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THIRTEENTH PARLIAMENT

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

ON

THE PETITION BY SIANY RESIDENTS REGARDING DESTRUCTION OF
41HA OF SIANY WETLAND - LR NO. NORTH MUGIRANGO
/MAGWAGWAI/403

PAPERS LAID	
DATE	23/07/2024
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APPROVED
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ABBREVIATIONS

EIA	–	Environmental Impact Assessment
EMCA	–	Environmental Management and Coordination Act
KPS	-	Kenya Prisons Service
KPS	-	Kenya Prisons Service
MECCF	-	Ministry of Environment, Climate Change and Forestry
MICNG	-	Ministry of Interior and Coordination of National Government
MINA	-	Ministry of Interior and National Administration
MoLPHUD	-	Ministry of Lands, Public Works, Housing and Urban Development
NEMA	–	National Environment Management Authority
NLC	-	National Lands Commission
WRMA	-	Water Resource Management Authority

PREFACE

Mr. Speaker sir,

The Standing Committee on Land, Environment and Natural Resources is established pursuant to standing order 228(3) of the Standing Orders of the Senate. As set out in the Fourth Schedule, the Committee is mandated to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

Committee Membership

The Committee comprises of the following Members.

1. Sen. John Muhia Methu, MP - **Chairperson**
2. Sen. (Dr) Steve Lelegwe Ltumbesi, MP - **Vice-Chairperson**
3. Sen. William Cheptumo Kipkiror CBS, MP
4. Sen. Johnes Mwashushe Mwaruma, MP
5. Sen. Issa Juma Boy, MP
6. Sen. Agnes Kavindu Muthama, MP
7. Sen. Wamatinga Wahome, MP
8. Sen. Mariam Sheikh Omar MP
9. Sen. Beatrice Akinyi Ogola, MP

At a sitting of the Senate held on Tuesday, 13th June, 2023, the Honourable Speaker of the Senate, reported to the Senate that a Petition had been submitted through the Clerk, by Siany residents of Misambi Sub-Location in Nyamira County concerning the degradation of Siany Wetland brought on by activities of the Kenya Prisons Service (KPS), a section of community members through cultivation and construction of structures and a primary school built on this land.

Pursuant to standing order 238(1) and the Fourth Schedule to the Standing Orders of

the Senate, the Petition was committed to the Standing Committee on Land, Environment and Natural Resources.

Pursuant to Articles 37 and 119(1) of the Constitution, section 5(2) of the Petition to Parliament (Procedure) Act and standing order 238(2) of the Senate Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioners within the prescribed period.

To facilitate a judicious disposal of the Petition, the Committee resolved to conduct an inquiry on the issues raised in the Petition. In this regard the Committee requested the Petitioners to submit written documents to elaborate further on the issues raised in the Petition and to supply supporting evidence.


The Committee proceeded to seek for responses from the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry and the Cabinet Secretary, Ministry of Interior and National Administration, to address the issues raised in the Petition.

ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Petitioners and the Ministry of Environment Climate Change & Forestry and the Ministry of Interior and National Administration for their submissions and contribution to the resolution of this matter.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Standing Committee on Land, Environment and Natural Resources on the Petition by Siany Residents on the destruction of 41HA Siany wetland- LR No. North Mugirango /Magwagwa II /403.

Signed:  Date: 11th July, 2024

SEN. JOHN MUHIA METHU, M.P.
CHAIRPERSON, SENATE STANDING COMMITTEE ON LAND,
ENVIRONMENT AND NATURAL RESOURCES

CHAPTER I

1.1 INTRODUCTION

1. At the sitting of the Senate held on 13th June, 2023, The Rt. Hon Speaker, reported to the Senate a Petition by Siany residents concerning destruction of 41 HA Siany Wetland-L.R. No. North Mugirango/ Magwagwa II/403.

Underlying Constitutional and Statutory Provisions

2. **Article 1(1) and (2)** of the Constitution, vests all sovereign power in the people of Kenya and shall be exercised only in accordance with the Constitution.
3. **Article 1(3) (a)** of the Constitution delegates sovereign power of the Constitution to, *inter alia*, Parliament and the legislative assemblies in the county governments.
4. **Article 37** of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while **Article 119(1)** of the Constitution provides that *“every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”*
5. **Section 5(2)** of the Petition to Parliament (Procedure) Act, provides that *a petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House.*
6. **Section 42** of the Environment Management and Coordination Act of No. 8 of 1999 stipulates measures for protection of rivers, lakes, seas and wetlands. It provides that no person shall undertake activities, such as constructing or altering structures, excavating, introducing animals or plants, depositing substances, diverting water bodies, or draining them without prior written approval from the Authority. This approval comes after an environmental impact assessment. Further the same section provides that the Cabinet Secretary responsible for matters relating to environment and natural resources can declare certain areas like lake shores, wetlands, coastal

zones, or river banks as protected. In doing so, the size and the interests of the local communities are to be considered.

7. **Section 30** of the Wildlife Conservation and Management Act, Act No. 47 of 2013 further prohibits any activity which is likely to have adverse effects on the environment, including the seepage of toxic waste into streams, rivers, lakes and wetlands.

1.12 The Petition

8. Siany wetland is a community land situated in Misambi Sub location in Nyamira County that had been set aside for grazing and registered as common grazing area under Gusii County Council and is a major water catchment area in the region that serves as a source of fresh and clean water for the larger community. However, the water sources have now been polluted with waste material due to human activities posing great risk to the health of residents.
9. Degradation of the wetland has been occurring through activities of the Kenya Prisons Service (KPS), a section of community members through cultivation and construction structures and a primary school built on this land.
10. The destruction of Siany Wetland was brought to the attention of National Environment Management Authority (NEMA), Water Resource Management Authority (WRMA) and the Ministry of Environment in 2010. NEMA subsequently gave orders for stoppage of construction on the land and issued an environmental restoration order in the same year.
11. KPS warders, who have been on the wetland for 14 years, have cut down indigenous trees and given way for personal commercial cultivation and are currently carrying

out renovation and completion of the buildings on the wetland despite the order issued by NEMA for stoppage of constructions. Due to cultivation carried out by the KPS there has been destruction of flora and fauna of the giant wetland which has led to water springs drying up.

12. The Country is currently dealing with adverse effects of climate change it is therefore not logical that there is deforestation and destruction of an environmentally sensitive riparian land like Siany wetland.

1.13 Background Facts of the Complaint

13. The wetland is a community land set aside by their grandfathers for grazing and is thus a trust land registered as common grazing area under Gusii County Council.
14. The main prison building was put along the edge of Kamoti Water Spring despite the Environmental Restoration Order issued by NEMA in 2010 who then issued the KPS with a conditional Environmental Impact Assessment (EIA) license valid for 24 months from the date of issue, based on EIA report prepared in May 2012.
15. However, it is not clear which part of the wetland the aforementioned license was particularly issued for construction(s) to take place on, further, the petitioners have observed that since that time buildings on parts of the land have failed to come up due to water, nature of the land and the springs.
16. KPS has brought into the land some prisoners who are currently housed in a makeshift building on the land whose main activity is cultivation thus resulting to deforestation and cultivation which in turn destroys flora and fauna of the wetland
17. Water springs have been gradually drying up over the past 15 years due to the current

degradation of the wetland. Additionally, the prison warders have been deliberately attempting to divert the course of the springs which are relied upon by a large number of people in the community.

18. The Government of Kenya is currently dealing with adverse effects of climate change and therefore the same government should not engage in deforestation and destruction of riparian land.
19. The petitioners have made efforts to have all the above matters addressed by relevant authorities all of which have failed to give a satisfactory response.
20. Currently there is no matter before courts, constitutional or legal body touching on the issue of destruction of 41 HA Siany Wetland-I..R. No. North Mugirango/ Magwagwa II/403.

The Petitioners prayed that:

21. The Committee stops the destruction of the wetland and ensures that the ecosystem is conserved and preserved for future generations.
22. The wetland is protected from being subdivided by the National Land Commission (NLC) and the County Government of Nyamira through clear and correct boundaries and beacons put in place.
23. The Land, Environment and Natural Resources Committee directs NEMA to work with community to restore the wetland and springs emanating from it to their original status through environmentally friendly activities.

1.2 LEGAL BASIS FOR PETITIONS

24. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the Senate Standing Orders.
25. **Article 37** of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while **Article 119(1)** of the Constitution provides that *“every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”*
26. **Section 5(2)** of the Petition to Parliament (Procedure) Act, provides that *a petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House.* In this regard, standing order 238 of the Senate Standing Orders provides as follows-
27. *Committal of Petitions (SO 238)*
- a. *Every Petition presented or reported pursuant to this Part, shall stand committed to the relevant Standing Committee.*
 - b. *Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes.*
28. Standing order 239 requires the Clerk to, within fifteen days of tabling of the report on a petition under Standing Order 238 (Committal of Petitions), submit a copy of the report to the petitioner or petitioners.

CHAPTER 2

2.1 CONSIDERATION OF THE PETITION

2.1 1 Approach taken by the Committee

29. In considering the Petition, the Committee observed that it would be important to verify the facts alleged in the Petition. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.
30. In this regard the Committee received the Petition from the Petitioner through the House and further requested for written submissions and evidence from the Petitioners.
31. Thereafter the Committee invited the Cabinet Secretary, MECCF who provided written responses to the Committee.

2.1 2 *Petitioners Submissions*

33. Vide a letter REF: SEN/DSEC/LENR/3/2023(76) dated 15th June, 2023, the Committee invited Petitioners to physically appear before the Committee on Wednesday, 28th June, 2023. However, the petitioners preferred submitting written submissions.
34. The Petitioners submitted the following attachments -
 - a. An Environmental Impact Assessment Study Report of the proposed Nyamira GK Prison at Esiany Area in Nyamira County dated May, 2012 indicating pictures of the land at the time and further, inconsistencies of land ownership documents and
 - b. Various photographic indications of the Wetland with accompanying searches and judgment rendered in the past concerning the acquiring of the land.

2.1.3 Responses by the Cabinet Secretary, Ministry of Environment Climate Change and Forestry

35. Vide Letters REF: SEN/DSEC/LENR/3/2023(84), and letter REF: SEN/DSEC/LENR/3/2023(93), dated 23rd June, 2023 and 4th July, 2023 respectively the MECCF requested for rescheduling of meetings and eventually appeared before the Committee via Letter REF: SEN/DSEC/LENR/3/2023(101) dated 25th July, 2023. The Cabinet Secretary was represented by the Principal Secretary, MECCF Mr. Gitonga Mugambi who appeared before the Committee on Thursday, 3rd August, 2023 with apologies from the Cabinet Secretary. The Committee admitted written responses and resolved to seek for further clarification should the submissions be insufficient.

The MECCF responded as follows:

Background information

36. Siany Wetland measures approximately 104 acres and the parcel is registered as L.R. No. North Mugirango/ Magwagwa II/ 403.
37. The land is a community land held in trust by the County Government of Nyamira having been set aside by community members as common grazing ground and with the advent of land adjudication it was registered as common grazing area under the Gusii County Council.
38. Burgeoning demand for land for settlement, agriculture and infrastructural expansion has however put immense pressure on this parcel of land leading to its degradation. The problem is compounded by unsustainable agricultural practices practiced by farmers.

Site visit report

(a) Preliminaries

39. On Wednesday, 12th of July 2023, NEMA, Nyamira County Office received information alleging destruction of the wetland perpetuated by the Nyamira Prison. The information was in the form of a petition authored by the community

members and submitted to the Senate.

40. The office treated the information as an incident and documented it in the Incident Register with the Incident Reference Number being NEMA/NRM/INCIDENT/0080. The incident was then processed following laid down procedures. A team from NEMA then visited the site on Thursday, 13th July 2023.
41. The team had the opportunity of interviewing the officer in charge of the prison and also toured the wetland and established that-

(b) Land Allocation

42. The 104 acres of land is allocated to various land uses with Nyamira Prison being allocated 50 acres. The land is surveyed and has beacons, however, nine (9) acres of this land is in dispute as both members of the community and the prison claim ownership and thus there is a case pending in court since 1997.
43. Esiany Primary School is allocated eight (8) acres and the land is surveyed and has beacons. Further, it was observed that Magongo Primary and Secondary Schools and Magongo Dispensary have encroached on the wetland though the extent of encroachment is yet to be determined. The remaining acreage of the wetland, over 40 acres have also been encroached on by members of the community.

(c) Human Activities on the Wetland

44. The prison has put up both permanent and temporary structures currently used to house inmates and serve as offices and staff quarters respectively. Further, the institution is in the process of putting up the main prison block which started in 2012 but stalled. During the visit, the contractor was on site.
45. Farming is very predominant on the wetland and its surrounding environs with the prison having set aside twenty (20) acres for farming, however, farm lands are

scattered all over the 50-acre parcel of land sometimes leading to encroachment of sensitive environmental areas. Land encroached on by members of the community has also been converted to farm land without provision for environmental conservation.

46. Communities neighboring the wetland keep livestock though on limited scale and rely on the wetland for pasture. Tethering was the common practice observed during the visit but there was no noticeable environmental degradation that could be associated with livestock keeping.

Natural features of the wetland

47. The land is characterized by a high-water table with some areas with minimal human activities being marshy and it still has its natural vegetation especially reeds although in some areas, reeds had been removed to pave way for farming activities. The team, however, did not observe any indigenous trees on the wetland neither was there fresh evidence depicting destruction of indigenous trees.
48. A stream whose catchment is on the periphery of the wetland cuts across the Siany Wetland. The banks of the stream are protected in some areas but in other areas the vegetation has been cleared. The stream has been diverted to pave way for construction near the upcoming prison block but the diversion has not interfered with its downstream flow. There was no visible case of pollution along the course of the stream and the water appeared clear.

Efforts to conserve the wetland

49. The prison has initiated the following measures aimed at protecting the wetland as follows;
- (a) Protection of a water spring within the wetland which supplies water for domestic purposes to both the communities and the institution;
 - (b) Tree nursery establishment within the wetland which is managed by the inmates.

The nursery has 1000 different varieties of fruit seedlings and 5000 assorted species of both indigenous and exotic tree species;

- (c) Afforestation programs initiated by the institution between September, 2022 and June, 2023 have managed to plant 9000 assorted tree seedlings on the wetland. However, conservation efforts have been frustrated by community members who uproot them due to the general feeling that the prison grabbed their ancestral land;
- (d) Donation of tree seedlings to learning institutions and members of the community for planting as a way of conserving the wetland. The institution had donated 7600 assorted tree seedlings between the months of March to May, 2023;
- (e) Promotion of fruit farming whereby the Prison has earmarked planting of Hass avocados on a ten (10) acre parcel of land. This project will go a long way in protecting the wetland as well as improving the food security in the area; and
- (f) Peace keeping missions to mitigate animosity from the community owing to the institution's allocation of 50 acres by conducting tournaments geared towards establishing good working relationship between the staff of the prison and the community members, usually, the tournaments are accompanied by tree planting activities.

2.1 4 Responses by the County Government of Nyamira

- 50. Vide Letters REF: SEN/DSEC/LENR/3/2023(144) dated 22nd November, 2023 and the County Government's letter REF: NCG/GOV/SEN/ VOL. 1(08) dated 15th November, 2023, the County Government of Nyamira prepared responses to the issues raised in the petition and I hereby respond as hereunder;

1.0 INTRODUCTION

- 51. This is a response to a petition to the Senate on alleged destruction of Siany Wetland, L.R NO. North Mugirango / Magwagwa 11/403. The petition was raised by residents living within the locality of Siany Wetland.

52. The petition was received by the County Governor of Nyamira vide a letter Ref. SEN/DSEC/LENR/3/2023/ (84) dated 23rd June, 2023 from the Clerk of the Senate.
53. The substance of the petition concerns destruction of Siany Wetland, located in Misambi Location of Nyamira North Sub- county in Nyamira County.

2.0 PETITIONERS PRAYERS

54. The petitioners in their petition pray that the Senate may -
- i. act within its legal mandate to stop destruction of the wetland and direct that the ecosystem provided by the wetland be conserved and that the wetland should be preserved for future generations through legislative and other measures;
 - ii. stop the National Land Commission and County Government of Nyamira from sub-dividing the wetland;
 - iii. direct the County Government of Nyamira and the Ministry of Lands to fix clear and correct boundaries marked by beacons through a public participation exercise instead of the current boundaries which are single handedly fixed by prison wardens;
 - iv. direct NEMA to work with communities to restore the wetland and springs emanating from it to their original status through environmentally friendly activities which may be carried out by the residents around the land, with support from the County Government and other stakeholders; and
 - v. Constitute an environment committee to URGENTLY visit the wetland and witness the destruction and its effect on communities around it and downstream.

3.0 SIANY WETLAND HISTORY

55. Siany Wetland is found in Misambi Location of Nyamira North Sub- county, Nyamira County along Nyamusi- Kadongo Road. The land measures approximately 41 hectares and registered as L.R. No. North Mugirango/ Magwagwa II/ 403 (Land search Attached- Annex 1).

56. The parcel of land was reserved by Gusii County Council, as SIANYI GRAZING AREA, on 7th August 1973. The land is thus a public land held in trust by the County Government of Nyamira
57. 50 acres was allocated to Nyamira Prison, through minutes of the defunct Nyamira County Council, by a minute; Minutes of special town Planning Committee meeting Held on 19th April, 2007, in the Council Chambers at 12.00 Noon (Annex 2). The allocation was further confirmed by; Minutes of a Special Town Committee Meeting Held on 19th November 2009 (Annex 3). But Prisons department was not issued with an Allotment Letter. The Prisons Department, progressed with developing infrastructure without a Physical Development Plan.
58. There's an ascertained encroachment of approximately 40 acres of the wetland by members of the community for farming purposes. Esiany primary School and Magongo Dispensary.

Dispute;

59. There is an existing dispute between the local community and the Prisons department of the Ministry of Interior and Coordination of National Government. Members of the community claim ownership of the same portion of land that the Prisons department is occupying. The dispute has been pending in Land and Environment Court since 1997, Case File No. 95 of 2021 formerly ELC No. 1225 of 2016 at Kisii law courts between one James Oriango Oriango vs the County Government of Nyamira (1st respondent), Zacharia Odida Kisimba (2nd respondent), Patric Monari (3rd respondent), Hudson Nyali (4th respondent) and the Attorney General (5th respondent). The case is still pending in court.

3.1 Natural Features of the Wetland

60. The land is characterized by a high-water table with some areas with minimal human activities being marshy.

61. The wetland still has its natural vegetation especially reeds although in some areas the reeds had been removed to pave way for farming activities. There are no indigenous trees on the wetland or fresh evidence depicting destruction of indigenous trees.
62. A stream whose catchment is on the periphery of the wetland cuts across the Siany Wetland. The banks of the stream are protected in some areas but in other areas the vegetation has been cleared. Near the upcoming prison block, the stream has been diverted to pave way for construction but the diversion has not interfered with downstream flow.

3.2 Human Activities on the Wetland

63. The following human activities are noticeable on the wetland: -

Infrastructure

64. The Prisons department has put up temporal offices and staff quarters made of iron sheets. The institution has also put up a permanent structure measuring approximately 6 meters by 4 meters for housing 33 inmates. The institution is also in the process of putting up the main prison block which started in 2012 but stalled. The Prisons department was issued with an Environmental Impact Assessment license by NEMA in February, 2013 after submission of an Environmental Impact Assessment Report
65. The wetland also hosts Esianyi Primary School that has an administration block and classrooms. There's no evidence that the construction of the school was approved by NEMA.

Farming

66. Farming is the predominant human activity on the wetland and its surrounding environs with the prison having set aside 20 acres for farming. The main crops grown by the institution are maize, millet, sorghum, sweet potatoes and vegetables. It was however, noted that the farm lands are scattered all over the 50-acre parcel of land sometimes leading to encroachment to sensitive environmental areas.

67. Land encroached on by members of the community has been converted to farm land without provision for environmental conservation. Where trees have been planted they are mainly the blue gum (*Eucalyptus saligna*) species.

Livestock Grazing

68. Communities neighboring the wetland keep livestock though on limited scale and rely on the wetland for pasture. Tethering is the common practice though there is no noticeable environmental degradation that can be associated with livestock keeping.

4.0 WETLAND CONSERVATION EFFORTS

69. The prison has initiated various measures aimed at protecting the wetland. The measures are as follows:

Protection of a Water Spring

70. The institution has protected a spring within the wetland which supplies water for domestic purposes to both the communities and the institution. The stream also augments the stream's water and this has gone a long way in conserving the wetland.

Tree Nursery

71. Nyamira Prison has established a tree nursery within the wetland which is managed by the inmates. The nursery has 1000 different varieties of fruit seedlings and 5000 assorted species of both indigenous and exotic tree species. Fruit trees are paw-paw, avocado, and guavas. Cyprus and blue gum are the main exotic tree species found in the nursery while *Markamia lutea* is the salient indigenous species in the nursery.
72. Bamboo and coffee seedlings are also propagated by Nyamira Prison.

Afforestation Programmes

73. The Prisons department has initiated a number of afforestation programmes on the wetland. Between September, 2022 and June, 2023, the institution managed to plant 9000 assorted **tree seedlings on the wetland.**

5.0 RESPONSE TO THE PRAYERS SOUGHT

74. **Prayer 1:** The petitioner pray that the Senate may act within its legal mandate to stop destruction of the wetland and direct that the ecosystem provided by the wetland be conserved and that the wetland should be preserved for future generations through legislative and other measures;

Response

75. It is important to note that that the Prisons department was allocated the land by the defunct Nyamira County Council. However, the Physical Development Plan has not been issued or approved through the Nyamira County Government. Stakeholders such as the Ministry of Lands and the National Land Commission shall be brought on board to advice on a necessary recourse.
76. **Prayer 2:** The petitioners pray that the Senate stop the National Land Commission and County Government of Nyamira from subdividing the wetland.

Response

77. County Government of Nyamira has not done any Physical Development Plan for the disputed land, as such subdivision has not been done.
78. **Prayer 3:** That the Senate direct the County Government of Nyamira and the Ministry of Lands to fix clear and correct boundaries marked by beacons through a public participation exercise instead of the current boundaries which are single handedly fixed by prison wardens.

Response

79. The County Government of Nyamira has started the process of surveying and beaconing of the Wetland (refer to the attached Site Map Coordinates).
80. Additionally, the County Government of Nyamira in collaboration with NEMA and the Water Resources Authority shall develop a comprehensive Environmental

Management Plan (EMP) for the Wetland. The EMP will identify relevant conservation measures including demarcation of the wetland, riparian reserves, removal of hazardous tree species such as eucalyptus, taking lead in planting of appropriate indigenous tree species and create awareness within the community on proper agricultural practices within the wetland's catchment.

81. **Prayer 4:** The petitioner pray that the Senate directs NEMA to work with communities to restore the wetland and springs emanating from it to their original status through environmentally friendly activities which may be carried out by the residents around the land, with support from the County Government and other stakeholders, constitute an environment committee to URGENTLY visit the wetland and witness the destruction and its effect on communities around it and downstream. Further to this, NEMA will in accordance to Section 72 of Environmental Management and Coordination Act, EMCA initiate a process for the gazettelement of the wetland.

Response

82. The County Government of Nyamira formed and gazette the Nyamira County Environmental Committee, in which NEMA and National Government Administration Officers (NGAO) are members. The committee through the Chairman, will endeavor to restore the wetland as will be outlined in the Wetland Environmental Management Plan (EMP) that will be developed.

2.1 5 Responses by the Ministry of Interior and Coordination of National Government

83. The Ministry of Interior and Coordination of National Government made responses on the aforementioned subject matter on 5th February, 2024 as follows –
84. Nyamira Prison is situated at Misambi Location Nyamira North Sub- County, Nyamira County along Nyamusi- Kadongo Road. The facility was established in the

year 2009 amongst other stations like Rachuonyo, Vihiga Kehancha and many others. The station was established to enable decongestion of Kisii and Homabay Prisons by absorbing petty offenders from the neighboring courts like Oyugis and Kosele in Homabay County and Nyamira courts from Nyamira County.

85. The land in dispute measures approximately 104 acres and is registered as LR. No. North Mugirango/ Magwagwa I / 403, a public land held in trust by the then Gusii County Council before allocating some portions to various public institutions. The Prison department was allocated 20.23ha (50acres) of the 104acres in the year 2009 through Council Minutes of 19th November, 2009.
86. Other allocations by the COUNCIL include;
 - i. Esianyi Primary School
 - ii. Magongo Primary and Secondary Schools
 - iii. Esianyi/ Magongo Dispensary
87. All these allocations have been surveyed by the County Surveyor and beacons erected at respective boundary points. The remaining acreage of the land is being used by the community for farming activities.
88. The Prison moved in and started construction immediately after allocation. During this time the schools and the Dispensary had been constructed and were in full operation. Currently there are temporary buildings (mabati houses) serving as office block and staff houses. There is also a permanent block for the 33 inmates and uncompleted prisoners ward which is undergoing construction. Prison has set aside a large portion of their portion for farming. The main crops grown by the institution are maize, millet, sorghum, sweet potatoes and vegetables.
89. Several measures have been put in place by the Prison to conserve the environment, these include;
 - a. Tree Nursery; Prison also runs a tree nursery of different varieties of fruits and seedlings as rehabilitation measures and for training of the inmates. There also existing assorted species of indigenous and exotic tress seedlings.

- b. Afforestation Programs; Nyamira Prison has managed to plant over 9,000 assorted tree seedlings within the area as a way of conserving the environment. This tree cover effort has been frustrated by a few local community members who have been uprooting these seedlings.
- c. Donation of Tree Seedlings; The Prison has so far donated a total of 8,000 assorted seedlings to learning institutions and willing members of the community for planting as a way of conserving the environment.
- d. Protection of water source; The Prison has conserved a stream that originates from the area which supplies water for domestic use to the facility and the general community down the stream.
- e. Encourage Fruit Farming; Nyamira Prison has planted hass avocados on a portion of their parcel of land. In the past years, Nyamira Prison managed to supply 19000 tree seedlings of hass avocado to farmers within the region with an aim to improve the people's income.

