

*Approved  
SWA  
11/6/24*

REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - THIRD SESSION - 2024  
PUBLIC PETITIONS COMMITTEE


REPORT ON-

CONSIDERATION OF PUBLIC PETITION NO. 36 OF 2023 REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MISUFINI, VIBANDANI AND KIBARANI SUB LOCATIONS, TEZO LOCATION IN KILIFI NORTH CONSTITUENCY BY HON. OWEN YAA BAYA, MEMBER OF PARLIAMENT, KILIFI NORTH CONSTITUENCY

JUNE, 2024

Directorate of Legislative & Procedural Services  
Clerk's Chambers  
Main Parliament Buildings  
NAIROBI



 <b>THE NATIONAL ASSEMBLY</b> PAPERS LAID	
<b>DATE: 11 JUN 2024</b> Tuesday	
TABLED BY:	<i>Chair, Public Petitions Committee Hon. Amud Mbari, MP</i>
CLERK-AT-THE-TABLE:	<i>Benson Ingoji</i>

## TABLE OF CONTENTS

CHAIRPERSON'S FOREWORD.....	2
PART ONE.....	3
1 PREFACE.....	3
1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE.....	3
1.2 COMMITTEE MEMBERSHIP.....	1
1.3 COMMITTEE SECRETARIAT.....	2
PART TWO.....	3
2 BACKGROUND TO THE PETITION.....	3
2.1 INTRODUCTION.....	3
2.1 PETITIONER'S PRAYERS.....	4
PART THREE.....	5
3 STAKEHOLDERS' SUBMISSIONS ON THE PETITION.....	5
3.1 THE PETITIONERS.....	5
3.2 CHURCH LEADERS.....	6
3.3 ZIWANI ESTATE RESIDENTS' ASSOCIATION (ZERA).....	7
3.4 SUBMISSIONS BY THE NATIONAL LAND COMMISSION.....	10
3.5 SUBMISSIONS BY THE BUSINESS REGISTRATION SERVICE.....	10
3.6 SUBMISSIONS BY THE MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT.....	14
PART FOUR.....	18
4 COMMITTEE OBSERVATIONS.....	18
PART FIVE.....	19
5 COMMITTEE RECOMMENDATIONS.....	19
ANNEXURES.....	21

## CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Public Petition No. 36 of 2023 regarding Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani sublocations, Tezo Location, Kilifi North Constituency. The petition was presented to the House pursuant to Standing Order No. 225 (2) (a) by the Member of Parliament for Kilifi North Constituency, Hon. Owen Baya, MP on behalf of the residents.

The Committee considered the Petition and observed that Coast Development Company Limited is inactive as the records from the Business Registration Service show that the annual returns filed last on 17<sup>th</sup> of January 1987 by Rosemary Sanau Keen indicated the shareholding of the Company was; John Keen 70%, Mrs. R. Keen 20% and Ali Mohamed 10%. There was a dispute over the ownership of the land as at 9<sup>th</sup> May 2023, as there was a claim of beneficiary interest placed on the parcels by Ms. Victoria Naishorua Keen.

The Committee recommends that the Ministry of Lands engages Ms. Victoria Naishorua Keen with a view to establish the reason for the encumbrance and address any disputes through the legal mechanisms, and that that in each financial year, the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development submit Budget Estimates for the acquisition of land in the Coastal region from absentee landlords for the settlement of citizens..

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

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.

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

Date.....11/6/2020.....

## **PART ONE**

### **1 PREFACE**

#### **1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE**

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

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

## 1.2 COMMITTEE MEMBERSHIP

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

### Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.

Kitui East Constituency

United Democratic Alliance (UDA)

### Vice Chairperson

Hon. Janet Jepkembai Sitienei, M.P.

Turbo Constituency

United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.

Mavoko Constituency

Wiper Democratic Movement-Kenya

(WDM-K)

Hon. Edith Vethi Nyenze, M.P.

Kitui West Constituency

Wiper Democratic Movement-Kenya

(WDM-K)

Hon. Ernest Kivai Ogesi Kagesi, M.P.

Vihiga Constituency

Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.

Kuria East Constituency

United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.

Baringo Central Constituency

United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.

Awendo Constituency

Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.

Mbeere South Constituency

Independent

Hon. Bidu Mohamed Tubi, M.P.

Isiolo South

Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.

Machakos Town Constituency

Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.

Taveta Constituency

Wiper Democratic Movement-Kenya

(WDM-K)

Hon. Peter Mbogho Shake, M.P.

Mwatate Constituency

Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.

Sabatia Constituency

United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.

Makueni Constituency

Wiper Democratic Movement-Kenya

(WDM-K)

### **1.3 COMMITTEE SECRETARIAT**

The Public Petitions Committee was facilitated members of the secretariat:

**Lead Clerk**  
**Mr. Ahmed Kadhi**  
**Senior Clerk Assistant**

**Ms. Anne Shibuko**  
**First Clerk Assistant**

**Ms. Miriam Modo**  
**First Clerk Assistant**

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

**Ms. Isaac Nabiswa**  
**Legal Counsel II**

**Ms. Patricia Gichane**  
**Legal Counsel II**

**Mr. Martin Sigei**  
**Research Officer III**

**Ms. Roselyne Njuki**  
**Principal Serjeant-at-Arms**

**Mr. Paul Shana**  
**Serjeant-at-Arms**

**Mr. Calvin Karungo**  
**Media Relations Officer III**

**Mr. Peter Mutethia**  
**Audio Officer**

## PART TWO

### 2 BACKGROUND OF THE PETITION

#### 2.1 INTRODUCTION

1. Public Petition No. 36 of 2023 by the residents of Misufini, Vibandani and Kibarani sublocations, Tezo Location, Kilifi North Constituency was presented to the House by the Hon. Owen Baya, MP on 29<sup>th</sup> June, 2023.
2. The residents have occupied a piece of land registered as Plot No: 5046/5 in the name of Coast Development Company Limited measuring 265 acres for more than 50 years.
3. One of the directors acquired the land at Independence from a European known as Mr. Lilly White who had initially acquired the land as a leasehold for a term of 99 years from 1<sup>st</sup> May, 1929 at a rent of Kshs.3,760 per annum.
4. The Petitioners are concerned that the leasehold term is almost lapsing and they are fearful of its fate in terms of Article 65(2) of the 2010 Constitution.
5. One of the directors allowed locals to settle in the area willingly and they were to pay a monthly fee. However, in the year 2010, a committee chaired by one Mr. Abdi Makarani entered into an agreement with Coast Development Company stating that the residents would be required to pay Kshs. 20,000 as shares to the company.
6. Some of the residents paid the Kshs. 20,000 and were issued with payment receipts.
7. Presently, there is no LR. 5046/5 as the property was sub-divided into several portions being LR No.5046/8, 5046/9, 5046/10 and 5046/11 without notification to the residents.
8. Plot No.5046/8 measuring 34.4 Acres was sub-divided subject to the compulsory acquisition of the property by the Government for the construction of Coast Institute of Agriculture, which is now Pwani University.
9. Coast Development Company submitted an application to the County Government of Kilifi seeking an approval for its proposed change of user from agricultural to Residential plot No.5046/11. This was approved on 27<sup>th</sup> June 2018.
10. The petitioners have written many letters to the National Lands Commission but no action has been taken concerning the matter.
11. Both the National Government and County Government have invested heavily in the piece of land by providing the necessary infrastructure such as electricity connectivity, water, roads and other social amenities.

12. The land has not been adjudicated and, therefore, no title deeds have been issued.
13. To the best of the Petitioners' knowledge, the matter in respect of which this Petition is made is not pending before any Court of Law or Constitutional body.

## **2.1 PETITIONER'S PRAYERS**

14. The Petitioners prayed that the National Assembly through the Public Petitions Committee -
  - a) inquires into the ownership of the land occupied by the residents of Misufini, Vibandani and Kibarani sub-locations, Kilifi North Constituency in the name of Coast Development Company.
  - b) establishes whether Coast Development Company is a legally registered company and the number of locals that bought shares in the Coast Development Company and their fate in terms of their shareholding in the company.
  - c) recommends that the Government under the 1 Million Acre Compulsory Land Acquisition Programme acquires the land for the local residents and that the land be adjudicated so as to ensure that the residents acquire title deeds; and,
  - d) makes any recommendation deemed fit in addressing the plight of the Petitioners and upholding the rule of law.

## PART THREE

### 3 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

#### 3.1 THE PETITIONERS

The Committee conducted a site visit on Thursday, 20<sup>th</sup> July, 2023 to Kilifi County and held a meeting with Petitioners, who submitted as follows -

15. Vide a letter dated 13<sup>th</sup> August 2007, Mr. John Keen wrote to the District Commissioner, Kilifi District informing him that the company has decided to sell its interests on all that land registered as L.R No. 5046/5 situated in Kilifi. The sale would thereafter be concluded through an offer for sale of company shares.
16. The letter expounded the terms and conditions for obtaining the land as follows:
  - i. The number of shares available for sale was one thousand ordinary shares at a fair value of Kshs. 20,000 each. It was emphasized that each share would represent a ground area of approximately (50\*100) in size.
  - ii. Prospective buyers were expected to avail themselves for verification to be conducted by the management assisted by the local administration.
  - iii. Prospective buyers would signify their acceptance form of the offer by signing the annexed copy of declaration of interest form.
  - iv. Upon completion of payments referred to, the purchaser would be entitled to be recorded in the members register and issue with share certificates.
  - v. Payments would only be acknowledged when paid to the company account and receipted. Under no circumstances would the payment be acknowledged when paid to the company accept responsibility for negotiations and subsequent payments erroneously made to persons other than to the company.
  - vi. The company had set aside 10 acres for its use, and those affected would be settled to other free areas.
  - vii. The land had been demarcated, beacons and surveyed, therefore before issue of a share certificate, investors were advised to ensure that they were issued with a share certificate, and pay all survey fees promptly to the surveyor who would issue a beacon certificate and official receipt.
  - viii. The letter concluded by stating that the offer was the first initiative by the company to regularize and legalise ownership of the plots on its land. Those interested were therefore requested to take up the chance failure to which the company would repossess and transfer its interest on the said plot to the other buyers.
17. Vide a letter dated 25<sup>th</sup> July 2009, the Mr. John Keen appointed Mr. Rashid Abdi Mkarani as the company's agent to work with Vibandani Misufini committee in matters relating to the land known as L.R. 5046/5- Kilifi. He was in charge of relocating squatters on to other free plots and generally to manage peaceful coexistence of squatters in the above land.

18. Vide a letter dated 22<sup>nd</sup> November 2013 addressed to the National Land Commission, the Coast Development Company Limited offered to sell land to the Government of Kenya.
19. In the letter, Mr. John Keen explained that he had not taken legal measures to evict the families living on the land because he was aware of the problem of landlessness at the Coast, and conscious of the suffering of the local people, and had purely on humanitarian grounds, allowed the said squatters to stay on the said land, so as not to deny them means of livelihood and comfort.
20. He proceeded to explain that the Government of Kenya had compulsorily acquired 400 acres of the land on which it set up the Coast Institute of Agriculture, now Pwani University. The Government had subsequently negotiated with Mr. John Keen for the purchase of a portion of 2,630 acres from the said land along Kilifi Creek for purposes of settling squatters. There remained in his possession a piece of land approximately 270 acres that is occupied by 500-600 squatters.
21. In April 2012, he offered to the Government through H.E the former President Kibaki the option to buy the said 270 acres for the sole purpose of giving it, through legal channels, to those residing there. He did not receive any official response from the Government, except an intimation that the matter had been referred to the Commissioner of Lands.
22. He concluded by inviting the public leaders in Kilifi County and the County Government to take up the issue with the National Government and the National Land Commission.
23. Vide a letter dated 21<sup>st</sup> January 2016, the Secretary of Kilifi County Land Management Board wrote to the Kibarani Residents Committee, inviting them to attend a meeting in which the National Land Commission would consider the matter of residents on LR 5046/5 Kilifi.
24. The Petitioners prayed that the Committee declares them as lawful settlers on land that was acquired through a willing seller willing buyer process.

### **3.2 CHURCH LEADERS**

During the site visit on Thursday, 20<sup>th</sup> July, 2023, the Committee received a written submission from church leaders on behalf of churches on the said parcel of land who submitted as follows -

25. The struggle for the cause of holding title deeds on the land is historical and dates over 50 years. Some pioneers of the process died and their children are still seeking justice.
26. The land originally belonged to the Mijikenda Community until when one of the colonial masters, Mr. Lily White, used the land on a lease tenure for pineapples and cashewnut processing purposes.

