF: CLAIMING OF A PORTION OF LAND PLOT NO. 162/V/MN JOMVU KUU

On behalf of WaJomvu Community Villagers we take this opportunity to claim the portion of land in Plot No. 162/V/MN whereby we build our structure and own shamba in that plot for more than 500 years.

We are the first settlers in that plot before the British, Portuguese and Arabs came in Mombasa.

It is very sad that upto today we still don't own that part of the plot situated at Jomvu Kuu near Jomvu Primary School.

It is our sincere hope that since we are the people and we are the Government, the concerned office will settle as, sooner as possible.

Yours faithfully,

CHAIRMAN
RISHAD BABU

C.C. PROVINCIAL COMMISSIONER - COAST
C.C. COMMISSIONER OF LANDS
C.C. PROVINCIAL SURVEYORS OFFICE
C.C. TOWN CLERK - MUNICIPAL COUNCIL OF MOMBASA
C.C. MOMBASA DISTRICT COMMISSIONER
C.C. PERMANENT SECRETARY – LANDS OFFICE NAIROBI

Attached with, are names, ID Nos. and signatures of some of those who sit on that plot

THE NATIONAL LAND COMMISSION

Telegrams: "MINILANDS", Nairobi

Telephone: Nairobi 2718050

ARDHI HOUSE
NGONG ROAD
P.O. Box 30450
NAIROBI

Ref: NLC/ADM.I/VOL.I/13

Date: 8th March, 2012

Chairman
Wajomvu Community
P. O. Box 98494
MOMBASA

COMPLAINTS OVER SEVERAL LAND PARCELS

The National Land Commission has received your grievances over several land parcels in the Jomvu/Changamwe area of Mombasa West. This appears to be an issue of historical injustices and/ or forced grabbing of the said parcels by persons other than you. The National Land Commission shall study the issue, given that you indicated there is a court case on the same.

We shall then communicate to you once the enabling legal framework to deal with historical land injustices is in place.

Thank you.

DR. MUHAMMAD A. SWAZURI, PhD, OGW
CHAIRMAN, NATIONAL LAND COMMISSION

REPUBLIC OF KENYA
IN THE NATIONAL LAND COMMISSION
MEMORANDUM OF WAJOMVU COMMUNITY

MEMBERS OF THE BOARD
1-Mwinyusi Mzee Mwinyusi Mwidadi
2-Salim Mwidadi Salim Mwidadi
3-Ali Bakari Shee
3-Mohamed Ahmed Mwijaa Ahmed
4-Mohamed Mzee Mwihija
5-Shenga Omar Shenga
6-Fairuz Juma Kaloo
7-Khamis Said
8-Mwinyi Matano Hassan
9-Mohamed Abdallah Dalok
10-Abdullah Mwidadi Salim
11-Sauda Kibwana Shejumaa
12-Uba Rashid Kibwana
13-Ngao Mwinyi Ngao
14-Salim Muungwana
15-Fakii Haji
16-Issa Mwidadi Salim
17-Mwanajuma M Mwidadi
18-Shafi Mbarak
19-Ahmed Mohamed Maftuu
20-Omar Mohamed Mwijaa

25 APR 2019

1-Introduction

a-Wajomvu community: The Wajomvu are among the Swahili 12 tribes **[ITHNAASHARA TWAIFA]**, some of the earliest inhabitants of the Mombasa County. They made entry into Mombasa around 800 years ago and established settlements at Junda Mombasa then Mvita at Aldina high school area, then Kwa Sheikh or Kwa Shee [Mikindani], after which they divided into three groups, some shifted to Jomvu Kuu and some to Maunguja and others remained in Kwa Sheikh.

When the Shiraz dynasty was destroyed by the Portuguese in the 14th century the Wajomvu were living in those three villages -Kwa Shee, Maunguja and Jomvu kuu. [Reference -Chijomvu and Chingare by Mwinyinguti. During the Mazrui period from 1735 to 1837 the Wajomvu were living in above mentioned villages. [Annexure Reference: Lambert, the Swahili Community of Mombasa].

Under Busaidi rule (1837-95) they were in the same villages. Seyyid Said died in the year 1856
[*The Journal of African History Vol. 9, No. 1 (1968), pp. 35-56 by F. J. Berg*]

b-Dr Krapf: There was no record of any Christian presence in Mombasa after the Arab regained control of Mombasa from the Portuguese. In the year 1844 Sultan Sayyid Said gave him a permit to start a missionary station at the coastal city of Mombasa. Johann Ludwig Krapf and Johannes Rebmann established a mission station at Rabai, a short distance inland from Mombasa in the same year. In the 1853 he travelled back to Europe and came again in the year 1862. In 1878 he established a mission station at Jomvu Kuu. N.B.It was during the year 1908 that the title was issued to the United Methodist Church Mission.
[An overview of Johann Landwing Kraf's Life and Work]

c-Mwidani; His real name is DANI. He came from Tanzania and changed his name to Mwidani. He started living at Rabai. Then he came to Jomvu with his daughter IMA. He is the person who helped Dr Krapf to establish mission stations in Rabai and Jomvu kuu, eventually he converted into Christianity. The late Mwidadi Salim Mwidadi[village elder jomvu kuu btw 1980-1996] told Peter Frank in interview in the year 1992. that the real name of Mwidani is DANI. He came from Tanzania and settled at Rabai before the coming of Krapf. then he came to Jomvu with his daughter her real name is unknown but he gave her a Jomvu name IMA. The Respective Mwidadi Salim Mwidadi told peter frank that Mwidani is not Midani bin Mwidadi. There is no record that shows that Mwidani was from the six clans of Wajomvu as follow
[i]Clan of Mkwaja/Mwakande –mbari ya Ngao
[ii] Mwinyihamisi bin Mwinyihaji –mbari ya mshenga wa chini
[iii] Mwidadi bin Mwinyihaji –Mshenga wa juu
[iv] Mwikaa bin Hasan

2-Jurisdiction

The National Land Commission was established by constitution of Kenya Article 67. Among the reasons is to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices. Article 67 of the Constitution of Kenya 2010 gave the commission power to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress. Therefore our position is that the National Land Commission has power to intervene on our issues.

3-Grounds

a-That the land is not enough to accommodate the increased population of the community. It should be noted that the community with a population of more than 3000 is now squeezed in a small area of only7.5 acres

b- That Wajomvu have been staying in the said land even before Arabs, Portuguese and British.

c- That In 1908 Dr Kraph was issued with a title deed of approximately 135 acres. These 135 acres included our father`s Farms, Grave yards, Fish landing sites, Shrines and even the first school of Jomvu at Kwafara.

d-That the missionary being European Used unfair means to issue a title deed in the year 1908, thus the Sultan of Zanzibar refused to sign the said title to Methodist church.

e-That: the title was issued without knowledge of the legal owners and this appears to be historical injustice.

f-That the said Mwidani was not the member of the community nor did he get authority from the community to alienate any portion of the community land to any person.

g-That the Civil suit Number 589 of 2011 doesn't relate to the subject matter.

4-History of our land

a- Jomvu Methodist Church Plot No VNM/162 [162/V/MN Jomvu Kuu]

i- Dr. Kraph approached the Wajomvu people and requested to be given a piece of land which he could build a Church and a vicars house on land not exceeding one acre. The elders of the Wajomvu people declined to give him land inside the village, however through Mwidani they agreed to give him permission to establish his Church out of the Village. After building the church he with the help of a Tanzanian man called Mwidani whose real name was Dani they brought with them some workers or helpers from western Kenya and Rabai areas of the coast province, some were from Malawi and Mwanza mainly from Rabai and Duruma. They began living and settled around the Church. The Wajomvu community co-existed with the new comers without any problem as this was not a major concern.

b- In 1908 Dr Kraph was issued with a title deed of approximant 151 acres. These 151 acres included Farms, Grave yards, Fish landing sites, Shrines and even schools of Wajomvu. This fact was unknown to the inhabitants as they continued accessing their land without any problem.

c- It is after many years that the Wajomvu people came to realize that the land which they deemed theirs is no longer theirs and that they are known as trespassers. It has come to our attention that the land is now owned by the Methodist Church of Kenya. How, when and Why is what we need the National land commission to tell us.

b- **196/V/MN Kenya Port Authority [Cargo]**
Historically there are more 8 Shambas of Wajomvu include graves

c- 168/V/MN, this is a crown land.

d-**Other as 164/V/MN, 169/V/MN, 169/V/MN and 192/V/MN** grabbed from our community in the year 1908 by Hindus and now are absentee landlords.

4-Facts
a- It is clear and evident that over the course of the 18th century, the policy of pushing us off our land started by Krapf in Rabai. Dr. Krapf came to Jomvu in the year 1877 and through Mwidadi asked permission from the elders to establish a

mission station at Ziwani Jomvu but no one among the elders accepted his request. He therefore promised Mwidadi to give him some money if he will manage to pursue the Jomvu elders to have a piece of land for him to build the said station. Eventually Mwidani without consulting other elders gave Krapf a plot to build a church. In 1908, the Methodist church expanded the said piece of land to 151 acres.

b- The history is clear that the said Mwidani has no clan in Jomvu is a Tanzania man.[***the founding of Rabai a Swahili chronicle by Midani bin Mwidadi edited by LYDON HARRIES M.A Ph.D. page 141 [khabari za kale za Wajomvu]]***

c-Mr Krapf through the Tanzania man seized our land from us, to increase mission Methodist activities and to establish settlement. Our fathers came to discover sometimes in the year 1920 that our lands have been systematically taken away from us, it was the beginning of vicious disputes between us -as the original owners, and the neighbours in the colonial government to date. Mr Krapf started living in Rabai in the year 1846 and he came to Jomvu in the year 1877 for a small piece of land to establish a mission station. [***the growth of Islam the Mijikenda of the Kenya coast 1826-1933 page 80]***

e- According to the Wakefield the governor of Mombasa, an Arab refused to affix his signature to the title deed. **Annexure marked**..... ***the growth of Islam the Mijikenda of the Kenya coast 1826-1933 page 80.***

d- In an effort to reverse our lands, sometimes in August, 2006 a memorandum from our community intended to be presented to **H.E THE PRESIDENT AND COMMANDER-IN-CHIEF OF THE ARMED FORCES OF THE REPUBLIC OF KENYA, HON. MWAI KIBAKI**. The said memorandum was prepared by the delegation of 14 people -8 elected office bearers and 6 member of board of trustees. In the same indicates that the land is not enough to accommodate the increased population of community. [***Memorandum presented to H.E the president and Commander-in-chief of the armed forces of the Republic of Kenya. Hon. Mwai Kibaki by Wajomvu welfare association***].

e- In the 2013 a letter dated 2nd May was sent to Arseli Lameck to have an agreement to jointly pursue the subject with a view of avoiding conflict between two communities ***[a letter dated 2nd May 2013].***

f-A brief memorandum was presented to Kenya Land Commission with its supporting documents on 24/09/2012 at SAIROCK HOTEL. Picture marked;

[*Land Advocacy Project Conference–coast@prideinn Sairock Hotel24/09/2012*].

h- In a letter dated 8th March 2012 signed by the chairman the National land admits that the said lands are issues for determination.

3-Conclusion & Prayers

The right to property is sacrosanct and as such, that right is vigorously protected in this country under the Constitution therefore the Wajomvu community have had their protection to right to property infringed as per Article 40(1) of the Constitution of Kenya 2010 and Article 14 of the African Charter on Human and People's Right. Therefore, seeking redress through the National Land Commission whose authority is derived from Article 67(1) to look into historical injustices and among its functions under Article 2(e) is to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices. The National Land Commission Act also establishes this authority of the Commission under Section 5(e) of the Act. The Act grants the Commission with the powers to conduct the necessary land historical injustices. Therefore, our position is that the National Land Commission has power to intervene on our issues. We sort the help of the NLC instead of violence. Section 15 of the National Land Commission Act defines historical Injustice and sets the criteria that leads to that said injustice. The Wajomvu community meet this criteria as established in Section 15 of the said Act6

REASONS WHEREFORE, the Wajomvu community pray for;
a- That the selling and disposal not be done until hearing and determination of this issue.
b-That the National Land commission do investigation over above mentioned plots.
c-That the hearing be fixed urgently
d-That 2/3 Jomvu Methodist Church Plot No VNM/162 [162/V/MN Jomvu Kuu] be given back to Wajomvu community.
e-That Plot 196/V/MN Kenya Port Authority [Cargo], 164/V/MN, 169/V/MN, 169/V/MN and 192/V/MN be given back to
the community.
f-That 168/V/MN crown land be allocated to a hospital for the community.

g-That the National Land Commission be pleased to issue an order to stop Kenya Port Authority to demolish houses built on plot 196/V/MN Kenya Port Authority [Cargo] pending for hearing and final determination of this Memorundum.