The Ministry further emphasized that-

- 90. The allocation of the land to Prison was a decision of the Council meeting through Council Minutes of 19th November, 2009.
- 91. The prison is a major conservator of the environment taking into consideration of the activities that are done by the inmates within the facility.
- 92. The local communities were already carrying out their farming activities on this land prior to allocation of a portion of it to prison, an activity that might have interfered with the vegetation cover.
- 93. There were no any indigenous trees when the Prison took possession of the allotted portion.
- 94. The building under construction is within the premises of the Prison facility and therefore it has no effect on the wetland as claimed. The other constructions are Government facilities whose progressions depend on the allocation of funds by the

Government and therefore they are not stalled because of water as claimed.

95. For any set up of a prison there must be at some point warders and inmates. Nyamira being a prison facility and before admission of inmates to the facility, officers must be posted to undertake the construction of the required infrastructure and also to safeguard the property.
96. The farming activities at Nyamira Prison are for prison use and not for commercial use/benefit for any officer.
97. The prison has two pit latrines which are in good condition without any spillage. The prisoners ward has toilets which are drained into a septic tank which is also in good condition. From all these there is no spillage of sewerage to the river from the Prison facility. Prison also has dug pits for other waste which are burnt occasionally.
98. The land boundary beacons were fixed by the County Survey of Nyamira County and not by the Prison warders. The Prison warders at Nyamira are not land experts and therefore could not put beacons on the land. They only accompanied the Surveyor to witness the positions of the beacons when he visited the land for demarcation exercise which was successful.
99. The land was a public land preserved for public use and all the allottees are public entities and never private.
100. The existence of these public facilities within this land is to serve the local community by making the services readily available to the community.
101. The activities done by the prison are all aimed at conserving the environment and not destructive in nature.

ISSUES FOR CONSIDERATION

I). *Whether the land is indeed community land set aside for communal grazing and other community needs*

The petitioners submitted evidence as follows:

102. The Petitioners alleged that the land was reserved for Siany Grazing Area and registered under the Gusii County Council in 1973 as parcel number 403. Two certificates of official searches were also provided to the committee which were obtained on 9th May, 1994 and 24th April, 2007 from the Lands registrar alleging that the land was owned by the Gusii County Council.

The Ministry of ECCF responded as follows:

103. Siany Wetland Resources is found in Misambi Location of Nyamira North. Sub-County, Nyamira County along Nyamusi-Kadongo Road. The land measures approximately 104 acres and the parcel is registered as LR. No. North Mugirango/Magwagwa II/ 403.
104. The parcel of land was set aside by community members as common grazing ground and with the advent of land adjudication it was registered as Common Grazing Area under the Gusii County Council. The land is thus a community land held in trust by the County Government of Nyamira

The Ministry of Interior and National Administration responded as follows:

105. The parcel of land is a public land preserved for public use and all the allottees are public entities and never private. The allocation of the land to the Prison was a decision of the Municipal council meeting through council minutes of 19th November, 2009.
106. There exists public facilities within the said parcel of land that serve the local community by making the services readily available.

The County Government of Nyamira responded as follows:

107. The prison department was allocated the parcel of land by the defunct Nyamira Municipal council, although the Physical Development Plan has not been approved through the Nyamira County Government, therefore it is proposed that stakeholders such as the Ministry of Lands and the National Land Commission shall be on-boarded to advice on next course of action.

Committee Observation

108. Having reviewed the documents presented by the petitioners, the relevant Ministries and the County Government, the committee observes that the evidence consistently supports the claim that Siany Wetlands is community land. This land was reserved as the Siany Grazing Area and registered under the Gusii County Council in 1973. The official search certificates from 1994 and 2007 corroborate this registration. The Ministry of Environment, Climate Change, and Forestry (MECCF) and the Ministry of Interior and National Administration both acknowledge the land's status as community land held in trust by the County Government of Nyamira. Furthermore, while the Nyamira Municipal Council allocated part of this land to the Kenya Prisons Service in 2009, the allocation remains within the context of public land use for the benefit of the community. Therefore, it is evident that Siany Wetlands is indeed community land set aside for communal grazing and other community needs.

II) Whether allegations of encroachment on the wetland can be proven

The petitioners submitted evidence as follows:

109. The Petitioner alleged that the activities of the Kenya Prisons Service, a section of community members and the existence of a primary school in this land has led to environment degradation of the wetland.

The Ministry of ECCF responded as follows

110. The 104 acres of land is allocated to various land uses with Nyamira Prison being allocated 50 acres. The land is surveyed and has beacons, however, nine (9) acres of this land is in dispute as both members of the community and the prison claim ownership and thus there is a case pending in court since 1997.
111. Esianyi Primary School is allocated eight (8) acres and the land is surveyed and has beacons. Further, it was observed that Magongo Primary and Secondary Schools and Magongo Dispensary have encroached on the wetland though the extent of encroachment is yet to be determined. The remaining acreage of the wetland, over 40 acres has also been encroached on by members of the community.

The Ministry of Interior and National Administration responded as follows:

112. The land boundary beacons were fixed by the County Survey department of Nyamira County and not by the Prison warders. The prison warders at Nyamira are not land experts and therefore could not put beacons on the land. The warders only accompanied the surveyor to witness the positions of the beacons when they visited the land for demarcation exercise and to construct required infrastructure and safeguard the property.

The County Government of Nyamira responded as follows:

113. The County Government of Nyamira has not done any Physical Development Plan for the disputed land, and as such, subdivision has not been done.

Observations of the Committee

114. Based on these findings, the Committee observes that there is indeed evidence of encroachment on the wetland by the surrounding community, schools, and dispensary. This is further supported by NEMA's comprehensive site visit report, which details the human activities taking place on the wetland, contributing to its degradation.

III) Whether there have been any negative consequences resulting from activities of the Kenya Prisons Service and some members of the community

The petitioner submitted evidence as follows:

115. The Petitioner claimed that water from the springs on the wetland, Konyando water stream and Awach River is widely used by a large population including schools and healthcare facilities. However, the water resources were being polluted by fecal materials directly discharged in to the water including other waste materials.
116. Additionally, the petitioner alleged that the Kenya Prisons Service had been on the wetland for 14 years and had cut down indigenous trees and natural under growth thus systematically destroying flora and fauna of the giant wetland and had also attempted to divert the course of the springs.

The Ministry of ECCF responded as follows

117. The land is characterized by a high-water table with some areas with minimal human activities being marshy and it still has its natural vegetation especially reeds although in some areas the reeds had been removed to pave way for farming activities. The team however, did not observe any indigenous trees on the wetland neither was there fresh evidence depicting destruction of indigenous trees.
118. A stream whose catchment is on the periphery of the wetland cuts across the Siany Wetland. The banks of the stream are protected in some areas but in other areas the vegetation has been cleared. The stream has been diverted to pave way for construction near the upcoming prison block but the diversion has not interfered with downstream flow. There was no visible case of pollution along the course of the stream and the water appeared clear.

The Ministry of Interior and National Administration responded as follows:

119. The activities done by the prison are aimed at conserving the environment and not destructive in nature. Meanwhile the farming activities at Nyamira Prison are not for

commercial use but strictly for prison utilization. Also, the prison has two pit latrines which are in good condition without any spillage. The prisoners ward has toilets which are in good condition that drain into a septic tank, there is no spillage of sewerage to the river from the prison facility. There is also dug pits to accommodate other waste materials which are burnt occasionally.

120. The building under construction is within the premises of the prison facility and therefore it has no effect on the wetland as claimed. The other constructions are government facilities whose progressions depend on the allocation of funds by the government and therefore they are not stalled because of water as claimed.

The County Government of Nyamira responded as follows:

121. The County government has begun the process of surveying and beaconing of the Wetland, and in collaboration with NEMA and the Water Resources Authority, they shall develop a comprehensive Environmental Management Plan for the Wetland. The plan shall identify relevant conservation measures including demarcation, riparian reserves, removal of hazardous tree species, taking lead in planting of appropriate indigenous tree species and creating awareness within the community on proper agricultural practices.

Observations of the Committee

122. Upon reviewing the evidence, the Committee observed that there are credible concerns about the negative consequences resulting from the activities of the Kenya Prisons Service and some community members. Specifically, there are indications of potential water contamination and deforestation impacting the wetland. While some efforts have been made by the relevant authorities to manage and mitigate these impacts, further measures are necessary to prevent ongoing and future environmental degradation. The development and implementation of a comprehensive Environmental Management Plan will be crucial in addressing these issues effectively.

IV) Whether there are efforts by Kenya Prisons Service to conserve the Wetland.

The petitioner submitted evidence as follows:

123. The petitioner alleged that Kenya was currently dealing with adverse effects of climate change and it was illogical for the same government to engage in massive deforestation and destruction of environmentally sensitive riparian land.

The Ministry of ECCF responded as follows:

124. The prison has initiated the following measures aimed at protecting the wetland as follows;
- (a) Protection of a water spring within the wetland which supplies water for domestic purposes to both the communities and the institution
 - (b) Tree nursery establishment within the wetland which is managed by the inmates. The nursery has 1000 different varieties of fruit seedlings and 5000 assorted species of both indigenous and exotic tree species.
 - (c) Afforestation programmes initiated by the institution Between September 2022 and June 2023 have managed to plant 9000 assorted tree seedlings on the wetland. However, conservation efforts have been frustrated by community members who uproot them due to the general feeling that the prison grabbed their ancestral land
 - (d) Donation of tree seedlings to learning institutions and members of the community for planting as a way of conserving the wetland. The institution had donated 7600 assorted tree seedlings between the months of March to May 2023
 - (e) Promotion of fruit farming whereby the Prison has earmarked planting of hass avocados on a ten (10) acre parcel of land. This project will go a long way in protecting the wetland as well as improving the food security in the area.
 - (f) Peace keeping missions to mitigate animosity from the community owing to the institution's allocation of 50 acres by conducting tournaments geared towards establishing good working relationship between the staff of the prison and the community members, usually, the tournaments are accompanied by tree planting

activities.

The Ministry of Interior and National Administration responded as follows:

125. The prison is a major conservator of the environment taking into consideration the activities that are done by the inmates within the facility.

The County Government of Nyamira responded as follows:

126. The Prison department has initiated a number of afforestation programmes and the protection of the water spring within the wetland which supplies water to the community.

Observations of the Committee

127. The committee reviewed the documents supporting the efforts by the Kenya Prisons Service (KPS) to conserve the Siany Wetland. The evidence provided shows that KPS has implemented several conservation initiatives, including the protection of a water spring, the establishment of a tree nursery managed by inmates, and the planting of thousands of tree seedlings. Additionally, KPS engaged in afforestation programs, donated tree seedlings to the community, promoted fruit farming, and conducted peacekeeping missions to improve relations with the local community. Despite these efforts, challenges remain due to community resistance and perceptions of land grabbing. The Committee acknowledges these conservation measures and stresses the need for ongoing and enhanced collaboration between KPS, local communities, and relevant authorities to ensure the effective preservation of the wetland.

V) **Whether NEMA and other government institutions can engage with the communities to restore the wetland and springs to their original state**

The petitioner submitted evidence as follows:

128. The main prison building was put along the edge of Kamoti Water Spring despite the Environmental Restoration Order issued by NEMA in 2010 who then issued the KPS

with a conditional Environmental Impact Assessment (EIA) license valid for 24 months from the date of issue, based on EIA report prepared in May, 2012. However, it is not clear which part of the wetland the aforementioned license was particularly issued for construction(s) to take place on as the petitioners have observed that since that time buildings on parts of the land have failed to come up due to water, nature of the land and the springs.

129. The petitioners further alleged that they had made efforts to have the matter of Siany wetlands degradation addressed by relevant authorities all of which have failed to give a satisfactory response.

The Ministry of ECCF responded as follows:

130. NEMA plans to assist the institution in developing an Environmental management plan as it's clear that Nyamira Prison occupies an area that is fragile and thus prone to environmental degradation. As provided for by Regulations 14 of the Environmental Management and Coordination (Wetlands, River Banks, Lake Shores and Sea Shores Management) Regulations of 2009, the institution has a duty to prevent degradation of the area as well maintain its ecological and other functions. They will also be guided in land use planning which will provide for areas for conservation and this will go a long way in protecting the wetland.
131. Neighboring communities who have encroached on the wetland will be engaged and educated on the best land use practices that will benefit both the communities and promote environmental conservation.
132. Relevant government institutions such as Kenya Forest Service, Kenya Forest Research Institute will be approached with a view of identifying the right tree species for afforestation programmes on the wetland.

The Ministry of Interior and National Administration responded as follows:

133. The local community carried out farming activities on the piece of land prior to allocation of land to the prison therefore the said activities might have interfered with

the vegetation. There were no any indigenous trees when the prison took possession of the allotted portion.

The County Government of Nyamira responded as follows:

134. The county government formed and gazetted the Nyamira County Environmental Committee, in which NEMA and National Government Administration Officers (NGAO) are members. The committee through the Chairman will endeavor to restore the wetland as will be outlined in the Wetland Environmental Management Plan that will be developed.

Observations of the Committee

135. The committee reviewed the documents regarding the engagement of NEMA and other government institutions with the communities to restore the Siany Wetland and its springs. It is evident that NEMA has plans to develop an Environmental Management Plan (EMP) and engage with local communities to promote sustainable land use practices. Additionally, the County Government of Nyamira has established the Nyamira County Environmental Committee to oversee the restoration efforts.
136. While these initiatives are a positive step, the committee notes that further actions are needed to ensure environmental conservation remains a top priority for the County Government, the Kenya Prisons Service, and the local community. Enhanced collaboration and commitment from all stakeholders are essential for the effective restoration and preservation of the wetland.

CHAPTER 5

COMMITTEE OBSERVATIONS

Prayer One:

The Committee stops the destruction of the wetland and ensures that the ecosystem is conserved and preserved for future generations

137. The committee observes that there were efforts by the Kenya Prisons Service geared towards restoration and conservation through protection of a Water Spring, tree nurseries, afforestation programmes, donation of tree seedlings, promotion of fruit farming and peace keeping missions as detailed in the Ministry's submission.
138. The Committee observes that Nyamira Prison occupies an area that is fragile and prone to environmental degradation. Consequently, the institution has a duty to prevent further degradation and maintain the ecological and other functions of the wetland, as outlined in Regulation 14 of the Environmental Management and Coordination (Wetlands, River Banks, Lake Shores, and Sea Shores Management) Regulations, 2009.
139. To address this, the Committee observes that there is need for the development of a comprehensive Environmental Management Plan (EMP). This EMP should focus on preventing adverse environmental impacts, mitigating pollution, and ensuring compliance with environmental regulations. The plan should also aim to improve the current environmental conditions and support the long-term conservation and preservation of the wetland ecosystem. Enhanced collaboration with NEMA and other relevant stakeholders will be essential in achieving these goals.

Prayer Two:

The wetland is protected from being subdivided by the National Land Commission (NLC) and the County Government of Nyamira through clear and correct boundaries and beacons put in place

140. Based on the submissions and evidence from the petitioners and respondents, the

committee observes that there is significant concern about the potential subdivision of the wetland. The County Government of Nyamira has not yet developed a Physical Development Plan for the disputed land. The land boundaries were established by the County Survey Department, not by the prison warders, and there is ongoing encroachment by community members and institutions.

141. Given the sensitivity of the Siany Wetland and its ecological importance, the committee observes the need for caution before any further subdivisions are considered. The conservation of the wetland should be a top priority for the County Government, the Kenya Prisons Service, and the local community. Establishing clear and correct boundaries with proper public participation is essential to prevent further encroachment and to ensure the protection and preservation of the wetland.

Prayer Three:

The Land, Environment and Natural Resources Committee directs NEMA to work with the community to restore the wetland and springs emanating from it to their original status through environmentally friendly activities.

142. The committee concurs with the Petitioners that it is the responsibility of the MECCE to ensure that NEMA develops and implements robust programs and plans that actively involve the community. This includes educating the community and KPS on best land use practices, engaging them in environmentally friendly activities, and promoting sustainable agricultural practices. The committee supports the petitioners' call for NEMA to work closely with the community to restore the wetland and its springs to their original state, thus ensuring long-term conservation and ecological balance. Enhanced collaboration among all stakeholders, including the County Government of Nyamira, is crucial to the success of these initiatives.

CHAPTER 6

COMMITTEE RECOMMENDATIONS

The Committee having investigated the matter in accordance with its mandate under the standing order 228(4) of the Senate Standing Orders recommends that –

143. The Kenya Prisons Service, in collaboration with NEMA and under the guidance of the Ministry of Environment, Climate Change and Forestry (MECCF), develops and implements a comprehensive Environmental Management Plan (EMP) to prevent environmental degradation, manage waste effectively, and promote sustainable practices within the prison's operations, ensuring compliance with all relevant environmental regulations and improving the current conditions of the wetland by 31st December, 2024.
144. A moratorium on further subdivision of the wetland should be enforced by the County Government of Nyamira until a comprehensive Physical Development Plan is in place. The County Government of Nyamira, in collaboration with the Ministry of Lands, Public Works, Housing and Urban Development (MoLPHUD) and the National Land Commission (NLC), should conduct a public participation exercise to establish clear and correct boundaries marked by beacons to prevent encroachment and ensure the protection of the wetland by 31st December, 2024. Further, the MoLPHUD should begin the process of issuing ownership documents to the uncontested areas since most of the land has been surveyed.
145. NEMA, with support from MECCF and the County Government of Nyamira, is required to develop and implement programs to engage and educate the local community and Kenya Prisons Service staff on best land use practices, focusing on environmentally friendly activities, sustainable agriculture, and the importance of wetland conservation, through regular workshops, training sessions, and community meetings to foster collaboration and commitment to conservation efforts.

146. NEMA shall lead efforts to restore the wetland and its springs to their original state, including replanting indigenous trees, removing hazardous tree species, and implementing soil and water conservation measures, with the County Government of Nyamira and the Kenya Prisons Service providing resources and manpower, and the local community actively involved in the restoration activities.
147. NEMA, MECCF, and the County Government of Nyamira shall establish a monitoring and reporting framework to track the progress of the conservation and restoration efforts, conducting regular site visits and assessments to ensure compliance with the EMP and other conservation measures, and documenting and sharing results with all stakeholders, including the Senate Standing Committee on Land Environment and Natural Resources, to ensure transparency and accountability.
148. The Environment Land Court expedites the resolution of the ongoing land disputes involving the Siany Wetland.
149. The Ministry of Environment, Climate Change and Forestry works together with the Ministry of Interior and Coordination of National Government (MICNG) to train and educate staff and warders in the Nyamira Prison on best practices on matters environmental conservation.

APPENDICES

ANNEX I: MINUTES OF THE MEETINGS

**Annex I - Minutes with the various stakeholders and consideration meetings of the
Petition**

ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS

Annex II (A) – MECCF Submissions responding to the Petition

Annex II (B) – County Government of Nyamira Submissions responding to the Petition

Annex II (C) – Ministry of Interior and Coordination of National Government Submissions responding to the Petition

ANNEX III: SUBMISSIONS BY THE PETITIONER

Annex III (A) – Petition as tabled in the Senate

Annex III (B) – Submissions presented by the Petitioner as evidence backing their
Petition

ANNEX I - MINUTES



MINUTES OF THE TWENTIETH (20TH) SITTING OF THE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON FRIDAY, 14TH JUNE, 2024 IN PRIDE INN PARADISE HOTEL, MOMBASA COUNTY AT 9:00 AM

PRESENT

- | | |
|---|--------------------|
| 1. Sen. John Muhia Methu, MP | - Chairperson |
| 2. Sen. (Dr.) Steve Lelegwe Ltumbesi, CBS, MP | - Vice Chairperson |
| 3. Sen. Johnes Mwashushe Mwaruma, MP | - Member |
| 4. Sen. Issa Juma Boy, MP | - Member |
| 5. Sen. Agnes Kavindu Muthama, MP | - Member |
| 6. Sen. Wamatinga Wahome, MP | - Member |
| 7. Sen. Mariam Sheikh Omar, MP | - Member |
| 8. Sen. Beatrice Akinyi Ogola, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|--|----------|
| 1. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
|--|----------|

IN ATTENDANCE

SECRETARIAT

- | | |
|-----------------------|---------------------------------|
| 1. Mr. Victor Bett | - Clerk Assistant I |
| 2. Ms. Ivy Nyambura | - Clerk Assistant III |
| 3. Ms. Angela Kagunyi | - Legal Counsel II |
| 4. Mr. John Gichia | - Research Officer III |
| 5. Ms. Lydia Kagumba | - Public Communications Officer |
| 6. Mr. Jack Lemeteki | - Media Relations Officer |
| 7. Ms. Shirley Milimu | - Audio Officer III |
| 8. Ms. Sarah Rukwaro | - Serjeant at Arms |

MINUTE SEN/LENR/100/2024:

PRELIMINARIES

The Chair called the meeting to order at 9.25 am. This was followed by a word of prayer.

The Committee adopted the program of the Retreat as was shared by the Secretariat and presented by the Chairperson.

MINUTE SEN/LENR/101/2024: CONSIDERATION OF DRAFT REPORT ON THE PETITION BY SIANY RESIDENTS ON THE DESTRUCTION OF 41 HA SIANY WETLAND- L.R. NO. NORTH MUGIRANGO/ MAGWAGWA II/ 403

The Secretariat took the Members through the draft report on the aforementioned Petition highlighting various legal submissions underpinning the Petition, submissions from the Petitioners as well as responses submitted by the Cabinet Secretary of the Ministry of Environment, Climate Change, and Forestry, Ministry of Lands, Public Works and Housing, Ministry of Interior and National Coordination, National Land Commission and The County Government of Nyamira. Further, the Members were taken through the key issues for consideration as follows -

- a) *Whether the land is indeed community land set aside for communal grazing and other community need;*
- b) *Whether allegations of encroachment on the wetland can be proven;*
- c) *Whether there have been any negative consequences resulting from activities of the Kenya Prisons Service and some members of the community;*
- d) *Whether there are efforts by Kenya Prisons Service to conserve the Wetland and*
- e) *Whether NEMA and other government institutions can engage with the communities to restore the wetland and springs to their original state.*

Having examined the Petitioners submissions, evidences and the responses submitted by the aforementioned stakeholders, the Committee made the following observations that -

1. The committee observes that there were efforts by the Kenya Prisons Service geared towards restoration and conservation through protection of a Water Spring, tree nurseries, afforestation programmes, donation of tree seedlings, promotion of fruit farming and peace keeping missions as detailed in the Ministry's submission.
2. The Committee observes that Nyamira Prison occupies an area that is fragile and prone to environmental degradation. Consequently, the institution has a duty to prevent further degradation and maintain the ecological and other functions of the wetland, as outlined in Regulation 14 of the Environmental Management and

Coordination (Wetlands, River Banks, Lake Shores, and Sea Shores Management) Regulations, 2009.

3. To address this, the Committee observes that there is need for the development of a comprehensive Environmental Management Plan (EMP). This EMP should focus on preventing adverse environmental impacts, mitigating pollution, and ensuring compliance with environmental regulations. The plan should also aim to improve the current environmental conditions and support the long-term conservation and preservation of the wetland ecosystem. Enhanced collaboration with NEMA and other relevant stakeholders will be essential in achieving these goals.
4. Based on the submissions and evidence from the petitioners and respondents, the committee observes that there is significant concern about the potential subdivision of the wetland. The County Government of Nyamira has not yet developed a Physical Development Plan for the disputed land. The land boundaries were established by the County Survey Department, not by the prison warders, and there is ongoing encroachment by community members and institutions.
5. Given the sensitivity of the Siany Wetland and its ecological importance, the committee observes the need for caution before any further subdivisions are considered. The conservation of the wetland should be a top priority for the County Government, the Kenya Prisons Service, and the local community. Establishing clear and correct boundaries with proper public participation is essential to prevent further encroachment and to ensure the protection and preservation of the wetland.
6. The committee concurs with the Petitioners that it is the responsibility of the MECCF to ensure that NEMA develops and implements robust programs and plans that actively involve the community. This includes educating the community and KPS on best land use practices, engaging them in environmentally friendly activities, and promoting sustainable agricultural practices. The committee supports the petitioners'

call for NEMA to work closely with the community to restore the wetland and its springs to their original state, thus ensuring long-term conservation and ecological balance. Enhanced collaboration among all stakeholders, including the County Government of Nyamira, is crucial to the success of these initiatives.

MINUTE SEN/LENR/102/2024: ADOPTION OF REPORT ON THE PETITION BY SIANY RESIDENTS ON THE DESTRUCTION OF 41 HA SIANY WETLAND- L.R. NO. NORTH MUGIRANGO/ MAGWAGWA II/ 403

The Committee having reviewed the aforementioned draft report recommended that the report be adopted with the following recommendations –

1. The Kenya Prisons Service, in collaboration with NEMA and under the guidance of the Ministry of Environment, Climate Change and Forestry (MECCF), develops and implements a comprehensive Environmental Management Plan (EMP) to prevent environmental degradation, manage waste effectively, and promote sustainable practices within the prison's operations, ensuring compliance with all relevant environmental regulations and improving the current conditions of the wetland by 31st December, 2024.
2. A moratorium on further subdivision of the wetland should be enforced by the County Government of Nyamira until a comprehensive Physical Development Plan is in place. The County Government of Nyamira, in collaboration with the Ministry of Lands, Public Works, Housing and Urban Development (MoLPHUD) and the National Land Commission (NLC), should conduct a public participation exercise to establish clear and correct boundaries marked by beacons to prevent encroachment and ensure the protection of the wetland by 31st December, 2024. Further, the MoLPHUD should begin the process of issuing ownership documents to the uncontested areas since most of the land has been surveyed.