27. Mr. Lily White did not evict the residents as he wanted them to help in agricultural work on the farm and production work at the factory. The increase in the market for cashew nuts called for a bigger factory which attracted workers from all over the country who form the diverse cultural origin of residents living on the parcel of land.
28. Before the exit of the colonial era at independence, Mr. John Keen took over the control of the land for agricultural use through the Coast Development Company.
29. After some time Mr. Keen demanded that every resident pays rent for the houses they built on the land. This plan shortly changed as he invited residents to buy shares in his company, each share being Kshs. 20,000 and equivalent to one plot of 50\* 100 feet.
30. Vide a letter dated 6<sup>th</sup> November 2007, Mr. John Keen wrote to residents of Misufuni and Vibandani warning them that the company would not take responsibility or indemnify payments made to anybody or through any group of persons as the company made it clear in the past that all payments be made directly through its Account No. 030110204745, KCB Kilifi Branch.
31. He further reminded the residents that the offer for the purchase of shares would expire after 24 months from 13<sup>th</sup> August 2007 and notified them that the company was in the process of preparing ownership documents for individuals who pay the share purchase money of Kshs. 20,000 for each share held.
32. Many residents including institutions such as churches, schools and mosques paid for the shares and other monies through Barclays Bank and Kenya Commercial Bank and submitted the receipts to Mr. Keen's representatives who were Mr. Paul Njoroge, Mr. Philip Yaa and Mr. Rashid Abdi Makarani.
33. Various attempts to have the matter addressed through the National Land Commission through the Historical Land Injustice, and the Environment and Land Court have not been fruitful.

### **3.3 ZIWANI ESTATE RESIDENTS' ASSOCIATION (ZERA)**

During the site visit on Thursday, 20<sup>th</sup> July 2023, the Committee received a written submission from Ziwani Estate Residents Association (ZERA) signed by the chairperson, Mr. Daniel Karani Masha and Mr. Patrick Nyanje Kambi who submitted as follows:

#### *Historical Background*

34. The land registered as L.R No. 5046/5 is located in Kilifi Township bordering Malindi- Mombasa Highway to the East, Pwani University to the south, and old Kenya Cashew nuts factory to the north.
35. The land has known to be owned by one Mr. John Keen. People started settling in the said piece of land as early as 1975 when most of them were paying land rent to Mr. Keen or his agents.

36. At some point, Mr. John Keen opened up the land for residents to settle in and as such interested workers in the then vibrant Kenya Cashew Nuts Company (Ltd.) (now defunct) had a check-off system through what was known as *Haba Haba* Union. These payments, transmitted to Mr. John Keen by the said company were to enable the workers to pay for their plots gradually.
37. Later on, Mr. John Keen appointed agents to oversee settlement in the land. These were Mr. Paul Njoroge Ngwiri, Councilor Mr. Philip Yaa and Mr. Rashid Makarani, who were actively engaged in the settling of most of the current residents as most people bought their current plots of land through and from them.
38. The occupants of L.R No. 5046/5 are in four categories -
- i. Those who paid money directly to Mr. John Keen through his bank account (Barclays Bank Account No. 1015037) or to KCB Account No. 030110204745, his company account;
  - ii. Those who paid money to Mr. John Keen through his own appointed agents;
  - iii. Those who bought from those who acquired either through (i) or (ii) above; and
  - iv. Those who did not pay Mr. Keen or his agents but settled by other means.
39. Through a willing seller and a willing buyer arrangement, the people in L.R. 5046/5 were therefore settled on plots of land measuring approximately 50\* 100 feet according to surveys conducted by Mr. Francis Tsalwa of MasJack Contractors Company.
40. Today, the area has permanent and semi-permanent residential houses, shops, access roads, piped water supply, electricity service lines, and institutions (churches, mosques, schools and colleges). This is irrespective of the fact that there is seemingly no formal approved map of the said parcels of land in addition to the different existing versions of the proposed subdivisions of L.R 5046/5.

#### *Emergence of Coast Development Company Limited*

41. Over the years, a venture by the name Coast Development Company Ltd purportedly owned by Mr. John Keen, made a number of written communications to the residents advising them on payment for their acquired plots of land.
42. A letter dated 13<sup>th</sup> August 2007 offered the settlers in the land to buy company shares to avoid the huge expenses involved in formal land transfer process. Each share thus represented a land plot measuring 50\*100 ft with a value of Kshs. 20,000. Another letter dated 9<sup>th</sup> June 2009, indicated that some people living on the land were to pay Kshs. 150,000 each via the KCB Coast Development Company Ltd Account No. 030 110 204 745.

### *Emerging concerns by residents*

43. The demolition of houses built on Pwani University land in May 2018 made the residents anxious that their houses and other institutions in the area would be demolished too. Further, the death of Mr. John Keen in 2020 left the settlers in the said parcel of land in the dark as there was no recognized agent of Mr. Keen or his company.
44. This prompted an official land search and a company search to be done to determine the legal owner of the land and the shareholders of Coast Development Company Ltd.
45. ZERA embarked on the search for justice by engaging various government institutions and officials as follows -
  - (i) On 11<sup>th</sup> October 2018, a Memorandum was submitted to the National Land Commission containing details and evidence of some of the transactions between John Keen or his agents and residents on LR 5046/5;
  - (ii) On 10<sup>th</sup> September 2021, a second Memorandum was submitted to the Historical Land Injustice Commission; and
  - (iii) On 22<sup>nd</sup> November 2022, a third Memorandum was submitted to the Environment and Land Court Judges.
46. After submission of the Memorandum to the National Land Commission, Echessa and Bwire Advocates, a law firm acting on behalf of John Keen's family wrote a reply and copied the same to ZERA on 16<sup>th</sup> November 2018.
47. ZERA has sought advice from the Ministry of Lands, Office of the Member of Parliament, Kilifi North Constituency, Kilifi County Government among others.
48. A search done on 5<sup>th</sup> September 2018 revealed that LR NO. 5046/5 covered a total area of 264.5 acres, is a lease hold of 999 years effective from 1st May 1929 and is owned by Coast Development Company Ltd. The land has two encumbrances as follows -
  - (i) Caveat dated 9<sup>th</sup> April 1980 by East African Power and Lighting Company claiming a grant of easement;
  - (ii) Caveat dated 14<sup>th</sup> June 1982 by the Government of the Republic of Kenya claiming absolute ownership in respect of LR NO. 5046/5 by compulsory acquisition under the Land Acquisition Act; and
  - (iii) The land has been subdivided.
49. Further, the Company search revealed many things key being the following -
  - (i) Coast Development Company is a private company registered on 1st July 1966 under registration No. is C6784;
  - (ii) Both its original certificate and Articles of Association are lost;

- (iii) Its Directors are John Keen (70 shares), Rosemary Sanau Keen (20 shares) and Ali Mohamed (10 shares); and
- (iv) The company has consistently erred in the filing of company returns thus indicting different directors and shareholders at different times.

50. A letter from the Assistant Registrar of Companies dated 3<sup>rd</sup> January 2017 to Oreunjo and Khalid Advocates disputes the mention of John Keen and his sons and daughter as both directors and shareholders of the company.

51. The company has inconsistently filed its annual returns, an aspect that made it receive several warnings and at some point, listed for deregistration, depicting the inactive state of the company.

### 3.4 SUBMISSIONS BY THE NATIONAL LAND COMMISSION

On Tuesday, 15<sup>th</sup> August 2023, Mr. Gerishom Otachi, the Chairperson of the National Lands Commission, appeared before the Committee and submitted as follows: -

52. The matter concerns a portion of land (LR NO. 5056/5) leased to Coast Development Company Ltd measuring 265 acres. The land had been initially leased for a term of 99 years from 1st May 1929, therefore the lease is almost ending.

53. On its part, the Commission had scheduled to commence conducting of hearings on historical land injustices in October 2023. The findings and recommendations of these reports would inform the planning and preparation of the Commission for these activities.

### 3.5 SUBMISSIONS BY THE BUSINESS REGISTRATION SERVICE

On 22<sup>nd</sup> August 2023, Mr. Kenneth Gathuma, the Director General, Business Registration Service, by written submissions informed the Committee as follows:

54. The Director The company was registered as a private limited company on 1<sup>st</sup> July 1966. The registered address of the company was provided as Ralli House, Nyerere Avenue, P.O Box 1411, Mombasa. The registered address was changed in 1973 to Plot LR No 2859.

55. According to records pertaining to this company as at incorporation, the names of directors of the above Company with their particulars were as follows -

Name	Nationality	Postal Address	Designation	Shares
Piero Agontinelli	Italian	P. O. Box 51 Kilifi	Director shareholder	1
Paride Ghirardi	Italian	P. O. Box 51 Kilifi	Director shareholder	1
John Keen	Kenyan	P. O. Box 3998 Nairobi	Director shareholder	1
<b>Total shares</b>				<b>3</b>

56. Vide a Return of Allotment (form 213) dated 1<sup>st</sup> October 1966, the company indicated that the following had been allotted shares in the company -

Name	Number of shares
Piero Agontinelli	33
Paride Ghirardi	32
John Keen	32
<b>Total</b>	<b>97</b>

57. The position of the company after this change was as follows -

Name	Nationality	Postal Address	Designation	Shares
Piero Agontinelli	Italian	P.O B0x 51 Kilifi	Director shareholder	34
Paride Ghirardi	Italian	P.O Box 51 Kilifi	Director shareholder	33
John Keen	Kenyan	P.O Box 3998 Nairobi	Director shareholder	33
<b>Total shares</b>				<b>100</b>

58. On 9<sup>th</sup> June 1967, Paride Ghirardi ceased to be a director of the company as notified to the Registry through Form 203A filed on 12<sup>th</sup> June 1967. (Attached please find the form 203A marked Annexure 2). The position was thus as follows after the change:

Name	Nationality	Postal Address	Designation	Shares
Piero Agontinelli	Italian	P.O Box 51 Kilifi	Director shareholder	34
Paride Ghirardi	Italian	P.O Box 51 Kilifi	Shareholder	33
John Keen	Kenyan	P.O Box 3998 Nairobi	Director shareholder	33
<b>Total shares</b>				<b>100</b>

59. Through an annual return dated 14<sup>th</sup> January 1969, the company noted a transfer of 33 shares by Paride Ghirardi and indicated the following as the position:

Name	Nationality	Postal Address	Designation	Shares
Piero Agontinelli	Italian	P.O Box 51 Kilifi	Director shareholder	50
John Keen	Kenyan	P.O Box 3998 Nairobi	Director shareholder	50
<b>Total shares</b>				<b>100</b>

60. On 7<sup>th</sup> September 1970, Mary Annetta Keen was appointed as the company secretary.

61. Vide an annual return dated 14th January 1971 filed by Mary Annette Keen (received at the registry on 12th April 1973), the company noted transfer of shares from Piero Agostineli and indicated the following as the new position:

Name	Nationality	Postal Address	Designation	Shares
John Keen	Kenyan	P.O Box 3998 Nairobi	Director shareholder	70
Mary Annete Keen	Kenyan	P.O Box 51 Kilifi	Director shareholder	20
Ali Mohamed	Kenyan	P.O Box 3998 Nairobi	Shareholder	10
<b>Total shares</b>				<b>100</b>

62. There is no form for the appointment of directors filed to show the appointment of Mary Annette Keen as a director of the company.

63. In 1972, the Registrar wrote to the company informing the directors of the company that they had not filed returns for the years 1970 and 1971 and the Registrar would proceed to strike off the name of the company from the register.

64. The Registrar moved to deregister the company vide a Gazette Notice Vol LXXIV No.52, dated 27th October 1972 on the basis that it was not carrying on business and published the name of the company. The notice indicated that if cause was not shown, the company would be struck off at the expiry of three months. (Attached please find the Gazette Notice marked Annexure 6)

65. The move to deregister the company was stopped by Agricultural Finance Corporation and Kenya Commercial Bank which both indicated that the company had taken out a loan with them. The Registry notified the banks that it would not proceed on the above basis.

66. The annual return filed on 10th January 1973 by Mary Annette Keen indicated the following as the position of the company,

Name	Nationality	Postal Address	Designation	Shares
John Keen	Kenyan	P. O. Box 3998 Nairobi	Director shareholder	70
Mary Annete Keen	Kenyan	P. O. Box 51 Kilifi	Director shareholder	20
Ali Mohamed	Kenyan	P. O. Box 3998 Nairobi	Shareholder	10
<b>Total shares</b>				<b>100</b>

67. Conflicting annual returns are also filed for the years 1973, 1974, 1975, 1976, 1977 and 1978 by Rosemary Sanau Keen. The documents were received on 31<sup>st</sup> May 1979 and shows the following position:

Name	Nationality	Postal Address	Designation	Shares
John Keen	Kenyan	P.O Box 43998	Director	70

		Nairobi	shareholder	
Mary Annete Keen	Kenyan	P.O Box 43998 Nairobi	Director shareholder	20
Ali Mohamed	Kenyan	P.O Box 43998 Nairobi	Shareholder	10
<b>Total shares</b>				<b>100</b>

68. On 11<sup>th</sup> January 1979, the company notified the Registrar that Rosemary Sanau Keen had been appointed as a director of the company. The form was filed by Rosemary Sanau Keen.

69. With effect from 25<sup>th</sup> January 1983, Rosemary Sanau Keen resigned as a director of the Company and John Keen, Anthony Simel Keen, Dennis Kiruti Keen, Pamela Soila Keen and Edward Meitamei Keen were appointed as directors of the company.

70. The annual returns filed on 17<sup>th</sup> January 1984, 17<sup>th</sup> January 1985, on 17<sup>th</sup> of January 1987 filed by Rosemary Sanau Keen indicated the following as the position of the company.