WAJOMVU COMMUNITY
P.O.BOX 98494
MOMBASA

TEL: 0720175154

DATED THIS 25TH APRIL 2019

SIGNED

MWINYUSI NZEE MWIDADI- CHAIRMAN

For and on behalf of the Wajomvu community of Mombasa County

OFFICE OF THE CHAIRMAN

Website: www.landcommission.go.ke
Telephone : Nairobi 020-8000242
Email:infor@landcommission.go.ke
When replying please quote:

ACK GARDEN ANNEX BUILDING
1ST NGONG AVENUE
P. O. BOX 44417-00100
NAIROBI

Ref: NLC/MOMBASA/1

20th May, 2021

Bishop. Joseph Ntombura
Presiding Bishop
Methodist Church in Kenya
P.O. Box 47633 – 00100 Nairobi, Kenya
Tel: 020-2403438
NAIROBI

Dear Bishop Ntombura,

WAJOMVU COMMUNITY HISTORICAL LAND INJUSTICE CLAIM- MN/V/162

The National Land Commission (NLC) is mandated under Article 67 of the Constitution as read together with Section 5 (1) (e), 6 and 15 of the National Land Commission Act 2012 to receive, admit and investigate all Historical Land Injustice (HLI) complains and recommend appropriate redress.

The Commission is in receipt of a HLI claim with respect to MN/V/162 which is a property associated with the Methodist Church, Mombasa Synod. Further, there is a live petition relating to the claim in the Senate Standing Committee on Land, Environment and Natural Resources and a subsequent complaint registered to the Commission on Administrative Justice by Wajomvu Community.

The purpose of this letter is to request you to apprise the NLC on your position on the matter to enable the Commission act appropriately within its mandate.

Attached find a copy of correspondences for your reference.

Yours Sincerely,

Gershom Otachi Bw'Omanwa
CHAIRMAN

Encl.

THE REPUBLIC OF KENYA
IN THE SENATE
PETITION OF WAJOMVU COMMUNITY

THE CLERK SENATE,
PARLIAMENT BUILDING,
NAIROBI.

THE HUMBLE PETITON OF THE WAJOMVU COMMUNITY ON HISTORICAL LAND INJUSTICES REGARDING PLOT NO 162/VMN/CR 1070.

1. The Wajomvu Community located at Jomvu Kuu Village, Jomvu Kuu Ward, Jomvu Sub County, hereby Petition the Senate on the issue of ownership of Plot no 162/VMN/CR 1070 located at Jomvu Kuu.

2. That your Petitioners are among the 12 Swahili Tribes and some of the earliest Tribes that settled in Mombasa around 800 years ago.

3. That on or about 1846 Dr. Kraph arrived on the East Africa Coast and settled at Rabai. Jomvu Kuu was the area where all travels to up Country started. Dr. Kraph traveled and settled in Rabai, where he established his Church.

4. That in 1877 through the benevolence of a Jomvu Elder by the Name Mwidani Dr. Kraph was given Land to established a Church in a predominately Muslim Community.

5. That the Area where the Church was built was a small Area. However when the adjudication was done in 1923, the Methodist Church was allocated 150 Acres of our Land.

6. That the Community has been using the land for farming and access to fishing sites for many years and part of it used as residence.

THE REPUBLIC OF KENYA
IN THE SENATE
PETITION OF WAJOMVU COMMUNITY

7. That recently the Methodist Church embarked on a sub-division scheme and sale of the land to third parties.

8. The land has been occupied by the Wajomvu Community all this time and has been held by the Community as its Ancestral land. The Community has no other alternative Land where it can go, and its historical injustices that the Colonial Administration committed on the Wajomvu Community by allocating 150acres of its Land to yet they had given a small portion to establish a Church.

9. That our fishing grounds/waters and jetty to travel to Jomvu Maunguja will be blocked.

10. That the Wajomvu Community graveyard will also be taken away.

11. That Important Cultural and Religious sites will be destroyed to the detriment of the Community.

12. That the Community is in danger of being disinherited, our village is in danger of being blocked.

13. That our farmlands are also likely to be taken away.

14. That the community sent a memorandum to the National Land Commission but its three years now with no response.

15. That there is no case Wajomvu Community has filed regarding the land in question.

16. That we pray that this Senate considers our Petition and grant us appropriate remedies.

THE REPUBLIC OF KENYA
IN THE SENATE
PETITION OF WAJOMVU COMMUNITY

PRAYERS

The Petitioners pray that the Senate undertakes an inquiry into the historical injustice with a view to resettle the local community to their Land.

Dated at Mombasa 2nd July 2020.

MR. SALIM MWIDADI **ID NO. 4644996** .....

MR. MOHAMMED KOMBO **ID NO. 5378195** .....

MR. KASSIM MWIKAA **ID NO. 3153528** .....

MR. MWINYIUSI MWIDADI **ID NO. 1319563** .....

METHODIST CHURCH IN KENYA

TEL: 0717 973754 / 0722 400 369
Email: ronaldnzai@gmail.com

3/3/2021

NATIONAL LAND COMMISSION
REGISTRY
04 MAR 2021
RECEIVED
P.O. Box 44417, NAIROBI

The National Lands Commission
Mr. Gershom Otachi Bw'omanwa

Chairman,

I bring you greetings of peace and prosperity from Jomvu Methodist Mission Community, on behalf of the church and the entire Jomvu Community would like to register our thanks to your office and the Senate Assemble land committee for coming down to Jomvu and careful listen the cry of historical injustice caused by the Methodist Church in Kenya Nairobi Office.

On Sunday 28/2/2001 at 2.00 pm the Jomvu people organized an interdenominational service and the item prayer was to ask God to intervene the situation in a peaceful way to avoid ethnic clashes.

Sir, enclosed find documents from Jomvu for references.

A copy of caveat was forwarded to you by Bishop Makonde

May God bless you

Yours in His service

NATIONAL LAND COMMISSION
RECEIVED
05 MAR 2021
CHAIRMAN
P.O. Box 44417 - 00100 NAIROBI

Rev. Ronald L Nzai
Mombasa Synod Bishop
0717973754

METHODIST CHURCH IN KENYA

COAST REGION CONFERENCE

TEL: +254 704 204 370/+154 702 167 148/+254 725 224 800
P.O BOX 79 80105, KALOLENI, GIRIAMA
Email: coastregionconference@gmail.com

16/10/2020

TO: The Director of Land Survey

FROM: The office of the President, Methodist Church in Kenya-

Coast Region Conference.

Dear Sir,

REF: DISPUTE SUB-DIVISION JOMVU METHODIST MISSION LAND:

PLOT REGISTRATION NO.162/V/MAINLAND NORTH.

The parcel of land mentioned above was bought by a white missionary Rev. Thomas Wake field in the late 1800, the founder of the Methodist church in Kenya and East Africa General under the United Methodist Mission churches.

The primary aim was to settle down free slaves and also other church development project to empower the community.

The sub-division of the parcel of land has raised contested dispute between the residents and the Methodist church in Kenya trustees. We kindly advise your office to make haste intervention before the situation worsen.

Yours in His Service

METHODIST CHURCH IN KENYA
19 OCT 2020
P.O. BOX KALOLENI
COAST REGION CONFERENCE

Rev. Dr. Tsuma Mumbe Chidongo
Conference Secretary

Methodist church in Kenya

Coast Region conference

METHODIST CHURCH IN KENYA

COAST REGION CONFERENCE
MOMBASA SYNOD
TEL: 0717 973754 / 0722 400 369
Email: ronaldnzai@gmail.com

31st AUG 2020

County Commissioner
Mombasa County
Dear Sir,

RE: DISPUTED SUB-DIVISION JOMVU METHODIST MISSION LAND: PLOT REGISTRATION NO.162/V/MAINLAND NORTH

I bring you greetings of peace and prosperity from Jomvu Methodist Mission Community which is in your administrative jurisdiction. The parcel of land mentioned above was bought by a white missionary Rev.Thomas Wakefield in the late 1800, the founder of the Methodist Church in Kenya and East Africa General under the united Methodist mission churches. The primary aim was to settle down free slaves and do other church development projects to empower the community, The Jomvu Mission land therefore belongs to the Jomvu Methodist community.

Over the years, the community has enjoyed living peacefully with freedom of doing personal and communal development projects without experiencing violence or controversy from any individual or parties. For the years they got settled, they had their social and church freedom until when a contested dispute mounted, caused by unconscious church administration that did not consider public participation with regard to the sub-division of the land. The Jomvu Methodist community comprise members of low class level, vulnerable ,elderly people that live in abject poverty.The Mombasa Synod Bishop Rev.Joshua Ikao and some Methodist cartels saw poverty as an entry point to the subject Jomvu Methodist Mission Community to spiritual psychological and social torture by causing threats that the land belong to the Methodist Church in Kenya Trustees and that they do not have a right to say anything.The community was aware about MCK Trustees being steward of the property, to make sure that there was protection of the land from intruders

Earlier than this during the term of Rev.Dr.Stephen Kanyaru,the church intended to sub-divide the land for profitable living among Jomvu Methodists,a resolve that was accepted by the community.The idea was accepted because it involved public participation,after which they made contributions to hire a registered surveyors Mr.Athuman.The process was concluded in 2008.

However,this process was interfered with by a minister Rev.Joshua Ikiao Stationed in Changamwe Circuit who had personal interest and his cartel regarding the land crafty changed the (already concluded)initial physical plan of ¼ acres per person to an 1/8 for each

household.This was a well –archesrated scheme between him and his cartels. Eventually this propelled a contested disagreement between the Jomvu support to recouncile the two

parties,this is when Jomvu Methodist Mission community decided to file a court case on 09/11/2011 to seek for justice.

Jomvu MCK members could not have gone to court if the connectional office had come to listen to their plight. From then on Jomvu Methodist Mission members have suffered high level of frustraction for a land they have know to be their home,their birth right and burial site where also their forefather such as Rev.George Kombo rests with a leadership that has not changed hands for over ten years,that breaches the standing order of the Methodist Church in Kenya that require church leadership for two terms of two years each.This was done so through dictatorship. Against this situation is the current frustrating position that is occasioned by the controversial court ruling in favour of the church that granted the Methodist Bishop Rev.Joshua Ikao the leeway to now sub-divide the land as he desires. It is a shame that he distributed letters stamped by the presiding Bishop claiming these were official documents from land office.The Jomvu Methodist Mission Community did not agree to allocate pieces of land to outsiders because there is no land committee at Jomvu. This is fraud and shall not be accepted.Currently Jomvu Mission members are encountering worst situations than What their forefathers experienced.

1. There is destruction of crops such as coconut trees,mango trees,orange trees,there is no Agricultural assessment that was make to compensate of these damages.
2. There is attempt to destroy houses that they struggle to build for many years .
3. There is 24 hrs presences of police that continue to harass innocent members.
4. Majority who are illegal allocated pieces of land are from one ethnic that might trigger anger, which is a propellant of violence and cause ethnic war.
5. A petrol BOM was thrown to Mr. Solomon Somon's house where his properties were destroyed by fire and this accident was reported to police and the first suspects are known but no action has been taken,instead Mr.Solomon Somo was arrested by police and put in police custody for the whole day in the office of DCI at Mikindani police station. This is an indication that Mr. Solomon Somo's life among others is in danger.
6. The Jomvu Methodist Mission Comminity currently live in fear and their future is total in dark because of the current situation they ate facing as if they are not Kenyans.
7. We find this to be unacceptable especially from a religious institution and leadership.

<u>THE JOMVU METHODIST MISSION COMMUNITY DEMAND</u>

1. The Jomvu Methodist Mission Community demands from your office withdrawal of police officers Jomvu Methodist Mission area because they intimidate and make the people restless and live in fear in twenty hours.
2. The Methodist Church in Kenya Presiding Bishop and his agents to with immediate effect obey the current court order and makes sure that all activities on the ground are halted and be forced to engage in peaceful dialogue with the members of Jomvu Methodist Mission Community until the matter is resolved peacefully to avoid Ethnic clashes.

3. The following church ministers and leaders who are presiding Bishop's Agents,Rev.Joshua 'Ikiao,Rev.Gitonga,Mr.Nyawa,Mr.Salimini,John Mwenda,Joseph Kimathi and Henry Gitonga to be stopped with immediate effect from pastoring Jomvu Methodist Church members because they have caused much pain and suffering to the innocent Jomvu people.
4. Sir,Jomvu Methodist Mission community being in your administrative jurisdiction may need your office to take decisive action for the matter to be resolved in an amicable and peaceful way possible. The Jomvu Methodist mission committed and the entire Mombasa Community people are proud of your strong committed and democratic leadership.

May God bless you, the Mombasa County during such a period when our life style has abruptly changed to the corona virus pandemic. Stay safe, by washing your hands regularly, sanitize and keep social distance.