3. NEMA, with support from MECCF and the County Government of Nyamira, is required to develop and implement programs to engage and educate the local community and Kenya Prisons Service staff on best land use practices, focusing on environmentally friendly activities, sustainable agriculture, and the importance of wetland conservation, through regular workshops, training sessions, and community meetings to foster collaboration and commitment to conservation efforts.
4. NEMA shall lead efforts to restore the wetland and its springs to their original state, including replanting indigenous trees, removing hazardous tree species, and implementing soil and water conservation measures, with the County Government of Nyamira and the Kenya Prisons Service providing resources and manpower, and the local community actively involved in the restoration activities.
5. NEMA, MECCF, and the County Government of Nyamira shall establish a monitoring and reporting framework to track the progress of the conservation and restoration efforts, conducting regular site visits and assessments to ensure compliance with the EMP and other conservation measures, and documenting and sharing results with all stakeholders, including the Senate Standing Committee on Land Environment and Natural Resources, to ensure transparency and accountability.
6. The Environment Land Court expedites the resolution of the ongoing land disputes involving the Siany Wetland.
7. The Ministry of Environment, Climate Change and Forestry works together with the Ministry of Interior and Coordination of National Government (MICNG) to train and educate staff and warders in the Nyamira Prison on best practices on matters environmental conservation.

The Committee adopted the report having been proposed and seconded by Sen. Wahome Wamatinga, MP and Sen. Issa Juma Boy, MP respectively.

MINUTE SEN/LENR/103/2024

ANY OTHER BUSINESS

There was no other business discussed.

MINUTE SEN/LENR/104/2024

**ADJOURNMENT AND DATE OF
NEXT MEETING**

The meeting was adjourned at 12:03 pm. The next meeting was scheduled for Friday, 14th June, 2024 at 2.00 pm



Signed _____

Date 11th July, 2024

SEN. JOHN MUHIA METHU, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES.



MINUTES OF THE FIFTYITH (50TH) SITTING OF THE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON SATURDAY, 28TH OCTOBER, 2023 IN THE CLUB HOUSE, ENASHIPAI RESORT, NAIVASHA AT 2:00 PM

PRESENT

- | | |
|--------------------------------------|---------------|
| 1. Sen. John Muhia Methu, MP | - Chairperson |
| 2. Sen. Johnes Mwashushe Mwaruma, MP | - Member |
| 3. Sen. Issa Juma Boy, MP | - Member |
| 4. Sen. Mariam Sheikh Omar, MP | - Member |
| 5. Sen. Wamatinga Wahome, MP | - Member |
| 6. Sen. Agnes Kavindu Muthama, MP | - Member |
| 7. Sen. Beatrice Akinyi Ogola, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|--|--------------------|
| 1. Sen. (Dr.) Steve Lelegwe Ltumbesi, MP | - Vice Chairperson |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |

SECRETARIAT

- | | |
|-----------------------|--------------------------|
| 1. Mr. Victor Bett | - Clerk Assistant II |
| 2. Ms. Ivy Nyambura | - Clerk Assistant III |
| 3. Mr. Peter Adika | - Chief Research Officer |
| 4. Ms. Angela Kagunyi | - Legal Counsel II |
| 5. Ms. Keziah Muthama | - Fiscal Analyst III |
| 6. Ms. Shirley Milimu | - Audio Officer III |
| 7. Mr. Ibrahim Odindo | - Serjeant at arms |

MINUTE SEN/LENR/286/2023

PRELIMINARIES

The Chair called the meeting to order at 2:21 pm. This was followed by a word of prayer.

MINUTE SEN/LENR/287/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. Agnes Kavindu Muthama, MP and seconded by Sen. Beatrice Akinyi Ogola, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the following sittings;
 - a) *Minutes of the 28th sitting held on 2nd August, 2023*
 - b) *Minutes of the 29th sitting held on 3rd August, 2023*
 - c) *Minutes of the 38th sitting held on 19th September, 2023*
 - d) *Minutes of the 45th sitting held on 26th October, 2023;*
 - e) *Minutes of the 46th sitting held on 26th October, 2023;*
 - f) *Minutes of the 47th sitting held on 27th October, 2023;*
 - g) *Minutes of the 48th Sitting held on 27th October, 2023; and*
 - h) *Minutes of the 49th Sitting held on 28th October, 2023.*
4. Matters arising;
5. **Adoption of the Committee Report on the-**
 - a) **Petition by squatters of the Mautuma Central Settlement Scheme regarding the degazettement of 1577.86 Ha of Lugari/Turbo Forest in Kakamega County;**
 - b) **Petition by residents of Laikipia West Constituency regarding degazettement of Land Reference No. 12493; and**
 - c) **Petition by residents of Chokaa on illegal demolition at Mihang'o, Njiru Chokaa;**
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MINUTE SEN/LENR/288/2023

CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS

1. The Committee confirmed the Minutes of the Twenty Eighth (28th) meeting held on Wednesday, 2nd August, 2023 after having been proposed by Sen. Johnes Mwaruma, MP and seconded and Sen. Beatrice Ogola, MP respectively.
2. The Committee confirmed the Minutes of the Twenty Ninth (29th) meeting held on Thursday, 3rd August, 2023 after having been proposed by Sen. Johnes Mwaruma, MP and seconded and Sen. Beatrice Ogola, MP respectively.
3. The Committee confirmed the Minutes of the Thirty Eighth (38th) meeting held on Tuesday, 19th September, 2023 after having been proposed by Sen. Johnes Mwaruma, MP and seconded and Sen. Beatrice Ogola, MP respectively.
4. The Committee confirmed the Minutes of the Forty Fifth (45th) meeting held on 26th October, 2023 after having been proposed by Sen. Johnes Mwaruma, MP and

seconded and Sen. Beatrice Ogola, MP respectively.

5. The Committee confirmed the Minutes of the Forty Sixth (46th) meeting held on 26th October, 2023 after having been proposed and seconded by Sen. Beatrice Ogola, MP and Sen. Johnes Mwaruma, MP respectively.
6. The Committee confirmed the Minutes of the Forty Seventh (47th) meeting held on 27th October, 2023 after having been proposed and seconded by Sen. Johnes Mwashushe Mwaruma, MP and Sen. Issa Juma Boy, MP respectively.
7. The Committee confirmed the Minutes of the Forty Eighth (48th) meeting held on 27th October, 2023 after having been proposed and seconded by Sen. Johnes Mwashushe Mwaruma, MP and Sen. Agnes Kavindu Muthama, MP respectively.
8. The Committee confirmed the Minutes of the Forty Ninth (49th) meeting held on 28th October, 2023 after having been proposed and seconded by Sen. Issa Juma Boy, MP and Sen. Mariam Sheikh Omar, MP respectively.

MINUTE SEN/LENR/289/2023

**ADOPTION OF THE COMMITTEE
REPORTS ON THREE (3)
PETITIONS BEFORE THE
COMMITTEE**

1. The Committee having reviewed the draft report on the *Petition by squatters of the Mautuma Central Settlement Scheme regarding the degazettement of 1577.86 Ha of Lugari/Turbo Forest in Kakamega County* recommended that the report be adopted with a recommendation that –

all the remaining processes that were remaining are fastened and a report on the progress tabled before this Committee within three (3) months of the tabling of this Report.

The Committee adopted the report having been proposed and seconded by Sen. Johnes Mwaruma, MP and Sen. Maria Sheikh, MP respectively.

2. The Committee having reviewed the draft report on the *Petition by residents of Laikipia West Constituency regarding degazettement of Land Reference No. 12493b* recommended that the report be adopted with the following recommendations –
 - a. In accordance with section 36 of the FCMA, KFS should immediately initiate and commence the process of –
 - i. Degazetment of Land Parcel Rumuruti LR No. 12493 being an excision

- of 149.1 Ha(s) from Rumuruti Forest and
- ii. Gazettment of Lariak Forest Block LR No. 2467/1 that is set to now benefit the Kenya Forest Service with 127.3 Ha(s) being an addition to Lariak Forest.
- b. The County Government of Laikipia should embark on ensuring services are offered to the residents residing in LR No. 12493 as Article 43 of the CoK 2010 including aligning of the County Integrated and Annual Development Plans to ensure the area is also developed;
 - c. The Committee recommends that a report on the progress be tabled before the Committee within three (3) months of tabling of this Report.

The Committee adopted the report having been proposed and seconded by Sen. Beatrice Ogola, MP and Sen. Johnes Mwaruma, MP respectively.

1. The Committee having reviewed the draft report on the *Petition by residents of Chokaa on illegal demolition at Mihang'o, Njiru Chokaa* recommended that the report be adopted with the following recommendations –
 - a. That should there be such incidences in future humane ways to evict the persons from the encroached areas should be employed; and
 - b. The petitioners have sought redress in the courts of law and therefore the matter is considered *subjudice* pursuant to the Senate Standing Orders 235(g) and 103(2) on the Form of a Petition that indicates the minimum requirements for admittance of Petitions, a matter pending in court being one of them and matters *subjudice* respectively.

The Committee adopted the report having been proposed and seconded by Sen. Agnes Kavindu, MP and Sen. Issa Juma Boy, MP respectively.

MINUTE SEN/LENR/290/2023

ANY OTHER BUSINESS

There was no other business discussed.

MINUTE SEN/LENR/291/2023

ADJOURNMENT AND DATE OF NEXT MEETING

The meeting was adjourned at 4:57 pm. The date of the next meeting was to be called on notice.

Signed



Date 31/10/2023

SEN. JOHN MUHIA METHU, MP

CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES



MINUTES OF THE FORTY SEVENTH (47TH) SITTING OF THE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON FRIDAY, 27TH OCTOBER, 2023 IN THE CLUB HOUSE, ENASHIPAI RESORT, NAIVASHA AT 9:00 AM

PRESENT

- | | |
|--------------------------------------|---------------|
| 1. Sen. John Muhia Methu, MP | - Chairperson |
| 2. Sen. Johnes Mwashushe Mwaruma, MP | - Member |
| 3. Sen. Issa Juma Boy, MP | - Member |
| 4. Sen. Mariam Sheikh Omar, MP | - Member |
| 5. Sen. Wamatinga Wahome, MP | - Member |
| 6. Sen. Agnes Kavindu Muthama, MP | - Member |
| 7. Sen. Beatrice Akinyi Ogola, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|--|--------------------|
| 1. Sen. (Dr.) Steve Lelegwe Ltumbesi, MP | - Vice Chairperson |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |

SECRETARIAT

- | | |
|-----------------------|--------------------------|
| 1. Mr. Victor Bett | - Clerk Assistant II |
| 2. Ms. Ivy Nyambura | - Clerk Assistant III |
| 3. Mr. Peter Adika | - Chief Research Officer |
| 4. Ms. Angela Kagunyi | - Legal Counsel II |
| 5. Ms. Keziah Muthama | - Fiscal Analyst III |
| 6. Ms. Shirley Milimu | - Audio Officer III |
| 7. Mr. Ibrahim Odindo | - Serjeant at arms |

MINUTE SEN/LENR/261/2023

PRELIMINARIES

The Chair called the meeting to order at 9:16 am. This was followed by a word of prayer.

MINUTE SEN/LENR/262/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. Agnes Kavindu Muthama, MP and seconded by Sen. Mariam Sheikh Omar, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. **Consideration of the draft report on the Petition by Siany residents regarding destruction of 41Ha of Siany Wetland – LR No. North Mugirango /Magwagwaii/403;**
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

MINUTE SEN/LENR/263/2023

**CONSIDERATION OF THE DRAFT
REPORT ON THE PETITION BY
SIANY RESIDENTS REGARDING
DESTRUCTION OF 41HA OF
SIANY WETLAND – LR NO.
NORTH MUGIRANGO
/MAGWAGWAII/403**

The Secretariat took the Members through the draft report on the aforementioned Petition highlighting various legal submissions underpinning the Petition, submissions from the Petitioners as well as responses submitted by the Cabinet Secretary of the Ministry of Environment, Climate Change, and Forestry. Further, the Members were taken through the key issues for consideration as follows-

- a) *Whether the land is indeed community land set aside for communal grazing and other community needs*
- b) *Whether allegations of encroachment on the wetland can be proven*
- c) *Whether there have been any negative consequences resulting from activities of the Kenya Prisons Service and some members of the community*
- d) *Whether there are efforts by Kenya Prisons Service to conserve the Wetland*
- e) *Whether NEMA and other government institutions can engage with the communities to restore the wetland and springs to their original state*

Having examined the Petitioners submissions, evidences and the responses submitted by the Ministry of Environment, Climate Change and Forestry, the Committee resolved to engage further with the following Stakeholders following the existence of some gaps -

- a) Ministry of Lands, Public Works and Housing;
- b) National Land Commission;
- c) Kenya Prisons Service; and

d) County Government of Nyamira.

The purpose of the aforementioned meetings would be to get a clearer understanding of how the land was sub divided to begin with and by whom as well as the root disgruntlement of the community members.

The Petition was consequently considered to be still under investigation by the Committee.

MINUTE SEN/LENR/264/2023

ANY OTHER BUSINESS

There was no other business discussed.

MINUTE SEN/LENR/265/2023

**ADJOURNMENT AND DATE OF
NEXT MEETING**

The meeting was adjourned at 12:40 pm. The date of the next meeting was to be called on notice.

Signed _____

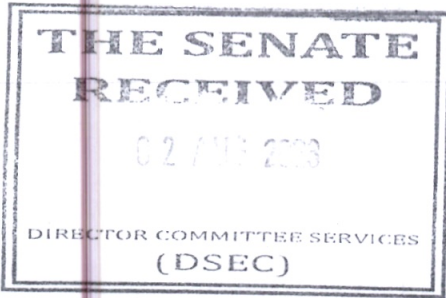


Date 28/10/2023

SEN. JOHN MUHIA METHU, MP

CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES

ANNEX II –
STAKEHOLDER
SUBMISSIONS



REPUBLIC OF KENYA

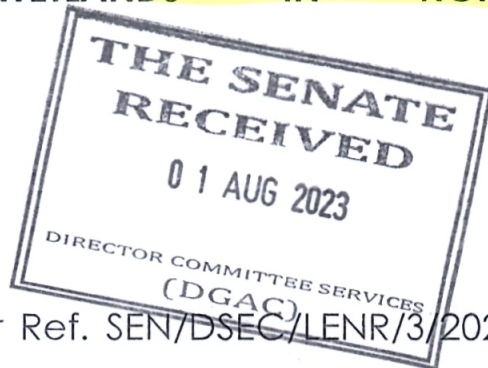
RECEIVED
01 AUG 2023

① DSEC
Kindly deal
01/08/2023

MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY

CABINET SECRETARY'S RESPONSE TO A PETITION CONCERNING
DESTRUCTION OF SIANY WETLANDS IN NORTH
MUGIRANGO/MAGWAGWA

② Mr. Jidoveli
Please deal
02/08/23



Introduction

The Clerk of the Senate through letter Ref. SEN/DSEC/LENR/3/2023/ (84) dated 23rd June, 2023 requested the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry to respond to a petition by the residents of Misambi Sub-location in Nyamira County concerning destruction of 41 HA Siany Wetlands – L.R. NO. North Mugirango/Magwagwa II/403

Petitioners Pray that the Senate: -

- 1. May act within its legal mandate to stop destruction of the wetland and direct that the ecosystem provided by the wetland

③ Mr. Bett
plse deal
Sub.
3/08/23

be conserved and that the wetland should be preserved for future generations through legislative and other measures;

2. May stop the National Land Commission and County Government of Nyamira from subdividing the wetland;
3. May direct the County Government of Nyamira and the Ministry of Lands to fix clear and correct boundaries marked by beacons through a public participation exercise instead of the current boundaries which are single handedly fixed by prison wardens;
4. May direct NEMA to work with communities to restore the wetland and springs emanating from it to their original status through environmentally friendly activities which may be carried out by the residents around the land, with support from the County Government and other stakeholders
5. May constitute an environment committee to URGENTLY visit the wetland and witness the destruction and its effect on communities around it and downstream.

1.0 BACKGROUND

Wetlands are ecosystems that are permanently or occasionally water logged with fresh, saline, brackish, or marine waters, including both natural and man-made areas that support characteristic plants and animals the depth of which at low tide should not exceed 6 meters. These include swamps, marshes, bogs, shallow lakes, ox-bow lakes, dams, riverbanks, floodplains, rice paddies, water catchment areas, fishponds, lakeshores and seashores. They also include coastal and

marine wetlands such as deltas, estuaries, mud flats, mangroves, salt marshes, seagrass beds and shallow reefs.

Wetlands are biologically diverse, dynamic and highly productive ecosystems, and are thus the world's most important environmental assets. They are the vital links between water and land. They provide a wide variety of ecosystem services such as:

- (a) Improving water quality by filtering sediment, nutrients, and pollutants.
- (b) Reducing flood damage.
- (c) Preventing bank and shoreline erosion.
- (d) Recharging ground and surface water supplies.
- (e) Providing vital fish and wildlife habitat.
- (f) Offering opportunities for recreation, education, and research.
- (g) Producing food, forest, and fuel products

Owing to its diverse geography, Kenya is endowed with a variety of wetland types that range from riverine, lacustrine, palustrine, estuarine, marine, to man-made, distributed widely across the country in the five River Basins

However, like all other land based ecosystems, wetlands are facing threats from several perspectives, mainly human activities. These include: -

- (a) Encroachment and conversion to other land uses such as settlement, agriculture and industries
 - (b) Pollution, eutrophication and salination
 - (c) Over-exploitation of wetland resources
 - (d) Introduction of alien and invasive species water hyacinth, *Salvinia sp.* and *Mimosa sp.*
-

These threats are largely due to the fact that the functions of wetlands are hardly appreciated by most people. This is made worse by the sectoral approach in management of wetlands which does not quite factor in the implications of other related legislation.

Despite their vital importance, there has not been a comprehensive inventory and mapping of wetlands to ascertain their ecological and social statutes.

2.0 Legal framework governing wetlands

2.1 Environmental Management and Coordination Act of 1999

EMCA is the overarching law on environmental management in Kenya. Section 42 of the Act stipulates measures for the Protection of rivers lakes seas and wetlands as well as other environmentally significant areas.

Section 54 provides for the protection of environment significant areas while Section 55 provides for the protection of the coastal areas. The Act also prohibits discharge of poison, toxic, noxious or obstructing matter, radioactive waste or other pollutants into the aquatic

environment under Section 72 of EMCA further mandates NEMA to initiate wetlands gazettelement processes.

2.2 National Wetlands Conservation and Management Policy 2014

The policy provides a framework for mitigating diverse challenges that affect wetlands in Kenya and advocates for their conservation and wise use in fulfilling Kenya's obligation under the Ramsar convention, the East Africa Community and other Multilateral Environmental Agreements (MEAS). The Policy further advocates for mapping and securing wetlands to ensure their benefits posterity

2.3 EMCA (Wetlands, Riverbanks, Lakeshores and Seashore) Regulations 2009

The Wetlands Regulations apply to all wetlands whether on public or private land. They regulate the exploitation and utilization of wetlands in the country. The Regulations have since been revised awaiting gazettelement

2.4 Other Legal frameworks in the country

Policy/Legal framework	Relevance to wetland ecosystems
Land Policy 2009	Section 3.4.2.3 (124) Restore the environmental integrity of land and facilitate sustainable management of land-based resources Section 3.4.2.3: 124 (d) Establish institutional mechanisms for conservation of quality of land for environmental conservation purposes. Section 3.4.3.1 Conservation and Sustainable Management of Land Based Natural Resources

Policy/Legal framework	Relevance to wetland ecosystems
Forest Policy 2016	Chapter 3- Sustainable development management, utilization and conservation of forest resources Chapter 8- Equitable sharing of the resources; Stakeholders involvement
Land Act 2012	Part II: 19 (1) - Make rules and regulations for the sustainable conservation of land based natural resources. Part II: 19 (2 e and f) -Involvement of stakeholders in the management and utilization of land-based natural resources; and ensure benefit sharing to the affected communities.
National Land Commission Act 2012	Part II 5 (c), Registration of title in land throughout Kenya. Part II 5 (d) Research related to land and the use of natural resources, and make recommendations to appropriate authorities Part II 5 (c) registration of title in land throughout Kenya.
Forest Act 2016	Sections 4 and 42-Provides for PFM and PFMP preparation Research and development programmes to provide information for sustainable natural resources Conduct training on natural resources Public participation and community involvement in management of forests Provides for preparation and gazettelement of rules and regulations such as Participation in Sustainable Forest Management
Wildlife Conservation and	Section 30- Prohibition of activities that may have adverse effects to the environment. Control of pollution from toxic waste seepage to streams, lakes and wetlands

Policy/Legal framework	Relevance to wetland ecosystems
Management Act, 2013	<p>Section 31 (1)- Publish management plan for wetland under KWS management</p> <p>Section 33- Through the Cabinet secretary declare a wetland that is an important habitat or ecosystem for wildlife conservation a protected wetland.</p>
Water Act 2016	<p>Provides the use management, control and conservation of water resources</p> <p>Stipulates matters on use, ownership and control of water resources and safeguards water catchment areas</p>
Agriculture Act cap 318	<p>Addresses maintenance and advancement of good agricultural practices</p> <p>Provides for soil conservation, fertility and encourages Agricultural land developments through principles and practices of good land management</p>
National Climate Change Response Strategy (NCCRS)	<p>Chapter 4- Protection of natural resource base (soil and water conservation techniques)</p> <p>Protection of Water towers, river banks and water bodies</p> <p>Building capacity for water quality improvement and awareness campaign to promote water efficiency measures</p>

3.0 General NEMA interventions on Wetlands to date:

NEMA has undertaken numerous interventions to conserve and protect wetlands from degradation and loss. Some of the interventions are

1. Development of guidelines and strategies such as
 - a. Kenya Shoreline Management Strategy.
 - b. Wetlands Monitoring and Assessment Strategy for Kenya.
 - c. Pollution Prevention and Control Guidelines for the Coastal and Marine Environment.

 - d. National Wetlands Conservation and Management Strategy.
2. Continuous Inventory, mapping and assessment which has resulted in the Kenya Wetlands Atlas and the State of Coast reports.
3. Development and implementation of site-specific wetlands integrated management plans.
4. Development and implementation of action plans
 - a. Integrated Coastal Zone Management Action Plan
 - b. National Marine Litter Management Action Plan
5. Undertaken awareness and outreach programme such as panel discussions and World Wetlands Day and World Oceans Day celebrations.
6. Conducted restoration and rehabilitation of wetlands such as Enapuiyapui, Gambela, Enkongu Enkare and Ondiri swamps, Lake Kisima, and Sabaki Estuary.

4.0 Recommendation

- Comprehensive inventory and Mapping of wetlands across the county

RESPONSE

Current status of the Siany Wetland

Introduction

- (a) Siany Wetland Resources is found in Misambi Location of Nyamira North Sub- county, Nyamira County along Nyamusi-m Kadongo Road. The land measures approximately 104 acres and the parcel is registered as L.R. No. North Mugirango/ Magwagwa II/ 403.
- (b) The parcel of land was set aside by community members as common grazing ground and with the advent of land adjudication it was registered as Common Grazing Area under the Gusii County Council. The land is thus a community land held in trust by the County Government of Nyamira
- (c) Burgeoning demand for land for settlement, agriculture and infrastructural expansion has however put immense pressure on this parcel of land leading to its degradation. The problem is compounded by unsustainable agricultural practices practiced by farmers. This report therefore, examines the impacts of these competing land uses on Siany Wetland.

2.0 SITE VISIT REPORT

- (a) On Wednesday the 12th day of July 2023, National Environment Management Authority (NEMA), Nyamira County Office received information alleging destruction of the wetland perpetuated by the Nyamira Prison. The information was in the form of a petition authored by the community members and submitted to the Senate.
- (b) The office treated the information as an incident and documented it in the Incident Register with the Incident Reference Number being NEMA/NRM/INCIDENT/0080. The incident was then processed following laid down procedures.
- (c) A team from NEMA visited the site on Thursday the 13th day of July 2023 and the findings of the visit are documented in this report.

3.0 FINDINGS OF THE SITE VISIT

The team had the opportunity of interviewing the officer in charge of the prison and also toured the wetland and established the following;

3.1 Land Allocation

- (i) The 104 acres of land is allocated to various land uses with Nyamira Prison being allocated 50 acres. The land is surveyed and has beacons. Nine (9) acres of this land is however, in dispute as both members of the community

and the prison claim ownership and there is a case pending in court since 1997.

- (ii) Esianyi Primary School is allocated eight (8) acres. The land is surveyed and has beacons.
- (iii) It was observed that Magongo Primary and Secondary Schools and Magongo Dispensary have encroached on the wetland though the extent of encroachment has not been determined.
- (v) The remaining acreage of the wetland, over 40 acres has also been encroached on by members of the community.

3.2 Human Activities on the Wetland

The following human activities were observed;

3.2.1 Infrastructure

- (i) The prison has put up temporarily structures made of iron sheets currently used as offices and staff quarters. The institution has also put up a permanent structure measuring approximately 6 meters by 4 meters for housing 33 inmates. The institution is also in the process of putting up the main prison block which started in 2012 but stalled. During the visit, the contractor was on site.
- (ii) The wetland also has an administration block and classrooms that houses Esianyi Primary School.

3.2.2 Farming

- (i) Farming is the predominant human activities on the wetland and its surrounding environs with the prison having

set aside twenty (20) acres for farming. The main crops grown by the institution are maize, millet, sorghum, sweet potatoes and vegetables. It was however, noted that the farm lands are scattered all over the 50-acre parcel of land sometimes leading to encroachment to sensitive environmental areas.

- (ii) Land encroached on by members of the community has been converted to farm land without provision for environmental conservation. Where trees have been planted they are mainly the blue gum (*Eucalyptus saligna*).

3.2.3 Livestock Grazing

Communities neighboring the wetland keep livestock though on limited scale and rely on the wetland for pasture. Tethering was the common practice observed during the visit but there was no noticeable environmental degradation that could be associated with livestock keeping.