Name	Nationality	Postal Address	Designation	Shares
John Keen	Kenyan	P.O Box 43998 Nairobi	Director shareholder	70
Mrs. R. Keen	Kenyan	P.O Box 43998 Nairobi	Shareholder	20
Ali Mohamed	Kenyan	P.O Box 43998 Nairobi	Shareholder	10
<b>Total shares</b>				<b>100</b>

71. The above position disregards Form 203A; Notice of Change of Directors filed on 25<sup>th</sup> January 1983 since it does not incorporate the persons appointed as directors. Further, it is noted that at one-point returns filed by the company indicate Mary Annette Keen as holding 20 shares while in other returns we find the 20 shares being held by Rosemary Sanau Keen.

72. The company has not filed any document of change of shareholding or directorship since 1983 when it filed a Form 203A to change the directors. Further, the last annual return available on record was filed in 1988.

73. There was an attempt by the company to update its records on eCitizen. The process seems to have been abandoned since 2019. This would have provided the Registry with an opportunity to compel the Company to verify the correct position by providing supporting documents for the changes and discrepancies in the records of the company.

### **3.6 SUBMISSIONS BY THE MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT**

On Wednesday 4<sup>th</sup> October 2023, Hon. Generali Nixon Korir, the Principal Secretary of the State Department for Lands, appeared before the Committee and made submissions as follows—

74. According to the records at the Ministry, the land in question, LR No. 5046/5 measuring approximately 107.24 Hectares (265 acres) was transferred from the estate of William Gilbert Lillywhite to Coast Development Company Limited from May 1, 1929 as per the Memorandum of Registration of transfer of Land (MRT) but not for 99 years as stated in the petition.
75. The government vide a Gazette Notice No. 1782 of 20<sup>th</sup> June, 1980 communicated the intention to acquire part of LR No. 5046/5 measuring approximately 34.44 Hectares for development of Coast Institute of Agriculture. On the same date, the government also issued a Notice of Inquiry vide Gazette Notice No. 1783 on the intended acquisition.
76. The then Commissioner of Lands vide a letter Ref. VAL.559/50 dated 1<sup>st</sup> April, 1982 issued a Notice of taking possession of the 34.44 Hectares acquired pursuant to section 19(3) of the Land Acquisition Act (Cap. 285) (Repealed).
77. A proposal by Coast Development Company Limited to subdivide LR No. 5046/5 was approved by the then Town Council of Kilifi vide a Notification of Approval of Development Permission (P.P A 2) Registration No. KTC/03/11 dated February 14, 2011. The Ministry also approved the same vide a letter Ref. No. KIL/LO/1750/VOL.XIX dated 30<sup>th</sup> March, 2012.
78. Upon subdivision, the acquired land was given L.R No. 5046/8 measuring approximately 34.48 Hectares as per the survey plan. The remaining subplots were given new LR Nos. 5046/9-38 as communicated vide a letter Ref: CT 52/VOL.28/150 dated June 3, 2015 from the Director of Surveys.
79. There have been further subdivisions from the remaining resultant 30 sub plots of LR. 5046/5.
80. According to the records held at the Ministry, a title CR 76854 dated February 16, 2021 for LR No. 5046/8 was issued in the name of Coast Development Company Limited.
81. A section of the land was acquired to establish an institution. In regard to issuance of individual titles, it would be difficult to do unless it uses the settlement fund after a comprehensive report on the status of ownership.

On 29<sup>th</sup> February 2024, Hon. Alice Wahome, the Cabinet Secretary, Ministry of Lands, submitted a list of ownership status of the LR No's 5046/9-38 noting that the Coast Development Company Ltd was the registered owner of the parcels as presented in the matrix below:

LR. NO.	C.R. NO.	SIZE(HA)	REGISTERED OWNER
5046/9			(Not provided)
5046/10	71563	22.30	The Coast Development Company Ltd.
5046/11	71564	1.520	The Coast Development Company Ltd. The title has been closed on surrender.
5046/12			(Not provided)
5046/13			(Not provided)
5046/14	73536	0.0281	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/15	73537	0.0293	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/16	73538	0.0386	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/17	73539	0.0405	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/18	73540	0.0425	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/19	73541	0.0444	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/20	73542	0.0463	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/21	73543	0.0482	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by

			Victoria Naishorua Keen claiming beneficiary interest.
5046/22	73544	0.0501	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/23			(Not provided)
5046/24	73546	0.0446	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/25	73547	0.0450	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/26	73548	0.0450	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/27	73549	0.1543	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/28			(Not provided)
5046/29	73551	0.0677	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/30	73552	0.0410	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/31			(Not provided)
5046/32	73554	0.0422	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/33	73555	0.0342	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/34	73556	0.0594	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/35	73557	0.0450	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.

			interest.
5046/36	73558	0.0450	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/37	73559	0.0437	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/38			(Not provided)

Source: Ministry of Lands

82. The claim of beneficiary interest placed on the parcels on 9<sup>th</sup> May 2023, by Victoria Naishorua Keen indicated a dispute over the ownership of the land. It implied that the matter was either under investigation or subject to legal proceedings.

83. The search results indicated lease tenures from 1<sup>st</sup> May 1929, with varying periods of 999 years and others for 99 years, both on leasehold and freehold. The Ministry acknowledged a potential inconsistency in tenure, particularly with the 999 years on leasehold, and committed to confirming whether that was an error since the standard should have been 99 years and not 999 years.

84. The terms in which the payments were made to Coast Development Authority were not legally structured, as the adjudication and settlement fund strictly adhered to official records, ensuring that no money was accepted before the allocation. Any payments made without official documentation fell beyond the control of the Ministry.

## PART FOUR

### 4 COMMITTEE OBSERVATIONS

Upon hearing from the Petitioner and other stakeholders, the Committee observed that—

85. The land has permanent and semi-permanent residential houses, shops, access roads, piped water supply, electricity service lines, and institutions (churches, mosques, schools and colleges). This is irrespective of the fact that there is seemingly no formal approved map of the said parcels of land in addition to the different existing versions of the proposed subdivisions of L.R 5046/5.
86. Coast Development Company Ltd was registered in 1966 and the lease for the land was given in 1929. There was inconsistency in the registration of the land as it was registered before its formation.
87. Despite a caveat dated 14<sup>th</sup> June 1982 by the Government claiming absolute ownership in respect of LR No. 5046/5 by compulsory acquisition, the land remains registered under Coast Development Company.
88. The Company is inactive as the records from the Business Registration Service show that the annual returns filed last on 17<sup>th</sup> of January 1987 by Rosemary Sanau Keen indicated the shareholding of the Company was; John Keen 70%, Mrs. R. Keen 20% and Ali Mohamed 10%.
89. There was a dispute over the ownership of the land as at 9<sup>th</sup> May 2023, as there was a claim of beneficiary interest placed on the parcels by Ms. Victoria Naishorua Keen.
90. The agreement between Mr. John Keen and the residents that prospective buyers would make payments, and upon completion of the instalments, would be entitled to be recorded in the members register and issue with share certificates was not honoured.
91. The search indicates the land has been subdivided but there is no record of the subdivision nor the authority of the subdivision.
92. Given Mr. John Keen's demise in July 2020, efforts by the Committee to reach the other directors to undertake negotiations or transactions with settlers on the land have not been fruitful.

## PART FIVE

### 5 COMMITTEE RECOMMENDATIONS

Based on the submission from the stakeholders. The Committee made the following recommendations -

**Prayer 1:** inquires into the ownership of the land occupied by the residents of Misufini, Vibandani and Kibarani Sub-Locations-Kilifi North Constituency in the name of Coast Development Company.

93. In response to the above prayer, the Committee has established that the land is registered in the name of Coast Development Company.

The Committee recommends that the Director of Criminal Investigation investigates the inconsistency that the lease for the land was given in 1929, but it was registered in 1966.

**Prayer 2:** establishes whether Coast Development Company is a legally registered company and the number of locals that bought shares in the Coast Development Company and their fate in terms of their shareholding in the company

94. In response to the above prayer, the Committee has established that Coast Development Company is a legally registered company but dormant since 1987. Shareholders of the company are John Keen 70%, Mrs. R. Keen 20% and Ali Mohamed 10%.

The Committee recommends that the Director of Criminal Investigation investigates the alleged fraud in the agreement between Mr. John Keen and the residents that prospective buyers would make payments, and upon completion of the instalments, be entitled to be recorded in the members register and issued with share certificates.

**Prayer 3:** recommends that the Government under the 1 Million Acre Compulsory Land Acquisition Programme acquires the land for the local residents and that the land be adjudicated so as to ensure that the residents acquire title deeds

95. In response to the above prayer, the Committee recommends that the Ministry of Lands engages Ms. Victoria Naishorua Keen with a view to establish the reason for the encumbrance and address any disputes through the legal mechanisms.

**Prayer 4:** Makes any recommendation deemed fit in addressing the plight of the Petitioners and upholding the rule of law.

96. The Committee also recommends that in each financial year, the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development submit Budget Estimates for the acquisition of land in the Coastal region from absentee landlords for the settlement of citizens.

Signed:  Date: 11/6/2024

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

|

## **ANNEXURES**

- Annex 1: The Adoption List**
- Annex 2: Public Petition No. 36 of 2023 regarding Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani sublocations, Tezo Location, Kilifi North Constituency**
- Annex 3: Minutes of 50<sup>th</sup> Sitting of 2023 held on 15<sup>th</sup> August, 2023**
- Annex 4: Minutes of 66<sup>th</sup> Sitting of 2023 held on 4<sup>th</sup> October, 2023**
- Annex 5: Minutes of 5<sup>th</sup> Sitting of 2024 held on 29<sup>th</sup> February, 2024**
- Annex 6: Minutes of 34<sup>th</sup> Sitting of 2024 held on 23<sup>rd</sup> May, 2024**



**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**  
**THIRTEENTH PARLIAMENT - THIRD SESSION - 2024**  
**PUBLIC PETITIONS COMMITTEE**

**ADOPTION SCHEDULE**  
**OF THE REPORT ON CONSIDERATION OF PUBLIC PETITION NO. 36 OF 2023**  
**REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MISUFINI,**  
**VIBANDANI AND KIBARANI SUB LOCATIONS, TEZO LOCATION IN KILIFI NORTH**  
**CONSTITUENCY**

DATE.....23/05/2024.....

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the consideration of **Public Petition No. 36 of 2023 Regarding Delayed Adjudication and Settlement of Residents of Misufini, Vibandani and Kibarani Sub Locations, Tezo Location in Kilifi North Constituency** to confirm our approval and confirm its accuracy, validity and authenticity:

NO.	NAME	DESIGNATION	SIGNATURE
1.	Hon. Nimrod Mbithuka Mbai, M.P.	Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, M.P.	Vice Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	Member	
4.	Hon. Joshua Chepyegon Kandie, M.P.	Member	
5.	Hon. John Walter Owino, M.P.	Member	
6.	Hon. Ernest Ogesi Kivai, M.P.	Member	
7.	Hon. Maisori Marwa Kitayama, M.P.	Member	
8.	Hon. Edith Vethi Nyenze, M.P.	Member	
9.	Hon. Bidu Mohamed Tubi, M.P.	Member	
10.	Hon. Caleb Mutiso Mule, M.P.	Member	
11.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	Member	
12.	Hon. Peter Mbogho Shake, M.P.	Member	
13.	Hon. Suzanne Ndunge Kiamba, M.P.	Member	
14.	Hon. John Bwire Okano, M.P.	Member	
15.	Hon. Sloya Clement Logova, M.P.	Member	

DLPS

Head-PRJ  
T.N. Juma Kimani  
30/06/23.



REPUBLIC OF KENYA

Please deal. The petition was presented on 29/06/23. *[Signature]*  
30/06/23

THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT (SECOND SESSION)

PUBLIC PETITION

(No. 36 of 2023)

**REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MISUFINI, VIBANDANI AND KIBARANI SUB-LOCATIONS, TEZO LOCATION -KILIFI NORTH CONSTITUENCY.**

I, the **UNDERSIGNED**, on behalf of the residents of Kilifi North Constituency;

**DRAW** the attention of the House to the following:

- THAT**, the people of Misufini, Vibandani and Kibarani Sub-Location, Tezo Location -Kilifi North Constituency have occupied a parcel of land registered as **Plot No: 5046/5** in the name of **Coast Development Company Limited** measuring **265 Acres** for more than **50 years**.
- THAT**, one of the Directors acquired the land at independence from a European known as **Lilly White** who had initially acquired the same land as a Leasehold for a term of **99 years** from **1<sup>st</sup> May, 1929** with a rent of **3,760 Kenyan shillings** per annum.
- THAT**, the Petitioners are concerned that the Leasehold term is almost lapsing and they are fearful of its fate in terms of Article **65(2)** of the 2010 Constitution;
- THAT**, one of the Directors allowed locals to settle in the area willingly and they were to pay a monthly fee, however in the year 2010 a Committee chaired by one **Mr. Abdi Makarani** entered into an

NATIONAL ASSEMBLY  
PETITIONS  
30 JUN 2023  
SERIAL No. ....  
**RECEIVED**

**REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MISUFINI, VIBANDANI AND KIBARANI SUB-LOCATION, TEZO LOCATION -KILIFI NORTH CONSTITUENCY.**

---

agreement with Coast Development Company stating that the residents would be required to pay **20,000 Kenyan Shillings** as shares to the said Company, some of the residents paid the 20,000 shillings and were issued with payment receipts;

5. **THAT**, presently there is no **LR. 5046/5** as the property was subdivided into several portions without the resident's notice being **LR NO. 5046/8, 5046/9, 5046/10** and **5046/11**.
6. **THAT**, plot **No.5046/8** measuring **34.4 Acres** was subdivided subject to the compulsory acquisition of the property by the Government for construction of **Coast Institute of Agriculture**, now **Pwani University**.
7. **THAT**, Coast Development Company submitted an application to the County Government of Kilifi seeking an approval for its proposed change of user from Agricultural to Residential plot **No.5046/11**. The same was approved **27<sup>th</sup> June, 2018**.
8. **THAT**, Petitioners have written many letters to the National Lands Commission but no action has been taken concerning the matter;
9. **THAT**, both the National Government and County Government have invested heavily in the said piece of land by providing the necessary infrastructure such as Electricity Connectivity, Water, Roads and other Social Amenities;
10. **THAT**, the land has not been adjudicated and therefore no title deeds issued;
11. **THAT**, the matter presented in this petition is not pending before any tribunal, court of law or Independent body.

**REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MISUFINI, VIBANDANI AND KIBARANI SUB-LOCATION, TEZO LOCATION -KILIFI NORTH CONSTITUENCY.**

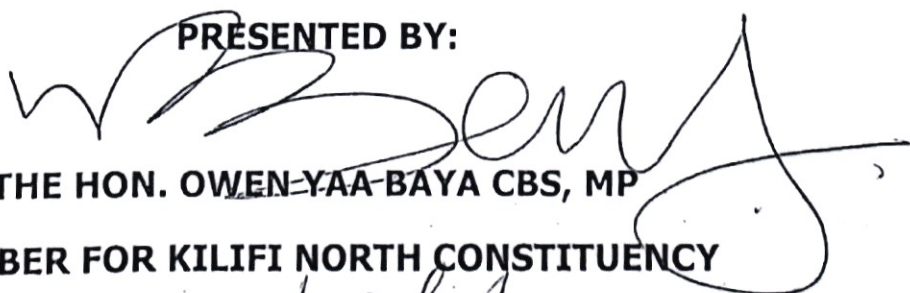
---

**THEREFORE**, your humble Petitioners pray that the National Assembly through the Public Petitions Committee;

- i. Inquire into the ownership of the land occupied by residents of Misufini, Vibandani and Kibarani Sub-Location - Kilifi North Constituency in the name of Coast Development Company.
- ii. Establish whether Coast Development Company is a legally registered Company and the number of Locals that bought shares in Coast Development Company and their fate in terms of their shareholding in the Company.
- iii. Recommend that the Government under the 1 Million Acre Compulsory Land Acquisition Programme acquires the land for the local residents and that the land be adjudicated so as to ensure that the residents acquire title deeds; and
- iv. Makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.

And your **PETITIONERS** will ever pray.

**PRESENTED BY:**

  
**THE HON. OWEN-YAA-BAYA CBS, MP**

**MEMBER FOR KILIFI NORTH CONSTITUENCY**

**DATE:** .....29/06/2023.....



**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**

**MINUTES OF THE 50<sup>TH</sup> SITTING OF THE PUBLIC PETITIONS COMMITTEE**  
**HELD ON TUESDAY, AUGUST 15, 2023, IN COMMITTEE ROOM 12, MAIN**  
**PARLIAMENT BUILDINGS AT 12.00 NOON**

**PRESENT**

- |                                       |   |             |
|---------------------------------------|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P.    | - | Chairperson |
| 2. Hon. Joshua Chepyegon Kandie, M.P. |   |             |
| 3. Hon. Ernest Ogesi Kivai, M.P.      |   |             |
| 4. Hon. Edith Vethi Nyenze, M.P.      |   |             |
| 5. Hon. John Walter Owino, M.P.       |   |             |
| 6. Hon. Maisori Marwa Kitayama, M.P.  |   |             |
| 7. Hon. Caleb Mutiso Mule, M.P.       |   |             |
| 8. Hon. John Bwire Okano, M.P.        |   |             |
| 9. Hon. Sloya Clement Logova, M.P.    |   |             |

**APOLOGIES**

- |   |   |                  |
|---|---|------------------|
| 1. Hon. Janet Jepkemboi Sitienei, M.P.      | - | Vice Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P.        |   |                  |
| 3. Hon. (Eng.) Bernard Muriuki Nebart, M.P. |   |                  |
| 4. Hon. Peter Mbogho Shake, M.P.            |   |                  |
| 5. Hon. Suzanne Ndunge Kiamba, M.P.         |   |                  |
| 6. Hon. Bidu Mohamed Tubi, M.P.             |   |                  |

**SECRETARIAT**

- |                       |   |                             |
|-----------------------|---|-----------------------------|
| 1. Mr. Samuel Kalama  | - | Principal Clerk Assistant   |
| 2. Ms. Anne Shibuko   | - | Clerk Assistant I           |
| 3. Ms. Miriam Modo    | - | Clerk Assistant I           |
| 4. Mr. Peter Barasa   | - | Legal Counsel II            |
| 5. Mr. Martin Sigei   | - | Research Officer III        |
| 6. Ms. Lilian Mburugu | - | Media Relations Officer III |
| 7. Ms. Rehema Koech   | - | Audio Officer III           |

**IN ATTENDANCE****National Lands Commission**

- |                       |   |   |
|-----------------------|---|---|
| 1. Mr. Gershom Otachi | - | Chairperson, National Lands Commission (NLC)      |
| 2. Prof. David Kuria  | - | Director, Land Administration and Management, NLC |
| 3. Dr. Samuel Nthuni  | - | Deputy Director, PLM                              |

**MIN./PPETC/2023/319: PRELIMINARIES**

The Chairperson called the meeting to order at 10.15 a.m. and Hon. Caleb Mule, M.P. said the prayers.

**MIN./PPETC/2023/320: ADOPTION OF AGENDA**

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sittings
4. Matters Arising
5. **Meeting with the CEO National Lands Commission on consideration of:**
  - a) *Public Petition No. 3 of 2022 regarding Degazettment of Hola Irrigation Scheme Land to allow for the expansion of the County Headquarters of Tana River;*
  - b) *Public Petition No. 13 of 2023 regarding Access roads for residents of Narok East Constituency;*
  - c) *Public Petition No. 14 of 2023 regarding Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord; and*
  - d) *Public Petition No. 36 of 2023 regarding Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub location, Tezo Location, Kilifi North Constituency*
6. **Consideration of Public Petition No. 11 of 2022 regarding Pollution of River Athi**

*-Meeting with the Government Chemist*
7. Any other Business
8. Adjournment & Date of Next Meeting

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Edith Nyenze, M.P. and seconded by Hon. Walter Owino, M.P.

**MIN./PPETC/2023/321: CONSIDERATION OF PUBLIC PETITION NO. 3 OF 2022 REGARDING DEGAZETTMENT OF HOLA IRRIGATION SCHEME LAND TO ALLOW FOR THE EXPANSION OF THE COUNTY HEADQUARTERS OF TANA RIVER**

The Chairperson, National Lands Commission submitted as follows:

- i) The land on which the Hola Irrigation Scheme sits on was set apart under the Native Lands Trust Ordinance in 1959 through Gazette Notices 2714 and 2715. These set apart a total of 3307.5 acres. There are references to gazette notice of 26th April 1960 and 26th April 1963. The gazette notice of 26th April 1960 has a number of setting apart orders, but not for the Hola Irrigation Scheme, We have

not been able to trace that of 26th April 1963 (only a reference to 23rd April 1963) and cannot ascertain the acreage set apart. However, there is consensus across the board that the scheme was given 12,360 acres.

- ii) The Commission through its County Coordination office in Tana River County has been participating in a multiagency engagement that the petition alludes to. There was an agreement to degazette 2,000 acres on the southern and eastern part of scheme to facilitate expansion of Hola Town. The scheme's northern border was to be extended by a similar acreage of 2,000 acres to compensate for the degazettment.
- iii) *What would be required to support the degazettment* -there are proposals to amend the boundaries as captured to correctly reflect the ground situation. The National Irrigation Authority (NIA) and the County Government should commission a survey to clearly demarcate the agreed portioning of the land. Prior to undertaking the survey, the County Government as the planning authority should plan the area. This plan ideally should be for the whole Municipality indicating the expansion, which surveyors will then use to have the survey work undertaken. The survey will be processed in line with the Survey Act.
- iv) *Who should issue the degazettment orders*- the orders would be issued by the Cabinet Secretary, Ministry of Water, Sanitation and Irrigation as NIA falls under the Ministry. NIA should consent to the degazettment. To support the degazettment of the scheme as it exists and subsequent gazettment of the amended boundaries, the authenticated surveys should be used. By dint of the planning function, the County Government has powers to vary land reserved for public purposes, but with the rider that the variations should not lead to net loss of land reserved for public purposes as per revised plans. This principle appears to have been captured in the engagements that have been ongoing, that the scheme will cede 2,000 acres on the southern and eastern parts but gain 2,000 acres on the northern part. Once the land has been degazetted, the Commission upon request by the National or County Government will proceed to reserve and gazette the reservations in respect of the identified national and county public purposes.
- v) *Will the expansion of the Scheme require compulsory acquisition of land in the northern extents of the Scheme*- the issue of compulsory will arise if the land identified on the northern parts is privately or communally held. In this respect, since the County Government is the one that needs the land for expansion, it should be the acquiring entity. The procedures for compulsory land acquisition are given in Part VIII of the Land Act, 2012. If the land is public, then the County Government as the holder will invoke Section 12 of the Land Act, 2012 and request the Commission to allocate or use Section 15 of the Act to reserve the planned and surveyed portion to NIA for the Hola Irrigation Scheme.
- vi) *What timelines and resources are required for degazettment and eventual expansion of the Municipality*- a lot of work has gone into the discussions and engagements, however, planning being participatory could take some more time and hence resources. Survey and its authentication processes also do take time and need to be properly factored in. The process of compulsory acquisition requires time as there are statutory timelines in the various processes that need to be undertaken. There is the need to budget for the exercise to ensure that the

acquisition complies with Article 40 of the Constitution of Kenya, 2010. Additionally, the process of preparation of degazettment of the part to be ceded to the County Government for Hola Municipality and gazettment of the extension to the Scheme could be elaborate and may require Cabinet approval.

- vii) There is need to ensure that a solution to the squatter problem is explored and resolved as this matter of gazettment is being considered.

#### *Committee concerns*

*Role of the National Land Commission-* the Committee inquired the role of the Committee in the matter.

The Chairperson explained that its role was to move the land from one function to another with the request of either the National or County government.

*Summary of procedure of degazettment-*the Committee sought to know the procedure of degazettment. Once NIA writes to the Cabinet Secretary, Ministry of Lands, the Cabinet Secretary will proceed to degazette the land.

**MIN./PPETC/2023/322:            CONSIDERATION OF PUBLIC PETITION NO. 13 OF 2023 REGARDING ACCESS ROADS FOR RESIDENTS OF NAROK EAST CONSTITUENCY**

The Chairperson submitted as follows:

- i) The mandate of the subject matter in the Petition lies with the county Governments and the Kenya Rural Roads Authority (KeRRA). It is expected that when the County Government approves the development plans, that as part of due diligence, the proposed developments should be reviewed to ensure that they do not obstruct or in any way restrict the flow of traffic, people and goods.
- ii) The proposed road needs to be designed and the design corridor identified within the areas proposed. The corridor will then need to be acquired in this case for the Kenya Urban Roads Authority (KURA).
- iii) The Commission's role will be restricted to matters on Compulsory Land Acquisition as spelt out in the law in consultation with the State Department of Lands and Physical Planning, and the conduct of final survey to vest the acquired road corridor to the acquiring entity.

#### **Committee Concerns**

*i) Responsible agency*

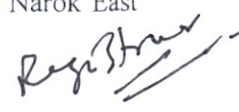
The Committee sought to know why both Kenya Rural Roads Authority (KeRRA) and Kenya Urban Roads Authority (KURA) had been cited as responsible agencies yet their mandates were different.

The Chairperson responded that the road passed in both rural area where KeRRA was responsible and an urban area where KURA was responsible hence the reference to the two agencies.

*ii) Inadequate response*

The Committee noted that the response was not detailed and did not address the concerns of the petitioners and therefore requested for a comprehensive response on the matter.

The Chairperson undertook to have the National Land Commission visit Narok East Constituency so that their response is well informed.



***Committee Resolution***

The Committee resolved to allow the National Lands Commission 7 days within which to present a detailed submission.

**MIN./PPETC/2023/323:      CONSIDERATION OF PUBLIC PETITION NO. 14 OF 2023 REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MNARANI SUBLOCATION, KILIFI COUNTY UNDER ABSENTEE LANDLORD**

The Chairperson, National Lands Commission submitted as follows: -

- i) The subject matter of the Petition falls under the Department of Adjudication and settlement in the State Department of Lands and Physical Planning, which is best placed to address the matter.
- ii) The suit land has been declared a Wakf under Islamic Law. It was therefore necessary that before the land is adjudicated, the matter of declaration of Wakf be dealt with.