Thank you in advance
Yours in His service

Bishop Ronald Nzai
Mombasa synod

31 AUG 2020

CC:

The Regional Commissioner - Coast Region
Regional Police Commander - Coast Region
County Police Commander - Mombasa County
Deputy County Commissioner- Jomvu

Sub-County Commander of Police

OCS - Mikindani Police Station
IPOA - Mombasa Office
H.E Allii Hassan Joho - Governor,Mombasa county
Members of Parliament - Jomvu Constituency
MCA - Jomvu Kuu Ward
CICC Director - Mombasa Office
NCCK Chairman - Coast branch
MHUR Office - Mombasa

Attached copies

1. Court Order - ELC Case No.78 of 2020
2. Illegally allotment letters
3. List of Jomvu Community Members
4. Letter of the Presiding Bishop's-Rev.Dr. Stephen Kanyaru

METHODIST CHURCH IN KENYA

MOMBASA SYNOD

Tel. [illegible]
Email: [illegible]

[illegible]
P.O. BOX [illegible]
MOMBASA [illegible]

TO: CHIRIRO BECHAKA MWUDUMA
C/o IDMVU METHODIST CHURCH
MOMBASA

Dear Sir/Madam

RE: ALLOCATION OF PLOT ON SUBDIVISION ON PLOT NO. [illegible]

I have the honor to [illegible] Methodist church (Coast Synod). [illegible] subject to survey on the above [illegible] acceptance of the offer by signing [illegible]

1.	Survey (demarcation fee)	[illegible]
2.	Conveyance fees	[illegible]
3.	Stamp duty	[illegible]
4.	Others [illegible]	[illegible]

Note: a. If acceptance [illegible] the date hereof the offer herein contained [illegible]
b. If the above plot [illegible] you should exercise the greatest care to [illegible] the boundaries of the plot for [illegible] reconstruction must be borne by [illegible]
c. The issue of [illegible] registration of titles will be undertaken [illegible]

The Chairman, Board of Trustees

Confirmed

The Synod Bishop

PRIMATECH LAND SURVEYORS & CONSULTANTS
DATE: 18/2/20

The contractor [illegible]
Please sign [illegible] copies

Name _____ ID No _____ Sign _____
(To be issued in triplicate)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 78 OF 2020

SOLOMON SOMO & 120 OTHERS ..... PLAINTIFFS/APPLICANTS

VERSUS

1. THE BOARD OF TRUSTEES.
   METHODIST CHURCH IN KENYA ..... 1ST DEFENDANT
2. REGIONAL POLICE COMMANDER.
   COAST REGION ..... 2ND DEFENDANT

ORDER

(IN CHAMBERS BEFORE HON. JUSTICE C.K. YANO ON 14TH JULY, 2020)

UPON READING the Notice of Motion application dated 13th July, 2020 filed under certificate of urgency Under Article 1,2,19(1)(3)20,23,27,28, of the Constitution, Under Order 40 Rule 1, Order 51 Rule 1 of the Civil Procedure Rules, Section 1(a) and (b), 3A and 63(c) and (e) of the Civil Procedure Act and all other enabling provisions of the law) and all other enabling provisions of the law and UPON READING the supporting Affidavit of Solomon Somo dated 13th day of July, 2020 and annextures thereto:

IT IS HEREBY ORDERED:-

1. THAT the Application is certified urgent to be heard ex-parte in the first instance and service in the 1st instance be dispensed with.
2. THAT a temporary injunction is issued in the interim to restrain the Defendants/Respondents, their servants, agents or otherwise and persons under their direction or instructions from subdividing, allocating and or alienating the suit-property known as PLOT No. 162/V/MN/, Title No. C.R No. 6348, pending *inter-partes* hearing and determination of this Application
3. THAT the Applicants to serve the application on the respondents for *inter-parties* hearing on 17th September, 2020.

GIVEN under my Hand and Seal of this Honourable Court on this 14th day of July, 2020.

DEPUTY REGISTRAR
ENVIRONMENT AND LAND COURT

ISSUED at Mombasa this 16th day of July 2020

PENAL NOTICE: If any person served herewith and required to comply with this order fails, that person shall be held to be in Contempt of Court and shall be liable to pay a fine and/or imprisonment.

THE KENYA POLICE

CHARGE SHEET

Police 5

OB 40/20/07/2020

Police Case No 343/219/2020
Date to Court: 21/07/2020
Court File No ..102/12..

Christian Name in Full	Surname or Father's	Identity Certificate No.	Sex	Nationality Or	Apparent Age	Address (include district and location where applicable)
SOLOMON SOLO	LAMECK	NILL	M	Kenyan	A	JOMVU MISSION

Charge	**INCITEMENT TO VIOLENCE CONTRARY TO SECTION 96(a) OF THE PENAL CODE.**
Particulars of offence	**SOLOMON SOLO LAMECK**. On the 19th day of July, 2020 at Jomvu Mission area in Jomvu Sub-county, within Mombasa County, jointly with others not before court, without lawful excuse uttered **"NITAHAKIKISHA TUMECHOMA NYUMBA YA RICHARD"** words which indicated or implied that you were to burn down the house of Richard, an act which was calculated to lead to damage or destruction of a house; the property of **RICHARD NYAWA GEORGE.**

	Date of arrest	With or without warrant	Date apprehension report to court	Bond or bail and amount	Is application made for summons to issue		
YES	20/07/2020	W/O	21/07/2020	IN CUSTODY		//	

Remanded or adjourned to	
Complainant and address	**RICHARD NYAWA GEORGE C/O JOMVU MISSION**
Witnesses	1.RICHARD NYAWA GEORGE 2. MARTHA NYAWA 3.OTHERS TO STATE
Sentence Court and date	....if fine paid..... Before CM'S MOMBASA ON 21/07/2020

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
KILINDINI Plaza, 4th Floor
CHIEF MAGISTRATE COURT
21 JUL 2020
APPROVED
P. O. Box 80896-80100, MOMBASA
Tel: (041) 2222011, MOI AVENUE

.....

Sub-county Criminal Investigations Officer Jomvu

COUNT II

CHARGE

FAILING TO MAINTAIN A PHYSICAL DISTANCE OF NOT LESS THAN ONE METER FROM ANOTHER PERSON IN A PUBLIC PLACE CONTRARY TO RULE 6(1) (a) AS READ WITH 6(3) AND RULE 11 OF THE PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) RULES 2020

PARTICULARS OF THE OFFENCE

1. **SOLOMON SOMO LAMECK**: On the 19th day of July, 2020, at Jomvu Mission area in Jomvu Sub-county within Mombasa County, with others not before court you were found in a public place without maintaining a physical distance of not less than one meter from each other.

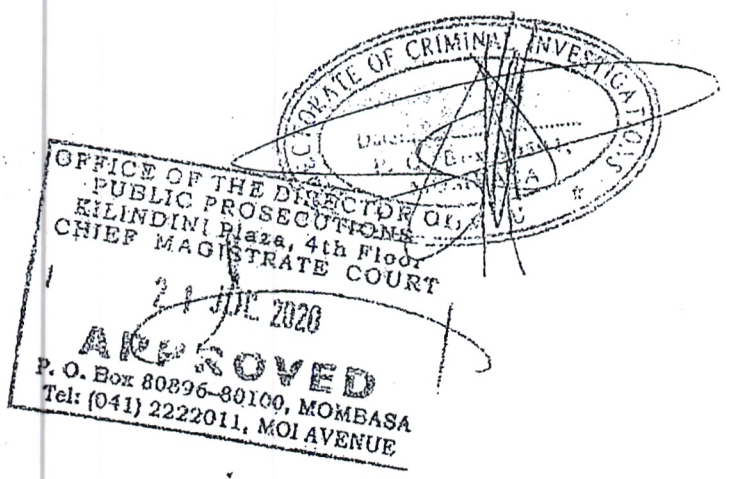
COUNT III

CHARGE

ENGAGING IN A PROHIBITED GATHERING CONTRARY TO RULE 7(1) AS READ WITH RULE 11 OF THE PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) RULES 2020

\PARTICULATRS OF THE OFFENCE

1. **SOLOMON SOMO LAMECK**: On the 19th day of July, 2020 at 1130hrs, in Jomvu Mission area within Jomvu Sub-county in Mombasa County, you jointly with others not before court engaged in a prohibited gathering during the restricted period by engaging in a public baraza.



Mr. Stephen Z. Arome
P. O. Box 98195
MOMBASA

Dear Mr. Arome

RE: JOMVU AND MAZERAS CHURCH PLOTS

Greetings to you in the precious name of Jesus Christ.

I write to remind you of the fact that for many years, the Methodist Church in Kenya has been paying land rates for the Church Plots named above. This is a serious matter and the situation must be reversed to that people living in these two areas may be allocated their own plots. The Methodist Church

METHODIST CHURCH IN KENYA
JOMVU MISSION
LIST OF PLOT BENEFICIARIES

1. CHRISTOPHER KAZUNGU TUNGWA
2. SAMUEL JEFFA KATEI
3. JOSEPH KAKENGA (EDDA)
4. JOHN DAVID KAMWENDO
5. SUNDAY EDWARD
6. ELIJAH MWAKIDOFU
7. RICHARD NYAWA GEORGE
8. ELISHA KATANA GILBERT
9. JOYCE RAI
10. AKSELI LAMECK
11. SILAS SOLOMON MENZA
12. EDDAH NAZI KAKENGA
13. GRACE NADZUA NDEGWA
14. ANTHONY SALMIN KAMENGA
15. ANDREW KOMBO KAPERA
16. ELISHA KAPALA
17. HARRISON JOSEPH MASEMO
18. JOB JOHN
19. MARY MWAMBAO RIA
20. CHRISTOPHER KAZUNGU ZAKARIA
21. CHIRIRO BECHAKA MWIJUMA
22. LUCAS MGANDI ZAKARIA
23. ROBERT MABAMDA MOSES
24. ELIJAH MRISA GEORGE
25. CHINYAVU SHEHE RAI
26. HANNAH MAUA MWARUWA
27. GEOTGE GONA
28. HABEL NYAE RAI
29. JOYCE TATU RAI
30. EDWARD CHIGAMBA KAKENGA
31. STANLEY MATSAHU TUGWA
32. JOHNSTONE BAGALA TUGWA
33. LUCAS JIRAH MAGANDI
34. JOMVU WOMEN FELLOWSHIP
35. KADZO GILBERT
36. KALUME ALBERT
37. JOSIAH KOMBO KAKENGA
38. SOPHIE DAVID MGONGO
39. WILLIAM MATANO DAVID
40. MARIA SADIKI
41. WILLY MWANGOA RAI
42. NZAME MWAMGULO MKUZI
43. LIZZY MUPA GIGAMBA
44. HENRY BENJAMIN MATANO
45. LAZARUS KAMWENDO
46. ALICE MENZA THOMAS
47. PATIENCE MUHAMBWA
48. SAMUEL LUSINA
49. THOMAS SADIKI
50. ROSE DAMA MUYA
51. CHARLES ATHUMAN BENJAMIN
52. WILLIAM MUYA
53. SAMUEL ETALE
54. LIVINGSTONE CHIVASTI NGOMA
55. JOAB MUYA
56. BENJAMIN KIBWANA
57. EDDAH NAZI NOSORO
58. BENJAMIN JUMA MASEMO

MUNICIPAL LAND RATES CONTRIBUTORS

59. LIZZY MAPENZI HARRISON
60. GRACE NADZUA NDEGWA
61. ESTHER SADIKI
62. BETTY MAISHI
63. PATIENCE MUHAMBWA
64. ELIJAH MRISA GEORGE
65. SALMIN KAKENGA ANTHONY
66. JASIAH KOMBO KAKENGA
67. SAMUEL LUSINA
68. EDDAH KAKENGA

MCK CHANGAMWE

69. ISAAC MURUIKI
70. JOSEPH KIMATHI
71. JOHN MWENDA
72. LAWRENCE M. INOTI
73. JOHNSON MURITHI
74. CHARLES MARETE
75. JULIOUS ANAMPIU
76. ELIJAH MWADIME
77. JAMES NGONI