4.0 NATURAL FEATURES OF THE WETLAND

- (a) The land is characterized by a high water table with some areas with minimal human activities being marshy.
- (b) The wetland still has its natural vegetation especially reeds although in some areas the reeds had been removed to pave way for farming activities. The team however, did not observe any indigenous trees on the wetland neither was there fresh evidence depicting destruction of indigenous trees.

- (c) A stream whose catchment is on the periphery of the wetland cuts across the Siany Wetland. The banks of the stream are protected in some areas but in other areas the vegetation has been cleared. Near the upcoming prison block, the stream has been diverted to pave way for construction but the diversion has not interfered with downstream flow. There was no visible case of pollution along the course of the stream and the water appeared clear.

5.0 EFFORTS TO CONSERVE THE WETLAND

The prison has initiated various measures aimed at protecting the wetland. The measures are as follows;

5.1 Protection of a Water Spring

The institution has protected a spring within the wetland which supplies water for domestic purposes to both the communities and the institution. The stream also augments the stream's water and this has gone a long way in conserving the wetland.

5.2 Tree Nursery

- (i) Nyamira Prison has established a tree nursery within the wetland which is managed by the inmates. The nursery has 1000 different varieties of fruit seedlings and 5000 assorted species of both indigenous and exotic tree species.
- (ii) Fruit trees are paw-paw, avocado, and guavas. Cyprus and blue gum are the main exotic tree species found in the nursery while *Markamia lutea* is the salient indigenous

species in the nursery. Bamboo and coffee seedlings are also propagated by Nyamira Prison.

5.3 Afforestation Programmes

- (i) The institution has initiated a number of afforestation programmes on the wetland. Between September 2022 and June 2023 the institution managed to plant 9000 assorted tree seedlings on the wetland.
- (ii) These conservation efforts have however, been frustrated by community members who uproot them. The community members feel that the prison grabbed their ancestral land.

5.4 Donation of Tree Seedlings

- (i) Nyamira Prison donates tree seedlings to learning institutions and members of the community for planting as a way of conserving the wetland.
- (ii) Between the months of March to May 2023, the institution donated 7600 assorted tree seedlings to learning institutions and members of the neighboring communities.

5.5 Promotion of Fruit Farming

- (i) Nyamira Prison has earmarked planting of hass avocados on a ten-acre parcel of land. This project will go a long way in protecting the wetland as well as improving the food security in the area.
- (ii) In the 2019/ 2020 Financial Year, Nyamira Prison managed to raise and supply 19200 tree seedlings of hass avocado to farmers. The aim was to diversify peoples' sources of livelihoods

as well as easing pressure on the dependency of the wetland resources.

5.6 Peace Keeping Mission

- (i) Nyamira Prison is fully aware that the community resented the allocation of 50 acres to the institution. To mitigate this animosity, the prison has ventured into peace keeping missions by organizing sports tournament.
- (ii) The tournaments are geared towards establishing good working relationship between the staff of the prison and the community members and the tournaments are normally accompanied by tree planting activities.

6.0 ACTION PLAN

From the foregoing, NEMA plans to undertake the following to restore and maintain the integrity of Siany Wetland;

6.1 Environmental Management Plan

- (i) It is vividly clear that Nyamira Prison occupies an area that is fragile and thus prone to environmental degradation. As provided for by Regulations 14 of the Environmental Management and Coordination (Wetlands, River Banks, Lake Shores and Sea Shores Management) Regulations of 2009, the institution has a duty to prevent degradation of the area as well maintain its ecological and other functions.
- (ii) To achieve this, the institution will be assisted in developing an Environmental Management Plan (EMP). The institution will use the EMP to ensure that undue or reasonably avoidable adverse

impacts of the school's activities are prevented. The EMP will also ensure that pollution cases are prevented and the school meets its compliance obligations as well as enhance the conditions of the environment.

6.2 Land Use Planning

- (i) Nyamira Prison needs a land use plan to guide it in allocating land to various land uses it intends to have on the 50-acre parcel of land.
- (ii) The plan will provide for areas for conservation and this will go a long way in protecting the wetland.

6.3 Monitoring Framework

The institution will be assisted in developing a framework for monitoring seedlings donated to stakeholders ensure that they are planted as envisaged and contribute to the conservation of the wetland.

6.4 Awareness on Wise Use of the Wetland

The neighboring communities who have encroached on the wetland will be engaged and educated on the best land use practices that will benefit both the communities and promote environmental conservation.

6.5 Use of Water Friendly Tree Species

Relevant government institutions such as Kenya Forest Service, Kenya Forest Research Institute will be approached with a view of identifying the right tree species for afforestation programmes on the wetland.

7.0 CONCLUSION

Hon. Chair and Hon. Members, surveying and pegging of the wetland will go a long way in addressing the land disputes currently bedeviling the resource. The exercise should however, be participatory and carried out by professionals agreeable to all parties.

Thank you, **Hon. Chair and Hon. Members**,



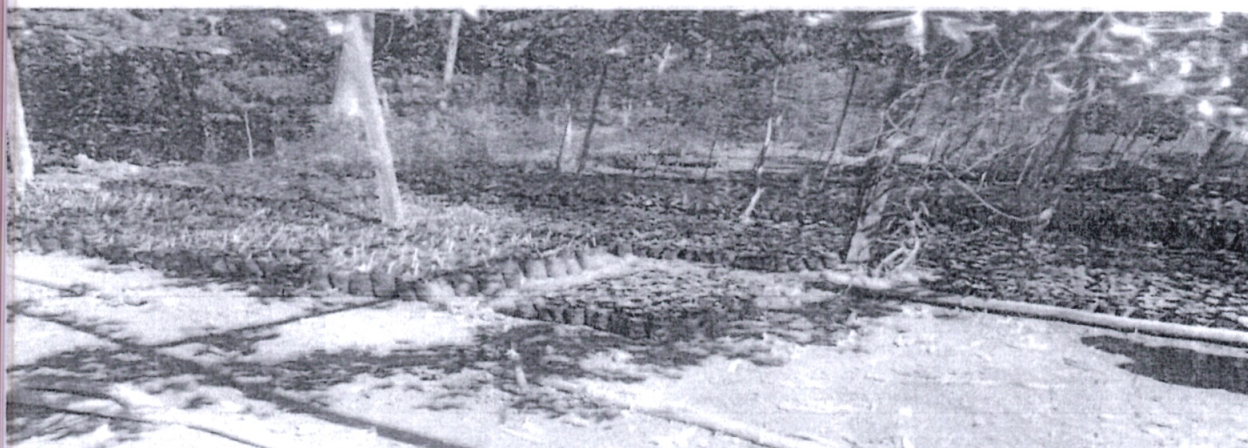
Hon. Soipan Tuya, CBS

Cabinet Secretary

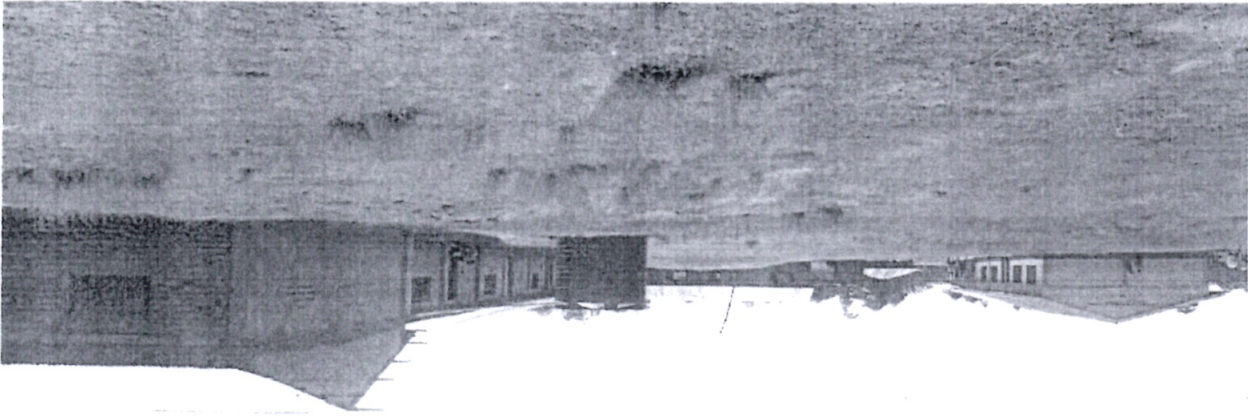
Ministry of Environment, Climate Change and Forestry

Date.....1/8/2023.....

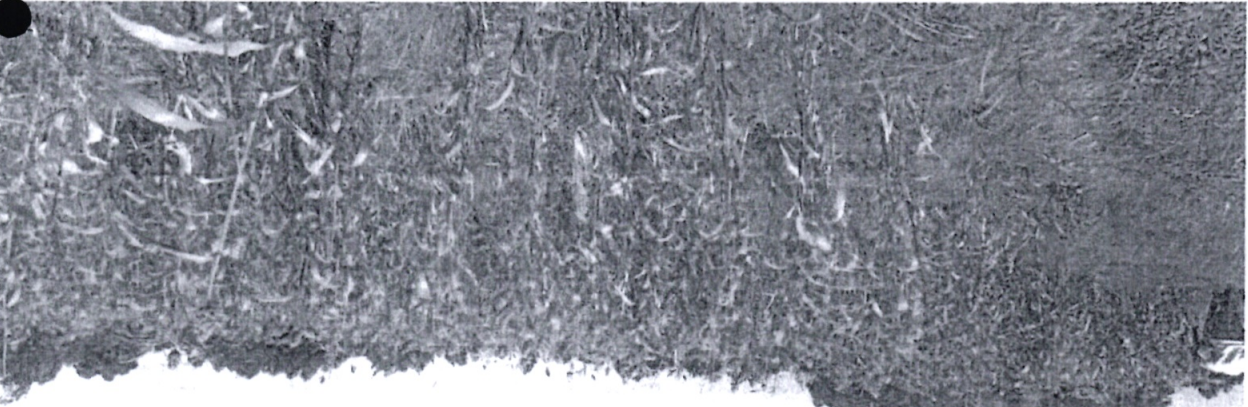
APPENDICES



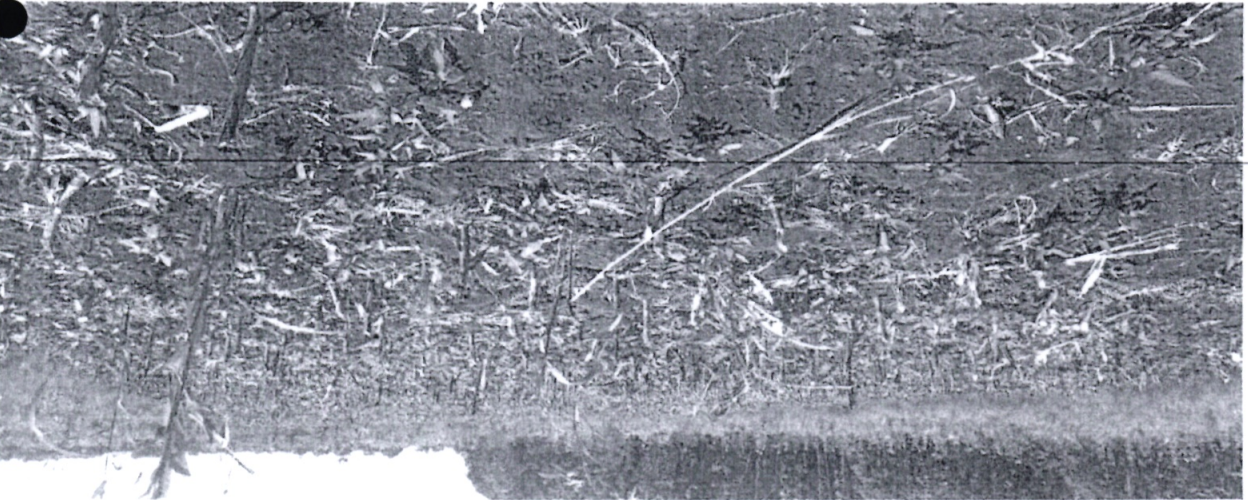
- *Appendix I: A Section of the Tree nursery with Assorted Tree Seedlings*
-



Appendix III: A Section of the Prison's Farms with Sorghum



Appendix II: A Section of the Prison's Farms with Sweet Potato



• *Appendix IV: Esianyi Primary School One of the Land Use on the Wetland*



• *Appendix V: The Main Prison Block under Construction*



• *Appendix VI: Remnants of Indigenous Vegetation on the Wetland*

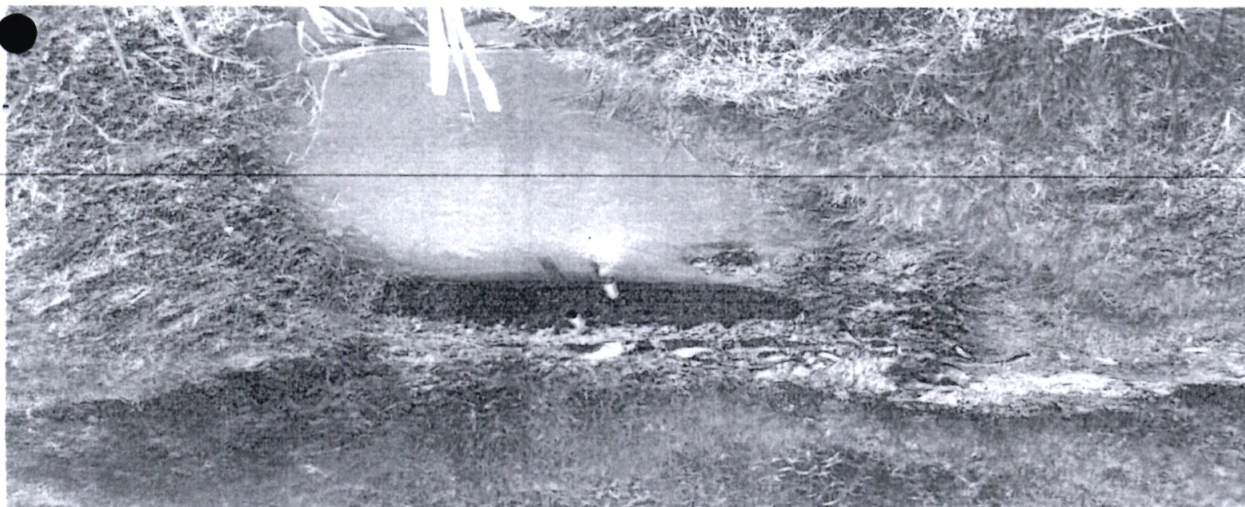
Appendix IX: Section of the Stream who's Banks have been interfered with



Appendix VIII: Section of the Stream with less interference from Human Activities

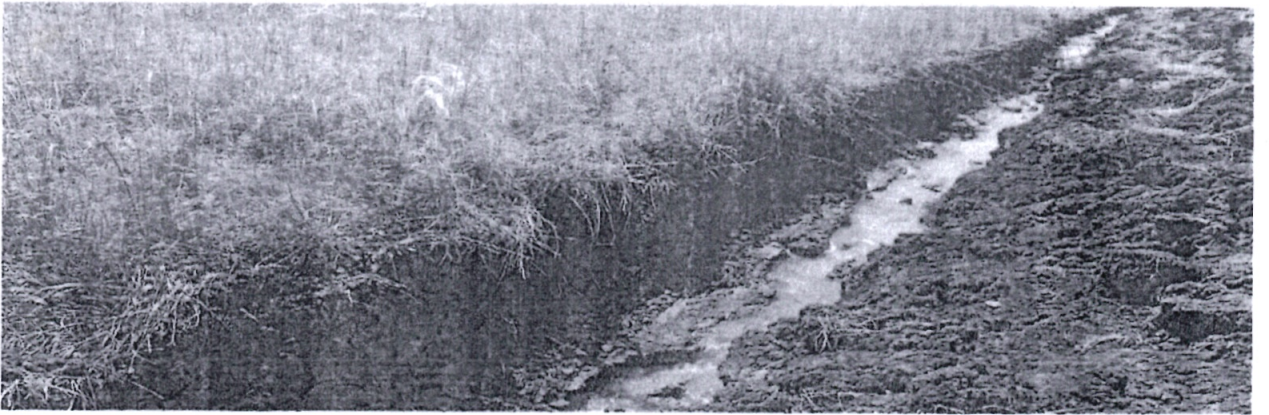


Appendix VII: Protected Spring that augments the Stream Water





- *Appendix X: Unsustainable Agricultural Practices along the course of the Stream*



- *Appendix XI: A Section of the Stream diverted to pave way for Construction of the Prison Block*



- *Appendix XII: Marshy Areas with Clean Water on the Wetland*



Appendix XIII: A Section of the Wetland encroached on by Neighbouring Communities

24 MAY 2023

The Clerk of the Senate AND
DIRECTOR LEGISLATION AND
Parliament Buildings SERVICES

23 MAY 2023

P.O. Box 41842-00100

NAIROBI

Email: senate.petitions@parliament.go.ke

**RE: PETITION TO THE SENATE CONCERNING DESTRUCTION OF 41 HA SIANY WETLAND-L.R.
NO. NORTH MUGIRANGO/MAGWAGWA II/403**

We, the undersigned, Citizens of the Republic of Kenya, and residents of Misambi Sub-location in Nyamira County; DRAW the attention of the Senate to the following:

1. The wetland is a community land situated in Misambi Sub-location in Nyamira County. Our grandfathers set it aside for grazing and that is why the then trust land was registered as Common Grazing Area under Gusii County Council. It is a major water catchment area in the region and is a source of several water springs which are sources of fresh and clean safe water used by communities up and down stream for drinking and other domestic use.

1.1 THAT degradation of the wetland is being carried out through activities of the Kenya Prisons Service and a section of community members; and the existence of a primary school on the land;

1.2 THAT the destruction of Siany Wetland was brought to the attention of the National Environment Management Authority (NEMA), Water Resources Management Authority (WRMA) and the Ministry of Environment in 2010. Subsequently NEMA stopped construction of the main prison building whose photograph is herein attached and issued Environmental Restoration Order in the same year. The building was put up along the edge of Kamoti Water Spring as can be seen from the attached photos. But NEMA later on 20th February 2013 issued the Kenya Prisons Service with a conditional Environmental Impact Assessment (EIA) license valid for 24 months from the date of issue, based on EIA report prepared in May 2012. It is not clear which part of the wetland the license was particularly issued for construction(s) to take place on. But we notice and there is evidence that since that time buildings on parts of the land (see attached photos) have been started but failed to come up due to water, nature of the land and the springs;

1.3 THAT we have noted that the Kenya Prisons Service warders on the wetland are currently carrying out renovation and completion exercise of the building described above- the building whose construction was stopped by NEMA 12 years ago. We have further noted that the Kenya Prisons service has brought into the land some prisoners who are currently housed in a makeshift building on the land;

1.4 THAT prison warders have been on the wetland for 14 years. Led by Mr. Mongare Sitino of PF No. 95015383, they cut down indigenous trees and natural undergrowth on the wetland to give way for personal commercial cultivation among themselves until last year when some prisoners were brought in. The main activity being carried out by the prisoners is cultivation. As a result of deforestation and cultivation, the warders have systematically destroyed flora and fauna of a giant wetland. Water springs are gradually drying up. The wetland and springs on it are completely different from what it used to be 15 years ago. Presently there is a deliberate

Petition to the Senate by Siany Residents Concerning Degradation of Siany Wetland

5) Ms. Rashida
address Mr.

① Daps
Please deal.
more
23/5/23
Mr. D. Cham
23 MAY 2023 Please process
Ms
Hosta

④ Ms. Madan
Kindly review over
facilitator
D. Ombaka
26/05/2023



attempt by the warders to divert the course of the springs as you can see from some of the photos attached.

2. Water springs on the wetland come together to form Konyando Water Stream which pores its water into Awach River. Water from the springs on the wetland, Konyando Water Stream and Awach River is widely used by a large population of people including schools, and healthcare facilities. However, the water sources are being polluted by faeces which is directly discharged on the water; plus, other waste materials as a result of human activities.

2.1 THAT the Government of Kenya is currently dealing with adverse effects of climate change. It is not logical that the same Government can engage in massive deforestation and destruction of environmentally sensitive riparian land.

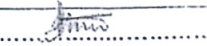






3. THAT, we have made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response.

4. THAT, none of these issues raised in this Petition is pending in any court of law, Constitutional or any other legal body.

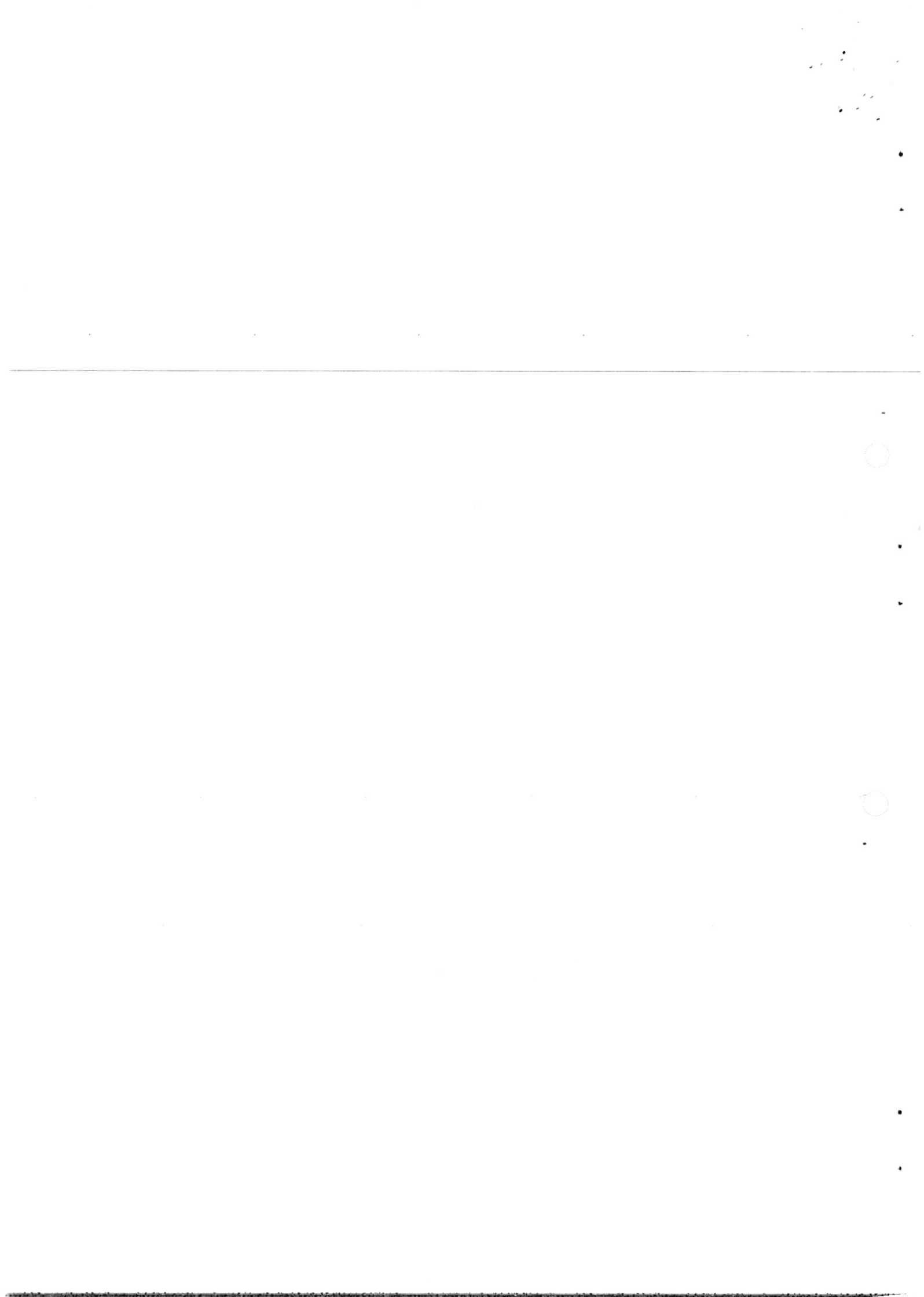
WHEREFORE, your humble petitioners pray that the Senate-

1. May act within its legal mandate to stop destruction of the wetland and direct that the ecosystem provided by the wetland be conserved and that the wetland should be preserved for future generation through legislative and other measures;
2. May stop the National Land Commission and County Government of Nyamira from subdividing the wetland;
3. May direct the County Government of Nyamira and the Ministry of Lands to fix clear and correct boundaries marked by bacons through a public participation exercise instead of the current boundaries which were single handedly fixed by prison waders;
4. May direct NEMA to work with communities to restore the wetland and springs emanating from it to their original status through environmentally friendly activities which may be carried out by the residents around the land, with support from the County Government and other stakeholders;
5. May constitute an environment committee to URGENTLY visit the wetland and witness the destruction and its effect on communities around it and downstream.

Dated this 28th day of April 2023.