***Committee Concerns***

*i) Role of the National Land Commission*

The Committee inquired what the role of the National Land Commission was in the matter given that there were historical injustices.

The Chairperson clarified that there were historical injustices and the matter was made easier by the fact that there was willingness of people settled on the land to cede it to the Government.

*ii) Process of the Government buying land*

The Committee inquired on the process of the Government buying land on which squatters had settled and included institutions such as public schools.

The Chairperson explained that if the land was intended for settlement of squatters, the process is dealt with by the Land Settlement Fund Board of Trustees, which would proceed with the purchase of the land. The Commission has a role in the board as the board composition requires a representative from the National Land Commission. The Commission would however not be involved in compulsory acquisition.

The Committee noted that the response was not detailed and did not address the concerns of the petitioners and therefore requested for a comprehensive response on the matter.

***Committee resolutions***

- i.) The Committee resolved to allow the National Lands Commission seven (7) days within which to present a detailed submission.
- ii.) The Secretariat was asked to send a copy of the Title Deed of Mnarani Land to the Nation Land Commission for authentication

**MIN./PPETC/2023/324:      CONSIDERATION OF PUBLIC PETITION NO. 36 OF 2023 REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MISUFINI, VIBANDANI AND KIBARANI SUB LOCATION, TEZO LOCATION, KILIFI NORTH CONSTITUENCY**

The Chairperson, National Lands Commission submitted as follows: -

- i) The matter concerns a portion of land (LR NO. 5056/5) leased to Coast Development Company Ltd measuring 265 acres for more than 50 years. It is also noted that the land had been initially leased for a term of 99 years from 1st May 1929, therefore the lease is almost ending.
- ii) There are observations reported in the Petition that need further confirmation from records held in the State Department of Lands and Physical Planning.
- iii) The Commission requests for time to dig into the matter so that it can furnish an elaborate response. Alternatively, the Committee could invite the State Department of Lands and Physical Planning to furnish the requested information as it is already in its custody.

**Conclusion**

- a) The Chairperson concluded his submissions by stating that the Commission would in October 2023 commence conducting of hearings on historical land injustices. The findings and recommendations of these reports would inform their planning and preparation of the Commission to these activities.
- b) The Committee would submit brief reports on the site visits of Public Petition No. 13 of 2023 regarding Access roads for residents of Narok East Constituency; Public Petition No. 14 of 2023 regarding Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord; and Public Petition No. 36 of 2023 regarding Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub location, Tezo Location, Kilifi North Constituency to enable the National Lands Commission to submit comprehensive responses on the matter.

*Committee concerns*

The Committee noted that the response was not detailed and did not address the concerns of the petitioners and therefore requested for a comprehensive response on the matter, including details of how Mr. John Keen acquired the land.

*Committee Resolution*

The Committee resolved to allow the National Lands Commission seven(7) days within which to present detailed submissions on the petitions.

**MIN./PPETC/2023/325: CONSIDERATION OF PUBLIC PETITION NO. 11 OF 2022 REGARDING POLLUTION OF RIVER ATHI**

This Agenda item was deferred.

**MIN./PPETC/2023/326: ANY OTHER BUSINESS**

*a) Status of Committee Report after Tabling*

A question was asked on the status of Committee Reports once they are tabled. The meeting was informed that procedurally, once a committee report is tabled before the House, it is sent to the Petitioner, Institutions/Agencies cited in the recommendations for action and a copy is sent to the National assembly Committee on Implementation for follow up and report to the House after 60 days.

*b) Consideration and adoption of the KICA Report*

The Committee resolved to review the KICA Report in the next meeting scheduled for 17<sup>th</sup> August, 2023 before tabling in the course of the week. The secretariat to circulate physical copies to all Members.

*c) Workshop of the Committee*

The Committee discussed and agreed that it would hold a workshop from Monday 28<sup>th</sup> August 2023 to Friday 1<sup>st</sup> September 2023 to hold the Multi stakeholder engagement on Public Petition No. 13 of 2023 regarding *Access roads for residents of Narok East Constituency* and other petitions before the Committee.

**MIN./PPETC/2023/327: ADJOURNMENT AND DATE OF THE NEXT MEETING**

There being no other business, the Chairperson adjourned the meeting at 02.10 p.m. The next meeting would be held on Thursday, 17<sup>th</sup> August 2023 at 11.00 a.m.

Sign: .....

(CHAIRPERSON)

Date.....



**REPUBLIC OF KENYA**

**THE NATIONAL ASSEMBLY**

**MINUTES OF THE 66<sup>TH</sup> SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, OCTOBER 4, 2023, IN THE COMMITTEE ROOM ON 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10:00 AM**

**PRESENT**

- |  |   |                  |
|--|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P.     | - | Chairperson      |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P.  |   |                  |
| 4. Hon. John Walter Owino, M.P.        |   |                  |
| 5. Hon. Maisori Marwa Kitayama, M.P.   |   |                  |
| 6. Hon. Edith Vethi Nyenze, M.P.       |   |                  |
| 7. Hon. Peter Mbogho Shake, M.P.       |   |                  |
| 8. Hon. John Bwire Okano, M.P.         |   |                  |

**APOLOGIES**

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. Suzanne Ndunge Kiamba, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. Sloya Clement Logova, M.P.

**SECRETARIAT**

- |                        |   |                              |
|------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama   | - | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo     | - | Clerk Assistant I            |
| 3. Mr. Willis Obiero   | - | Clerk Assistant III          |
| 4. Mr. Shadrack Omondi | - | Legal Counsel II             |
| 5. Mr. Martin Sigei    | - | Research Officer III         |
| 6. Ms. Rahab Chepkilim | - | Audio Officer                |

**IN ATTENDANCE**

**MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT**

- |                              |   |                                   |
|------------------------------|---|-----------------------------------|
| 1. Hon. Generali Nixon Korir | - | PS, Lands                         |
| 2. Mr. B.K Mbiti             | - | DDLAS                             |
| 3. Ms. Carolyn Menin         | - | Legal Advisor                     |
| 4. Mr. Hilton Kamau          | - | Ass. Director Land Administration |
| 5. Mr. Andrew Kositany       | - | Personal Assistant                |
| 6. Mr. Paul Ndungu           | - | Ass. Dir. Land Survey             |

## NATIONAL LANDS COMMISSION

- |   |                    |   |                                       |
|---|--------------------|---|---------------------------------------|
| 1 | Mr. Gershon Otachi | - | Chairman, NLC                         |
| 2 | Mr. Hezron Alela   | - | Personal Assistant to the Chairperson |
| 3 | Prof. David Kuria  | - | Director                              |
| 4 | Mr. Zachary Ndege  |   |                                       |

### MIN./PPETC/2023/427: PRELIMINARIES

The Chairperson called the meeting to order at 10.00 a.m. and said the prayers

### MIN.PPET/2023/428: ADOPTION OF THE AGENDA

#### **AGENDA**

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Meeting with the Cabinet Secretary, Ministry of Lands regarding the following Petitions:**
  - i) *Public Petition No 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of lease of Macalder Mines Ltd Land,*
  - ii) *Public Petition No 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sub-location, Kilifi County;*
  - iii) *Public Petition No 36 of 2023 regarding delayed adjudication and settlement of residents of Misufuni, Vibandani and Kibarani Sub-Locations, Tezo Location, Kilifi North,*
  - iv.) *Public Petition No 10 of 2023 regarding resettlement of Residents of Muthanga Farm,*
  - v) *Public Petition No 15 of 2023 on Declaration of Mukutani Forest as a Public Forest, and*
  - vi) *Public Petition No 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council.*
6. **Meeting with the CEO, National Lands Commission (NLC) regarding the following Petitions:**
  - i *Public Petition No 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of lease of Macalder Mines Ltd Land*
  - ii *Public Petition No 10 of 2023 regarding resettlement of Residents of Muthanga Farm*
  - iii *Public Petition No 15 of 2023 on Declaration of Mukutani Forest as a Public Forest*
  - iv *Public Petition No 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council*
7. Any Other Business
8. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon John Walter Owino, M P. and seconded by Hon. Numrod Mbithuka Mbai, M P

### MIN./PPETC/2023/429: MEETING WITH THE CS MINISTRY OF LANDS

The Principal Secretary of the State Department for Lands, Hon General Nixon Korir made submissions as follows -

**A. Consideration of Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of squatters after the expiry of the lease of Macalder Mines Ltd Land**

---

- i.) The Petitioners, described as residents of Nyatike Constituency claim they were disposed of their ancestral land measuring approximately 300 acres when it was leased to Macalder Mines Ltd in 1935.
- ii.) According to the records at the Ministry, the subject falls within the parcel registered as Muhuru/Kadem/Macalder/498 which measures approximately 2167.5 Hectares. It was registered in favour of the defunct South Nyanza County Council (now County Government of Migori) on February 19, 1982 on freehold tenure.
- iii.) Following the Constitution of Kenya 2010, the land became public land under the County Government of Migori pursuant to Article 62. It can only be alienated under direct allocation, a process that can only be initiated by the county government. The Ministry will thereafter process the title documents. The matter can therefore be referred to the County Government of Migori for consideration.

**Committees Concerns**

*Gazettement of the land as a forest*

- i. The Committee inquired about the gazettement of the Macalder land as a forest land by the CS, Ministry of Environment, Forestry, and Climate Change. The PS indicated that the information had not come to the attention of the Ministry of Lands. However, there were instances of such gazettements without the knowledge of the Ministry of Lands. Further, the PS stated that a gazettement process needed public participation and involvement of the County Government of Migori which is the custodian of the land.

*The status of the land*

- ii. The Committee inquired about the status of the land. The PS indicated that the land in question was about 5000 acres, but the petitioners were claiming just 300 acres. However, Migori County Government should be answerable as the Ministry of Lands only facilitates issuance of title deed after the allocation has been done by the county. Further, the county oversees planning and approving the allocation before subdivision and NLC issuance of allotment letter.

*Efforts by the Ministry in protection of community interest*

- iii. The Committee inquired the efforts by the Ministry regarding the protection of community interest. The PS stated that a committee on historical land injustices was in place under the NLC and was mandated to look community interests in historical land instances.

**Committee resolutions**

After the deliberations, the Committee resolved to allow the PS two weeks to establish the records of the 5000 acres in question and any other relevant correspondences and full status of the land.

## **B. Consideration of Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest**

---

- i.) The main contention in the Petition was that there was no public participation in the process of gazetting the forest. The area is occupied by three communities namely Pokot, Tugen, and Ilchamus. The Petitioners claim that the designation of the area as a forest poses an existential threat to the communities and requires urgent intervention to avert further conflict.
- ii.) The Mukutani Forest was gazetted as a public forest vide Legal Notice No. 265 of 2017 and it covers part of Mukutani Location. The forest measures approximately 13,195.8 hectares and by the time of gazettelement, the Ministry had already declared the area as an adjudication section per the Notice dated 18<sup>th</sup> February 2016.
- iii.) Due to insecurity in the area, demarcation and recording of rights had not commenced as there had been communal conflicts between residents of Mukutani Location and the neighbouring Arabal Location.
- iv.) Both Arabal and Mukutani Location residents claim that their views were not sought before gazettelement of the forest despite the area covering what they consider as their community land. The people from Arabal also view the forest as their hideout and refuge from cattle rustlers who continue to torment them.
- v.) That, if proper consultation was done and the locations involved, then issues regarding to its existence would not be in contest and measures of proper protection would have been put in place to allay the fears of the communities.
- vi.) The Forest Conservation and Management Act No. 34 of 2016 at section 30 classifies categories of forests as follows: -
  - (1) Forests may be classified as public, community, or private forests.
  - (2) Public forests include; public forests classified under Article 62(1)(g) of the Constitution; and forests on land between the high and low water marks classified under Article 62(1)(1) of the Constitution.
- vii.) Section 31(1) and (2) of the Act prescribed the procedure for the creation and management of public forests
- viii.) According to the records held by the Ministry of Lands, Mukutani Forest falls in the former trust land which transitioned to community land under Constitution of Kenya 2010 and the Community Land Act, 2016.

### **Committee Concerns**

#### *The Status of the land*

With regards to the status of the land, the PS clarified that the land was under trust and was reverted to the community but in 2011, it was gazetted as a forest land. The gazettelement did not involve the community and ought to have been reversed and land given to the community.

#### *The missing link between the Ministry of Land and Ministry of Environment, Forestry and Climate Change regarding gazettelement*

The Committee sought to know why the two Ministries were to in tandem on matters gazettelement of forest lands and the way forward for handling the disconnect. The PS indicated that there was a missing link in decision making as the Forestry Department occasionally

gazetted forest lands without the input or knowledge of the Ministry of Lands. However, the Ministry of Environment had to get approval from the counties which allocated the lands.

*The consequences of not involving the community*

The Committee sought to know how the matter would be addressed when the views of the community were not collected before gazettelement of their land as a forest land. The PS indicate that the Ministry of Land was in support of the case brought forth by the community. Further, the Ministry of Lands would bring to the attention of the Ministry of Environment, Forestry and Climate Change to degazette the land and release it to the community.