78. MUNJURI IKIAMBA
79. NICHOLAS MURITHI
80. JOHN M. MUNORU
81. STANLEY MUREITHI
82. JULIUS MURIUNGI
83. ERUSTUS MUTHURI INOTI
84. HENRY KADALA GILBERT
85. GEORGE CHARO MLENA
86. NJERI CHARO
87. PRUDENCE NAZI MWAMBUI
88. LYDIA KAZUNGU
89. TUNGWA KAZUNGU
90. MRS JEFFA
91. LOICE KAKENGA
92. HARRY KAKENGA
93. FLORENCE KANWENDO
94. MARY SANDAY
95. EMILLY ELIJAH
96. NELLY MLONGO NYAWA
97. JAMES NDORO NYAWA
98. MARBEL NYAGNESO NYAWA
99. JANE KATGI
100. ALBERT MLEWA
101. JAMES NDORO
102. GEORGE SHEHE RAI
103. JOHN MADU
104. WINNIE MAKU RAI
105. EMMAH AKSELI
106. LAMEOK AKSELI
107. WILFRED WAZIRI SOLOMON
108. ALICE BOMBO SILAS
109. MASUMBUKO SOLOMONI
110. ADAM SILAS SOLOMON
111. MAPENZI HARRISON
112. VICTORIA KITIDAYA
113. LUCY MAUA HARRISON
114. SADIKI HARRISON
115. PAUL CHAI MUNGA
116. SAMMY NASORO CHIRATSI
117. COLLINGS NDEGWA CHIVASTI
118. NELLY SALMIN MASHAKA
119. CHARITY CHADDI BAYA
120. JOSEPH KAKENGA SALMIN
121. MAUA S. KASICHANA
122. KOMBE S. BAYA
123. NELLI MASHAKA KOMBO
124. MARTIN MAJALIWA KADERA
125. SERAH TABO KOMBO
126. CLARA SADA KOMBO
127. MORRIS MASAMAKI KOMBO
128. ESTHER KAPALA
129. JULIET KAPALA
130. LINNAH KAPALA
131. FREDRICK KAPALA MANDELA
132. MEGGIE KAPALA
133. KAPALA
134. ROSE MWIKALI SIMBA
135. JOSEPH MASEMO KAKENGA
136. WILLIAM MATANO MASENO
137. LIZZY NWAPA MASEMO
138. BETTY JOB
139. CHRISTOPHER KAKUNGU JOB
140. TOM KAMAU JOB
141. MWAJUMA JOHANESS
142. FRANCIS JOHNESS
143. OSCOR ESUKU JOHANESS
144. LEE JIRAH CHIGAMBA
145. TUNGWA CHIGAMBA
146. JOHNSTONE BALALA ZAKARIA
147. MARIAM MGANDI MWANDESE
148. HELLEN KADZA GONA
149. MOSES MWARUWA MABANDA
150. HANNAH MABANDA
151. DORRIS MWACHAI CHAI
152. CHARLES TSUMA MRISA
153. CHARLOTTE UMAZI MRISA
154. GEORGE SHEHE MRISA
155. ESTHER NYEVU MRISA
156. MARTHA KINYAVU MRISA
157. JAMES NDORO MRISA

158. ROBERT MRISA
159. PRISALLA GONA
160. MISITI GONA
161. MARY GONA
162. BEFRICE MWIJUMA GONA
163. SERAH NDZALAMBI
164. EZEKIEL JTO
165. EMMAH KIDZALA
166. PRISCAH
167. FRANCIS CHENGO
168. ESTHER MBEYU
169. MICHAEL MWARUWA
170. MWANATUMU
171. MOSES MWARUA MATANO
172. ELIJAH MWAKIDOFU MATANO
173. HANNAH MWAKIDOFU ELIJAH
174. NANCY GEORGE RAI
175. NURU BOMBO MASUMBUKO
176. WINNIE MAKU MASUMBUKO
177. BORN SOLOMON MASUMBUKO
178. JANET MASUMBUKO
179. MONICA KIGAMBA
180. LIZZIE MAPAKIGAMBA
181. MARIA KIKAMBA
182. JOSEPH KAKENGA KAGAMBA
183. REHEMA MWATSAHU
184. VILLANS BAGALA
185. JOSEPHINE MGANDI JIRA
186. FRANCIS JIRA
187. ESTHER NYAMBULA JIRA
188. YAYA GILBERT
189. GEORGE CHARO KATEI
190. HILTON KATIE
191. ELISHA KATANA GILBERT
192. KANGU GILBERT
193. CAROLINE DAMA
194. ANNAH ALBERT
195. HENRY KAPALA ALBERT
196. SALOME NZALE MLEWA
197. LILLY MLEWA
198. TABU ALBERT MLEWA
199. ALBERT MLEWA
200. KACHE ALBERT
201. CLARAH KADZO ALBERT
202. EUNICE MWAKA KOMBO
203. JOSEPH KAKENGA KOMBO
204. PAULINE KAKENGA
205. WILLIAM MATANO KOMBO
206. LIZZIE MUPA KOMBO
207. NELLY MASHAKA KOMBO
208. KELVIN CHARO KOMBO
209. MARY MKARTE KAKENGA
210. LINNAH MBEYU MASEMO
211. HARRY MASEMO
212. WILLIAM MATANO
213. LIZZIE MUPA
214. SHEVU
215. NELLY DAVID MGONGO
216. SERAH TABU KAPERA
217. LUCY MAUA DAVID
218. JUMA BENJAMIN DAVID
219. PETER MKHAMA (S/O MAUA)
220. SOPHIE MATANO
221. FAIDA MATANO
222. EDDAH DADO
223. BILLY MAISHI
224. DICKSON SADIKI THOMAS
225. KOMBO THOMAS S/O MARIA
226. JUMA SADIKI
227. ANDRETTA NYEVU SADIKI
228. MARY TAMASHA
229. MARGARET SADIKI
230. CHARLOTTE GEORGE RAI
231. BEATRICE LUVUNO GEORGE
232. UHURU- GEORGE RAI
233. RIZIKI RAI GEORGE
234. FUADI S/O LUVUNO
235. HAMISI MWARUWA
236. DENNIS MWARUWA DZAYA
237. PURITY TIMAINI DZAME

238. EDWARD KYIGAMBA MALEMBI
239. CHRISTOPHER KAZUNGU MALEMBI
240. LUCAS MGANDI MALEMBI
241. CAROLINE MAGANDI MALEMBI
242. BENJAMIN JIRA
243. MARY MALEMBI
244. LIZZIE MUPA MALEMBI
245. KADIDA LAZARO
246. GILBERT LAZARO
247. NGOA LAZARO
248. EMILY LAZARO
249. UCHI LAZARO
250. ROBERT SOMEO CHIVATSI
251. JANE SOMEO
252. EDDAH SOMEO
253. THOMAS MENGA
254. HARRIET MWENDE
255. ALICE CHICHI
256. EDDAH DADO MENZA
257. WILLY MUYA MENZA
258. HAPPY CLARA SADA
259. PATIENCE MUHAMBWE
260. RUTH SALAMA MUHAMBWE
261. THOMAS BORA MUHAMBWE
262. HANNA JESIA MUHAMBWE
263. LORNA LUSINA
264. MONICA LUZINA
265. JOYCE LUSINA
266. AGNES LUSINA
267. SAMMY LUSINA MANGI
268. JOYCE SADIKI
269. ESTHER SADIKI
270. WILLIAM KOMBO SADIKI
271. ZAWADI SADIKI
272. LUCY MAUA SADIKI
273. MAGGIE NCARO KIBWANA
274. MOUREEN KIBWANA
275. KAGOMA KIGWANA
276. JOYCE ETALE
277. JOSEPH MUHAMBWA ETALE
278. ANNAH OMUCHESIA ETALE
279. ROBERT SOMEO ETALE
280. PRISCILLA ETALE
281. JANE HAJILA ETALE
282. SERAH MUYA
283. JAMES DIMBWA
284. PRICILLA MUYA
285. EDWARD KIGAMBA ZAKARIA
286. ESTHER NYAMVULA TUNGWA
287. CAROLINE KARWITHA
288. ESTHER CHIPANGA MBWIGA
289. ELISHA NDENGE SAMSON
290. FRANSCIS MUTHEE NDEREBA
291. DAVID KIRIMI KARANGANIA
292. FERDINARND TSUMA MWANZA
293. JOSEPH KAPERA MAZERA(S/O FAIDA)
294. CHARLOTTE KIWELE NDEGE
295. MTURI SAMSON MTURI
296. PATRICK MUTWIRI KIMATHI
297. MORRIS MUGUNA NKONGE
298. ANNE MWANGOLO JILANI
299. JOHN MATOLE MWERO
300. FRANCIS M. MWAGAYA
301. LUCAS MWERO MATOLE
302. GEORGE M. MWACHAMBI
303. PATIENCE M. UCHI
304. HAMPHREY DZORO MATOLE
305. LIVIGSTONE M. JUMA
306. EMILY MOSE MATOLE
307. EMMA THOMAS MENZA
308. RAMA THOMAS
309. GILBERT KATEI KAPALA
310. WILLIAM SOLOMON KEAH
311. SAMMY JEFFA DANIEL
312. REUBEN NYALE
313. MANASES BOSHA
314. JANE K. MARETE
315. J. MURIUNGI
316. ALISON NKOMBWA
317. DAVID CHEPKWONY

318. SILAS MUZUNGU
319. JAMES MATHIU
320. MBONA KURU INVST (LTD)
321. CALVIN WANGIO
322. MWEGATI TRANSPORTERS
323. PURITY KIRUMBA KITHINJI
324. JERUSHA MWARI
325. SAMSON MUTURI
326. JOSEPH MUTHAMIA
327. JOEL KINYUA
328. JOHN MWENDA
329. JOSEPH KIREMA
330. SOLOMON LAMECK
331. LUTHER K. LAMECH
332. MARTHA K. NYAWA
333. TIMNA A. GATOBU
334. BONNY GATOBU
335. MARGRET MALEMBI
336. THOMAS MUTSINZA
337. RACHAEL ZAKARIA
338. CONTANCE NYAWA
339. MRS MATANO KOMBO
340. DORAH MOSES
341. SALOME MBEYU KAKENGA
342. ROSE M. KAKENGA
343. EDDAH NAZI JOSEPH
344. DANIEL JEFFA
345. JAPHET JEFAH MOMBO
346. JOSEPHENE CHARO GEORGE

Out of 454 people only 69 plots allocated to Jomvu residents and the rest plots were allocated to nun residents at Jomvu

MINISTRY OF LANDS AND SETTLEMENT

Telegrams: "Lands", Mombasa
Telephone: Mombasa 311201, Ext 3004
When replying please quote
Ref. No. 24913
and date

DEPARTMENT OF LANDS
P.O. Box 80053-80100
MOMBASA
12th April 20 06

Jomvu Kuu Villagers
P O Box 98494
MOMBASA

RE : PORTION OF LAND ON PLOT NO 161/V/MN - JOMVU KUU

I refer to your letter dated 14th February 2006 in connection with the above.

Please note that it is not ; possible for me to know the exact area where you are settled as per my plans.

Please seek the services of a surveyor who will pinpoint the area settled so that I can take further action to assist you.

S M OSODO
for DISTRICT LAND OFFICER

C.C.

The Commissioner of Lands
P O Box 30089
NAIROBI

The District Commissioner
MOMBASA

JOMVU KUU VILLAGERS
P.O. BOX 98494
MOMBASA
Tel: 0720908022

14th Feb. 2006.

TO
THE COMMISSIONER OF LANDS
P.O. BOX ~~MOMBASA~~ NAIROBI
KENYA

REF: CLAIMING OF A PORTION OF LAND PLOT NO. 162/V/MN JOMVU KUU

On behalf of WaJomvu Community Villagers we take this opportunity to claim the portion of land in Plot No. 162/V/MN whereby we build our structure and own shamba in that plot for more than 500 years.

We are the first settlers in that plot before the British, Portuguese and Arabs came in Mombasa.

It is very sad that upto today we still don't own that part of the plot situated at Jomvu Kuu near Jomvu Primary School.

It is our sincere hope that since we are the people and we are the Government, the concerned office will settle as, sooner as possible.

Yours faithfully,

CHAIRMAN
RISHAD BABU

C.C. PROVINCIAL COMMISSIONER - COAST
C.C. COMMISSIONER OF LANDS
C.C. PROVINCIAL SURVEYORS OFFICE
C.C. TOWN CLERK - MUNICIPAL COUNCIL OF MOMBASA
C.C. MOMBASA DISTRICT COMMISSIONER
C.C. PERMANENT SECRETARY - LANDS OFFICE NAIROBI

Attached with, are names, ID Nos. and signatures of some of those who sit on that plot

THE NATIONAL LAND COMMISSION

Telegrams: "MINILANDS", Nairobi

Telephone: Nairobi 2718050

ARDHI HOUSE
NGONG ROAD
P.O. Box 30450
NAIROBI

Ref: NLC/ADM.I/VOL.I/13

Date: 8th March, 2012

Chairman
Wajomvu Community
P. O. Box 98494
MOMBASA

COMPLAINTS OVER SEVERAL LAND PARCELS

The National Land Commission has received your grievances over several land parcels in the Jomvu/Changamwe area of Mombasa West. This appears to be an issue of historical injustices and/ or forced grabbing of the said parcels by persons other than you. The National Land Commission shall study the issue, given that you indicated there is a court case on the same.

We shall then communicate to you once the enabling legal framework to deal with historical land injustices is in place.

Thank you.