NO.	NAME	ADDRESS	I.D. NUMBER	SIGNATURE
1	SAMWEL OWINO ORIANGA	P.O. BOX 39, KADONGO, TEL. 0711 527 225	1368231	
2	REMJIUS ODHIAMBO	"	33094819	
3	WAREN ALANDO	"	23308663	
4	ISAYA YOGO WAMBE	"	3821817	
5	PERES JUMA	"	5299713	
6	CHRISTINE NASIKE	"	30832906	
7	LINET AKOTH	"	36160509	

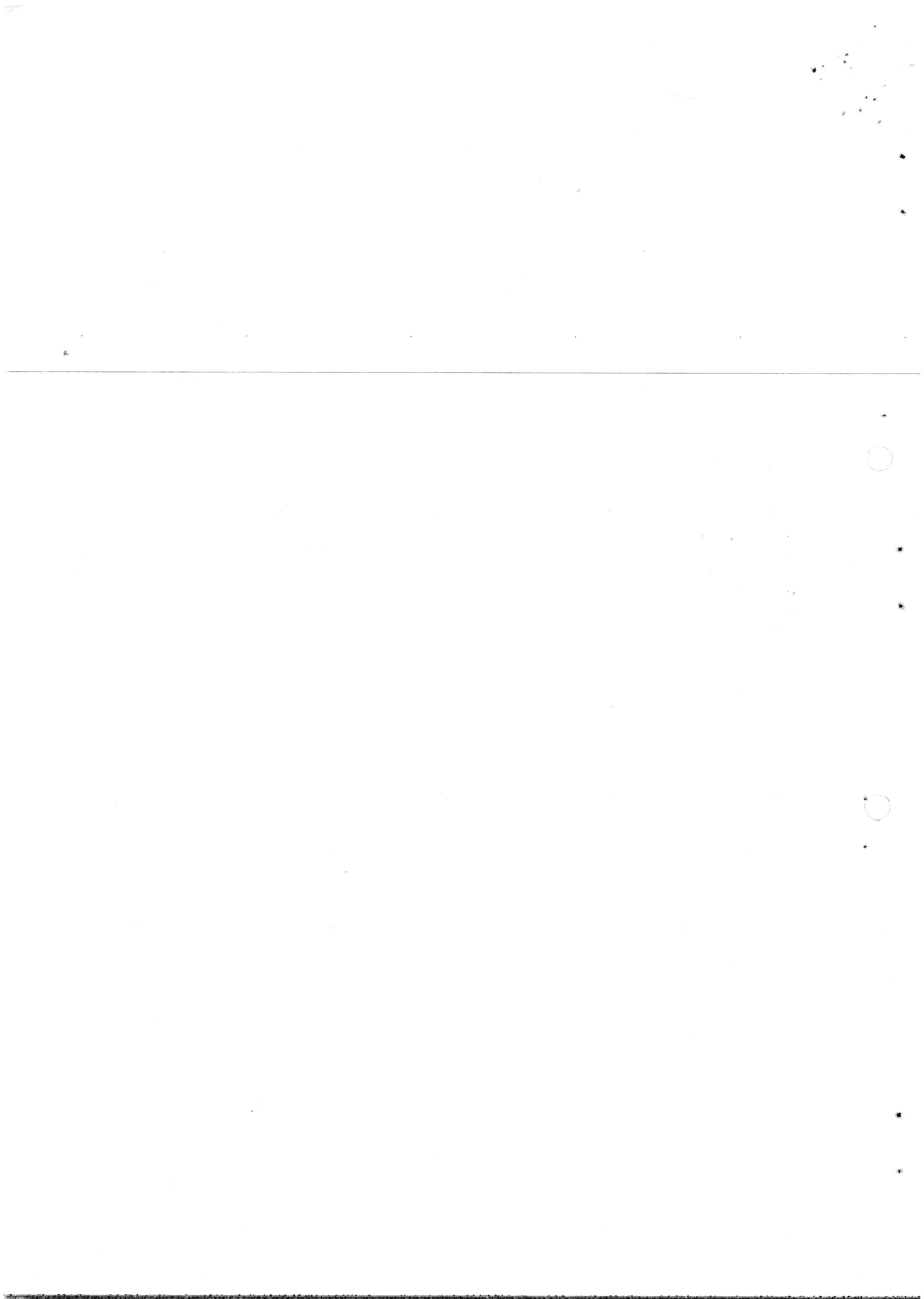
Petition to the Senate by Siany Residents Concerning Degradation of Siany Wetland



8	JOSPHAT SAOKE	"	23340711	Samba
9	EMMANUEL SAOKE	"	24065626	EM
10	VICTOR OMONDI	"	29154878	VB
11	GILBERT SAMBA	"	24147585	G
12	BENTA ATIENO	"	24353429	BA
13	DANIEL OYOLO	"	5889054	DO
14	SYPRINE OPIYO	"	3686110	Spy
15	MATHEW ONYANGO	"	29851709	MO
16	EDWIN OKOTH	"	27328892	ED
17	SYPHROSE AUMA	"	32689489	S
18	MICHAEL OKINDO	"	21855490	MO
19	DORINE ADHIAMBO	"	9548479	DORINE
20	PAMELA ADHIAMBO	"	13091204	PAMELA
21	PETER OLUOCH	"	28017936	Oluch
22	NEREA AUMA	"	1603066	N
23	TOBIAS NYALALA	"	30002424	T
24	AKUMU NYACHOKA	"	4813938	AKIN
25	GEORGE OTIENO	"	24497633	George
26	HELLEN KAINDO	"	2599612	H
27	PAUL ORENGO JOHN	"	27976223	PO
28	PETER GANGA	"	31436998	Ganga
29	MESHACK OCHIENG	"	9911827	MS
30	JENIFA AKELO	"	5888956	J
31	HENRY OWINO	"	9912088	HO
32	FLORENCE AYODO	"	35542549	FLAY
33	YUCABETH AKUMU	"	5888932	Y
34	SIMON AKUMU	"	22405486	SM
35	SAMMY AKUMU	"	7222251	AKUMU
36	REUBEN AGANGA	"	6956714	R
37	ROSE AWUOR	"	26988461	Rose
38	WISBORN OWINO	"	24147595	W
39	KEVIN OTIENO	"	33229745	K
40	LILIAN OUMA	"	30892866	Lum
41	WILSON ODHIAMBO	"	22940698	W
42	TOBIAS OTILA	"	23395915	T
43	NANCY ANYANGO	"	28953412	NANCY
44	PERES ODHIAMBO	"	26988782	PERES
45	MARY ABONGO	"	3869071	M
46	KEVIN OTIENO	"	24903806	K
47	KENNEDY OMONDI	"	34383789	Kenn
48	MILLICENT OMOLLO	"	13091253	M
49	GEOFREY OMOLLO	"	25827781	G



50	MARTIN OMONDI	"		
51	RUTH ODOYO	"	32298576	MAD
52	JOHN WAMBE	"	31276671	RUTH
53	MICHAEL BONYO	"	3821680	WAMBE
54	KENNEDY OGWENO	"	11113615	Mob
55	NEREAH AWINO	"	21635997	Kidama
56	WILIAM AYODO	"	32479710	AYODO
57	JOSEPH OMONGO	"	31718070	AYODO
58	DORIS SAMBA	"	4874072	DJS
59	CALVINCE OMONDI	"	5888941	OMONDI
60	JOHN OYOLLO	"	31234233	JOHN
61	HENRY OKOTH	"	6523029	JOHN
62	BENARD OGWENO	"	9402910	OKOTH
63	BENARD OTILA	"	13567553	BENARD
64	ELSA ONYANGO	"	20902426	ELSA
65	BELDINA AUMA	"	33711376	BELDA
66	ELGA OKOTH	"	5888069	ELGA
67	BONFACE ONYANGO	"	23657961	B
68	JOSHUA ODONGO	"	34416738	BONFACE
69	JANE MWALO	"	2816832	JANE
70	JOSEPH MARAO	"	0774928	JAM
71	FRANCIS MARAO	"	7282919	JOSEPH
72	DICKSON AYIEKO	"	3869181	FRANCIS
73	DAMALIS ARONI	"	8646589	DAMALIS
74	BENARD ODHIAMBO	"	6957591	DAMALIS
75	ERICK OTIENO	"	33058412	ERICK
76	JOB ODHIAMBO	"	35769444	JOB
77	SYDNEY FESTUS	"	36342628	SYDNEY
78	GODWINS ODHIAMBO	"	35033031	GODWINS
79	BRITON OCHIENG	"	36849611	GODWINS
			36894107	BRITON



REPUBLIC OF KENYA

Mobile: 0738727272/0735232323
E-mail: info@nyamira.go.ke
Website: <http://www.nyamira.go.ke>

P.O BOX 434 – 40500
NYAMIRA

When replying please quote our Reference



COUNTY GOVERNMENT OF NYAMIRA OFFICE OF THE GOVERNOR



Ref: NCG/GOV/SEN/ VOL 1 (10)

Date: 29/11/2023

The Clerk of the Senate
Clerk's Chambers
Parliament Buildings
P.O Box 41842-00100
Nairobi

RE: RESPONSE TO PETITION CONCERNING THE DESTRUCTION OF SIANY WETLAND BY SIANY RESIDENTS

Your letter ref. SEN/DSEC/LENR/3/2023(144), dated 22nd November, 2023 and our letter ref. No. NCG/GOV/SEN/ VOL. 1(08) dated 15th November, 2023 refers.

The County Government of Nyamira has prepared responses to the issues raised in the petition and I hereby respond as hereunder;

1.0 INTRODUCTION

- This is a response to a petition to the Senate on alleged destruction of Siany Wetland, L.R NO. North Mugirango / Magwagwa II/403. The petition was raised by residents living within the locality of Siany Wetland.
- The petition was received by the County Governor of Nyamira vide a letter Ref. SEN/DSEC/LENR/3/2023/ (84) dated 23rd June, 2023 from the Clerk of the Senate.
- The substance of the petition concerns destruction of Siany Wetland, located in Misambi Location of Nyamira North Sub- county in Nyamira County.

2.0 PETITIONERS PRAYERS

The petitioners in their petition pray that the Senate may: -

- i. act within its legal mandate to stop destruction of the wetland and direct that the ecosystem provided by the wetland be conserved and that the wetland should be preserved for future generations through legislative and other measures;



- ii. stop the National Land Commission and County Government of Nyamira from subdividing the wetland;
- iii. direct the County Government of Nyamira and the Ministry of Lands to fix clear and correct boundaries marked by beacons through a public participation exercise instead of the current boundaries which are single handedly fixed by prison wardens;
- iv. direct NEMA to work with communities to restore the wetland and springs emanating from it to their original status through environmentally friendly activities which may be carried out by the residents around the land, with support from the County Government and other stakeholders; and
- v. Constitute an environment committee to URGENTLY visit the wetland and witness the destruction and its effect on communities around it and downstream.

3.0 SIANY WETLAND HISTORY

- Siany Wetland is found in Misambi Location of Nyamira North Sub- county, Nyamira County along Nyamusi- Kadongo Road. The land measures approximately 41 hectares and registered as L.R. No. North Mugirango/ Magwagwa II/ 403 (*Land search Attached- Annex 1*).
- The parcel of land was reserved by Gusii County Council, as SIANYI GRAZING AREA, on 7th august 1973. The land is thus a public land held in trust by the County Government of Nyamira
- 50 acres was allocated to Nyamira Prison, through minutes of the defunct Nyamira County Council, by a minute; *Minutes of special town Planning Committee meeting Held on 19th April 2007, in the Council Chambers at 12.00 Noon (Annex 2)*. The allocation was further confirmed by; *Minutes of a Special Town Committee Meeting Held on 19th November 2009 (Annex 3)*. But Prisons department was not issued with an *Allotment Letter*. The Prisons Department, progressed with developing infrastructure without a Physical Development Plan.
- There's an ascertained encroachment of approximately 40 acres of the wetland by members of the community for farming purposes. Esiany primary School and Magongo Dispensary.

Dispute;

- There is an existing dispute between the local community and the Prisons department of the Ministry of Interior and Coordination of National Government. Members of the community claim ownership of the same portion of land that the Prisons department is occupying. The dispute has been pending in Land and Environment Court since 1997, Case File No. 95 of 2021 formerly ELC No. 1225 of 2016 at Kisii law courts

between one James Oriango Oriango vs the County Government of Nyamira (1st respondent), Zacharia Odida Kisimba (2nd respondent), Patric Monari (3rd respondent), Hudson Nyali (4th respondent) and the Attorney General (5th respondent). The case is still pending in court

3.1 Natural Features of the Wetland

- The land is characterized by a high water table with some areas with minimal human activities being marshy.
- The wetland still has its natural vegetation especially reeds although in some areas the reeds had been removed to pave way for farming activities. There are no indigenous trees on the wetland or fresh evidence depicting destruction of indigenous trees.
- A stream whose catchment is on the periphery of the wetland cuts across the Siyani Wetland. The banks of the stream are protected in some areas but in other areas the vegetation has been cleared. Near the upcoming prison block, the stream has been diverted to pave way for construction but the diversion has not interfered with downstream flow.

3.2 Human Activities on the Wetland

The following human activities are noticeable on the wetland: -

Infrastructure

The Prisons department has put up temporal offices and staff quarters made of iron sheets. The institution has also put up a permanent structure measuring approximately 6 meters by 4 meters for housing 33 inmates. The institution is also in the process of putting up the main prison block which started in 2012 but stalled. The Prisons department was issued with an Environmental Impact Assessment licence by NEMA in February 2013 after submission of an Environmental Impact Assessment Report

- The wetland also hosts Esyani Primary School that has an administration block and classrooms. There's no evidence that the construction of the school was approved by NEMA.

Farming

- Farming is the predominant human activities on the wetland and its surrounding environs with the prison having set aside 20 acres for farming. The main crops grown by the institution are maize, millet, sorghum, sweet potatoes and vegetables. It was however, noted that the farm lands are scattered all over the 50-acre parcel of land sometimes leading to encroachment to sensitive environmental areas.



- Land encroached on by members of the community has been converted to farm land without provision for environmental conservation. Where trees have been planted they are mainly the blue gum (*Eucalyptus saligna*) species.

Livestock Grazing

- Communities neighboring the wetland keep livestock though on limited scale and rely on the wetland for pasture. Tethering is the common practice though there is no noticeable environmental degradation that can be associated with livestock keeping.

4.0 WETLAND CONSERVATION EFFORTS

The prison has initiated various measures aimed at protecting the wetland. The measures are as follows;

Protection of a Water Spring

The institution has protected a spring within the wetland which supplies water for domestic purposes to both the communities and the institution. The stream also augments the spring's water and this has gone a long way in conserving the wetland.

Tree Nursery

Nyamira Prison has established a tree nursery within the wetland which is managed by the inmates. The nursery has 1000 different varieties of fruit seedlings and 5000 assorted species of both indigenous and exotic tree species. Fruit trees are paw-paw, avocado, and guavas. Cyprus and blue gum are the main exotic tree species found in the nursery while *Markamia lutea* is the salient indigenous species in the nursery. Bamboo and coffee seedlings are also propagated by Nyamira Prison.

Afforestation Programmes

- The Prisons department has initiated a number of afforestation programmes on the wetland. Between September 2022 and June 2023 the institution managed to plant 9000 assorted tree seedlings on the wetland.

5.0 RESPONSE TO THE PRAYERS SOUGHT

Prayer 1: The petitioner pray that the Senate may act within its legal mandate to stop destruction of the wetland and direct that the ecosystem provided by the wetland be conserved and that the wetland should be preserved for future generations through legislative and other measures;

Response

It is important to note that that the Prisons department was allocated the land by the defunct Nyamira County Council. However, the Physical Development Plan has not been issued or approved through the Nyamira County Government. purpose stakeholders such as the Ministry of Lands and the National Land Commission shall be brought on board to advice on a necessary recourse.

Prayer 2: The petitioners pray that the Senate stop the National Land Commission and County Government of Nyamira from subdividing the wetland.

Response

County Government of Nyamira has not done any Physical Development Plan for the disputed land, as such subdivision has not been done.

Prayer 3: That the Senate direct the County Government of Nyamira and the Ministry of Lands to fix clear and correct boundaries marked by beacons through a public participation exercise instead of the current boundaries which are single handedly fixed by prison wardens.

Response

The County Government of Nyamira has started the process of surveying and beaconing of the Wetland (refer to the attached Site Map Coordinates).

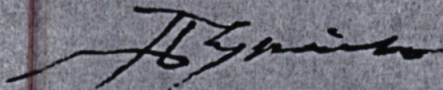
Additionally, the County Government of Nyamira in collaboration with NEMA and the Water Resources Authority shall develop a comprehensive Environmental Management Plan (EMP) for the Wetland. The EMP will identify relevant conservation measures including demarcation of the wetland, riparian reserves, removal of hazardous tree species such as eucalyptus, taking lead in planting of appropriate indigenous tree species and create awareness within the community on proper agricultural practices within the wetland's catchment.

Prayer 4 The petitioner pray that the Senate directs NEMA to work with communities to restore the wetland and springs emanating from it to their original status through environmentally friendly activities which may be carried out by the residents around the land, with support from the County Government and other stakeholders, constitute an environment committee to URGENTLY visit the wetland and witness the destruction and its effect on communities around it and downstream. Further to this, NEMA will in accordance to Section 72 of Environmental Management and Coordination Act, EMCA initiate a process for the gazettelement of the wetland.



Response

The County Government of Nyamira formed and gazette the Nyamira County Environmental Committee, in which NEMA and National Government Administration Officers (NGAO) are members. The committee through the Chairman, will endeavor to restore the wetland as will be outlined in the Wetland Environmental Management Plan (EMP) that will be developed.



Amos Kimwomi Nyaribo
Governor
Nyamira County



CC:

CECM - Environment, Water, Energy, Mining, Climate Change
and Natural Resources
CECM – Land, Housing, Physical Planning & Urban Development
Nyamira County

Sen. Mogeni Erick Okong'o, MP
Senator, Nyamira County
Parliament Buildings
Nairobi

Annex 1

MAP SHEET
6

Form LRA-85

(r.84(3))

REPUBLIC OF KENYA

THE LAND REGISTRATION ACT

THE LAND REGISTRATION (GENERAL) REGULATIONS, 2017

CERTIFICATE OF OFFICIAL SEARCH

NO WITH 28TH
TITLE NO. MOKIMBO/MABWA BOA II / 403
SEARCH NO.

the 28th day of NOV 2023 the following were the subsisting entries on the register of the above-mentioned title:

Part A - Property Section (easements, etc.)
RESERVED FOR SIAMSI GRAZING AREA

Nature of title ABSOLUTE

Approximate area 41.0 HA

Part B - Proprietorship Section
28-73 NYAMIRA COUNTY COUNCIL

Name and address of proprietor
2-30-11-2005 TITLE DEEDS ISSUED

Prohibitions, cautions and restrictions

Part C - Encumbrances Section (leases, charges, etc.)

The following applications are pending:

The following certified copies are attached as requested:

the 28th day NOV 2023

Signed by the Registrar
M. M. Ojwang 277
[Signature]



force by the Secretary to the Cabinet and Head of Public Service on December 19, 2012 to fast track the resettlement programme of IDPs and Forest Evictees. The Members of the Taskforce were mandated to inspect and assess suitability of land offered for sale to Government and make recommendations for purchase.

The role of the Ministry of Lands in the resettlement programme was to value, purchase, plan and survey land for the Internally Displaced Persons (IDPS) and Forest Evictees already profiled.

The profiling and placement of IDPs on these farms was the Mandate of the Ministry of Devolution and Planning (Former Ministry of State for Special Programmes). They also set up and managed the IDP Camps from there they would organize and transport them to the purchased farms for resettlement. The then Ministry of State for Special Programmes would identify and determine which IDPs would be placed on which farm.

Allocation of Land to the IDP and Forest Evictee Households

Balloting was undertaken as a means of assigning farm and residential plots to IDP and Forest Evictee Households. The approach of balloting was adopted as a way of ensuring transparency and fairness in assigning farm and residential plots to IDPs and Forest Evictees. During balloting most of the information of the beneficiary is captured such as Name of beneficiary; ID No, Gender; Age; Household size; Plot No. In addition, a passport size photo of the individual is taken. This information is used when preparing the Title Deed for the beneficiary.

Shift of Government Policy on Land Purchase

In August, 2013, the Government issued an executive Order that land purchase for the resettlement exercise be stopped forthwith and a cash payment program be adopted. The number of IDPs and Forest Evictees who had been resettled by the time the directive was issued was 6,656 and 1,124 respectively leaving a balance of 969 IDPs and 5,983 Forest Evictees to be given cash in lieu of allocation of Government Land.

According to the Prevention, Protection and Assistance of Internally Displaced Persons (IDPs) and Affected Communities Act 2012, the responsibility over IDP matters was given to the National Consultative Coordinating Committee (NCCC).

Forthwith, the Mandate to profile the integrated IDPs and determination of how their issues are addressed is executed by the NCCC board. The Ministry of Lands, Public Works, Housing and Urban Development is a member of the Committee.

The program for compensating IDPs and Forest Evictees who were living in camps through cash payments by the National Consultative Coordinating Committee was completed in 2016. The NCCC remained with the task of profiling and compensating the integrated IDPs and Forest Evictees throughout the Country.

This and several other groups of integrated IDPs have made many petitions to various Government Ministries and Agencies requesting for resettlement.

Notwithstanding the enactment of the Prevention, Protection, and Assistance of Internally Displaced Persons and Affected Communities Act 2012, this Category of IDPs have not been compensated. According to this Act the Mandate of the profiling

and compensation of the IDPs was transferred to the National Consultative and Coordination Committee on internally displaced Persons(NCCC). In the year 2016, the NCCC profiled 83,550 PEV integrated IDPs and started a compensation program. The petitioning group may be among those who had been profiled.

However, upon the expiry of the NCCC board term, it was not renewed and its records were handed over to the Ministry of Interior and National Administration. The compensation figures paid at different times was for different purposes, but not discriminatory as alleged by the petitioners. The amounts of Kshs. 10,000, 25,000 and 50,000 were paid immediately after the 2007/2008 post-election violence to assist the IDPs in the camps who wanted to return back to their homes commonly known Operation Rudi Nyumbani.

The Kshs. 400,000/= was given to the IDPs who forfeited allocation of land in lieu of cash payment. Later because of lack of funds the cash payment was reduced to Kshs. 200,000/=

Information on the compensation money in bank accounts that the vetted IDPs were awarded can only be provided by Special Programs under the State Department for Devolution.

The Government purchased 36 and 45 farms in Nyandarua and Laikipia Counties respectively, for settlement of IDPs. All that land was allocated through balloting. Due to lack of funds, the land is yet to be planned, surveyed and demarcated in order to regularize ownership. The Ministry has prepared a budget and once funds are

availed the exercise will commence. Annexure 13 is a copy of the 36 farms purchased in Laikipia County.

The Ministry has not received any complaints on the alleged grabbing of land allocated to IDPS.

ISSUES FOR CONSIDERATION

- I). *Whether it is necessary to reconstitute the NCCC Board to look into such claims to enable resettlement and compensation of the IDPs as in the aforementioned Petition*

The petitioners submitted evidence as follows:

The Petitioners submitted that the NCCC Board has not been able to offer a solution on their resettlement and compensation since the committee lacks the mandate as stipulated in the Prevention Protection and Assistance to Internally Displaced Persons and Affected Communities Act No. 56 of 2012.

The Ministry responded as follows:

According to the Prevention, Protection and Assistance of Internally Displaced Persons (IDPs) and Affected Communities Act 2012, the responsibility over IDP matters was given to the National Consultative Coordinating Committee (NCCC).

Forthwith, the Mandate to profile the integrated IDPs and determination of how their issues are addressed is executed by the NCCC board. The Ministry of Lands, Public Works, Housing and Urban Development is a member of the Committee.

The program for compensating IDPs and Forest Evictees who were living in camps through cash payments by the National Consultative Coordinating Committee was completed in 2016. The NCCC remained with the task of profiling and compensating the integrated IDPs and Forest Evictees throughout the Country.

This and several other groups of integrated IDPs have made many petitions to various Government Ministries and Agencies requesting for resettlement.

Notwithstanding the enactment of the Prevention, Protection, and Assistance of Internally Displaced Persons and Affected Communities Act 2012, this Category of IDPs have not been compensated. According to this Act the Mandate of the profiling and compensation of the IDPs was transferred to the National Consultative and Coordination Committee on internally displaced Persons(NCCCC). In the year 2016, the NCCCC profiled 83,550 PEV integrated IDPs and started a compensation program. The petitioning group may be among those who had been profiled.

However, upon the expiry of the NCCCC board term, it was not renewed and its records were handed over to the Ministry of Interior and National Administration.

Committee Observation

The Committee observes that the NCCCC Board could be reconstituted for a final term for them to clear all the pending IDP Claims once and for all rather than the mandate remaining at the Ministry of Interior and National Administration which has not been able to handle to finalize on the matter of the IDPs over the years.

II) Whether justice was given to the IDPs in terms of the alleged disbursement of compensation of Kshs. 400,000, Kshs. 200,000, Kshs. 150,000, Kshs. 100,000, Kshs. 50,000, Kshs. 25,000 and others Kshs. 10,000 per household;

The petitioners submitted evidence as follows:

There was bias in the distribution of the disbursement of compensation of Kshs. 400,000, Kshs. 200,000, Kshs. 150,000, Kshs. 100,000, Kshs. 50,000, Kshs. 25,000 and others Kshs. 10,000 per household. The Petitioner alleged that the government allocated money for compensation of the already vetted IDPs, which was never released since 2017.

The Ministry responded as follows

The compensation figures paid at different times was for different purposes, but not discriminatory as alleged by the petitioners. The amounts of Kshs. 10,000, 25,000 and 50,000 were paid immediately after the 2007/2008 post-election violence to assist the IDPs in the camps who wanted to return back to their homes commonly known Operation Rudi Nyumbani.

The Kshs. 400,000/= was given to the IDPs who forfeited allocation of land in lieu of cash payment. Later because of lack of funds the cash payment was reduced to Kshs. 200,000/=

Information on the compensation money in bank accounts that the vetted IDPs were awarded can only be provided by Special Programs under the State Department for Devolution.

Committee Observation

The committee observes that lack of funds cannot justify the reduction of an earlier approved allocation of Kshs. 400,000 to Kshs. 200,000 for the IDPs and that proper valuation should have been done and the justified amounts paid to the IDPS.

III) Whether there were any parcels of land bought through social trust fund for settling IDPs especially in Laikipia County

The petitioner submitted evidence as follows:

The Petitioner claimed that the government had bought land for resettlement of IDPs through the social trust fund, of which the identification, recovery and resettlement was not implemented.