**C. Consideration of Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufuni, Vibandani and Kibarani Sub-Locations, Tezo Location, Kilifi North**

---

- i.) The Petitioners described as residents of Misufuni, Vibandani and Kibarani Sub Location, Tezo Sub location in Kilifi Constituency have been in occupation of Plot No. 5046/5 for more than 50 years as authorised by the registered proprietor, Coast Development Company.
- ii.) According to the records at the Ministry, the land in question, LR No. 5046/5 measuring approximately 107.24 Hectares (265 acres) was transferred from the estate of William Gilbert Lillywhite to Coast Development Company Limited from May 1, 1929 as per the Memorandum of Registration of transfer of Land (MRT) but not for 99 years as stated in the petition.
- iii.) The government vide a Gazette Notice No. 1782 of June 20, 1980 communicated the intention to acquire part of LR No. 5046/5 measuring approximately 34.44 Hectares for development of Coast Institute of Agriculture. On the same date, the government also issued a Notice of Inquiry vide Gazette Notice No. 1783 on the intended acquisition.
- iv.) The then Commissioner of Lands vide a letter Ref. VAL.559/50 dated April 1, 1982 issued a Notice of Taking Possession of the 34.44 Hectares acquired pursuant to section 19(3) of the Land Acquisition Act (Cap. 285) (Repealed).
- v.) A proposal by Coast Development Company Limited to subdivide LR Bo. 5046/5 was approved by the then Town Council of Kilifi vide a Notification of Approval of Development Permission (P.P A 2) Registration No. KTC/03/11 dated February 14, 2011. The Ministry also approved the same vide a letter Ref. No. KIL/LO/1750/VOL.XIX dated March 30, 2012.
- vi.) Upon subdivision, the acquired land was given L.R No. 5046/8 measuring approximately 34.48 Hectares as per the survey plan. The remaining subplots were given new LR Nos. 5046/9-38 as communicated vide a letter Ref: CT 52/VOL.28/150 dated June 3, 2015 from the Director of Surveys.
- vii.) There have been further subdivisions from the remaining resultant 30 sub plots of LR. 5046/5. The Ministry will provide a detailed report on ownership of the plots. Further, information on the registration and shareholding of Coast Development Company Limited should be sought from the
- viii.) According to the records held at the Ministry however, a title CR 76854 dated February 16, 2021 for LR No. 5046/8 was issued in the name of Coast Development Company Limited.

## **Committees Concerns**

### *Status of the land*

- i. The Committee inquired about the status of the land. The PS indicated that the title of the land is in the possession of Coast Development Company and the land was host to Pwani University. However, the acquisition process of the land was fraudulent, and the Director of Criminal Investigation (DCI) would investigate the matter. The PS requested the committee for additional two weeks to provide copies of the report on the directors of the company holding the title.

### *Addressing the concerns of squatters*

- ii. The Committee inquired whether the Ministry would finalize and facilitate issuance of titles to the people who had already settled in the land. The PS indicated that the land was acquired to establish an institution hence it would be difficult to issue titles unless it uses the settlement fund after a comprehensive report on the status of ownership.

### *Land settlement fund*

- iii. The Committee inquired on the land settlement fund and how it could be actualised to compensate the landowners to allow for closure and settlement of the people. The PS stated that the fund was a budgetary allocation for purchase of lands from absentee landlords. Further, most of the landlords were willing to surrender the lands and negotiate with government but there was need for a budgetary allocation into the fund to facilitate the process.

### *Different ways of acquisition*

- iv. The Committee inquired about the various ways of land acquisition available for the Ministry. The PS indicated that the government could buy the land and give to the people or allow for a hybrid system where the government subsidises the costs and allows people to purchase. However, there was no provision in law for government to purchase from the landlords and the people buys back from the government.

## **MIN./PPETC/2023/430: MEETING WITH THE NATIONAL LANDS COMMISSION**

The Chairperson, the National Lands Commission (NLC), Mr. Gerishon Otachi made the following submissions: -

### **A. Consideration of Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of the lease of Macalder Mines Ltd Land**

#### *Background*

Facts gathered during the visit indicate that Macalder Mines Ltd., a Canadian Company started mining in that area in 1933. According to the locals, the company mapped out specific areas for mining and displaced the locals. However, it allowed them to settle in adjacent areas with conditions to obtain a permit from Macalder Mines Ltd. and some of the conditions included:

- The locals were not supposed to cultivate more than five acres of land.
- The locals were not supposed to keep more than 16 heads of cattle.

The locals indicate that when the lease expired around 1970, they moved in claiming it as their ancestral land.

### *The current situation*

- i.) The residents occupy the largest portion of the land where they have built residential houses and cultivated crops for subsistence. Some dwelling houses have been constructed with permanent materials, but the majority are semi-permanent materials (mud walls and corrugated iron sheets). Some individuals also keep cattle, sheep, and goats.
- ii.) There is Nyatike Market, which was planned, and resultant plots were allocated to individuals by the defunct County Council of Migori. The entire block consisting of the perimeter of the whole market is surveyed but NLC could not authenticate from the county government whether individual plots are surveyed.
- iii.) There is a catholic mission complex which comprises the church, convent, and offices. The mission complex is surveyed but NLC could not confirm whether their interest is registered.
- iv.) There are old mines on the parcel. Adjacent to these old mines are old residential buildings which appear to have been dwelling places of those who were managing the mines. The mines are still in the state where they were left by the Canadians, and they have not been rehabilitated.
- v.) On the parcel, is a central government housing scheme under the Ministry of Land Housing and Urban Development.
- vi.) There are also sub-county administration offices, residential quarters for the sub-county administrators, a police station and police lines to the North.
- vii.) There is an airstrip to the northeastern part of the parcel and a primary school almost to the central part of the land.

### *Observations*

- i.) The land records indicate that there is a reservation for Macalder Township which was registered on 11<sup>th</sup> November 1941 and therefore adjudication as requested may not be the procedure for regularisation of settlement.
- ii.) The land records also reveal that the parcel is registered in favour of South Nyanza County Council whose successor in law is now the County Government of Migori.
- iii.) There is a need to regularise ownership for local inhabitants settled on the ground. There are also public institutions on the land which need to be regularised by way of document ownership.

### *Recommendation*

The subject matter under the petition will be effectively addressed in a participatory manner in consultation with all the relevant stakeholders. The following processes in the prioritized order can be implemented in regularising ownership: -

- i.) A public participation forum be organised for all stakeholders on the subject land and all the views be collected and collated.
- ii.) Census/enumeration of *bonafide* squatters/institutions/allottees by the County Government to determine genuine beneficiaries can be done with the help of County Government Administrators and community leaders.

- iii.) Proper planning be undertaken on the parcel putting into consideration the topographical and registry maps sheets which may be used to prepare a development plan. The plan will indicate the plot location, approximate sizes, and users of various plots.
- iv.) The development plan is subjected to a stakeholders' forum for adoption. The plan and the list of beneficiaries are then forwarded to the county assembly for approval.
- v.) A cadastral survey is done to determine the sizes of resultant subplots according to the development plan.
- vi.) Presentation of a formal request from the County to the NLC for processing.
- vii.) Verification and validation of owners.
- viii.) Preparation of Letters of Allotment
- ix.) Acceptance and payment of levies as stipulated in the letters of allotment.
- x.) Processing of titles/certificates of leases

The land is vested in the County Government of Migori; therefore, it will be the initiator and key player in the process with the support of the Ministry of Lands and the NLC. However, the Commission remains committed to assist in processing of ownership documents within its mandate.

### **Committees Concerns**

#### *Gazettement of Macalder Land*

- i.) The Committee inquired on the gazettement of the land as forest land by the Ministry of Environment, Forestry and Climate Change. The Chairperson indicated that the Commission knew about the gazettement from the news hence there was no background information on the matter. However, the gazettement process was not as rigorous as de-gazettement which even requires the input of Parliament hence lots of complaints arise. NLC had no role in the gazettement.

#### *Protection of land rights by NLC as an Independent Commission*

- ii.) The Committee inquired into the role of NLC in the protection of the interest of the community. The Chairperson indicated that NLC would inquire from the CS why the gazettement was done, however, the Committee should invite the CS to respond. The Commission was involved in addressing cases of historical land injustices and there were no cases pending arising from historical land injustice out of the 1000 complaints filed formally.

#### *Legal provisions and the process of allocation*

- iii.) The Committee inquired into the legal provisions and the process of allocation. The Chairperson indicated that the NLC administers land in accordance with the provisions of the law and relevant statutes. The NLC receives requests for allocation from the county government as the law confers powers to county governments but there are checks and balances.

### **B. Consideration of Public Petition No. 10 of 2023 regarding the resettlement of Residents of Muthanga Farm**

---

- i.) The dispute was between the current occupants who claim to have been living on the farm and Muthanga Farm Company Limited shareholders who purchased the land from the government and subsequently issued title deeds.

- ii.) The confrontation between squatters and law enforcers during efforts to execute court orders necessitated an urgent solution to the problem.
- iii.) The office of the President through the Ministry of Interior and Coordination of National Government stepped in to look into the matter.
- iv.) The PS, Internal Security constituted a Multi-Agency Committee to review the matter and submit a report for action. The committee is comprised of State Department of Internal Security and National Administration, State Department of Lands and Physical Planning, County Government of Murang'a, Police representatives at the constituency and ward levels, representatives of Muthanga Farm Limited, representatives from Royal Capital Holding Limited and the National Lands Commission.
- v.) The NLC therefore being a party to the ongoing efforts to resolve the matter as spearheaded by the Ministry of Interior, awaits adoption and communication of final recommendation to inform implementation by the Committee.

**C. Consideration of Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest**

---

- i.) While considering the petition, the NLC checked its records for any correspondence from the then Ministry in charge of Forestry or the Kenya Forest Service as anticipated under Section 21(2) of Forest Conservation and Management Act, 2016 leading to Legal Notice No. 265 of 27/10/2017 regarding gazettelement of Mukutani Forest. The NLC affirmed that its records do not have details of involvement in the gazettelement of Mukutani Forest.
- ii.) The Commission opined that the matter is better handled by direct involvement of the Ministry in charge of Forestry and the respective County Government involving all relevant stakeholders and/or residents.

**Committee Concerns**

*Gazettelement of the land*

- i.) The Committee inquired into best way to address the disconnect between the Ministry of Environment and NLC regarding the missing link on gazettelement. The Chairperson stated that NLC should be notified before gazettelement of a community land as a forest land. However, the process required public participation.

*Recommendations on the gaps in the law*

- ii.) The Committee sought to know where there were gaps in the law and some recommendations from the NLC. The Chairperson stated that NLC always works on recommendations on improvement of the law for example a Bill on historical land injustice was before the National Assembly. However, there was need to tighten the gaps that allow for gazettelement of lands without public participation or knowledge of the NLC.

**D. Consideration of Public Petition No. 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council**

---

- i.) While considering the petition, the NLC was informed by the Court of Appeal Ruling in Kisumu (Civil Appeal No.161 of 2010) in which Town Council of Awendo appealed against a judgement delivered at Kisii High Court Civil Suit No. 133 of 2006.

- ii.) The Decree by the High Court and confirmed by the Court of Appeal is to the effect that the original owners of the suit land ought to be registered as the lawful owners of the unutilized parcels of the suit land and that unutilized parcels be re-surveyed and title deeds thereof be issued to the rightful persons by the area Land Registrar.
- iii.) In view of the above, the implementation of the decree is ideally by the Director of Survey and the Chief Land Registrar who are officers of the Ministry of Lands. However, since the County Government of Migori is the successor to Awendo Town Council which was involved in the litigation, any challenges in implementing the Decree should be addressed jointly by the County and the Ministry.


**Committee Concerns**

*Options that address the Petitioners' prayers*

The Committee inquired into the available options that could address the concerns by the petitioners. The Chairperson NLC would analyse the Supreme Court's Ruling on the matter and advise the committee within two weeks.

**MIN./PPETC/2023/431: ADJOURNMENT AND DATE OF THE NEXT MEETING**

There being no other business, the Chairperson adjourned the meeting at 1:30 p.m. The next meeting would be held on Thursday 5<sup>th</sup> October 2023 at 10.00 a.m.

Sign:  .....

*for* (CHAIRPERSON)

Date..... *29/11/2023* .....



**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**

**MINUTES OF THE 5<sup>TH</sup> SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, FEBRUARY 29, 2024, IN COMMITTEE ROOM 12, NEW WING, PARLIAMENT BUILDINGS AT 12.00 NOON**

**PRESENT**

1. Hon. Ernest Ogesi Kivai, M.P. - Chairing
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. Maisori Marwa Kitayama, MP
5. Hon. Bidu Mohamed Tubi, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. Edith Vethi Nyenze, M.P.
8. Hon. Suzanne Ndunge Kiamba, M.P.
9. Hon. John Bwire Okano, M.P.
10. Hon. Sloya Clement Logova, M.P.

**APOLOGIES**

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
3. Hon. Patrick Makau King'ola, M.P.
4. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
5. Hon. Peter Mbogho Shake, M.P.