DR. MUHAMMAD A. SWAZURI, PhD, OGW
CHAIRMAN, NATIONAL LAND COMMISSION

REPUBLIC OF KENYA
IN THE NATIONAL LAND COMMISSION
MEMORANDUM OF WAJOMVU COMMUNITY

MEMBERS OF THE BOARD
1-Mwinyusi Mzee Mwinyusi Mwidadi
2-Salim Mwidadi Salim Mwidadi
3-Ali Bakari Shee
3-Mohamed Ahmed Mwijaa Ahmed
4-Mohamed Mzee Mwihija
5-Shenga Omar Shenga
6-Fairuz Juma Kaloo
7-Khamis Said
8-Mwinyi Matano Hassan
9-Mohamed Abdallah Dalok
10-Abdullah Mwidadi Salim
11-Sauda Kibwana Shejumaa
12-Uba Rashid Kibwana
13-Ngao Mwinyi Ngao
14-Salim Muungwana
15-Fakii Haji
16-Issa Mwidadi Salim
17-Mwanajuma M Mwidadi
18-Shafi Mbarak
19-Ahmed Mohamed Maftuu
20-Omar Mohamed Mwijaa

25 APR 2019

1-Introduction

a-Wajomvu community: The Wajomvu are among the Swahili 12 tribes **[ITHNAASHARA TWAIFA]**, some of the earliest inhabitants of the Mombasa County. They made entry into Mombasa around 800 years ago and established settlements at Junda Mombasa then Mvita at Aldina high school area, then Kwa Sheikh or Kwa Shee [Mikindani], after which they divided into three groups, some shifted to Jomvu Kuu and some to Maunguja and others remained in Kwa Sheikh.

When the Shiraz dynasty was destroyed by the Portuguese in the 14th century the Wajomvu were living in those three villages -Kwa Shee, Maunguja and Jomvu kuu. [Reference -Chijomvu and Chingare by Mwinyinguti. During the Mazrui period from 1735 to 1837 the Wajomvu were living in above mentioned villages. [Annexure Reference: Lambert, the Swahili Community of Mombasa].

Under Busaidi rule (1837-95) they were in the same villages. Seyyid Said died in the year 1856
[*The Journal of African History Vol. 9, No. 1 (1968), pp. 35-56 by F. J. Berg*]

b-Dr Krapf; There was no record of any Christian presence in Mombasa after the Arab regained control of Mombasa from the Portuguese. In the year 1844 Sultan Sayyid Said gave him a permit to start a missionary station at the coastal city of Mombasa. Johann Ludwig Krapf and Johannes Rebmann established a mission station at Rabai, a short distance inland from Mombasa in the same year. In the 1853 he travelled back to Europe and came again in the year 1862. In 1878 he established a mission station at Jomvu Kuu. N.B.It was during the year 1908 that the title was issued to the United Methodist Church Mission.
[An overview of Johann Landwing Kraf's Life and Work]

c-Mwidani; His real name is DANI. He came from Tanzania and changed his name to Mwidani. He started living at Rabai. Then he came to Jomvu with his daughter IMA. He is the person who helped Dr Krapf to establish mission stations in Rabai and Jomvu kuu, eventually he converted into Christianity. The late Mwidadi Salim Mwidadi[village elder jomvu kuu btw 1980-1996] told Peter Frank in interview in the year 1992. that the real name of Mwidani is DANI. He came from Tanzania and settled at Rabai before the coming of Krapf, then he came to Jomvu with his daughter her real name is unknown but he gave her a Jomvu name IMA. The Respective Mwidadi Salim Mwidadi told peter frank that Mwidani is not Midani bin Mwidadi. There is no record that shows that Mwidani was from the six clans of Wajomvu as follow
[i]Clan of Mkwaja/Mwakande –mbari ya Ngao
[ii] Mwinyihamisi bin Mwinyihaji –mbari ya mshenga wa chini
[iii] Mwidadi bin Mwinyihaji –Mshenga wa juu
[iv] Mwikaa bin Hasan

2-Jurisdiction

The National Land Commission was established by constitution of Kenya Article 67. Among the reasons is to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices. Article 67 of the Constitution of Kenya 2010 gave the commission power to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress. Therefore our position is that the National Land Commission has power to intervene on our issues.

3-Grounds

a-That the land is not enough to accommodate the increased population of the community. It should be noted that the community with a population of more than 3000 is now squeezed in a small area of only7.5 acres

b- That Wajomvu have been staying in the said land even before Arabs. Portuguese and British.

c- That In 1908 Dr Kraph was issued with a title deed of approximately 135 acres. These 135 acres included our father`s Farms, Grave yards. Fish landing sites, Shrines and even the first school of Jomvu at Kwafara.

d-That the missionary being European Used unfair means to issue a title deed in the year 1908, thus the Sultan of Zanzibar refused to sign the said title to Methodist church.

e-That: the title was issued without knowledge of the legal owners and this appears to be historical injustice.

f-That the said Mwidani was not the member of the community nor did he get authority from the community to alienate any portion of the community land to any person.

g-That the Civil suit Number 589 of 2011 doesn't relate to the subject matter.

4-History of our land

a- Jomvu Methodist Church Plot No VNM/162 [162/V/MN Jomvu Kuu]

i- Dr. Kraph approached the Wajomvu people and requested to be given a piece of land which he could build a Church and a vicars house on land not exceeding one acre. The elders of the Wajomvu people declined to give him land inside the village, however through Mwidani they agreed to give him permission to establish his Church out of the Village. After building the church he with the help of a Tanzanian man called Mwidani whose real name was Dani they brought with them some workers or helpers from western Kenya and Rabai areas of the coast province, some were from Malawi and Mwanza mainly from Rabai and Duruma. They began living and settled around the Church. The Wajomvu community co-existed with the new comers without any problem as this was not a major concern.

b- In 1908 Dr Kraph was issued with a title deed of approximant 151 acres. These 151 acres included Farms, Grave yards, Fish landing sites, Shrines and even schools of Wajomvu. This fact was unknown to the inhabitants as they continued accessing their land without any problem.

c- It is after many years that the Wajomvu people came to realize that the land which they deemed theirs is no longer theirs and that they are known as trespassers. It has come to our attention that the land is now owned by the Methodist Church of Kenya. How, when and Why is what we need the National land commission to tell us.

b- 196/V/MN Kenya Port Authority [Cargo]
Historically there are more 8 Shambas of Wajomvu include graves

c- 168/V/MN, this is a crown land.

d-Other as 164/V/MN, 169/V/MN, 169/V/MN and 192/V/MN grabbed from our community in the year 1908 by Hindus and now are absentee landlords.

4-Facts
a- It is clear and evident that over the course of the 18th century, the policy of pushing us off our land started by Krapf in Rabai. Dr. Krapf came to Jomvu in the year 1877 and through Mwidadi asked permission from the elders to establish a

mission station at Ziwani Jomvu but no one among the elders accepted his request. He therefore promised Mwidadi to give him some money if he will manage to pursue the Jomvu elders to have a piece of land for him to build the said station. Eventually Mwidani without consulting other elders gave Krapf a plot to build a church. In 1908, the Methodist church expanded the said piece of land to 151 acres.

b- The history is clear that the said Mwidani has no clan in Jomvu is a Tanzania man.[***the founding of Rabai a Swahili chronicle by Midani bin Mwidadi edited by LYDON HARRIES M.A Ph.D. page 141 [khabari za kale za Wajomvu]]***

c-Mr Krapf through the Tanzania man seized our land from us, to increase mission Methodist activities and to establish settlement. Our fathers came to discover sometimes in the year 1920 that our lands have been systematically taken away from us, it was the beginning of vicious disputes between us -as the original owners, and the neighbours in the colonial government to date. Mr Krapf started living in Rabai in the year 1846 and he came to Jomvu in the year 1877 for a small piece of land to establish a mission station. [***the growth of Islam the Mijikenda of the Kenya coast 1826-1933 page 80]***

c- According to the Wakefield the governor of Mombasa, an Arab refused to affix his signature to the title deed. **Annexure marked**..... ***the growth of Islam the Mijikenda of the Kenya coast 1826-1933 page 80.***

d- In an effort to reverse our lands, sometimes in August, 2006 a memorandum from our community intended to be presented to **H.E THE PRESIDENT AND COMMANDER-IN-CHIEF OF THE ARMED FORCES OF THE REPUBLIC OF KENYA, HON. MWAI KIBAKI**. The said memorandum was prepared by the delegation of 14 people -8 elected office bearers and 6 member of board of trustees. In the same indicates that the land is not enough to accommodate the increased population of community. [***Memorandum presented to H.E the president and Commander-in-chief of the armed forces of the Republic of Kenya. Hon. Mwai Kibaki by Wajomvu welfare association***].

e- In the 2013 a letter dated 2nd May was sent to Arseli Lameck to have an agreement to jointly pursue the subject with a view of avoiding conflict between two communities ***[a letter dated 2nd May 2013].***

f-A brief memorandum was presented to Kenya Land Commission with its supporting documents on 24/09/2012 at SAIROCK HOTEL. Picture marked:

[*Land Advocacy Project Conference–coast@prideinn Sairock Hotel24/09/2012*].

h- In a letter dated 8th March 2012 signed by the chairman the National land admits that the said lands are issues for determination.

3-Conclusion & Prayers

The right to property is sacrosanct and as such, that right is vigorously protected in this country under the Constitution therefore the Wajomvu community have had their protection to right to property infringed as per Article 40(1) of the Constitution of Kenya 2010 and Article 14 of the African Charter on Human and People's Right. Therefore, seeking redress through the National Land Commission whose authority is derived from Article 67(1) to look into historical injustices and among its functions under Article 2(e) is to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices. The National Land Commission Act also establishes this authority of the Commission under Section 5(e) of the Act. The Act grants the Commission with the powers to conduct the necessary land historical injustices. Therefore, our position is that the National Land Commission has power to intervene on our issues. We sort the help of the NLC instead of violence. Section 15 of the National Land Commission Act defines historical Injustice and sets the criteria that leads to that said injustice. The Wajomvu community meet this criteria as established in Section 15 of the said Act6

REASONS WHEREFORE, the Wajomvu community pray for;
a- That the selling and disposal not be done until hearing and determination of this issue.
b-That the National Land commission do investigation over above mentioned plots.
c-That the hearing be fixed urgently
d-That 2/3 Jomvu Methodist Church Plot No VNM/162 [162/V/MN Jomvu Kuu] be given back to Wajomvu community.
e-That Plot 196/V/MN Kenya Port Authority [Cargo], 164/V/MN, 169/V/MN, 169/V/MN and 192/V/MN be given back to
the community.
f-That 168/V/MN crown land be allocated to a hospital for the community.

g-That the National Land Commission be pleased to issue an order to stop Kenya Port Authority to demolish houses built on plot 196/V/MN Kenya Port Authority [Cargo] pending for hearing and final determination of this Memorundum.

WAJOMVU COMMUNITY
P.O.BOX 98494
MOMBASA

TEL: 0720175154

DATED THIS 25TH APRIL 2019

SIGNED

MWINYUSI NZEE MWIDADI- CHAIRMAN

For and on behalf of the Wajomvu community of Mombasa County

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

26th May, 2021

RESPONSES TO THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES ON STATEMENTS REQUESTED BY MEMBERS

1. Petition submitted by the Wajomvu community, Mombasa County, concerning the alleged historical land injustices involving plot no.162/V/MN CR 1070 in Mombasa County

Hon Chair, the Commission responds as follows:

The Commission is in receipt of a Historical Land Injustices Petition whose contents can be summarized as follows:

i. That Wajomvu people made their entry into Mombasa around 800 years ago;
ii. That they settled in three villages i.e in Jomvu kuu, Maunguja and Kwa Shee;
iii. That during the Mazurui period from 1735 and 1837 and Busaidi rule (1837 - 1895) they were in the same villages;
iv. That in 1844 Sultan Sayyid Said gave Dr. Krapf permit to start a missionary station in Mombasa. In 1878 he established a mission station at Jomvu kuu;
v. That in 1908 a title was issued to the Methodist Church Mission at Jomvu
vi. against the will of Wajomvu;
vii. That the title had an acreage of 151 acres which included the Wajomvu farms, graves, shrines and fish landing sites;
viii. That the Wajomvu came to realize later that their land now belonged to the Methodist Church and that they were now being referred to as trespassers;
ix. That the Methodist Church around 2008 started to subdivide the land; and
x. That the Wajomvu claim that powerful people are using the police to harass them with the aim of silencing them.

Action

The National Land Commission has received an HLI claim no. NLC/HLI/565/2019 for the above and has admitted it for investigation, and, possibly hearing and determination depending on the preliminary findings. The Chairman also engaged with the claimants together with the Senate Standing Committee on Land, Environment and Natural Resources on 20th February 2021. During visit, the Chairman of NLC accompanied by the County Coordinator, took note of and recorded the detailed statements and submissions by the Claimants.

Hon Chair the Commission has officially communicated to the Methodist Church seeking their position on the petition by Wajomvu Community (*copy of the letter and attachments annexed*).

In addition to the other HLI cases, this claim has also been prioritized for investigation, subject to direction or recommendation by the Senate.