That the multiple hundreds and hundreds parcels of land especially in Laikipia County as well as other counties and especially those bought during the reign of the former Minister for Special Programs, Hon. Esther Murugi and that the land having been alienated and grabbed be recovered after identification since they were solely bought as Social Trust

Fund (STF Land) according to the lands Registry Records. After completion of the recovery these land parcels be given to the IDPs beneficiaries.

The Ministry responded as follows

The Government purchased 36 and 45 farms in Nyandarua and Laikipia Counties respectively, for settlement of IDPs. All that land was allocated through balloting. Due to lack of funds, the land is yet to be planned, surveyed and demarcated in order to regularize ownership. The Ministry has prepared a budget and once funds are availed the exercise will commence. Annexure 13 is a copy of the 36 farms purchased in Laikipia County.

Observations of the Committee

The Committee appreciates the effort the Ministry is putting towards the resettlement of the IDPS and prevails upon the Ministry to prioritize the planning, surveying and demarcating of the already purchased in order to regularize ownership the resettlement of the said IDPs. The process should be fastened to lessen the suffering of the IDPs.

CHAPTER 5

COMMITTEE OBSERVATIONS

Prayer One:

The Committee puts in place elaborate and proper mechanism to give the mandate to the NCCC Board to enable it accomplish its primary mandate as stipulated in the Prevention Protection and Assistance to Internally Displaced Persons and Affected Communities Act No. 56 of 2012.

The Committee observes that it would be prudent for the Ministry of Lands Housing Public Works and Urban Development and the Ministry of Interior and National Administration to spearhead the establishment of the NCCC Board to put to an end once and for all the matter of IDPs in the Country.

Prayer Two:

The Committee recommends the release of the money awarded for compensation of the vetted IDPs which is overdue since 2017.

The Committee observes that there should be any money that is yet to be given to the aggrieved IDPs that the process of allocating and making the payments be done the soonest time possible.

Prayer Three:

The Land, Environment and Natural Resources Committee effects the identification, recovery and settlement of the IDPs on the parcels of land bought through social trust fund for settling IDPs.

The Committee observes that the purchased 36 and 45 farms in Nyandarua and Laikipia

Counties respectively, for settlement of IDPs be fastened. Since the matter was agreed to a while back, the Committee expects the MoLPP to have budgeted for the funds required in the budget for the FY 2024/25 to facilitate the planning, surveying and demarcation to regularize ownership by the IDPs of the purchased 36 and 45 farms in Nyandarua and Laikipia Counties respectively.

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PETITION CONCERNING DESTRUCTION OF SIANY WETLAND

Honourable Chair, the Senate Standing Committee on Land, Environment and Natural Resources has been considering the petition by the residents of Siany regarding the destruction of Siany Wetland.

I state as follows;

Honourable Chair, Nyamira Prison is situated at Misambi Location of Nyamira North Sub- County, Nyamira County along Nyamusi- Kadongo Road. The facility was established in the year 2009 amongst other stations like Rachuonyo, Vihiga Kehancha and many others. The station was established to enable decongestion of Kisii and Homabay Prisons by absorbing petty offenders from the neighboring courts like Oyugis and Kosele in Homabay County and Nyamira courts from Nyamira County.

(3) Mr. Roth
Please deal
12/02/24

Honourable Chair, the land in dispute measures approximately 104 acres and is registered as L.R. No. North Mugirango/ Magwagwa II/ 403, a public land held in trust by the then Gusii County Council before allocating some portions to various public institutions.

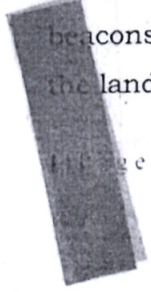
The Prison department was allocated 20.23ha(50acres) of the 104acres in the year 2009 through Council Minutes of 19th November.

Other allocations by the COUNCIL include;

- i) Esiany Primary School
- ii) Magongo Primary and Secondary Schools
- iii) Esiany/Magongo Dispensary

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(DSCS)

All these allocations have been surveyed by the County Surveyor and beacons erected at respective boundary points. The remaining acreage of the land is being used by the community for farming activities.





2.1 The land with location of the prison, schools and the dispensary

The Prison moved in and started construction immediately after allocation. During this time the schools and the Dispensary had been constructed and were in full operation. Currently there are temporary buildings (mabati houses) serving as office block and staff houses. There is also a permanent block for the 33 inmates and uncompleted prisoners ward which is undergoing construction.

Prison has set aside a large portion of their portion for farming. The main crops grown by the institution are maize, millet, sorghum, sweet potatoes and vegetables.

Honourable Chair, several measures have been put in place by the Prison to conserve the environment, these include;

- a) **Tree Nursery;** Prison also runs a tree nursery of different varieties of fruits and seedlings as rehabilitation measures and for training of the inmates. There also existing assorted species of indigenous and exotic tress seedlings.
- b) **Afforestation Programs;** Nyamira Prison has managed to plant over 9,000 assorted tree seedlings within the area as a way of conserving the environment. This tree cover effort has been frustrated by a few local community members who have been uprooting these seedlings.
- c) **Donation of Tree Seedlings;** The Prison has so far donated a total of 8,000 assorted seedlings to learning institutions and willing members of the community for planting as a way of conserving the environment.
- d) **Protection of water source;** The Prison has conserved a stream that originates from the area which supplies water for domestic use to the facility and the general community down the stream.
- e) **Encourage Fruit Farming;** Nyamira Prison has planted hass avocados on a portion of their parcel of land. In the past years, Nyamira Prison managed to supply 19000 tree seedlings of hass avocado to farmers within the region with an aim to improve the people's income.

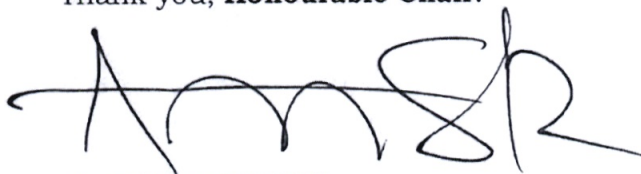
Honourable Chair, in view of the above, I state the following;

1. The allocation of the land to Prison was a decision of the Council meeting through Council Minutes of 19th November, 2009.
2. The prison is a major conservator of the environment taking into consideration of the activities that are done by the inmates within the facility.
3. The local community were already carrying out their farming activities on this land prior to allocation of a portion of it to prison, an activity that might have interfered with the vegetation cover. There were no any indigenous trees when the Prison took possession of the allotted portion.
4. The building under construction is within the premises of the Prison facility and therefore it has no effect on the wetland as claimed. The other constructions are Government facilities whose progressions depend on the allocation of funds by the Government and therefore they are not stalled because of water as claimed.
5. For any set up of a prison there must be at some point warders and inmates. Nyamira being a prison facility and before admission of inmates to the facility, officers must be posted to undertake the construction of the required infrastructure and also to safeguard the property.
6. The farming activities at Nyamira Prison are for prison use and not for commercial use/benefit for any officer.
7. The prison has two pit latrines which are in good condition without any spillage. The prisoners ward has toilets which are drained into a septic tank which is also in good condition. From all these there

is no spillage of sewerage to the river from the Prison facility. Prison also has dug pits for other waste which are burnt occasionally.

8. The land boundary beacons were fixed by the County Survey of Nyamira County and not by the Prison warders. The Prison warders at Nyamira are not land experts and therefore could not put beacons on the land. They only accompanied the Surveyor to witness the positions of the beacons when he visited the land for demarcation exercise which was successful.
9. The land was a public land preserved for public use and all the allottees are public entities and never private.
10. The existence of these public facilities within this land is to serve the local community by making the services readily available to the community.
11. The activities done by the prison are all aimed at conserving the environment and not destructive in nature.

Thank you, **Honourable Chair.**



KITHURE KINDIKI

CABINET SECRETARY FOR INTERIOR
AND NATIONAL ADMINISTRATION

5th FEBRUARY, 2024

ANNEX III –
PETITIONER
SUBMISSIONS

The Clerk of the Senate
Parliament Buildings
P.O. Box 41842-00100
NAIROBI



Email: senate.petitions@parliament.go.ke

RE: PETITION TO THE SENATE CONCERNING DESTRUCTION OF 41 HA SIANY WETLAND-L.R. NO. NORTH MUGIRANGO/MAGWAGWA II/403

We, the undersigned, Citizens of the Republic of Kenya, and residents of Misambi Sub-location in Nyamira County; DRAW the attention of the Senate to the following:

1. The wetland is a community land situated in Misambi Sub-location in Nyamira County. Our grandfathers set it aside for grazing and that is why the then trust land was registered as Common Grazing Area under Gusii County Council. It is a major water catchment area in the region and is a source of several water springs which are sources of fresh and clean safe water used by communities up and down stream for drinking and other domestic use.

1.1 THAT degradation of the wetland is being carried out through activities of the Kenya Prisons Service and a section of community members; and the existence of a primary school on the land;

1.2 THAT the destruction of Siany Wetland was brought to the attention of the National Environment Management Authority (NEMA), Water Resources Management Authority (WRMA) and the Ministry of Environment in 2010. Subsequently NEMA stopped construction of the main prison building whose photograph is herein attached and issued Environmental Restoration Order in the same year. The building was put up along the edge of Kamoti Water Spring as can be seen from the attached photos. But NEMA later on 20th February 2013 issued the Kenya Prisons Service with a conditional Environmental Impact Assessment (EIA) license valid for 24 months from the date of issue, based on EIA report prepared in May 2012. It is not clear which part of the wetland the license was particularly issued for construction(s) to take place on. But we notice and there is evidence that since that time buildings on parts of the land (see attached photos) have been started but failed to come up due to water, nature of the land and the springs; *Attached*

1.3 THAT we have noted that the Kenya Prisons Service warders on the wetland are currently carrying out renovation and completion exercise of the building described above- the building whose construction was stopped by NEMA 12 years ago. We have further noted that the Kenya Prisons service has brought into the land some prisoners who are currently housed in a makeshift building on the land;

1.4 THAT prison warders have been on the wetland for 14 years. Led by Mr. Mongare Sitino of PF No. 95015383, they cut down indigenous trees and natural undergrowth on the wetland to give way for personal commercial cultivation among themselves until last year when some prisoners were brought in. The main activity being carried out by the prisoners is cultivation. As a result of deforestation and cultivation, the warders have systematically destroyed flora and fauna of a giant wetland. Water springs are gradually drying up. The wetland and springs on it are completely different from what it used to be 15 years ago. Presently there is a deliberate

Petition to the Senate by Siany Residents Concerning Degradation of Siany Wetland

attempt by the warders to divert the course of the springs as you can see from some of the photos attached. ~~Attached~~

2. Water springs on the wetland come together to form Konyando Water Stream which pores its water into Awach River. Water from the springs on the wetland, Konyando Water Stream and Awach River is widely used by a large population of people including schools, and healthcare facilities. However, the water sources are being polluted by faeces which is directly discharged on the water; plus, other waste materials as a result of human activities.

2.1 THAT the Government of Kenya is currently dealing with adverse effects of climate change. It is not logical that the same Government can engage in massive deforestation and destruction of environmentally sensitive riparian land.





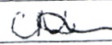

3. THAT, we have made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response. ~~Attached~~

4. THAT, none of these issues raised in this Petition is pending in any court of law, Constitutional or any other legal body.

WHEREFORE, your humble petitioners pray that the Senate-

1. May act within its legal mandate to stop destruction of the wetland and direct that the ecosystem provided by the wetland be conserved and that the wetland should be preserved for future generation through legislative and other measures;
2. May stop the National Land Commission and County Government of Nyamira from subdividing the wetland;
3. May direct the County Government of Nyamira and the Ministry of Lands to fix clear and correct boundaries marked by bacons through a public participation exercise instead of the current boundaries which were single handedly fixed by prison waders;
4. May direct NEMA to work with communities to restore the wetland and springs emanating from it to their original status through environmentally friendly activities which may be carried out by the residents around the land, with support from the County Government and other stakeholders;
5. May constitute an environment committee to URGENTLY visit the wetland and witness the destruction and its effect on communities around it and downstream.

Dated this 28th day of April 2023.

NO.	NAME	ADDRESS	I.D. NUMBER	SIGNATURE
1	SAMWEL OWINO ORIANGA	P.O. BOX 39, KADONGO, TEL. 0711 527 225	1368231	
2	REMJIUS ODHIAMBO	"	33094819	
3	WAREN ALANDO	"	23308663	
4	ISAYA YOGO WAMBE	"	3821817	
5	PERES JUMA	"	5299713	PERES
6	CHRISTINE NASIKE	"	30832906	
7	LINET AKOTH	"	36160509	

8	JOSPHAT SAOKE	"	23340711	<i>Saoke</i>
9	EMMANUEL SAOKE	"	24065626	<i>ESM</i>
10	VICTOR OMONDI	"	29154878	<i>VB</i>
11	GILBERT SAMBA	"	24147585	<i>GS</i>
12	BENTA ATIENO	"	24353429	<i>BA</i>
13	DANIEL OYOLO	"	5889054	<i>DO</i>
14	SYPRINE OPIYO	"	3686110	<i>Spy</i>
15	MATHEW ONYANGO	"	29851709	<i>MO</i>
16	EDWIN OKOTH	"	27328892	<i>EO</i>
17	SYPHROSE AUMA	"	32689489	<i>SA</i>
18	MICHAEL OKINDO	"	21855490	<i>MO</i>
19	DORINE ADHIAMBO	"	9548479	<i>DORINE</i>
20	PAMELA ADHIAMBO	"	13091204	<i>PAMELA</i>
21	PETER OLUOCH	"	2801793E	<i>PO</i>
22	NEREA AUMA	"	1603066	<i>NA</i>
23	TOBIAS NYALALA	"	30002424	<i>TO</i>
24	AKUMU NYACHOKA	"	4813938	<i>AK</i>
25	GEORGE OTIENO	"	24497633	<i>GO</i>
26	HELLEN KAINDO	"	2599612	<i>HK</i>
27	PAUL ORENGO JOHN	"	27976223	<i>POJ</i>
28	PETER GANGA	"	31436998	<i>PG</i>
29	MESHACK OCHIENG	"	9911827	<i>MO</i>
30	JENIFA AKELO	"	5888956	<i>JA</i>
31	HENRY OWINO	"	9912088	<i>HO</i>
32	FLORENCE AYODO	"	35542549	<i>FA</i>
33	YUCABETH AKUMU	"	5888932	<i>YA</i>
34	SIMON AKUMU	"	22405486	<i>SA</i>
35	SAMMY AKUMU	"	7222251	<i>SA</i>
36	REUBEN AGANGA	"	6956714	<i>RA</i>
37	ROSE AWUOR	"	26988461	<i>RAW</i>
38	WISBORN OWINO	"	24147595	<i>WO</i>
39	KEVIN OTIENO	"	33229745	<i>KO</i>
40	LILIAN OUMA	"	30892866	<i>LO</i>
41	WILSON ODHIAMBO	"	22940698	<i>WO</i>
42	TOBIAS OTILA	"	23395915	<i>TO</i>
43	NANCY ANYANGO	"	28953412	<i>NANCY</i>
44	PERES ODHIAMBO	"	26988782	<i>PERES</i>
45	MARY ABONGO	"	3869071	<i>MA</i>
46	KEVIN OTIENO	"	24903806	<i>KO</i>
47	KENNEDY OMONDI	"	34383789	<i>Kenny</i>
48	MILLICENT OMOLLO	"	13091253	<i>MO</i>
49	GEOFFREY OMOLLO	"	25827781	<i>GO</i>

50	MARTIN OMONDI	"	32298576	Martin
51	RUTH ODOYO	"	31276671	RUTH
52	JOHN WAMBE	"	3821680	WAMBE
53	MICHAEL BONYO	"	11113615	Michael
54	KENNEDY OGWENO	"	21635997	KENNEDY
55	NEREAH AWINO	"	32479710	NEREAH
56	WILIAM AYODO	"	31718070	AYODO
57	JOSEPH OMONGO	"	4874072	JOSEPH
58	DORIS SAMBA	"	5888941	DORIS
59	CALVINCE OMONDI	"	31234233	CALVINCE
60	JOHN OYOLLO	"	6523029	JOHN
61	HENRY OKOTH	"	9402910	HENRY
62	BENARD OGWENO	"	13567553	BENARD
63	BENARD OTILA	"	20902426	BENARD
64	ELSA ONYANGO	"	33711376	ELSA
65	BELDINA AUMA	"	5888069	BELDINA
66	ELGA OKOTH	"	23657961	ELGA
67	BONFACE ONYANGO	"	34416738	BONFACE
68	JOSHUA ODONGO	"	2816832	JOSHUA
69	JANE MWALO	"	0774928	JANE
70	JOSEPH MARAO	"	7282919	JOSEPH
71	FRANCIS MARAO	"	3869181	FRANCIS
72	DICKSON AYIEKO	"	8646589	DICKSON
73	DAMALIS ARONI	"	6957591	DAMALIS
74	BENARD ODHIAMBO	"	33058412	BENARD
75	ERICK OTIENO	"	35769444	ERICK
76	JOB ODHIAMBO	"	36342628	JOB
77	SYDNEY FESTUS	"	35033031	SYDNEY
78	GODWINS ODHIAMBO	"	36849611	GODWINS
79	BRITON OCHIENG	"	36894107	BRITON

DESTRUCTION OF SIANY WETLAND

LR NO. NORTH MUGIRANGO/MAGWAGWA II/403: DOCUMENTS SUPPORTING PETITION

1. **Confirmation that the land is a community land set aside for communal grazing and other community needs:**
 - a) Green card obtained in 1985
 - b) 2 searches obtained on 9th May 1994 and 24th April 2007.
 - c) As cited in criminal case Number 2992 of 1985
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 - d. Inability of Kenya prisons to complete buildings on the land due to water as shown by photos marked SIANY 6 and SIANY 15.
 - e. Other photos showing general condition of the wetland include:
 - SIANY 3
 - SIANY 9
 - SIANY 11
 - SIANY 13
 - SIANY 7
 - f. Land parcel Registration No. North Mugirango/Magwagwaii 403 is typically a swampy land with permanent and seasonal water streams.
 - It is dominated by riparian vegetation characterized by hydrophilic plants.
 - g. Prison warders are diverting the course of Kamoti water springs as is shown by SIANY 15.

Anyim ID 7223661
28/06/2023

3. Efforts made by community members and stakeholders to have environmental matters resolved:

- a) Letters addressed to NEMA Ministry of Environmental and Ombudsman dated:
- 28th March, 2011 (NEMA)
 - 18th April, 2011 (Ministry)
 - 8th May, 2012 (NEMA)
 - 23rd May, 2012 (NEMA)
 - 1st November, 2018 (Ombudsman)
 - 17th January, 2019 (Reply from Ombudsman)
- b) Peaceful demonstration by community members.
- The star Newspaper of 20th May 2011, page 13.

4. Other documents:


- a) Residents and Kenyans learnt from the newspapers (DN of March 31, 2007) that Kenya prisons had acquired 104 acres (Siany wetland) for construction of a new prison and had already spent Kshs. 25 Million in housing project. There was nothing on ground at that time -an indication that the money was lost through corruption in the name of construction of the prison.
- b) Environmental Impact Assessment Study Report dated May 2012 with several misrepresentations and fake documents.
- c) Original diagram of the land dated 30th April, 1987.

PRESENTED BY:

JAMES AYIEKO

COMMUNITY MEMBER, ID 7223661

TEL: 0721 441 289


28/06/2023

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28/06/2023

The Clerk of the Senate
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Petition to the Senate by Siany Residents Concerning Degradation of Siany Wetland

attempt by the warders to divert the course of the springs as you can see from some of the photos attached. ~~Attached.~~

2. Water springs on the wetland come together to form Konyando Water Stream which pores its water into Awach River. Water from the springs on the wetland, Konyando Water Stream and Awach River is widely used by a large population of people including schools, and healthcare facilities. However, the water sources are being polluted by faeces which is directly discharged on the water; plus, other waste materials as a result of human activities.

2.1 THAT the Government of Kenya is currently dealing with adverse effects of climate change. It is not logical that the same Government can engage in massive deforestation and destruction of environmentally sensitive riparian land.




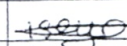
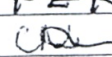

3. THAT, we have made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response. ~~Attached~~

4. THAT, none of these issues raised in this Petition is pending in any court of law, Constitutional or any other legal body.

WHEREFORE, your humble petitioners pray that the Senate-

1. May act within its legal mandate to stop destruction of the wetland and direct that the ecosystem provided by the wetland be conserved and that the wetland should be preserved for future generation through legislative and other measures;
2. May stop the National Land Commission and County Government of Nyamira from subdividing the wetland;
3. May direct the County Government of Nyamira and the Ministry of Lands to fix clear and correct boundaries marked by bacons through a public participation exercise instead of the current boundaries which were single handedly fixed by prison waders;
4. May direct NEMA to work with communities to restore the wetland and springs emanating from it to their original status through environmentally friendly activities which may be carried out by the residents around the land, with support from the County Government and other stakeholders;
5. May constitute an environment committee to URGENTLY visit the wetland and witness the destruction and its effect on communities around it and downstream.

Dated this 28th day of April 2023.

NO.	NAME	ADDRESS	I.D. NUMBER	SIGNATURE
1	SAMWEL OWINO ORIANGA	P.O. BOX 39, KADONGO, TEL. 0711 527 225	1368231	
2	REMJIUS ODHIAMBO	"	33094819	
3	WAREN ALANDO	"	23308663	
4	ISAYA YOGO WAMBE	"	3821817	
5	PERES JUMA	"	5299713	PERES
6	CHRISTINE NASIKE	"	30832906	
7	LINET AKOTH	"	36160509	

8	JOSPHAT SAOKE	"	23340711	Saoke
9	EMMANUEL SAOKE	"	24065626	Emmanuel
10	VICTOR OMONDI	"	29154878	Victor
11	GILBERT SAMBA	"	24147585	Gilbert
12	BENTA ATIENO	"	24353429	Benta
13	DANIEL OYOLO	"	5889054	Daniel
14	SYPRINE OPIYO	"	3686110	Syprine
15	MATHEW ONYANGO	"	29851709	Mathew
16	EDWIN OKOTH	"	27328892	Edwin
17	SYPHROSE AUMA	"	32689489	Syphrose
18	MICHAEL OKINDO	"	21855490	Michael
19	DORINE ADHIAMBO	"	9548479	DORINE
20	PAMELA ADHIAMBO	"	13091204	PAMELA
21	PETER OLUOC	"	28017936	Peter
22	NEREA AUMA	"	1603066	Nerea
23	TOBIAS NYALALA	"	30002424	Tobias
24	AKUMU NYACHOKA	"	4813938	Akumu
25	GEORGE OTIENO	"	24497633	George
26	HELLEN KAINDO	"	2599612	Hellen
27	PAUL ORENGO JOHN	"	27976223	Paul
28	PETER GANGA	"	31436998	Peter
29	MESHACK OCHIENG	"	9911827	Meshack
30	JENIFA AKELO	"	5888956	Jenifa
31	HENRY OWINO	"	9912088	Henry
32	FLORENCE AYODO	"	35542549	Florence
33	YUCABETH AKUMU	"	5888932	Yucabeth
34	SIMON AKUMU	"	22405486	Simon
35	SAMMY AKUMU	"	7222251	Sammy
36	REUBEN AGANGA	"	6956714	Reuben
37	ROSE AWUOR	"	26988461	Rose
38	WISBORN OWINO	"	24147595	Wisborn
39	KEVIN OTIENO	"	33229745	Kevin
40	LILIAN OUMA	"	30892866	Lilian
41	WILSON ODHIAMBO	"	22940698	Wilson
42	TOBIAS OTILA	"	23395915	Tobias
43	NANCY ANYANGO	"	28953412	NANCY
44	PERES ODHIAMBO	"	26988782	PERES
45	MARY ABONGO	"	3869071	Mary
46	KEVIN OTIENO	"	24903806	Kevin
47	KENNEDY OMONDI	"	34383789	Kennedy
48	MILLICENT OMOLLO	"	13091253	Millicent
49	GEOFFREY OMOLLO	"	25827781	Geoffrey

50	MARTIN OMONDI	"	32298576	Mart
51	RUTH ODOYO	"	31276671	RUTH
52	JOHN WAMBE	"	3821680	WAMBE
53	MICHAEL BONYO	"	11113615	Maeb
54	KENNEDY OGWENO	"	21635997	Kwame
55	NEREAH AWINO	"	32479710	
56	WILIAM AYODO	"	31718070	AYODO
57	JOSEPH OMONGO	"	4874072	JOS
58	DORIS SAMBA	"	5888941	
59	CALVINCE OMONDI	"	31234233	Cal
60	JOHN OYOLLO	"	6523029	JOHN
61	HENRY OKOTH	"	9402910	OKOTH
62	BENARD OGWENO	"	13567553	Benard
63	BENARD OTILA	"	20902426	Benard
64	ELSA ONYANGO	"	33711376	ELSA
65	BELDINA AUMA	"	5888069	
66	ELGA OKOTH	"	23657961	E
67	BONFACE ONYANGO	"	34416738	Bon
68	JOSHUA ODONGO	"	2816832	Joshua
69	JANE MWALO	"	0774928	JAM
70	JOSEPH MARAO	"	7282919	JOS
71	FRANCIS MARAO	"	3869181	Francis
72	DICKSON AYIEKO	"	8646589	Dickson
73	DAMALIS ARONI	"	6957591	DAMALIS
74	BENARD ODHIAMBO	"	33058412	Benard
75	ERICK OTIENO	"	35769444	Erick
76	JOB ODHIAMBO	"	36342628	JOB
77	SYDNEY FESTUS	"	35033031	FESTUS
78	GODWINS ODHIAMBO	"	36849611	GOD
79	BRITON OCHIENG	"	36894107	Briton

EDITION: 1		PART A - PROPERTY SECTION	
OPENED: 7.8.73			
REGISTRATION SECTION	EASEMENTS ETC.		ABSOLUTE
NORTH MUGIRANGO			
MAGWAGWA II			
PARCEL NUMBER	R-S-RV-D FOR SIANYI GRAZING AREA		
403			
APPROXIMATE AREA			
41.0 Ha.			
REGISTRY MAP SHEET NO			
6			

PART B - PROPRIETORSHIP SECTION

ENTRY NO.	DATE	NAME OF REGISTERED PROPRIETOR	ADDRESS AND DESCRIPTION OF REGISTERED PROPRIETOR	CONSIDERATION AND REMARKS	SIGNATURE OF REGISTRAR
1	7.8.73	GUSII COUNTY COUNCIL	P.O. SONDU		<i>[Signature]</i>
<p><i>Certified true copy</i></p> <p><i>[Signature]</i></p> <p>REGISTRAR</p>					

TITLE BELOW THIS LINE

TITLE NUMBER	REGISTRATION SECTION	PARCEL NO.
	NORTH MUGIRANGO/MAGWAGWA II	403

OLD SONDA

PHOTO COPY

R.L. 27'

REPUBLIC OF KENYA
THE REGISTERED LAND ACT
(Cap. 300)

CERTIFICATE OF OFFICIAL SEARCH

TITLE NO. N/m MALWAHWA II 403 025/5/54
SEARCH NO.