**IN ATTENDANCE**

**PETITIONERS**

1. The Hon. Richard Ken Chonga - Member for Kilifi Constituency
2. Mr. Chibuga Morris - Chairman, KUPPET Kilifi Branch
3. Mr. Caleb Mogere - Executive Secretary, KUPPET Kilifi County

**MINISTRY OF LANDS**

1. Hon. Alice Wahome - Cabinet Secretary
2. Hon. Nixon Korir - PS for State Department for Lands
3. Mr. Eric Mulevu - PA to the CS
4. Cathrine Muindi
5. Mr. Joseph Kamuyu
6. Mr. Andrew Kositany
7. Ms. Wambui Nganju

## SECRETARIAT

1. Mr. Ahmed Kadhi	-	Senior Clerk Assistant
2. Ms. Miriam Modo	-	Clerk Assistant I
3. Ms. Anne Shibuko	-	Clerk Assistant I
4. Ms. Patricia Gichane	-	Legal Counsel II
5. Mr. Willis Obiero	-	Clerk Assistant III
6. Mr. Martin Sigei	-	Research Officer III
7. Mr. Paul Shana	-	Assistant Serjeant-at-Arms
8. Mr. Eugene Luteshi	-	Audio Officer

## MIN./PPETC/2024/ 035:

## PRELIMINARIES

The Chairperson called the meeting to order at 12:00 noon and Hon. Caleb Mule, M.P. said the prayers.

## MIN./PPETC/2024/036:

## ADOPTION OF AGENDA

### AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Meeting with CS, Lands, Public Works, Housing and Urban Development on consideration of the following Petitions—
  - i. *Delayed adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd Land;*
  - ii. *Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord;*
  - iii. *Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub location, Tezo Location, Kilifi North Constituency; and*
  - iv. *Illegal acquisition of private land by the defunct Awendo Town Council*
6. Meeting with CEC in charge of Lands, Migori County (Hon. John Kobado) regarding the consideration of the following Petitions—
  - i. *Delayed adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd Land; and*
  - ii. *Illegal acquisition of private land by the defunct Awendo Town Council*
7. Consideration of public petition regarding Hardship Allowance and Affirmative Action for Teachers in Chonyi Sub County—
  - i. *Meeting with Petitioner (Hon. Ken Chonga, MP)*
  - ii. *Meeting with KUPPET Kilifi Branch Chairperson (Mr. Morris Chiguba)*
8. Any Other Business
9. Adjournment



### ***Efforts made to address the issues***

- i. A countrywide data collection exercise aimed at reviewing hardship areas was led by an inter-agency committee with representation from different ministries, state agencies and commissions. The committee concluded its report on 17<sup>th</sup> September, 2021 and listed Mbita, Lunga Lunga, Suba, and Chonyi areas to be gazetted as hardship areas to allow for enhanced allowances of public servants including teachers.
- ii. Despite the proposal, Chonyi was never been gazetted as a hardship area. In a collective bargaining agreement (CBA) signed between TSC and the teachers' unions, the Commission promised to embark on promotion of teachers serving in Arid and Semi-Arid Lands (ASAL) and revealed eighteen new hardship areas in the 2021-2025 CBA.
- iii. Kilifi County is an ASAL area but only had two sub counties of Magarini and Ganze being declared ASAL while other sub counties were left out including Chonyi. Further, most of the administrators in schools in Kilifi County are in acting capacity thus lowering their morale.
- iv. Efforts made to have this matter addressed by TSC had not resulted into satisfactory response.

### **Prayers**

That the Committee—

- i. Engages the TSC to ensure teachers working in Chonyi area are paid hardship allowances.
- ii. Enquires into the matter and recommends that the entire Kilifi County be gazetted as a hardship area, be granted ASAL status as a hard to staff area to allow the teachers to benefit from all the affirmative action, promotion and hardship allowance going forward.

### **Meeting with KUPPET, Kilifi Branch**

The Chairperson, KUPPET Kilifi Branch Mr. Morris Chiguba accompanied by the Executive Secretary, Mr. Caleb Mogere appeared before the Committee and submitted that they were in support of the petition for the following reasons—

- i. *Discrimination in Chonyi area as a hardship*: Despite its geographical location and lack of municipality status, Chonyi area was not gazetted as a hardship area. Consequently, teachers in the region were unable to benefit from hardship allowances, unlike other areas with similar work conditions.
- ii. *Medical services*: The area lacked even a single medical facility accredited by various medical schemes for teachers. It only had a poorly facilitated health center, putting the health of teachers at risk. Teachers relied on Kilifi County Referral hospital, located about 30 kilometres away.

- iii. *Poor housing conditions for teachers:* Due to inadequate housing in Chonyi, most teachers resided in Kilifi town hence the need for a hardship allowance.
- iv. *Food insecurity and harsh climatic conditions:* Unpredictable weather conditions led to failures in agricultural production, causing food insecurity.
- v. *Shortages and absence of water:* Key water and electricity infrastructure were absent in many parts of Chonyi. The available water sources were unhygienic and untreated, raising health concerns.
- vi. *Poor roads and communication network:* Major roads in Chonyi were impassable during bad weather and inconvenient during the dry season due to dust, potholes, and general damages, making it difficult for teachers to move around. Some areas had limited network coverage, hence affecting communication.
- vii. *Mass teacher transfers and understaffing:* All schools experienced understaffing, with only one out of the twelve secondary schools in Chonyi Sub County having a substantive deputy principal. The rest had deputies serving in acting capacities. This understaffing was a result of mass teacher transfers away from Chonyi due to poor working conditions.

#### Committee Concerns

- i. Regarding whether the gazettelement should benefit Chonyi Sub County or the entire Kilifi County, the Petitioner indicated that the petition targeted teachers in Chonyi to benefit. However, the entire Kilifi County should also be considered as ASAL area to benefit from other concession that comes along with that.
- ii. Regarding the justification for gazetting Chonyi as a hardship area and whether the issues were perennial or seasonal, the Petitioner stated that the area deserved the gazettelement as other areas with similar working conditions were already gazetted. Further, despite some of the challenges affecting other parts of the country the infrastructure in Chonyi was a perennial problem.
- iii. Members sought clarification regarding municipality status and in contributed to extra allowances for teachers. The Petitioner indicated that a municipality status would attract various benefits such as enhanced house allowance for teachers not accorded to rural areas.
- iv. The Committee sought clarification on the report quoted to recommend the gazettelement of Mbita, Lunga Lunga, Suba and Chonyi. The Petitioner indicated that the report recommended the regions including Chonyi but there was no follow up yet Chonyi featured in the inter-agency committee collecting data on areas due for gazettelement.
- v. Regarding the efforts made for TSC to address the concerns raised by the teachers, the Petitioner and KUPPET officials indicated that despite following up the matter with TSC, no action had been taken.

- vi. Regarding the fate of other civil servants in relation to the gazettelement, the Petitioner indicated that the teachers were putting pressure for gazettelement but other civil servants would also benefit as per the respective employers' terms.

**MIN./PPETC/2024/040: MEETING WITH CS, MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT**

The Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development, Hon. Alice Wahome appeared before the Committee and submitted on the various petitions as follows—

**Delayed adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd Land**

- i. Macalder Mines was within a parcel registered as Muhuru/ Kadem/Macalder/498 measuring approximately 2167.5 Hectares (approximately 5,355.9 Acres)
- ii. The total acreage of the land gazetted as a forest by the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry in Legal Notice No. 85 of 2023 marked annexure 2 is 2494.95 Hectares (approximately 6,165.0 Acres)
- iii. The initial land was MR. NO. 123 with an acreage of 6178 acres as presented in Survey plan FR. NO. 4948. A resurvey was done in 1993 which converted MR. NO. 123 to LR. NO. 17955 with an acreage of 2,500 Hectares (6,178 acres).
- iv. In 1993, a subdivision of LR. NO. 17955 resulted into LR. NO. 17955/1 and 17955/2 with acreages of 1.019 Hectares (2.518 acres) and 4.170 Hectares (10.30 acres), respectively.

**Committee Concern**

The Committee sought clarity on the process of gazetting a land as a forest. The CS clarified that all lands are registered by the Ministry whether private, public or community land. The land in question was registered under the County Government of Migori but was leased to individuals. After the expiry of the lease, the land reverted to the county. Therefore, any negotiation on gazettelement as a forest was between the county and the Ministry of Environment, Forestry and Climate Change but the Ministry of Lands was only to document the records.

**Illegal acquisition of private land by the defunct Awendo Town Council**

The Committee had requested the CS to provide information on:

- i. The nature of restriction put on the Parcel No. North Sakwa/Kamasoga/1193 land;
- ii. A list of all original owners of the entire land, which was the subject matter of the Petition; and
- iii. A list of the owners who were compensated after compulsory acquisition of the land.

The CS submitted as follows—

- i. The parcel North Sakwa/Kamasoga/1 193 measuring 0.5 Ha was initially registered in favor of Obiero Omedo on 9th February, 1977 as the absolute proprietor. However, on 18th April 1984, a restriction was registered against the said parcel of land restricting any dealings on the within written land until a portion measuring 0.5 Ha set aside for the expansion of the South Nyanza Sugar Scheme (Awendo Township Expansion) in South Nyanza District has been transferred to the Government.
- ii. The parcels which were supposed to be surrendered to the Government were advertised vide Gazette Notice No. 3737 of 24th December 1976 outlining various parcels to be acquired by the government for the aforesaid reason.
- iii. The parcel LR No. North Sakwa/Kamasoga/1193 was unutilized for gazetted reason as the lands were found to be unsuitable for sugarcane farming and were not occupied by South Nyanza Sugar Scheme. Considering section 75 of the Constitution required that once land has been compulsorily acquired it ought to be used for designated purpose only, the original owners ought to be registered as the lawful owners of the unutilized parcels of the land.
- iv. A case was filed by the registered owner of the land together with twelve (12) others where they placed seventeen (17) issues for court determination. A decision was made vide a court judgment dated 19th November 2009 in Civil Suit No. 133 of 2005 at Kisii High Court.
- v. According to the decree, the court ordered for the restriction to be withdrawn and a transfer to be registered in favor of the initial owner (Obiero Omedo). Upon the registration of the transfer a title deed was issued in favor of one Obiero Omedo the initial registered proprietor.
- vi. On 26<sup>th</sup> May 2021 vide Succession Case No. 179 of 2019 in Migori Law Courts the said parcel of land was transferred to George Otieno Obiero as a beneficiary and a title deed was issued. Upon transfer the register was closed on 25th September, 2023 on subdivision in to two portions number 2945 and 2946 and therefore, the above register ceased to exist.

The CS provided a list of the original owners of the land and requested for more time to provide a list of persons who were compensated after the compulsory acquisition.

#### **Committee Concern**

In relation to the timelines for providing the list of individuals compensated following the compulsory acquisition, the CS stated that obtaining the list of original landowners was more straightforward through the gazette notice. However, when it came to identifying the actual beneficiaries who were compensated and those who were not, the records were inaccessible due to the relocation of the State Department of Lands from one ministry to another. The Ministry was working towards compiling the list and assured that it would be made available at the earliest opportunity.

**Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub location, Tezo Location, Kilifi North Constituency**

The Committee had requested the CS to provide the ownership status of LR No's 5046/9-38. The CS provided a list of ownership status of the LR No's 5046/9-38 noting that the Coast Development Company Ltd. was the registered owner of the parcels. However, there was a caution dated 9<sup>th</sup> May 2023 by Victoria Naishorua Keen claiming beneficiary interested in on the majority of the parcels as per the records in the Ministry.

**Committee Concerns**

- i. Concerning the significance of the claim of beneficiary interest placed on the parcels on 9<sup>th</sup> May 2023, by Victoria Naishorua Keen, the CS clarified that it signaled a dispute over the ownership of the land. It implied that the matter was either under investigation or subject to legal proceedings. However, the CS committed to engaging with the party issuing the caution to ascertain whether it still needed to be in place, as allowed by land laws. Should there be disagreement regarding her claimed interest, the matter would be resolved in court.
- ii. In response to the query by the Committee on whether due diligence was conducted on the Coast Development Company, which had not filed returns for 25 years but managed to renew the lease, the Ministry explained that the search results indicated lease tenures from 1<sup>st</sup> May 1929, with varying periods of 999 years and others for 99 years, both on leasehold and freehold. The Ministry acknowledged a potential inconsistency in tenure, particularly with the 999 years on leasehold, and committed to confirming whether that was an error since the standard should have been 99 years and not 999 years.
- iii. The Committee inquired about the awareness of the Ministry of allegations suggesting that squatters had made payments for settlement. The CS responded, expressing uncertainty regarding the terms and capacity in which the payments were made. She emphasized that, in most instances, Kenyans were deceived into making payments for land and were at risk of financial loss.

The adjudication and settlement fund strictly adhered to official records, ensuring that no money was accepted before the allocation. Any payments made without official documentation fell beyond the control of the Ministry. The CS pledged to investigate the matter further during discussions with Victoria Keen, including an inquiry into the available land for allocation, if any, for the settlers.

- iv. The Committee raised a question regarding the renewal of a lease for 99 years, starting from 1<sup>st</sup> May 1929, set to expire in 2028, which, according to the search, was renewed before its expiration. In response, the CS clarified that the renewal process typically commences before the lease term concludes.