2. Illegal alienation of land belonging to Kitale Primary School by a private developer.

Hon. Chairman, on the matter relating to Kitale School land, the Commission wish to submit as follows:

i. Kitale primary (also referred to as either Kitale School or Kitale Academy) was established in 1929 as per the documentation provided by the School.

ii. In a letter dated 14.9.1973 signed by the Director of Urban Rural Physical Planning indicated that Kitale Primary land has 55 Ha and proposed a public road reserve and open space of 2.44 Ha.

iii. Planning: The site for Kitale School in Kitale Municipality was provided for in approved Development Plan Ref.10/72/7 on 17-1-1974. However, the acreage is not indicated.

iv. Government subsequently re-planned the site resulting in the following Part Development Plans (PDPs)

   a) PDP Ref. No. KTL.10.92.15 approved on 20-8-1992 for proposed primary school with an acreage of 2.09 Ha. - *Refer to attached Approved Plan Number 174.*

   b) PDP Ref. KTL. 10.94.111 approved in 23-12-1994 for proposed hotel use. (The acreage is not indicated)- *Refer to attached Approved Plan Number 229.*

   c) PDP Ref. No. KTL. 10.96.100 approved in 23.11.1998 for existing Kitale Academy measuring approximately 43.33 Ha.-*Refer to attached Approved Plan Number 294.*

   d) It appears that one of the above subdivisions created Kitale Municipality Block 12/132 which was registered in favour of Nathaniel Tum.

v. Kitale primary states that it applied for allotment letter in a letter dated 7th June 1983 and a reminder on15th July 1985.

vi. On 27th September 2007, the Commissioner of Lands wrote to Nathaniel K Tum asking him to return the title. The title was being recalled for "cancellation and replacement with a new certificate" since it had encroached into Kitale Academy. It seems a re-survey was done to exclude school dormitory and the title corrected. A preliminary ground report by National Land Commission shows that the School's septic tank is still on the private parcel. The basis of the request by the Commissioner of Lands to Tum was a complaint by the Kitale School that the School land had been encroached by a private developer and that the school developments were comprised in Tum's title.

vii. The Minister for Lands vide gazette notice 5566 of 21st May 2010 revoked Nathaniel Tum's title. The gazette notice stated that the land had been reserved for public purpose. We did not find any evidence that the title for Kitale Municipality Block 12/132 was cancelled.

viii. **Kitale High Court JR No 38 of 2011**: The School went to Court seeking an order to the commissioner of lands to allocate the land parcel which had been revoked. The court declined to determine the allocation validity issues but held that the gazette notice revocation procedure was un-procedural. The application by Kitale primary was dismissed and the court advised the school to seek lawful and procedural remedy in an appropriate forum.

ix. Kitale primary has sought the intervention of the National Land Commission into the matter.

x. The Schools's management states that the subject land was school land all along and it had been fenced. It further states that the school cultivated agricultural crops on the land to feed pupils and students. It alleges that unknown to them Tum applied for allocation of part of the school land of 10 acres and got registered via parcel no Kitale Municipal Block 12/132.

Way Forward

a) The matter at hand has a long history and the NLC is in the process of piecing together all the information.
b) The Ministry of Lands and Physical Planning may provide more information on the re-planning that became the basis for survey and subsequent registration of the school land and the land held by private developers as well as the rationale behind the gazette notice that sought to revoke the title in Mr. Tum's name.
c) NLC will continue to collect the evidence, with the assistance of MoLPP, and provide necessary advice and Direction in due course, as may be guided by the Senate.

Honourable Chair, I submit;

GERSHOM OTACHI BW'OMANWA
CHAIRMAN

Dated May 26, 2021

ODUOR SIMINYU & COMPANY ADVOCATES

M. O. Oduor, BAL, LLB (Hons), Dip Ksl
Oduori Siminyu, Bcom, LLB, Dip Ksl

FURAHA PLAZA
3RD FLOOR
NKURUMAH ROAD
P.O. BOX 42847-80100
MOMBASA
TEL: 0202660921
Email: oduorokumuadvocates@gmail.com

Our Ref; OSA/MSA/2021

8th June, 2021

TO;

1. THE CHAIRMAN
   NATIONAL LANDS COMMISSION
   NAIROBI
2. THE CABINET SECRETARY
   LANDS
   NAIROBI.
3. THE CHAIRMAN
   COMMITTEE OF LANDS - SENATE
   NAIROBI

Dear Sir/Madam,

RE: METHODIST CHURCH IN KENYA – JOMVU ON PROPERTY INITIALLY KNOWN AS PLOT NO. LR 162/ V/MN

Historical Background

The establishment of the mission station at Jomvu was initiated in1878 by the then United Methodist Free Churches, the precursors of the present Methodist Church in Kenya. The Church then acquired a sizable piece of land not only for evangelistic purpose but also for the settlement of slaves who were either running away from their masters and some that were rescued from the high seas. This was not the only, settlement by the Methodist Church but there were other settlements in Ribe and Mazeras (Ganjoni). The C.M.S. (Anglican) had another in Frere Town (Kisauni).

In order to ensure that this humanitarian mission was sustained for a long haul the pioneers Thomas Wakefield and Thomas Carthew, bought land in these places as no land was given for free. The administrator of Jomvu settlement was Thomas Carthew who ensured that the ex-slaves, some of who had ran away from their masters. They were well treated and offered means of livelihood for them and their families by

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being allocated a piece of land to cultivate. This did not please their masters who tried to claim them back as part of their property. As a compromise the missionaries decided to compensate their masters for the loss.

In 1888, the Methodist mission had paid 3500 sterling pounds for the land a huge amount of money at the time. The British consul in Zanzibar encouraged the missionaries to purchase land in order that they would be safe from the land owners who acted under authority of the Sultan. The Imperial British East Africa Company who administered the territory for Britain oversaw the process was done legally and land titles were processed. The titles were later issued under the Colony and Protectorate of Kenya mandate.

By 1888, Thomas Carthew who was, the pastor and administrator of Jomvu community had more than 200 people who were residing in the Church land. Apart from the Church and his residence he built a school, for the children and a clinic for the community. Those who settled there were well aware they were living in the Church, land. In 1923 a title was issued for **PLOT NO. LR. 162/V/MN**.

In the year 2003 the Methodist Church in Kenya Registered Trustees conference office on its own volition decided to subdivide their land at Jomvu Mission amongst its fellowship. The leadership at Jomvu M.C.K/Mombasa synod was mandated with planning on how the land would be shared. In a meeting held on **26th February, 2011**, the Committee agreed that all households would stand on a quarter acre while all those of 18 years whether female or male would each get an **1/8**. The distribution was therefore done as parties had agreed.

The agreement, however, escalated into civil suits particularly when the Plaintiffs were called upon, vide a letter dated 5th November 2011 to contribute money towards subdivision of the parcel. It should not be lost to this Honourable committee that the agreement between the church was mutually reached and was never repudiated.

Transactions on the Original Title

That after the Plaintiffs failed to deposit the stated security by court, the Defendants (Methodist Church in Kenya) executed the orders of the court hence 456 Sub-divisions. Most of the residents on the property already have their independent titles. The church sold extra plots to willing buyers who have already done their transfers. As things stand plot No. 162 is non-existent.

Litigation

Vide a plaint dated **8th November, 2011**, one, Akseli Lameck and 121 others filed suit in High court at Mombasa,

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being **HCC No. 589 of 2011**, which was later transferred to the Environment and Land division of the said court to become Mombasa High Court ELC No 589 of 2011.**A copy of the plaint and the defence is attached hereto and marked as M-1.**

The Plaintiffs in the suit sought for orders, *inter alia:*

a) *That a declaration that Methodist Church in Kenya's contractual agreement with them (Plaintiffs) be recognized to constitute a valid and enforceable contractual agreement in law and the that the church be compelled to execute transfer documents in favour of the plaintiffs and/or the Registrar of the High court Mombasa to execute the relevant documents upon failure of the church to do so;*

b) *An order against the Municipal Council of Mombasa to approve to approve the proposed subdivision dated 10th July 2008 and an order directing the Registrar of titles Mombasa to register and issue titles to the plaintiffs.*

c) *A declaration that the Jomvu Mission non –Residents and in particular Changamwe brethren are not beneficiaries of the entire scheme and that any money collected from them by any of the defendants purportedly for allotment of land in Jomvu mission be refunded to them by the defendants.*

On **16th December 2019**, the Honourable court, delivered its Judgement dismissing the Plaintiffs' suit and with costs. **A copy of the relevant Judgement is annexed hereto and marked as *"M -2".***

Without prejudice to the foregoing, the Honourable learned Judge decreed that the said Plaintiffs be assigned the respective sub divisions as per the approved plans but pegged the allocation on the plaintiff's relationship with the church, having found that indeed the L.R no 162/V/MN was indeed lawfully owned by the church. (**A copy of the relevant Decree is attached hereto and marked as *M*-3**. It is noteworthy stating that the decree has never been set aside by any court of Law.

From the said decision, the plaintiffs sought for a variation foregoing orders more specifically on the aspect of the security payable, hereafter the Honourable learned ELC judge, Justice S. Munyao directed the Plaintiff's to have a stay of execution upon payment of Kenya Shillings one Hundred Thousand (Kshs.100,000/=) each in court within Forty five (45) days of 23rd April 2020. (**A copy of the relevant ruling is annexed hereto and marked as *'M 4'*.**

None of the Plaintiff's complied with the foregoing orders but they instead, opted to move this court again, in **ELC CASE NO. 78 OF 2021** seeking, inter alia, orders for a further stay of the orders of 23rd April 2020. In the current suit no orders exist as the same were never extended therefore lapsing.

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The Sub-divisions and/or ownership

The Church then, on 14th July, 1937 appointed The Methodist Missionary Trust **Association**, to be the sole Trustee in place of the then governing body, **Methodist Church Missions Kenya Trustees Registered.**

The church equally has, over the years acquired various properties in Kenya salient amongst them, (within the coastal region) being:-

i. MOMBASA/BLOCK XVII/1027
ii. MOMBASA/BLOCK/XII/194
iii. KWALE/MNAZINI/792
iv. JOMVU/654/PLOT II
v. KWALE/MNAZINI/935
vi. MOMBASA/BLOCK XVII/1031
vii. MOMBASA/TONONOKA/PLOT NO. IV/I
viii. UPEONI/12064
ix. KWALE/5007/19
x. KONGOWEA/MOMBASA/1494
xi. MALINDI CR. NO, 13171 (ORIGINAL NO. 81)
xii. GRON NO. CR 50035 REF 2009163/XII-CI
xiii. MAZERAS -LR NO. 1270
xiv. MSONGETIFU LR 1278
xv. LR.161/MIKINDANI-216 ACRES
xvi. LR 654- MAGWANDA- 163 ACRES
xvii. LR. 12085 – RIBE
xviii. PLOT NO. 208 KIKOMANI/MAKOBENI
xix. PLOT. NO. 1314 MAANDANI/NYALENI
xx. PLOT NO. 693 – PONGARI
xxi. PLOT NO. 857 – CHONYI (MWARAKAYA- PINGILI)
xxii. PLOT NO. 208- NYALONI- JIBANA- TSUNONI
xxiii. PLOT NO. 24 – MWAKULIO ADJ. SEC
xxiv. LR. NO. 1001/2- MAZERAS
xxv. KILIFI/MTWAPA/4240
xxvi. KILIFI/CHIKUU/542
xxvii. MALINDI- LR. NO1924
xxviii. LAMU/ 4691/24/11
xxix. LAMU/LAKE KENYATTA/1/246
xxx. LAMU/LAKE KENYATTA/1/251
xxxi. PLOT NO, 62/11/2- MTOPANGA
xxxii. PLOT. LR. NO. 5007/19- KWALE
xxxiii. HONGERA RD (HOUSE LR/NO.134)
xxxiv. MOMBASA/BLOCK XVII/1027
xxxv. KWALE LUKUNDU S.S/196

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So far as things stand parcel **LR. NO. 162/V/MN** does not exist anymore as 456 subdivisions have been done and titles are already out in members and private purchasers own names.

The petitioners have miserably failed to allege anywhere in the petition whether the church fraudulently acquired the parcel and have failed to inform the commission of the effect of the foregoing litigation. The rule of equity is settled that he who seeks equity must do equity.

The salient question the petitioners have further failed to address, is whether the right for the church to own property anywhere within the Republic of Kenya under article 40 of the Constitution has been removed from the Constitution overnight.

For almost **TEN (10) YEARS** this case dragged in court, where were the Petitioners to join the suit.

We note with dismay that one of the complainants to the National Land Commission (NLC) is a former retired Reverend of the Methodist Church (**Rev. Ronald L. Nzai**) who was duly expelled from the Methodist Church in 2020 (as per the 2020 minutes of the Methodist Church in Kenya) after joining a splinter group. They have formed an amorphous group calling itself **Methodist Church in Kenya Coast Region Conference Mombasa Synod**. This group is not registered under any legal regime and out to create trouble to the mainstream church.

Before the sub-divisions, the church set aside enough land for social amenities e.g land was set aside for a dispensary, police station, forestry, school and riparian land comprising of 13.75 acres. The total acreage left for sub-division was 50.8 acres.

Contrary to what is alleged in the petition there is no blockage to fishing grounds or the jetty. No graveyard was touched by the Sub-division. The Petition as a whole is a fallacy which is designed to taste the waters. It has no clear grounds to allege historical injustices. What currently forms **JOMVU** (Wajomvu) comprises of an entire sub-County. If what is claimed in the Petition is to be true, then all those land owners within JOMVU must leave.