On the 9TH day of MAY 1994 the following were the subsisting entries on the register of the above-mentioned title:

Part A—Property Section (Easements, etc.)

Nature of title ABSOLUTE
Approximate area 41.0 Hrs (Family One Point Zero) HA

Part B—Proprietorship Section

Name and address of proprietor:
1. 7-8-73 GUSU COUNTY COUNCIL P.O. SONDA

Inhibitions, cautions and restrictions:

NIL

Part C—Encumbrances Section (leases, charges, etc.)

NIL

The following applications are pending —

NIL

The certified copies requested are attached.

The fees now payable are Sh. 100.00; please detach the form below, and remit this amount and return it to me within seven days of today's date.

A stay of registration has been noted in the register.

Date 9/5/94

[Signature]
Land Registrar
2 ARZURA

TO: THE LAND REGISTRAR,

[Signature]
DISTRICT REGISTRY.

Search No.

Postal Order/Money Order/Cash for Sh. enclosed herewith.

Signature of Applicant
or his Advocate

REPUBLIC OF KENYA

THE REGISTERED LAND ACT
(Cap. 300)

APPLICATION FOR OFFICIAL SEARCH

TITLE No. MARWAGWA II / 403

To: THE LAND REGISTRAR,

NYAMIRA

DISTRICT REGISTRY.

Please supply--

- * (a) particulars of the subsisting entries in the register of the above-mentioned title;
- * (b) a certified copy of each of the following

I propose JAMES ONYANGO ORENGO proposes

and application is hereby made for a stay of registration in accordance with section 43 (1) of the Act. The written consent of the proprietor accompanies this application.

I enclose Postal Order/Money Order/Cash for Sh. 100.00.

I understand that any additional fee which is payable must be paid by me forthwith on demand.

Date 9/4/94

Signature of Applicant
or his Advocate

Postal address:

Box 126,
KADONGO

Enclosure if not applicable

The minimum fee is Sh. 100

THE REGISTERED LAND ACT
(Cap. 300)

CERTIFICATE OF OFFICIAL SEARCH

TITLE NO. N. MUGIRANGO/MAGWAGWATI/403 SEARCH NO. 0104/4/07

On the 24th day of APRIL, 2007 the following were the subsisting entries on the register of the above-mentioned title:

PART A—Property Section (Easements, etc.) RESERVED FOR SIANYI

Nature of title ABSOLUTE (GRAZING AREA)

Approximate area 41.0 HA (FOURTY ONE POINT ZERO) HA

PART B—Proprietorship Section

Name and address of proprietor:

7.8.73 NYAMIRA COUNTY COUNCIL

30.11.05 TITLE DEED ISSUED

Inhibitions, cautions and restrictions—

Part C—Easement Section (Easements, etc.)

The following applications for grants:

The certified copies requested are attached.

The fees now payable are Sh. 100/= please detach the form below and attach to it Post Order/Money Order/Bankers Cheque/Cash for that amount and return to me within seven days of today's date.

* A stay of registration has been noted in the register.

Date 24/4/2007

[Signature]
Land Registrar

*Delete if not applicable.

To: The Land Registrar,

Search No.

District Land Registry,

P.O. Box

Postal Order/Money Order/Banker's Cheque/Cash for Sh. attached hereto.

Signature of Applicant or his Advocate

REPUBLIC OF KENYA

THE REGISTERED LAND ACT
(Cap. 300)

APPLICATION FOR OFFICIAL SEARCH

TITLE NO. MAGWAGWA II/403

To: The Land Registrar,

NYAMIRA District Land Registry,

Please supply—

- (a) particulars of the subsisting entries in the register of the above-mentioned title;
- (b) a certified copy of each of the following:

I/we JAMES ONYANGO ORIANGO propose

to COURT

and application is hereby made for a stay of registration in accordance with section 43 (1) of the Act. The written consent of the proprietor accompanies this application.

Postal Order/Money Order/Bank Cheque/Cash on 100/- is attached hereto.

I understand that any additional fee which is payable must be paid by me forthwith on demand.

Date 24/4/07

[Signature]
Member of Applicant's 4th Advocate

Home address: Box 60
KADONGA

Stamp if no. apply etc

(The minimum fee is KSh. 100.)

AT KISII

OB No 20-27/8/85 CRIMINAL CASE NO. 2992 OF 1985
POLICE 5 NYAMIRA

REPUBLIC PROSECUTOR

VERSUS

- 1. SAMUEL ONDIEKI
 - 2. OYONDI SAMBAREE
 - 3. PHILIP ODERA NDIEGO
 - 4. JAMES ONYANGO
- } ACCUSED

JUDGEMENT

The accused are charged with trespass upon Private Land contrary to s.3 of the Trespass Act cap 294 Laws of Kenya.

The particulars of the offence are that the Accused Trespassed on the Land belonging to Gusii County Council No. MAGWAGWA II/403 in Nyanisi Sub Location in Kisii District of the Nyanza Province on 27/3/85.

On 27/3/85 the clerk to Gusi County Council received a report from the Assistant chief of Boigengo sub Location that 5 people had encroached upon Magwagwa II scheme 403. A letter was written to the D.O. Nyamira by the County Council to effect the arrest of the trespassers. Then the Assistant chief of Bosanyagwe Mr. Zacharia Ondinda proceeded to the land in the company of A.P. Jerry Owino (PW3). He found A1, A2 and A3 cultivating upon the county council land. He arrested them. He observed that they had encroached about 50 metres into the county council land. Later on 2/12/85 A4 was arrested from Kisii town by A.P. Silvanus Onsongo.

A1 told the court that he was arrested from his home and later on he was told that he had trespassed on county council land. A2 said that he had been to buy medicine at a trading centre when he was arrested for the alleged trespass.

A3 said that Awambi (DW5) hired him to fence for him a plot and before he started fencing the Assistant chief arrested him.

A4 said he had come to court to stand as a surety for Samwel Ondieki (A1) when he was arrested by the Assistant chief who clubbed him and asked him why he had stood as a surety for Ondieki. He was then charged with trespass.

The prosecution seem to have lost sight of the fact that this case is very serious since the subject matter is land. Therefore the investigating officer did not see need for thorough security of the case before it was brought to court.

X There is no evidence to show that the county council land was fenced so that nobody could ~~the~~ mistake its boundaries. It is therefore doubtful whether the accused were in any position to know that they were encroaching over council land. The accused appear to have been arrested on the assumption that the accused were trespassing upon county council land.

The accused were arrested in August 1985 except A4 who was arrested in December, 1985. The Deputy clerk to the council took the surveyor to the land much later after he had visited the land in December 1985. The accused were therefore arrested before it was ascertained that they had actually encroached upon council land.

X There is no evidence to show that the council land had fixed boundaries marked by beacons and the accused do not seem to have been shown the beacons or the fixed boundary. Before the accused were arrested they should have been satisfied that they had crossed the boundaries of their land or that they were encroaching on council land.

X Evidence was not adduced by the prosecution to show how the council acquired the land. This was very necessary to show that the council had acquired legal possession of the land in question for value and nobody else had any interest in the land. Part of the land claimed by the council might have belonged to the accused before the council assumed possession of it.

~~If the council took part of the land of the accused and did not pay compensation for it the accused would still be having some interest in the land. They would therefore have reasonable excuse for stepping on the land. It was not therefore shown whether the accused had no claim of right over the land.~~

A4 was arrested on 2/12/65 in Kisii town. He was not present on the land when A1, A2 and A3 were arrested. His mother told the court that the land in respect of which he was arrested belongs to her. Moti (DW5) told the court that the land in respect of which A3 was arrested is his land. Therefore the county council appears not to have acquired absolute ownership of the land in question from the original owners.

The dispute between the county council and the accused is purely of land nature. It should have been processed through the land tribunal so that ownership of the land in question could be determined. ~~here~~ registration of the land by the county council does not solve the question of ownership. The council may have acquired registration of the land without the knowledge of those who had interests in it. It was also necessary for the public to be shown the boundaries of the county council plot so that those neighbouring the plot can not encroach upon it.

On the foregoing the court is doubtful whether the accused committed the alleged trespass. The case is therefore dismissed and the accused must be set free.

S. MUKABWA, D.M.I.

ORDER:

Case dismissed. Accused are acquitted u/s 215 C.P.C.

S. MUKABWA, D.M.I.

19/11/67.

[Signature]
S. MUKABWA, D.M.I.

5/11/88

IN THE SENIOR RESIDENT MAGISTRATE'S COURT

AT KISII

CRIMINAL CASE NO. 2992 OF 1985

REPUBLIC PROSECUTOR

VERSUS

- 1. SAMUEL ONDIEKI)
- 2. OYONDI ZAMBAREE) ACCUSED
- 3. PHILIP ODERA NDIEGG)
- 4. JAMES ONYANGO)

28/8/85

CORAM: C.O. ONG'UDI, Esq. S.R.M.

CI/P. Karuga for Republic.

Accused present - adult.

The substance of the charge and every element of it has been stated by the Court to the Accused who, being asked whether he admits or denies the truth of every element of the charge, replies:-

- A1 - Not guilty.
- A2 - Not guilty.
- A3 - Not guilty.
- A4 - Not guilty.

COURT: Plea of not guilty entered. Hearing on 23/9/85. Each Accused be released on bond of shs.400/= with a surity. Mention on 11/9/85.

C.O. ONG'UDI, S.R.M.

September 11th

Accused called present in person.

C.I. Karuga for Pros.

COURT: Hearing on 23/9/85 confirmed. B/E.

C.O. ONG'UDI, S.R.M.

23/9/85

Before J.S. Kaburu.

Accused present.

Cpl. Agunda. for Pros.

Inter. - Omboga.

COURT: Each accused reminded of the charge and replies:-

Accused 1 - Not guilty.

Accused 2 - Not guilty.

Accused 3 - Not guilty.

J.S. KABURU, D.M.II.

PROS. I wish to apply for an adjournment. The key witness is the District forester who was called to Nairobi Head office.

J.S. KABURU, D.M.II.

COURT: Application for adjournment is granted. Let the case be mentioned in Court I for re-allocation.

J.S. KABURU, D.M.II.

D.M.I Pros. Accused.

COURT: Hearing on 18/10/85. B/E.

N. K. NYANG'ERA, D.M.I

18/10/85

Before J.S. Kaburu.

Accused present.

Cpl. Agunda for Pros.

PROS. I wish to apply for an adjournment. I have received a telephone call from Nairobi telling me that my nephew ~~is~~ died. I feel grief stricken and I cannot proceed. I have to deliver the message at home. There's no other prosecutor who can assist me.

J.S. KABURU, D.M.II.

COURT: Application for adjournment is allowed. Let the case be re-allocation in Court I today.

J.S. KABURU, D.M.II.

Later

Accused called present in person.

IP. Njogu for Pros.

COURT: Hearing on 2/12/85. Further mention on 18/11/85. B/E.

C.O. ONG'UDI, S.R.M.

18/11/85

Accused present.

IP. Njogu for Pros.

COURT: Hearing on 2/12/85. B/E.

J.S. KABURU, D.M.II.

2/12/85

P.M. Mutani, D.M.II.

IP. Njogu for Pros.

COURT: Case cannot be heard owing to shortage of magistrates, hearing on 29/1/86. Mention on 2/1/86.

P.M. MUTANI, D.M.II.

2/1/86

Accused.

COURT: Hearing 29/1/86. B/E.

N.K. NYANG'ERA, D.M.II.

29/1/86

P.M. Mutani, D.M.II.

All 3 accused present.

Cpl. Nyakundi for Pros.

Clerk - Otieno dholuo/English.

C/Pros. I apply to consolidate this case with case No. 4244/85, and substitute a new charge sheet.

ORDER:

Request is granted, substituted charge is read to the accused present who reply :-

- A1 - Not guilty.
- A2 - Not guilty.
- A3 - Not guilty.
- A4 - Not guilty.

COURT: Plea of not guilty entered for the 4 accused.

P.W.1 SAMSON ONYANCHA S/STATES IN ENGLISH: I am Deputy clerk Gusii County Council. I administer all County Council properties. I have met A1, and A3 at the scene of the crime.

On 27/8/85, reported that 5 people had encroached on the Council land. It was the Assistant chief of Boyengo Sub-Location, North Mugirango Kisii. That 5 people had encroached Council plot No. Magwagwa II scheme. No. 403, which is North Mugirango. The county council wrote to D.O. Nyamira to arrest the intruders. The 5 people were arrested. James Onyango (A4) intruded into Parcel No. 286, Samuel Ondieki (A1) into Parcel No. 288, Harrison Obuor No. 290, Oyondi Sambare (A2) intruded into parcel No. 286. Philip Odera (A3) intruded into parcel No. 296.

In December, last year, I visited the scene. I found that there had been encroachments on the Council land. Later, I visited the scene with county council surveyor, to indentify the encroached parcels of land. There were fences erected and some cultivation on the parcels in question. The area in question is registered in the name of Gusii county council as Magwagwa II Scheme No. 403. It is almost 41 hectares. It has been a marshy land. The map is here with me, M.F.I.I, I have been keeping it as an exhibit I wish to produce it as an exhibit I in the case. The pink parts on the map are the intruded area by the 4 accused and the other one not in court. Since the 4 accused were arrested, there are no signs of recent cultivation.

XXD BY A1: No question.

XXD BY A2: No questions.

XXD BY A3: No questions.

XXD BY A4: No questions.

P.M. MUTANI, D.M.II.

29/1/86.

P.W.2 ZAKARIA ONDINDA GISIMBA S/STATES IN KISWAHILI:

Assistant chief, Bosenyegue sub/Location, North Mugirango Chache Location Kisii.

I have been Assistant chief for 2 years. I know the 4 accused persons in the dock. On 26/8/85, I took some askaris to go and arrest the 4 accused persons. They were cultivating on public land. No. 403 for Gusii county council. The 4 accused persons here put up a fence, and here cultivated on the said plot. I personally found A1, A2, and A3 cultivating on the parcel on 26/8/85 when we went to arrest them. Later, A4, was arrested, the 5th person (not in time) was also arrested. The accused person had intruded about 50 metres inside the parcel. The 4 accused persons cultivate on other plots near said parcel which they have legal right of cultivating. On the map. Exhibit I the open part is a public land for general use.

QXD BY AI: I informed you had trespassed into private land.

QXD BY A2: No questions.

QXD BY A3: You also trespassed into the Gusii county council land.

I found you on the Gusii county council land.

QXD BY A4:

I found you on the Gusii county council land.

REXD: Nil.

P.M. MUTANI, D.M.II.

29/1/86.

PW3. NO.208992 A.P. JERRYOWINO S/STATES IN ENGLISH:

Of Nyamisu chiefs camp, North Mugirango location Kisii. 27/8/85, on duty at the chiefs camp I was instructed to join the assistant chief to arrest some people who had trespassed into county council land. I then obeyed and we proceeded to the scene. At the scene, A1, A2, A3, A4 was not present. Some people ran away. I arrested the 3 people and took them to Nyamira police station.

QXD BY AI: I arrested you about 2 p.m.

QXD BY A2: No questions.

QXD BY A3: No questions.

QXD BY A4: You were not at the shamba when I arrived to arrest the

.... /6

REXD: Nil.

P.M. MUTANI, D.M.II.

29/1/86.

PW5 NO. 20057 A.P. SILVANUS ONSONGO S/STATES IN KISWAHILI:

Of Nyamisi chief's camp. On 2/12/85, while at Kisii court. I was informed by Assistant chief, one the people who had run away from arrest was within the Kisii town. We then proceeded to Kisii Bus stand and arrested that person. The person is A4 in the dock. I took him to Kisii police station where he was charged.

XND BY A1: No question.

XND BY A2: No questions.

XND BY A3: No questions.

XND BY A4: No questions.

P.M. MUTANI, D.M.II.

29/1/86.

PROS: I would request the court to visit the scene. There is one more last witness to be called. The area is called Magwagwa Kisii.

COURT: The case can be listed for viewing and hearing at the same time. B/E.

P.M. MUTANI, D.M.II.

29/1/86.

Later

Accused called present in person.

C.I. Karuga for Pros.

COURT: Case fixed for viewing on 4/3/86. Mention on 1/3/86.

C.O. ONG'UDI, S.R.M.

February 28th

Coram: As before.

Accused called present in person.

ORDER: Further hearing on 4/3/86.

C.O. ONG'UDI, S.R.M.

4/3/86

Coram: As before.

4 accused present.

Clerk - Magara Kisii/English.

C/Pros. The case for viewing today, county council were not ready today. No transport arrangement were made.

COURT: Adjournment is allowed, let another viewing date be taken in later April or early May. B/E.

P.M. MUTANI, D.M.II.

Later

Accused called present in person.

Corp. Gichangi for State.

COURT: Viewing on 30/4/86. Mention on 4/4/86.

C.O. ONG'UDI, S.R.M.

April 4th

COURT: Viewing on 30/4/86. B/E.

C.O. ONG'UDI, S.R.M.

April 30th

Coram: As before.

Accused called present in person.

COURT: Further hearing on 1/7/86. Mention on 30/5/86. B/E.

C.O. ONG'UDI, S.R.M.

May 30th

Coram: As before.

Accused called present in person.

COURT: Further hearing on 1/7/86. Mention on 30/6/86. B/E.

C.O. ONG'UDI, S.R.M.

June 30th

Coram: As before.

Accused called present in person.

ORDER: Further hearing on 1/7/86. B/E.

.../8

1/7/86

Accused present.

I.P. Irungu for Pros.

Pros. We are going for viewing at Kilgoris and this other viewing cannot proceed.

ORDER: Another viewing date to be taken in Court*1.

J.S. KABURU, D.M.II.

1/7/86.

1/7/86 (Later)

Court: Viewing now on 1/9/86. Further mention on 1/8/86.

K. BETT, AG. R.M.

August 1st

ORDER: Viewing on 1/9/86. B/E.

C.O. ONG'UDI, S.R.M.

1/9/86

Accused present.

COURT: Hearing on 13/10/86. Mention on 1/10/86.

K. BETT, AG. R.M.

October 1st

Accused called present in person.

C.I. Karuga for Pros.

ORDER: Viewing on 13/10/86. B/E.

C.O. ONG'UDI, S.R.M.

October 13th

Accused called present in person.

C.I. Karuga for Pros.

COURT: Viewing on 11/12/86. Mention on 13/11/86.

C.O. ONG'UDI, S.R.M.

November 13th

Coram: As before.

C.I. Karuga for Pros.

11/12/86

Accused present.

I.P. Gumba.

COURT: Could not be reached. Viewing on 16/2/87. Mention on 12/1/87.

J.S. KABURU, AG. R.M.

12/1/87

Accused present.

COURT: Viewing on 16/2/87. Mention on 12/2/87. B/E.

J.S. KABURU, AG. R.M.

February 12th

Accused called present in person.

C.I.P. Karuga for Pros.

ORDER: Hearing on 16/2/87 confirmed. B/E.

C.C. ONG'UDI, S.R.M.

16/2/87

Accused present.

AZ - Reported sick.

IP. Irungu for Pros.

Inter. Onkundi.

PROS. We could not get transport in time to go to the scene. The scene is far. 2nd accused is also reported sick and it is fair if he's present. I pray for an adjournment so that we can visit the scene early in the morning. I am aware the case is an old case but I cannot help applying for adjournment.

J.S. KABURU, AG. R.M.

COURT:

Adjournment granted. Mention ~~on~~ in Court 2 to fix a viewing date.

J.S. KABURU, AG. R.M.

Coram: Ndombi,

Agunda.

PROS. The case is for viewing date.

COURT: Viewing on 3/4/87. Parties to wait at scene

3/4/87

A3 - absent.

others present.

I.P. Irungu for Pros.

Inter. Onkundi.

PROS. I apply for W/A against 3rd accused. The witnesses who were to come and lead us to the scene are not in court. They were not bonded. I was brought a wrong charge sheet. I pray for an adjournment and apply for summons against Area Assistant chief whose name is in Charge Sheet. I also apply for summons against county council surveyor

J.S. KABURU, AG. R.M.

COURT: Adjournment granted. Mention on 6/3/87. for re-allocation. Summons to issue as requested and also surety. for A3.

J.S. KABURU, AG. R.M.

April 6th

Accused called

C.I. Karuga for Pros.

COURT: Hearing on 2/6/87. Mention on 6/5/87.

C.O. ONG'UDI, S.R.M.

6/4/87.

6/3/87

A3 - present.

I.P. Irungu for Pros.

Inter. Onkundi.

PROS. Surety for A3 wishes to withdraw.

J.S. KABURU, AG. R.M.

A3 - I missed a vehicle to come to court.

J.S. KABURU, AG. R.M.

ELISHON ABJORO OGETA - I am the surety for A3 I wish to withdraw because I looked for him on Thursday and Friday. I got a lot of problems looking for him. I fear he may not come because even

COURT: Surety for A3 is discharged. He's to remain in custody unless he gets another surety. Hearing on 2/6/87. Mention on 21/4/87 for A3.

J.S. KABURU, AG. R.M.

April 21st

Accused called present in person.

COURT: Further hearing on 2/6/87. A3 mention on 5/5/87.

C.O. ONG'UDI, S.R.M.

21/4/87.

May 5th

Coram: As before.

Accused called present in person.

ORDER: Hearing on 2/6/87. Mention on 19/5/87.

C.O. ONG'UDI, S.R.M.

19/5/87

Coram: Ndombi.

Agenda.

Accused.

ORDER: Hearing 2/6/87.

T.O. NDOMBI, D.M.II.

2/6/87

Accused present.

I.P. Gichangi.

Inter. Onkundi.

PROS. This case is for viewing. I have just realised this transport is not organized. I pray for adjournment.

J.S. KABURU, AG. R.M.

COURT: Adjournment granted. Mention in Court 2 to fix a new viewing date.

J.S. KABURU, AG. R.M.

2/6/87

Accused called present in person.

C.I. Karuga for Pros.

...../12

July 2nd

Coram: As before.

Accused called present in person.

COURT: Hearing on 29/7/87. B/E.

C.O. ONG'UDI, S.R.M.

2/7/87.

29/7/87

Accused present.

I.P. Irungu.

Inter. Omare.

PROS. I am applying for adjournment since the person supposed to produce a map from county council is deployed on duties in All Africa Games Nairobi. He is expected to come back after end of August. The map is in court but the one who brought it does not know that Area. ~~We need to view the place. This is an old case but we pray that the court gives a chance.~~

J.S. KABURU, AG. R.M.

A1. We come from far and we have suffered.

A2 - I pray that this case be disposed of as fast as possible.

J.S. KABURU, AG. R.M.

COURT: Accused sentiments noted. This is clearly a very old case and I grant the very last adjournment.

ORDER: Viewing on 8/9/87.

J.S. KABURU, AG. R.M.

8/9/87

Court: J.S. Kaburu, R.M.

IP. Irungu.

Accused present.

Inter. Morema.

COURT: Assistant chief Zakaria Odida. Shows the court where he arrested A1.

.../13

There is shrubs showing boundaries in a swampy area. (seen). I am shown to A1's shamba on hilly place. It is plot No.288. Assistant chief shows where accused 2 was working. Bananas are seen in a swampy open ground. I am shown where James Onyango A6 was arrested. It is next to where A2 was arrested. I am told A2 is next to A6. There is a fence/shrub made alienating this portion to A2's plot No.286. I am shown where A3 was arrested. There are a few bananas. The area shows sisal shrubs calving as per map. Clearly the banana are in the open ground.

XXD A3: I found you in county council land and I do not know if you were employed.

XXD A1: You were tilling this area (shown) and that is where I arrest you.

XXD A4: The boundary of county council is far (shown and compared with map). The visible footpath has been removed. Your father planted those trees near where you tilled, Another person near you has ploughed near you.

J.S. KABURU, R.M.

COURT: Mention on 13/9/87.

J.S. KABURU, R.M.

14/9/87

Accused called present in person.

C.I. Obwaka for Pros.

COURT: Further hearing on 12/10/87. B/E.

C.O. ONG'UDI, S.R.M.

12/10/87

Accused present.

I.P. Irungu.

PROS. I close my case.

J.S. KABURU, R.M.

COURT: Each accused placed on his defence. S.211 C.P.C. complied with.

J.S. KABURU, R.M.

- A1 - Sworn statement and 2 witnesses to call.
- A2 - Sworn statement and 2 witnesses to call.
- A5 - Sworn statement and one witness ~~to~~ who is not present today.
- A4 - Sworn statement and some two who will be called by A1 and A2.

J.S. KABURU, R.M.

A1 - Samuel Ondieki A/s states: I was arrested at home of Wilson at 12 noon. It is sub-chief who arrested me and took me to chief's camp. I had not trespassed on Gusii County Council Land. It is at chief's camp where I heard I had trespassed. I was eventually brought to court.

XXD PROS. I was present when the court visited the land in question. I saw where the Assistant chief showed he arrested me. He lied to court. I have no grudge with Assistant chief. I do not know why he made these allegations against me.