However, she noted that extension was allowed for an expired lease, with renewal allowed for those who failed to apply for an extension before the expiration. Applying for lease renewal before the term lapsed was not a serious concern. Various motivations for application of renewals, include the intention to sell the land or the desire to embark on development projects. The Planning Department routinely

rejected expiring leases and recommended renewal to facilitate the approval of new development plans.

**Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord**

The Committee had requested the CS to provide a comprehensive response and way forward to the petition. The CS submitted as follows—

- i. As per the records, the land in question was under Plot No. 7 Group V Kilifi measuring approximately 172.80 acres. It was registered as LT. 45, Folio 475, File 15284 on freehold basis in favor of Wakf of Khadija Binti Suleiman El-Busaidy who was registered owner.
- ii. However, the parcel of land was encumbered by three different caveats registered in favor of three different parties as follows:
  - a) Caveat dated April 21, 1965 by Ag. Registrar of Titles Mombasa claiming Ownership by compulsory acquisition by virtue of Gazette Notice No. 12 of 1965 -7.20 acres;
  - b) Caveat dated November 4, 1965 by East African Power and Lighting claiming a grant of easement; and
  - c) Caveat dated 1965 by Ag. Registrar of Titles on behalf of Government of Kenya claiming ownership by compulsory acquisition of 2.83 acres being portion of Plot 7 Group V by virtue of Gazette No. 72 of 1966.
- iii. The Ministry would in the next Financial Year (2024/2025) initiate negotiations with the registered land owners with a view of arriving at an agreeable compensation and surrender of the land for settlement.

**Committee Concerns**

- i. Concerning the adjudication of Wakf land and whether the previous government had extended an offer of compensation to Khadija Binti Suleiman El-Busaidy, the Ministry acknowledged the possibility of previous engagements with Wakf for land acquisition through settlement or compensation. However, it clarified that such plans were occasionally formulated but not executed due to budgetary constraints. The Ministry expressed the intention to initiate discussions regarding the purchase of the land after budget allocation.

The CS pledged to engage with the Wakf of Khadija Binti Suleiman El-Busaidy to determine the available land for compensation. Notably, the land was registered as private and could not be allocated to individuals without a transfer, which would require payment through compulsory acquisition or settlement purchase. The land remained unavailable for allocation as it was titled under the name of Wakf Khadija Binti Suleiman El-Busaidy.

- ii. In response to the query by the Committee about the completion of the government's acquisition of the land, the CS clarified that the government's focus was on settling

individuals. The Ministry would identify the Wakf of Khadija Binti Suleiman El-Busaidy, negotiate ownership, and work towards compensating and resettling the occupants, aiming to put the land into economic use.

- iii. Regarding compensation for the landowners affected by roads built by KeNHA, the Ministry directed the inquiry to the National Lands Commission, emphasizing that it was the appropriate authority responsible for land acquisition matters.

MIN./PPETC/2024/041:

ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 01:50 p.m. The next meeting will be held on Tuesday, 5<sup>th</sup> March 2024 at 12.00 noon.

Sign:  .....

(CHAIRPERSON)

Date..... 17-03-2024 .....



**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**

**MINUTES OF THE 34<sup>TH</sup> SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, MAY 23, 2024, IN GARDEN SUITE 1, HILTON GARDEN INN HOTEL, MACHAKOS AT 10.00. A.M**

**PRESENT**

- |   |   |                  |
|---|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P.          | - | Chairperson      |
| 2. Hon. Janet Jepkemboi Sitienei, M.P.      | - | Vice Chairperson |
| 3. Hon. (Eng.) Bernard Muriuki Nebart, M.P. |   |                  |
| 4. Hon. Maisori Marwa Kitayama, MP          |   |                  |
| 5. Hon. Ernest Ogesi Kivai, M.P.            |   |                  |
| 6. Hon. Joshua Chepyegon Kandie, M.P        |   |                  |
| 7. Hon. John Walter Owino, M.P.             |   |                  |
| 8. Hon. Bidu Mohamed Tubi, M.P.             |   |                  |
| 9. Hon. Suzanne Ndunge Kiamba, M.P.         |   |                  |
| 10. Hon. Edith Vethi Nyenze, M.P.           |   |                  |
| 11. Hon. Caleb Mutiso Mule, M.P.            |   |                  |
| 12. Hon. Peter Mbogho Shake, M.P.           |   |                  |

**APOLOGIES**

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Sloya Clement Logova, M.P.
3. Hon. John Bwire Okano, M.P.

**SECRETARIAT**

- |                              |                             |
|------------------------------|-----------------------------|
| 1. Mr. Samuel Kalama         | Principal Clerk Assistant 1 |
| 2. Ms. Roselyne Ndegi        | Senior Serjeant-at-Arms 1   |
| 3. Ms. Miriam Modo           | Clerk Assistant I           |
| 4. Ms. Anne Shibuko          | Clerk Assistant I           |
| 5. Ms. Patricia Gichane      | Legal Counsel II            |
| 6. Mr. Isaac Nabiswa         | Legal Counsel II            |
| 7. Ms. Abdinasir Moge Yussuf | Fiscal Analyst II           |
| 8. Mr. Willis Obiero         | Clerk Assistant III         |
| 9. Mr. Martin Sigei          | Research Officer III        |
| 10. Ms. Nancy Akinyi         | Research Officer III        |
| 11. Mr. Calvin Karungo       | Media Relations Officer III |
| 12. Ms. Felistus Muiya       | Protocol Officer            |
| 13. Mr. Cosmas Akhonya       | Audio Officer               |

MIN./PPETC/2024/ 216: PRELIMINARIES

The Chairperson called the meeting to order at 10:00 a.m. and proceedings began with prayers by Hon. Maisori Marwa Kitayama, MP

MIN./PPETC/2024/217: ADOPTION OF AGENDA

**AGENDA**

1. Prayer
2. Adoption of the Agenda
3. Consideration of Report on Public Petition No. 14 of 2023 on Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee Landlord
4. Consideration of Report on Public Petition No. 36 of 2023 on Delayed adjudication and settlement of residents of Misifuni, Vibandani and Kibarani sub locations in Tezo Location, Kilifi County
5. Confirmation of minutes of previous sittings
6. Matters Arising
7. Any Other Business
8. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Janet Sitienei, M.P. and seconded by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/218: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/219: CONSIDERATION OF REPORT ON PUBLIC PETITION NO. 14 OF 2023 REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MNARANI SUBLOCATION, KILIFI COUNTY UNDER ABSENTEE LANDLORD

The Committee reviewed the draft Report and made the following observations:

- i. The land was registered in favor of Wakf of Khadija Binti Suleiman El-Busaidy under subdivision No. 72.15-18, Group No V, Meridional District of South-A- 37/V.IV.6.5 in the locality South of Kilifi Creek under office copy number 36259-63.
- ii. Fatma Mohammed Fadhil Al Baakry and Zayane Mohammed Omar were appointed as trustees of the waqf on 15<sup>th</sup> August 1996. Zayane Mohammed Omar placed a deed of retirement in September 2001 and Fatma Mohammed is the present sole trustee.

- iii. Ms. Fatma Mohammed through her advocates engaged the National Government through the Ministry of Lands, Public Works, Housing and Urban Development and initiated an offer of sale for group V Plots No. 7, 16 and 18 in the Waqf for the settlement of squatters through the Land Settlement Fund.
- iv. There are residents squatting on the land at Mnarani, Kilifi County who had put up permanent structures such as schools and residential homes, and the government had provided the necessary infrastructure such as electricity connectivity, water, roads and other social amenities.
- v. Even though previous government administrations may have engaged the trustees of the Waqf for compulsory acquisition of the land for settlement, such plans were formulated but not executed due to budgetary constraints.
- vi. The Ministry of Lands, Public Works, Housing and Urban Development had expressed willingness to engage the trustee of the Wakf of Khadija Binti Suleiman El-Busaidy with a view to purchase it and issue titles to the residents.
- vii. Only upon purchase of the Waqf properties as per the provisions of section 21 of the Waqf Act 2022, can allocation of the land be undertaken by the Ministry of Lands, Public Works, Housing and Urban Development in accordance with the Land Act, Cap 280.

**The Committee made the following recommendations:**

Prayer 1: inquires into the ownership of the land occupied by Mnarani residents registered as plot No: YSR130 Section V situated at Mnarani-Kilifi Takaungu in the name of Kalthum Binti Mohammed and Shariffa Binti Mohammed

- i. The Committee undertook this inquiry by listening to the various stakeholders and state agencies and established that the land is registered in the Wakf of Khadija Binti Suleiman El-Busaidy.

Prayer 2: recommends that the parcel of land in Mnarani be acquired and granted to the present occupants and the process of compensation be finalized.

- ii. The Committee recommends that the national government through the Ministry of Lands, Public Works, Housing and Urban Development and the Ministry of Finance and National Treasury prioritizes the settlement of the residents of Mnarani and undertake through the National Land Commission the compulsory acquisition of the land as per the provisions of the Land Act.

- iii. The Committee recommends that the trustee of the waqf M/S. Shariffa Binti Mohammed seeks to dispose of the specific land registered in the Wakf of Khadija Binti Suleiman El-Busaidy in accordance with the provisions of the Waqf Act Section 21 and 18.

Prayer 3: recommends that the land be adjudicated to ensure that the residents acquire title deeds and save the residents from alleged erroneous records and missing information on the parcels of land

- iv. The Committee recommends that upon such acquisition the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development submits the request to the National Land Commission for the allocation of the land under section 12 (1) of the Land Act, Cap 280.

MIN./PPETC/2024/220:

CONSIDERATION OF REPORT ON PUBLIC PETITION NO. 36 OF 2023 REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MISIFUNI, VIBANDANI AND KIBARANI SUB LOCATIONS IN TEZO LOCATION, KILIFI COUNTY

The Committee reviewed the draft Report and made the following observations:

- i. The land has permanent and semi-permanent residential houses, shops access roads, piped water supply, electricity service lines, and institution (churches, mosques, schools and colleges). This is irrespective of the fact that there is seemingly no formal approved map of the said parcels of land in addition to the different existing versions of the proposed subdivisions of L.R 5046/5.
- ii. Coast Development Company Ltd was registered in 1966 and the lease for the land was given in 1929. There was inconsistency in the registration of the land as it was registered before its formation.
- iii. Despite a caveat dated 14<sup>th</sup> June 1982 by the Government claiming absolute ownership in respect of LR No. 5046/5 by compulsory acquisition, the land remains registered under Coast Development Company.
- iv. There was a dispute over the ownership of the land as at 9<sup>th</sup> May 2023, as there was a claim of beneficiary interest placed on the parcels by Ms. Victoria Naishorua Keen.
- v. The Company is inactive as the records from the Business Registration Service show that the annual returns filed last on 17<sup>th</sup> of January 1987 by Rosemary Sanau Keen indicated the shareholding of the Company was; John Keen 70%, Mrs. R. Keen 20% and Ali Mohamed 10%.

- vi. The agreement between Mr. John Keen and the residents that prospective buyers would make payments, and upon completion of the instalments, would be entitled to be recorded in the members register and issue with share certificates was not honoured.
- vii. The search indicates the land has been subdivided but there is no record of the subdivision nor the authority of the subdivision.
- viii. Given Mr. John Keen's demise in July 2020, efforts by the Committee to reach the other directors to undertake negotiations or transactions with settlers on the land have not been fruitful.

**The Committee made the following recommendations:**

Prayer 1: inquires into the ownership of the land occupied by the residents of Misufini, Vibandani and Kibarani Sub-Locations-Kilifi North Constituency in the name of Coast Development Company.

- i. In response to the above prayer, the Committee has established that the land is registered in the name of Coast Development Company.

The Committee recommends that the Director of Criminal Investigation investigates the inconsistency that the lease for the land was given in 1929, but it was registered in 1966.

Prayer 2: establishes whether Coast Development Company is a legally registered company and the number of locals that bought shares in the Coast Development Company and their fate in terms of their shareholding in the company

- ii. In response to the above prayer, the Committee has established that Coast Development Company is a legally registered company but dormant since 1987. Shareholders of the company are John Keen 70%, Mrs. R. Keen 20% and Ali Mohamed 10%.

The Committee recommends that the Director of Criminal Investigation investigates the alleged fraud in the agreement between Mr. John Keen and the residents that prospective buyers would make payments, and upon completion of the instalments, be entitled to be recorded in the members register and issued with share certificates.

Prayer 3: recommends that the Government under the 1 Million Acre Compulsory Land Acquisition Programme acquires the land for the local residents and that the land be adjudicated so as to ensure that the residents acquire title deeds

iii. In response to the above prayer, the Committee recommends that the Ministry of Lands engages Ms. Victoria Naishorua Keen with a view to establish the reason for the encumbrance and address any disputes through the legal mechanisms.

Prayer 4: Makes any recommendation deemed fit in addressing the plight of the Petitioners and upholding the rule of law.

iv. The Committee also recommends that in each financial year, the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development submit Budget Estimates for the acquisition of land in the Coastal region from absentee landlords for the settlement of citizens.

MIN./PPETC/2024/221:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 01:00 p.m. The next meeting ~~will~~ <sup>would</sup> be held on Thursday, 23<sup>rd</sup> May 2024 at 02:00 p.m.

Sign:  .....

(CHAIRPERSON)

Date: 05-06-2024 .....