Without much ado, our humble and very honest opinion is that this petition is designed to drive a particular political agenda and should be dismissed henceforth.

Thank you in advance.

FOR; ODUOR SIMIYU & COMPANY ADVOCATES,

ODUOR SIMIYU & CO
ADVOCATES
P.O. BOX 47847 - 80100
MOMBASA

ODUOR SIMIYU

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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CIVIL CASE NO. 589 OF 2011

ASKEL LAMECK & 121 OTHERS ..... PLAINTIFFS

= VERSUS =

1) **METHODIST CHURCH IN KENYA TRUSTEES**
2) **SUPERINTENDANT MINISTER FOR CHANGAMWE CIRCUIT REV. JOSHUA MIKIAO**
3) **CHAIRMAN JOMVU METHODIST CHURCH MR. RICHARD NYAWA**
4) **JOHN MATOLE MWERO**
5) **ANTHONY SALIMINI**
6) **CHARITY BAYA**
7) **MUNICIPAL COUNCIL OF MOMBASA**
8) **THE REGISTRAR OF TITLES MOMBASA ..... DEFENDANTS**

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JUDGEMENT

1. The plaintiffs brought this claim against the 8th defendants vide their plaint dated 8th November 2011. The plaintiffs prayed for judgment to be entered against the defendants jointly and severally for;

   a) **A declaration that the 1st Defendant's Contractual agreement by conduct of the 1st defendant to the plaintiffs be recognised to constitute a valid and enforceable contractual agreement in law and the 1st defendant be compelled to execute transfer of documents in favour of the plaintiffs and/or Registrar of**

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the High Court of Kenya Mombasa to execute the relevant documents upon failure of the 1st defendant to do so.

b) An order that the subdivision carried as per Draft Physical Development dated 10th July 2008 be declared valid and to be enforced save for any amendment by the Physical Planning Department in regard to public services utilities.

c) An Order against the Municipal Council of Mombasa to approve the proposed subdivision dated 10th July 2008 and an Order directing the Registrar of Titles Mombasa to register and issue titles to the plaintiffs.

d) A declaration that the JOMVU Mission non-residents and in particular the Changamwe brethren are not beneficiaries of the entire scheme and that any money collected from them by any of the defendants purportedly for allotment of land at Jomvu Mission be refunded to them by the defendants.

e) Costs and incidental to this suit.

f) Any other relief that this Honourable Court may deem fit to grant.

2. It is pleaded for the plaintiffs that land L.R. No. 162/V/MN registered in the name of the 1st defendant originally belonged to their forefathers. The plaintiffs pleaded that they have always been involved in the management of Jomvu Methodist Church and payment of land rates to the Mombasa Municipal

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Council. Further that the 1st defendant by a letter dated 5/11/2003 requested them to contribute money for the subdivision of the suit land.

3. The plaintiffs averred that by the conduct of the 1st defendant to transfer the responsibility and management and control of the suit land to the plaintiffs, the plaintiffs believed that now they owned the suit land and that the letter of 5th November 2003 formed a valid agreement enforceable at law. However the defendants negated into their agreement and have now refused to honour the physical development plan dated 10th July 2008. The plaintiffs' prayer against the defendants is for specific performance as stated in the plaint by way of enforcing the subdivision plan dated 10/7/2008 and issuance of title documents to the plaintiffs without any conditions.

4. The 1st – 6th defendants filed their joint statement of defence and counter-claim on 11th November 2011 which denied the plaintiffs' suit in toto. The 1st – 6th defendants pleaded that the plaintiffs reside with permission of the 1st defendant on 58 semi-permanent structures on a very small portion of the suit property LR. No. 162/V/MN. The 1st – 6th defendants stated that some of the plaintiffs are members of the 1st defendant while the second category does not belong to the Jomvu Mission Methodist Church.

5. It is pleaded that the 3rd and 5th defendants are among the 58 residents and for them (3rd and 5th defendants) they respect the 1st defendant's right over the suit property. The 1st – 6th

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defendants plead that the plaintiffs have organised themselves to oppose the 1st defendant's plan of utilizing the suit property which is 151 acres. The 1st – 6th defendants gave the organisational structure of the 1st defendant which is registered as a body corporate under Cap 164 of the laws of Kenya.

6. At paragraph 10, the 1st – 6th defendants aver that at all material times, the 1st defendant was the registered proprietor, within the meaning of section 23 of the Registration of Titles Act, Chapter 281 Laws of Kenya (repealed), of LR. No. 162/V/MN popularly known as Jomvu Mission, measuring 151 acres in area. The 1st – 6th defendants further contend that by virtue of its legal status as the proprietor of the suit property, the 1st defendant has exclusive possession of the suit property including the small portion of the same on which stands the 58 semi-permanent structures and that the plaintiffs and other residents of the Jomvu Mission are licensees whose license is terminable upon being given a reasonable notice of termination. The 1st to 6th defendants further aver that at all material times, it is the 1st defendant which has paid to the Municipal Council of Mombasa the rates payable in respect to the suit property.

7. At paragraph 11 of the defence, it is pleaded that on the said property popularly known as Jomvu Mission are the following developments:

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a) *A church on half an acre; this serves the members of the 1st defendant both residents and non-residents who choose to worship there;*

b) *Primary school known as Kwa Jomvu primary School;*

c) *A nursery school;*

d) *Fifty eight (58) semi-permanent structures; these are the homes of both the plaintiffs and the loyal members of the 1st defendant pleaded in paragraph (2) above; some of the 58 structures are thatched with corrugated iron sheets whiles others are thatched with makuti; the 58 semi-permanent structures are scattered over an area of about two (2) to five (5) acres;*

e) *A grave yard or burial place.*

8. The 1st – 6th defendants denied paragraph 11 of the plaint stating that although residents in 58 structures, the following are not members of the 1st defendant and its Jomvu Mission situated on the suit property; the 1st, 3rd, 5th, 17th, 20th, 31st, 34th, 38th, 39th, 42nd, 44th, 45th, 47th, 58th, 59th, 64th, 66th, 67th, 77th, 79th, 80th, 87th, 90th, 93rd, 94th, 96th, 97th, 101st, 102nd, 103rd, 113th, 114th, 115th, 116th, 120th and 122nd plaintiffs. The 1st – 6th defendants further contend that the non-members of the 1st defendant operate outside the constitution of the 1st defendant and consequently are not entitled to enjoy the rights conferred by its constitution.

9. That the 1st defendant requested the Jomvu congregation to start arranging to consider a proposal for ownership under

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conditions imposed by it of a portion on which the residents were occupying. The 1st defendant has developed its plan and submitted it to the 7th defendant for approval. From a part of the suit property, the 1st defendant has created 450 plots on which it proposes to settle deserving and genuine residents. On 18th September 2011, the 1st defendant developed proposed letters of allotment to be used by the residents who wished to be considered for ownership of the said 450 and that the plaintiffs formed an organisation without authority of the 1st defendant to own plots curved out of the suit title and purported to submit the plan to the Council for approval yet under the law, it is only the registered proprietor who can submit a plan for approval.

10. It is the 1st – 6th defendants' case that the doctrine of specific performance applies to contracts of purchase of land and that the 1st defendant has never entered into a contract of purchase for any portion with any of the plaintiffs. These defendants asked the Court to dismiss the plaintiffs' suit with costs and enter an order for the 1st – 6th defendants for the plaintiffs to give vacant possession for the position of the village they are in possession of together with costs of the suit.

11. The 1st – 6th defendants also filed a list dated 16th October 2012 containing 37th documents which they relied on in support of their defence.

12. The 7th defendant filed her statement of defence on 13th March 2013. The 7th defendant denied that the plaintiffs have been

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paying rates; that the plaintiffs claim is scandalous and/or vexatious; misconceived and a non-starter and should be struck out or dismissed. The 7th defendant denied receiving any demand before the suit was filed.

13. The 8th defendant also denied the plaintiffs' claim vide her defence filed on 8th March 2012 and demanded for strict proof. The 8th defendant also pleaded that there was no allegation or claim raised against the Registrar of Titles Mombasa and urged that the suit against the Registrar be struck out or dismissed. After pleadings closed, the suit was set down for hearing.

14. **PW1** first gave his evidence on 13th march 2013 and was later recalled on 8th March 2018 to identify the documents contained in the supplementary list filed on 19th February 2018. **PW1** called **Akseli Lameck** stated that he lives in Jomvu Mission and is 52 years old. He is also the first plaintiff. PW1 said they filed this suit because of problems brought by the Methodist Mission of Kenya.

15. It is **PW1's** case that the suit land belonged to their ancestors which was given to the first defendant in 1878 on the 1st defendant's request for a portion. That after their ancestors gave out the land, the 1st defendant got titles for the whole land measuring 151 acres without the elders/ancestors knowledge. That in 1923 the elders who had given the land were made squatters on this land. **PW1** produced the copy of title for the suit land as Pex 1.

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16. **PW1** continued that the plaintiffs are members of the Methodist Church and produced baptism cards as proof - Pex 2 (at pages 9 – 22 of their list of documents). That their ancestors had been paying taxes to the 7th defendant. **PW1** continued that they have also been paying tithes, offering and development money to the 1st defendant as shown in the receipts appearing at pages 23 – 101 of their documents (Pex 3). **PW1** contend that the trustees of the Church are holding the titles in trust of the Jomvu Mission residents.

17. According to the witness, the subdivision of the land was started by their ancestors. That by a letter dated 5th November 2003, the Presiding Bishop of the 1st defendant explained who was to benefit from the suit land i.e. men and women who live there. The letter was produced as Pex 5. That pursuant to this letter, they held several meetings on how to go about the subdivision which were minuted and the minutes produced as Pex 5 (pages 110 – 190 of their documents). **PW1** further stated that this meeting appointed Athmani Ali to carry out the subdivisions and his fee was agreed at Kshs.72,100. He continued that a deposit of Kshs.36,000 was paid (Pex 6).

18. It is the further evidence of **PW1** that Mr Athman began the survey works and prepared drawings to be presented for approvals (Pex 7). That they agreed with the surveyor that the drawing was to be according to the houses and their children to get ¼ acre each. That the surveyor never completed the drawing because a new Reverend Joshua Ikiao who replaced

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Reverend Paul Matumbi did not co-operate with them. Instead the new Reverend brought another surveyor called Sulleiman Omari of A. A. Maddy to prepare new drawings (Pex 8) which plan the plaintiffs did not agree with.

19. **PW1** stated that they wrote to the presiding Bishop to complain about the leadership of Jomvu Mission vide their letter dated 5th May 2011 produced as Pex 9 and other offices Pex 10 and 11. That the Bishop listened to their complaint and sent a trustee. The trustee came but was not able to resolve the problem. They all attended meetings at the offices of the physical planner – Pex 13 and the District Officer but there was no solution to the dispute. Because the matter became difficult for them, they decided to file this case to stop the defendants from executing the 2nd plan (drawing by Suleiman). On recall, **PW1** produced all the documents in the supplementary list dated 19th February 2018.

20. **PW1** was cross-examined by counsels for the defendants. On 12/6/2013, Miss Wamucii for the 1st – 6th defendants put the questions to the witness. **PW1** said the land belongs to Methodist Church (1st defendant). That when a church goer pays money, he is usually given a receipt specifying what the payment is for. That the people to get land were the residents and people born there. The letter of 5/11/2003 directed what was to be done. That Mr Athman Ali was appointed by Mr Stephen Z. Arome and Church leaders. **PW1** did not know that this surveyor was removed for not doing his work. **PW1** stated

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that the plan approved by the Council (7th defendant) and other authorities was not good for them because it did not follow what the Presiding Bishop had said. That he knew the consequences of non-payment of land rates. That the letter of 5/11/2003 said whoever had not paid land rates should be left out. **PW1** denied that only 3 plaintiffs had paid rates.

21. **PW1** agreed that at page 104 of the list of those who had paid, his name was not there. That the demands for rates are directed to the Church. That when they came to court, there was no outstanding rates. As at 4th July 2008, there was an outstanding rate arrears of Kshs.915,486 from 1985 – 2008. After the recall, Mr. Simiyu learned counsel for 1st – 6th defendants also cross-examined the witness. **PW1** said that the school given 15 acres in 1973 belongs to the 7th defendant. That the drawing by Athman had many plots but the number of individuals given are not indicated. That this plan was not approved by the 7th defendant. That the plan approved had 454 plots.

22. **PW1** was aware of the meeting held on 26/2/2011 which at *Min. 3A* said all should benefit. That as per *Min. 2C*, the acreage was 135 acres comprised in; built up area 45.8 acres; riparian area and road reserves. That Pex 14 is dated 2/11/2005 and Athman was also paid in 2005. That some of the plaintiffs are dead. That Athman had not presented any receipt issued by the church in his name. That people were to pay Kshs.1,000 per month. A few payments made by Patience

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drawings with members of the Church, a few individuals raised a dispute. That the residents are about 300 in number. The total number of plots created were 459. That since the plaintiffs are numbering 122, the portion measuring 54 acres cannot accommodate each one of them getting 1 acre each. **DW1** urged Court to grant the Church permission to give members their shares to avoid the on-going invasions.

50. In cross-examination, **DW1** said the Presiding Bishop's letter was addressed to Stephen Arombe. **DW1** admitted that the residents sat and agreed on how the land was to be sub-divided. That Athman's drawing was not approved because he did not finish the job as his drawings went outside the boundaries and he had also been transferred. That the new surveyor was to build on what the members had initially agreed. The Church Chairman in 2010 was Thomas Sadiki. That the sizes of the plots were reduced on the basis of the acreage available with each couple getting one plot. That the people who paid extra money for rates were 11 and they were to be given extra plots. That it is not right for some to claim more than the Church was giving. **DW1** produced the documents contained in their list as Dex 1 – 88.

51. PAUL MATUNGU MUDHURI testified as **DW2**. He is currently holding the position of bishop in Nairobi. He adopted his statement dated 18/9/2012. **DW2** served in Changamwe Circuit in the year 2004 – 2008. He saw the Presiding Bishop's letter dated 5/11/2003 in the file while at Changamwe. That

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Jomvu is one of the Churches under the Changamwe Circuit. That while serving they brought members of Jomvu Church together and came up with a committee to implement the letter of 5/11/2003. According to **DW2,** the conference gave them the liberty to decide the size each member was to get. **DW2** stated they decided each house was to get ¼ acre.

52. That as the work was on-going, the costs involved overwhelmed Jomvu Church and they opted to seek help of the Changamwe Church. That for contributing Kshs.60,000 the 19 Changamwe members would get 1/8 portion. According to **DW2**, the outstanding rates then was Kshs.425,000. That members of Changamwe and Jomvu had held a meeting which preceded the minutes of 7th April 2010. **DW2** said he was not aware that the plaintiffs paid the rates as the same was paid by the conference in the year 2009.

53. **DW2** in cross-examination said he was not present in the meeting of 25/11/2007. That the minutes of 7/4/2010 made reference to a request from Changamwe for 2 acres of land. **DW2** stood by his statement that rates were not paid by members of the Church. That as a church they do not ask members to pay rates and the receipt dated 13/2/2010 at page 41 is fake. That he does not know who wrote the letter of appreciation dated 13/5/2008. **DW2** denied that it was agreed the plaintiffs were to be given land according to areas they occupied. That the proposal of 20/1/2004 to be given plots as

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the houses were was not adopted by the Church. That he was not present during the meeting of 2nd July 2006.

54. In re-examination, **DW2** stated Pex 3 does not indicate where it originated from. That he has not seen any receipt for payment of Kshs.5,000. That some of Edda's receipts did not bear Church stamp so it was hard to tell who received the payments. That there was no approved plan by Athman.

55. Mrs CHARITY BAYA testifying as **DW3** on 6/2/2019 adopted her statement dated 18/9/2012 as her evidence. She stated that she joined Jomvu Methodist Church in 1990 and has been a member since then. That the Church's proposal was to have the residents help in paying rates before subdivision and continue paying for their respective plots after the subdivision. **DW3** continued in her statement that although this arrangement was put forth to the residents, none of them paid rates as agreed as most of them do not have income.

56. **DW3** blamed the residents for being in some comfort zone which they do not want disturbed. She stated that the residents do not want the subdivision to provide for roads, hospitals or schools or other amenities claiming they can access such services from the neighbouring areas. That the church has engaged the residents and carried out civic education on the subdivision of the land. **DW3** stated further that the surveyor also explained to the residents why the acreage of the plots had to reduce in accordance with government regulations on provision of social amenities and riparian reserve. That the

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Church also wanted some land reserved for its projects like guest houses and recreational centres.

57. **DW3** concluded her evidence that she is aware the tithes and offerings made to the Church are very little and even harambees held did not raise enough funds to pay the rates due to the 7th defendant. That it is this status which necessitated the Jomvu Church leadership resolve to have other Methodist Churches get a 1/8 acre plot on payment of Kshs.60,000. That if the land is subdivided and allocated to the plaintiffs' want then;

(a) *There will be no reserve for public utilities like roads, hospitals etc.*

(b) *Their plan for subdivision would not be accepted by the Government for not complying with its conditions, Laws and Regulations. In the end, there would be no resettlement and eventual ownership by the residents as proposed by the Church.*

(c) *There will be incessant fights over space among the residents because population is growing and there is need to create clear boundaries.*

(d) *The Church will not have reserve for its own development projects which are aimed at generating income to sustain it.*

(e) *The residents will not gain the benefits that come with ownership of land because the Church might decide to*

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admitted that at the time of his marriage/wedding the marriage certificate gave his place of residence as Tana River. The wedding was also not conducted by the 1st defendant. PW2 said she started living on the suit land after she got married in 1981. She conceded that her husband made an application for a place to build. PW2 did not say where her husband was living in before making the application or anything linking her to the 1st plaintiff or any of the plaintiffs other than being members of Jomvu Methodist Church. PW3 said she was born on the land in 1944 but did not account how or when her parents started living there and what happened to their rights if any as regards the title issued to the 1st defendant as she was not challenging the 1st defendants title. Lastly PW4 also stated that she started living on the land in 1975 upon marriage but gave no history on her husband's ancestry.

64. In light of the evidence adduced by the plaintiffs; which is not challenging the 1st defendant's title, the question then is whether the letter of 5th November 2003 created a contract between them and the 1st defendant and what were the terms of that contract. In item numbered 3 in the letter, the Presiding Bishop said that Mr. Stephen Z. Arome as the recipient of the letter was to assist the Church Leaders to identify a surveyor who was to carry out survey of the plot in order to allocate individuals and families their own plots to be registered jointly with the Church.

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65. Under item 4, each individual/family allocated a plot was to pay survey fees for their own plots. Under item 6 provided that those who did not pay survey fee was to be left out. In item 7, all the remaining pieces of land will be owned solely by the Methodist Church in Kenya and item 8 provided that all Methodist men and women were encouraged to take advantage of the offer before it expired on 31st December 2004.

66. The letter of 5th November 2003 thus gave an offer to the individuals and families living on the land an opportunity to be given titles to plots which they were to co-own with the Church. The offer was subject to acceptance by 31st December 2004. Further the offer was subject to resolutions made by the Church Leaders in consultation with entire community and the local administration to chart the way forward in order to eliminate the squatter problem. The letter did not provide that the parties were to be given sizes of plots as occupied on the ground as claimed by the plaintiffs and or ¼ or 1/8 size as proposed by the 1st – 6th defendants. The Bishop left it to the Church leadership of Jomvu Methodist Church in consultation with the community and the local administration to get a way forward to eliminate the squatter problem.

67. In my understanding of this letter, the plaintiffs' first role was to prove to this Court that they indeed accepted the offer before 31st December 2004 by paying for the survey fees for it to be declared as constituting a contract. If they are relying on this letter as the backbone of their case. From the bundles of

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receipts produced at page 29 – 101 of the plaintiffs list, I have noted only two payments made between 5th November 2003 – 31st December 2004. There is a payment by Thomas Sadiki on 27/8/2004 for Kshs.1,000 whose purpose is given as land allocation. The second payment is by Samuel Lusina for Kshs.300 on 11/1/2004 whose purpose is given as October 2003 assessment. The remainder of the payments are made either prior the date of the letter of 5th November 2003 or post the deadline given as 31st December 2004. The plaintiffs have thus failed to prove that they accepted the offer within the timeline set to be entitled to prayer of their plaint.

68. The second limb of the letter proposed that the Church Leaders were to hold meetings in consultation with the community. The plaintiffs produced as Pex 5 minutes of leaders which has dates of 24/7/2005 and 5/2/2006. Min 6/2005 discussed about sharing (Ugawaji) of the suit land in which they passed that each household was to contribute Kshs.5,000 and those who wanted plots for building were to pay registration fee of Kshs.5,000 each. The minutes are signed by secretary and chairman but their names are not given (page 111 of their bundle). This minutes did not have the page of those in attendance so it difficult to determine who was the secretary or chairman. However these minutes did not make mention of plot sizes to be allocated to individuals or families.

69. The meeting of 27/11/2005 had a list of attendees referred to as Christians of Jomvu MCK. In this meeting, Mr. Lusina

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referred to as the Chairman of the Land Committee reported that the process to identify a surveyor to do the subdivision was complete and the surveyor had been paid a deposit of Kshs.35,000. Mr. Lusina encouraged those who had not paid the Kshs.5,000 for the sub-division and land rates to do so. At page 118 of the bundle gives names of elected officials of the Church for the period 2006 – 2007. The issue of size of plots to be allocated was not discussed during this meeting.

70. The only minutes which discussed plot size allocation of the land was that at page 152 i.e. minutes of meeting held on 20/1/2004. At *Min. 2/04*, it is reported that the chairman was informed that the Christians of Jomvu Methodist Church of Kenya would like to have the subdivision done according to how the houses are (Nyumba zilivyo) instead of how it had been put in the plan of Shukla. That Rev. Matumbi said people would be called to agree on this and their voices would be heard together with advice from the surveyor. The meeting also said the subdivision was to take care of residential plots, commercial plots (Mahali pa duka), school, church and plots for future developments.

71. The plaintiffs claim was that they were not engaged in the subdivision process. From the evidence adduced by both sides, indeed the plaintiffs were involved because the issue of subdivision of the suit plot was discussed in various meetings held in the year 2004, 2005, 2006 et al. In my view and I so find that what made the plaintiffs unhappy was that their

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proposal as suggested in the minutes of 20/1/2004 to have the land subdivided in the manner they were using the land physically on the ground was not approved by the Church Leaders as per the approved subdivision plan prepared by A. A. Maddy surveyors.

72. The letter of 5th November 2003 stated that the leaders were to chart a way on how to eliminate the squatter problem. The Church Leaders were to do this in consultation with the community but the letter did not state that the views of the communities was to bind the Church Leaders/The Registered Trustees who held the title in trust for the 1st defendant. Secondly item 8 said that the remaining plots were for the Church. This means that the letter did not state that the entire land was to be given to the residents of Jomvu.

73. The plaintiffs produced the minutes of 20/1/2004 which contained their proposal. The Reverend Paul who was in charge then is indicated to have told them that a meeting would be called and their voices be heard depending on advice from the surveyor. DW3 stated that the surveyor whose report was approved and which is contested explained to the meeting why the sizes of the plots had to be reduced from ¼ to 1/8. DW3 said the sizes had to be reduced to provide for roads and social amenities in accordance with the Government regulations for the plan to be approved.

74. In the minutes presented by the 1st – 6th defendants, dated 26th February 2011 provided how each individual/family was

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allocated plots. The plaintiffs did not say that some of them were left out. Pex 8 and Pex 14 are agreements between the Jomvu Methodist Church of Kenya and Mr. Gabriel Lenjo for drawing of a sub-division scheme signed on 13th May 2008 but no sub-division scheme prepared was attached. The plaintiffs' evidence was that sub-division scheme prepared by Athman was not approved by the 7th defendant because there were outstanding rates. The approval was thus not declined because of interference of the 1st – 6th defendants. There was even no evidence adduced that the scheme prepared by Athman was ever presented to the 7th defendant for approval. This was necessary to be established in view of the defendants defence mounted that Mr. Athuman never completed the work given.

75. If Athuman never completed the work given can a court of law make orders of specific performance in vain? It is not trite law to give orders in vain. The plaintiffs had an obligation to prove that indeed the draft Physical Development dated 10th July 2008 was ready for approval by calling its maker to satisfy that it provided for the roads, social amenities and obtained approval of the Jomvu Church Leaders. The copy of draft Physical Development Plan produced as Pex 7 on the face of it, is not signed by the person who prepared it. It is not dated and the name of the person who prepared it is not legible. Even if it was signed and it was legible, as I have stated above, the

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proposals by the community was not binding on the 1st defendant who is the Registered Owner of the land.

76. In conclusion, I am thus not persuaded that the plaintiffs have made out a case that entitles them to the orders sought in the plaint. As a consequence, I proceed and dismiss the plaintiffs' suit. The plaintiffs will be assigned plots as per the approved plans presented by the 1st – 6th defendants on the basis of their relationship with the Church and subject to them proving payments of the charges set out in the letter of 5/11/2003. I also decline to grant orders of vacant possession as prayed in the counter-claim of the 1st – 6th defendants.

77. There was no case made against the 7th and 8th defendants. The plaintiffs' suit is dismissed in its entirety and they shall pay costs of the suit to all the defendants.

Dated and signed at Busia this 5th day of December, 2019.

A. OMOLLO
JUDGE

Delivered and Read at Mombasa this 16th day of Dec. 2019

C. YANO
JUDGE

In the Presence of:

Counsel for the Plaintiffs: Mr Tumbale

Counsel for the Defendants: Gathu for 1st to 7th Defs.

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