J.S. KABURU, R.M.

A2: JUMBO SAMBAFE A/S STATES: I was arrested where I come from a trading centre to buy medicine. I was passing near the county council field. It is Assistant chief and A.P.'s who arrested me saying I had trespassed. I was arrested and taken to the chief's camp. My home was even searched. I was taken to the chief's camp. From there I was charged. Assistant chief had assaulted me.

XXD PROS. I was assaulted by assistant chief. I did not report about that assault up to today. I have never reported. I am not lying that I was assaulted. I was arrested after I passed that forest. I have no grudge with the assistant chief of that area. I saw him show court where I was tilling. He lied to court. I do not know why he lied against me.

J.S. KABURU, R.M.

A3: PHILIP ODERA NDIEGO A/S STATES: I was at home. One mzee called Kwambe Moti came and asked me to go and fence for a plot for him at a river. He gave me 15/=. Before I started fencing, the

I went to him and he arrested me and told me I had trespassed. The man who had hired me came, I was ordered back. I was taken to the chief's camp. I was told I was trespassed. That is all and I apply for summons against Kwambe Moti who hired me. That is all.

XXD ACCUSED: It is Kwambe Moti who hired me. I do not know if where I was fencing belonged to Gusii County Council. I did not know Gusii County Council is around there because my home is far from there. My father is called Ndieto. My home is about 1/2 km. from the scene the court visited. I have always lived at Magwagwa which is far from there. I have lived at home for 6 months. I live with my father now and for last six months. Before then I did not knew the county council has land there. I was to fence for 1/2 an hour. I had no grudge with assistant chief. I am not lying to court.

J.S. KADUNU, R.M.

(A1: JAMES ONYANGO A/S STATES:) On 2nd December, 1985, I came to court to stand surity for Samuel Ondieki. After I left court, I passed ~~to~~ Kisii police station and Assistant chief arrested me. He clubbed me and asked me why I stood surity for accused. I was taken to Kisii police station and charged and told I was amongst those who trespassed. I was brought to court. I deny the charge. When the court visited the scene, I saw Assistant chief show a part he alleged I alienated to my plot. Since when I was born I used to see that part on our land. I never trespassed.

XXD PRO3. I had no grudge with Assistant chief. I stood surity for A1 at court. A1 had already been charged. A1 had been remanded. I am speaking the truth. I was charged on a different file in No. 4244/85. A1 is my paternal uncle. The Assistant chief assaulted me in 1985 at the police station. I did report about the incident. My P.3 form is at the police station. My case against Assistant chief will continue after this case. I got an injury on the left ear. It is not true that I went for a P.3 because Assistant chief had arreste

DWI: SAMUEL ODETI A/S STATES: On 25th August, 1985, an old man called Husein came to my home. He told me that Samwel Ondieki was wanted. We traced Ondieki and found him at home of Wilson. We arrested him and took him to Assistant chief. That is all.
XXD PROS. I do not know what he had done.

J.S. KABURU, R.M.

DW2: PETER NYANGOGE A/S STATES:

There is a dispute over size of boundary. My father fixed a boundary before I married. A1 is my fourth follower. That is all.
XXD PROS. The boundary dispute is between county council and us. Our cattle grazes on that portion. I have my title deed of my plot. I know the boundary of Gusii county council land. I know it was alleged that A1 was cultivating that land. A1 has not cultivated that land. It is my father who marked that land. ~~That land is ours and there is no land of county council in that area. That part the county council is clearing was our land.~~ Surveyors are making roads there and the road has divided our land and that other part which the county council claims. Where accused I is alleged to have cultivated is me and not A1. We have not sued the county council in High Court. I have lived there since my birth. All we fixed was a road and not giving county council land. The whole parcel which court saw belongs to us and not county council. I maintain that our plot go even to the swampy area. I am not lying to court.

J.S. KABURU, R.M.

COURT: Case is adjourned. Time is up. Hearing to proceed on 12/11/87. Summons to issue for witnesses.

J.S. KABURU, R.M.

12/11/87

Before Stephen Mukabwa (D.M.I)

Pros. I.P. Irungu.

Accused:- present in persons.

Interpreter:- English/Dholuo by W. Oremo.

D.W.3 LOISE ODUKA F/A C/S/STATES:IN DHOWO:

The land is mine. I have sugarcane and big trees on it. The surveyors found me using it. They made a bath through the land. The bath is a cross the land. (It divides the land into two portions; the upper and the lower part. They told me to continue using the land. I don't know why the accused were arrested.

XXD BY PROS. I did not go to school - I don't know its number. I don't know why the accused were arrested. They were arrested that they trespassed on county council land. They did not trespass on my land. I don't know whether there is county council land there.

James Onyango called me to be his witness. (The land over which you were arrested is mine. You were arrested in Kisii town. The land is not yours. It is mine. You have committed no offence - This is Re-Examination).

ADD BY COURT: The county council is claiming the lower that if the ~~land to be theirs. We used to stay on that part but we are now on the~~ upper part. Trees and sisal are on that portion. There are bananas. I am using that portion. I used it even this year. The county council have put nothing there. They started to disturb me last year. My husband died long ago when I had seven children. The county council have never approached me for any part of my land. They did not approach my husband.

A1 is my brother-in-law. A2 is my brother-in-law. A3 is my brother-in-law. A4 is my son. I am a luo, but my land is in Kisii District. (The county council have not paid me anything for my land. They did not tell me that they were taking part of my land. I have no quarrel with the path.

S. MUKABWA, D.M.I.

DW4: JOSEPH OSORO SWORN STATES: I was the surveying chairman in 1968. I was surveying paths and public plots. I came to the land of Loise. I found her there. (I passed there.) I did not do any work on her land. That is all.

XXD BY PROS. We put a path on the top part of her land. It was not on her land. It is not true that we put a path across her land. It was a public path of access.

I know where the accused stay. I know their lands. Surveyor set aside a grazing ground in that area in 1969. It was a Government surveyor. Elders were selected to help him. I don't know about the county council surveyor. I am a Kisii. The land of Loise is adjacent to the grazing field. I was not present when the court visited the disputed land. Nobody is allowed to cultivate a public grazing field. The accused did not cultivate it. The county council alleges that the accused were spoiling their plot, but they are not.

The field was set aside by the villegers. I don't know how they county council comes in. I did not know that the field would be acquired by the county council. I don't know what the accused were charged for. I was not working by 1976. I left in 1968. I don't know whether the county council surveyed her land later and put a road across it. I stay a bit far from there. I know the Assistant chief of accused. He is Mr. Zakaria Odida. He is a Luo. Accused are Luos. I don't know whether he has any quarrel with accused. I stay about 6 miles away from them. I cannot know what is happening there very much. Loise called me to give evidence. She told me that she was accused. She is not sitting with the accused. There is a school and a church there.

Re-Exam.

None.

XXD BY COURT:

We were setting aside public field according to the agreement of the owners of the land.

21.5. MICANOR KWAMBI MOTI M/A S/S.

The disputed land is mine. I have owned it for many years. The Surveyor passed a road beside the land. I hired A3 to fence the land for me. That is all.

xxed by Pros:- The path does not touch my land. If someone says that the path passes through my land he would be lying. I am a good fearing person. I am telling the truth. If the county council surveyor says the path passes through my land he would be lying. I know loise. She does not live near me. There is a county council field there but I am far from it. They have planted trees there two years ago. My land stretched down to the road before the county council took that part. They did not snatch the lower part of land from me.

The county council did not snatch land which was running into the river from people. The county council uses the land for making breaks and planting trees. I know the Accused. There is a place in dispute between them and the County Council over the area where the county council have planted trees. The county council wants the Accused to leave that area. The trees were planted by the accused and they are being ordered to remove them or the court will take them. Accused k and A4 stay near that area. They are told to remove the trees. Surveyors have come there twice. The first one was court. The second one was county council. There is county council land here. The county council was planted trees there. They have planted two types of trees there. Accused 3 did not encroach upon county council land. was not present when he was fencing but I visited the place and saw the had done there. My title deed got lost when my mother died. The county council plot is 102 acres in area. My land is about 50 acres. The County council have not taken part of my land. A3 was arrested by the ass. chief. don't know whether there is any dispute between him and the Ass. Chief. like the ass. chief. He is not claiming any part of my land.

Exam:- None.

by Court:- The 102 acres was taken from peoples land. I know the people

from whom the county council took the land. About 12 people. They added the land to a field which had no owner. The Accused are among the 12 people. They have not been compensated by the county council.

S. MUKABWA

D.M.I.

Accused:- That is all.

Order:- Judgement on 19.11.87 B/E.

S. MUKABWA

D.M.I.

one copy
15/1/88
Kib

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL SUIT NO. 370 OF 1996

LAW COURTS
REPUBLIC OF KENYA
- 4 211 000
H.I.H COURT
KISII

JAMES ONYANGO ORLANGO.....PLAINTIFF

V E R S U S

1. GUSII COUNTY COUNCIL
2. ZACHARIAH ODIDA KISIMBA
3. PATRICK MONARI
4. EDSON NYALI
5. ATTORNEY GENERAL.....DEFENDANTS

P L A I N T

1. The plaintiff is amale adult of sound mind residing and working for gain at Bonyaenkwe North Mugirango whose address for purposes of this suit shall be care of G. J. MAINYE, ADVOCATE, CO-OPERATIVE BANK BUILDING, MOI HIGHWAY, P.O. BOX 455, KISII.
2. The 1st. Defendant is a duly constituted local authority within the ambit of Local Authorities Act Chapter 265, Service of Summons to enter appearance shall be through the plaintiff's Advocate's office.
3. The 2nd. Defendant is the Chief of North Mugirango Chache Location. Summons to enter appearance shall be effected through the plaintiff's Advocate's office.
4. The 3rd. Defendant is the assistant chief of Bonyaenkwe Sub-Location. Service of Summons to enter appearance shall be through the plaintiff's Advocate's office.
5. The 4th. Defendant is the D.O. of EKERENYO DIVISION. Service of Summons to enter appearance shall be through the plaintiff's Advocate's office.
6. The 5th. Defendant is the authorized legal advisor of the Government of Kenya sued in his representative capacity as the principal of the 2-5 Defendants - officers under the office of the President.
7. The plaintiff's averment is that in the year 1964, while very young his father (now deceased) allocated him well marked unregistered land approximately 10 hectares. The same was left in custody of the plaintiff's uncle. MARAO SAMBARE and mother: LOISE ODUKA.
8. That sometimes in 1981, the plaintiff's uncle aforesaid had part of the unregistered interest, registered and sold to one THOMAS MAEL MOGENI - approximately 1.08 hectares. The

plaintiff instituted KISHI H.C.C.C. NO. 98 OF 1982 which he won.

9. ~~That the remaining portion: approximately 9 hectares still remained intact but unregistered and fully occupied by the plaintiff and his family. And upon going to the land registry to effect the aforesaid court order he had obtained for rectification of the register, the plaintiff discovered that the remaining unregistered part approximately 9 hectares had been sundered from the registered 1.08 hectares and submerged into: NORTH MUGIRANGO/MAGWAGWA II/403 and registered in the name of the 1st. Defendant GUSII COUNTY COUNCIL as grazing land, without compensation, notice or any lawful excuse.~~
10. Under instructions from the 1st. Defendant, the 2nd. - 5th. Defendants have severally and/or jointly through their servants unleashed suffering on the plaintiff, burnt his houses, destroyed his property and rendered the plaintiff homeless claiming that the plaintiff is in trespass of the 1st. Defendants land.
11. ~~That the 1st. Defendant in the year 1985 prosecuted the plaintiff of trespass in KISHI S.R.M. Criminal Case NO. 2992 of 1985 which the 1st. Defendant lost since it failed to prove its acquisition of NORTH MUGIRANGO/MAGWAGWA II/403.~~
12. That on 7th. July, 1996, further under direction from the 1st. Defendant, the 2nd. - 5th. Defendants, their servants and/or agents totally demolished the plaintiff's 3 houses by ~~burning~~ burning the same down with substantial loss of property and to date, the plaintiff has been virtually rendered homeless.
13. ~~The plaintiff's claim against the 1st. Defendant is for a declaration that he is the owner of 9 hectares out of land parcel NO. NORTH MUGIRANGO/MAGWAGWA II/403 the same having been ancestral land acquired unlawfully by it, from the plaintiff and/or the plaintiff has acquired it adversely.~~
14. The plaintiff shall crave for a perpetual injunction against the 2nd. - 5th. Defendants and or their servants against interruption of his quiet enjoyment of the said 9 hectares out of land parcel NORTH MUGIRANGO/MAGWAGWA II/403.
15. The cause of action arose within the jurisdiction of this Honourable court.

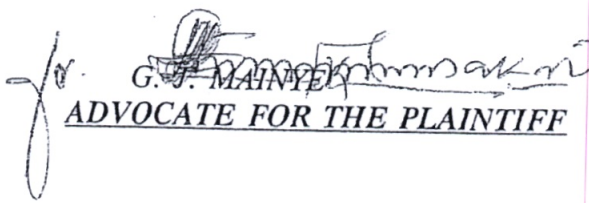
REASONS WHEREFORE the plaintiff prays for judgement against the Defendants jointly and severally for:-

- (a) A declaration that he is the owner of 9 hectares out of land parcel: NORTH MUGIRANGO/MAGWAGWA II/403 registered in the name of the 1st. Defendant the same being ancestral land and/or acquired adversely.
- (b) An order enjoining the 1st. Defendant to transfer the same to the plaintiff or in lieu

Deputy Registrar
executive officer of this Honourable court to do it.

- (c) A perpetual injunction to issue against the Defendants and/or their agents or servants, to desist from interrupting the plaintiff's quiet enjoyment of the land in issue.
- (d) Damages for unlawful eviction and destruction of the plaintiff's property aforesaid.
- (e) Costs of this suit.
- (f) Interest at court rates.
- (g) Any further relief(s) deemed fit and just to grant.

DATED at KISII this..... 23RD day of..... OCT..... 1996


G. J. MAINYE
ADVOCATE FOR THE PLAINTIFF

DRAWN & FILED BY:-

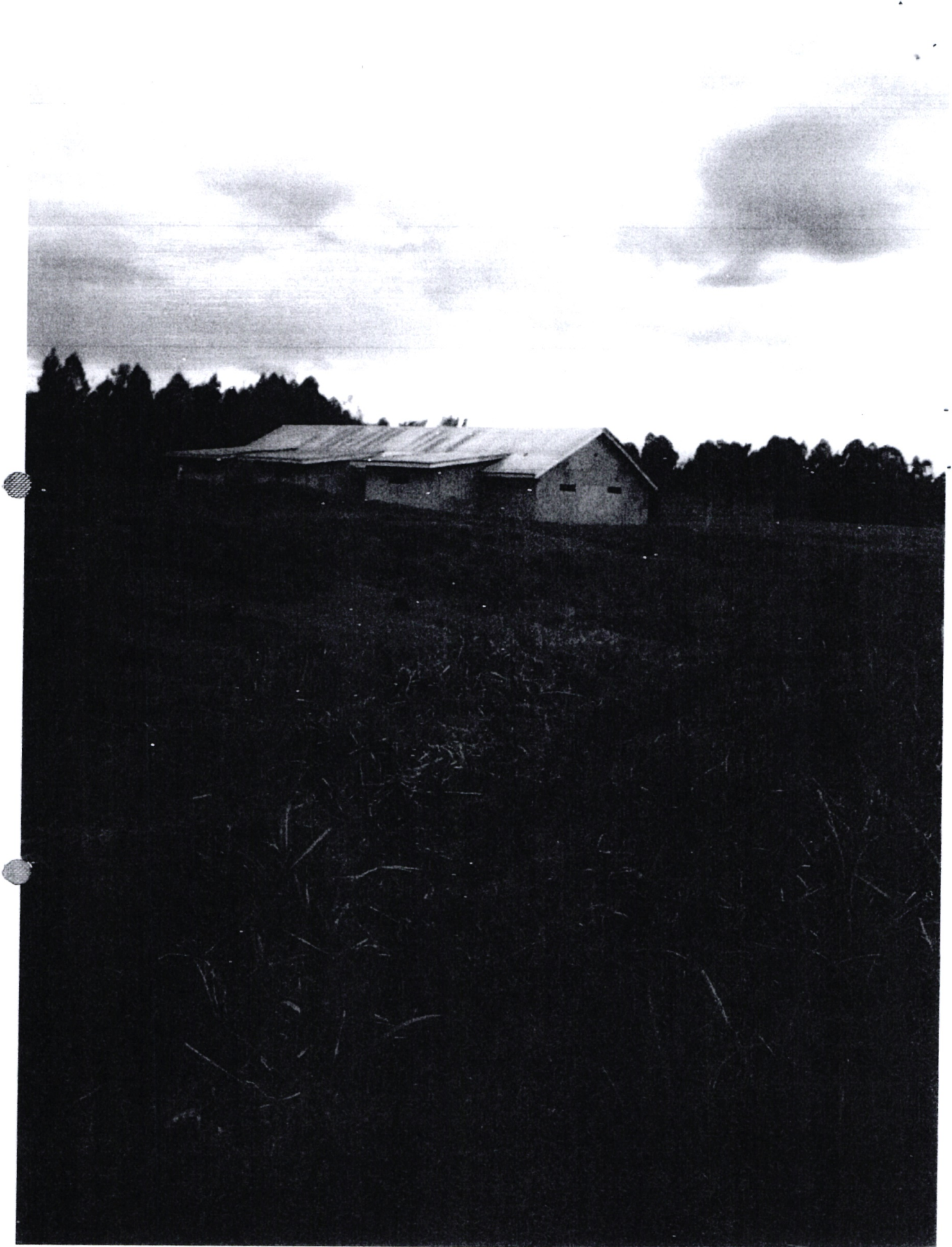
G. J. MAINYE
ADVOCATE,
CO-OPERATIVE BANK BUILDING,
MOI HIGHWAY,
P.O. BOX 455,
KISII.

TO BE SERVED UPON:-

1. GUSHI COUNTY COUNCIL,
P.O. BOX 90,
KISII.
2. THE D.O. EKERENYO,
EDSON NYALI,
P.O. EKERENYO.
3. ZACHARIAH ODIDA KISIMBA,
CHIEF NORTH MUGIRANGO
CHACHE LOCATION.
4. PATRICK MONARI,
ASSISTANT CHIEF,
BONYAENKWE SUB-LOCATION
5. ATTORNEY GENERAL,
C/O STATE COUNSEL KISII &
SOUTH NYANZA,
P.O. BOX 2470,
KISII.



itel
SHOT ON A36









EIA/8.19
 Application Reference No.
 Registration No. **0014374**

nema
 National Environment Management Authority

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)

**THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT
 ENVIRONMENTAL IMPACT ASSESSMENT LICENSE**

This is to certify that the Project Report/Environmental Impact Assessment Study Report received from
 Ministry of Home Affairs, Prison Department- Nyamira Prisons (Name of
 of individual/firm) of P. O. Box 543-40500 Nyamira (Address)

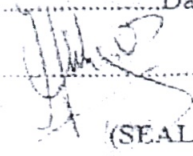
submitted to the National Management Environment Authority (NEMA) in accordance with the
 Proposed Construction of a G.K
 Environmental Impact Assessment and Audit Regulations regarding Prison

Construction of modern prison wards on 50 acres of land
 (title of project) whose objective is to carry out

Esiany area in Borangi location, Bonyengwe II Sub location in Nyamira County on Plot L.R. No.
 North Mugirango/Mogwagwa/11/403.

reviewed and a licence is hereby issued for implementation of the project, subject to attached conditions.

Dated this 20th Day of Feb 2013

Signature  (SEAL)

*Director General
 The National Environment Management Authority*

CONDITIONS OF LICENSE

1. This licence is valid for a period of (time within which the project should commence) from the date hereof.
2. The Director-General shall be notified of any transfer/variation/surrender of this license.

1.0 General Conditions

- 1.1. This approval is for the construction of proposed G.K. Prison on Plot L.R. No. North Mugirango / Magwagwa/11/403, at Esiany area in Nyamira County costing Kshs.52,000,000.
- 1.2. The license shall be valid for 24 months from the date of issue.
- 1.3. The proponent shall provide the final project accounts (final project costs) on completion of construction phase. This should be done prior to project commissioning/operation/occupation.
- 1.4. Without prejudice to the other conditions of this license, the proponent shall implement and maintain an environmental management system, organizational structure and allocate resources that are sufficient to achieve compliance with the requirements and conditions of this license.
- 1.5. The Authority shall take appropriate action against the proponent in the event of breach of any of the conditions stated herein or any contravention to the Environmental Management and Co-ordination Act, 1999 and regulations thereunder.
- 1.6. This license shall not be taken as statutory defence against charges of pollution in respect of any manner of pollution not specified herein.
- 1.7. The proponent shall ensure that records on conditions of licenses/approval and project monitoring and evaluation shall be kept on the project site for inspection by NEMA's Environmental Inspectors.
- 1.8. The proponent shall submit an Environmental Audit Report in the first year of occupation/operation/commissioning to confirm the efficacy and adequacy of the Environmental Management Plan.
- 1.9. The proponent shall comply with NEMA's improvement orders throughout the project cycle.

2.0 Construction Conditions

- 2.1. The proponent shall ensure that construction is done as per the approved plans and in adherence to the Building Code of Kenya, 1968.
- 2.2. The proponent shall ensure that no construction is done within 30 metres from the highest mark of the wetland neighbouring the Project site.
- 2.3. The proponent pursuant to regulation 6 (c) of Water Quality Regulation 2006, shall protect 10m of the riparian reserve by ensuring that no development activity is undertaken within the full width of the river or stream to a minimum of six (6) meters and a maximum of 30 meters on either side based on the highest recorded flow level.
- 2.4. The proponent shall obtain requisite approvals from Nyamira County Council and other relevant Authorities prior to commencement of construction works.
- 2.5. The proponent shall ensure that cooling systems employed are suitable alternatives with zero ozone depleting potential as per EMCA (Controlled Substances) Regulations, 2007.

- 2.6. The proponent shall submit the design drawings of the waste water treatment system to the County Council of Bureti and the District Public Health Officer for approval before installation.
- 2.7. The proponent shall put up a project signboard as per the Ministry of Works Standards indicating the NEMA license number among other information.
- 2.8. The proponent shall ensure that all excavated material and debris is collected, re-used and where need be disposed off as per the Environmental Management and Coordination (Waste Management) Regulations 2006.
- 2.9. The proponent shall ensure strict adherence to the provisions of Environmental Management and Coordination (Noise and Excessive Vibrations Pollution Control) Regulations 2009.
- 2.10. The proponent shall ensure strict adherence to the Occupational Safety and Health Act (OSHA), 2007.
- 2.11. The proponent shall ensure that construction workers are provided with adequate personal protection equipment (PPE), sanitary facilities as well as adequate training.
- 2.12. The proponent shall ensure that construction activities are undertaken during the day (and not at night) - between 08.00 hrs and 17.00 hrs; and that transportation of construction materials to and from site are undertaken during weekdays (and not weekends) off peak hours.
- 2.13. The proponent shall ensure strict adherence to the Environmental Management Plan developed throughout the project cycle.
- 2.14. The proponent shall ensure that the development adheres to zoning specifications issued for development of such a project within the jurisdiction of Nyamira County Council with emphasis on approved land use for the area.
- 3.0 **Operational Conditions**
- 3.1. The proponent shall obtain an effluent discharge license from NEMA as per EMCA (Water Quality) Regulations 2006 within the first year of operation.
- 3.2. The proponent shall ensure that all waste water is disposed as per the standards set out in the Environmental Management and Coordination (Water Quality) Regulations 2006.
- 3.3. The proponent shall ensure that all drainage facilities are fitted with adequate functional grease and silt traps.
- 3.4. The proponent shall ensure that rain water harvesting facilities are provided to supplement surface water.
- 3.5. The proponent shall ensure that appropriate and functional efficient Air Pollution Control Mechanisms are installed in the facility to control all air emissions.

- 3.5. The proponent shall ensure that all equipment used are well maintained in accordance with the Environmental Management and Coordination (Noise and Excessive Vibration Pollution Control) Regulations 2009.
 - 3.7. The proponent shall ensure that all solid waste is handled in accordance with the Environmental Management and Coordination (Waste Management) Regulations 2006.
 - 3.8. The proponent shall ensure that all workers are well protected trained as per the OSHA, 2007.
 - 3.9. The proponent shall comply with the relevant principal laws, by-laws and guidelines issued for development of such a project within the jurisdiction of Nyamira County Council, Water Resource Management Authority, Ministry of Lands, Ministry of Agriculture and Directorate of Occupational Health and Safety Services, Ministry of Public Health and Sanitation and other relevant Authorities.
 - 3.10. The proponent shall ensure that environmental protection facilities or measures to prevent pollution and ecological deterioration such as Energy and Water Saving Fixtures, Traffic Management Plan, Solid Waste Management Plan, Dust and Soil Erosion Control Measures, Land Scaping and Tree Planting, Emergency Response Plans are designed, constructed and employed simultaneously with the proposed project.
- 4.0 Notification Conditions**
- 4.1. The proponent shall seek written approval from the Authority for any operational changes under this licence.
 - 4.2. The proponent shall ensure that the Authority is notified of any malfunction of any system within 12 hrs on the NEMA hotline 020 606041 and mitigation measures put in place.
 - 4.3. The proponent shall keep records of all pollution incidences and notify the Authority within 24 hrs.
 - 4.4. The proponent shall notify the Authority of intent to decommission three (3) months in advance in writing.
- 5.0 Decommissioning Conditions**
- 5.1. The proponent shall ensure that a decommissioning plan is submitted to the Authority for approval at least three (3) months prior to decommissioning.
 - 5.2. The proponent shall ensure that all pollutants and polluted material is contained and adequate mitigation measures provided during the phase.

The above conditions will ensure environmentally sustainable development and must be complied with.



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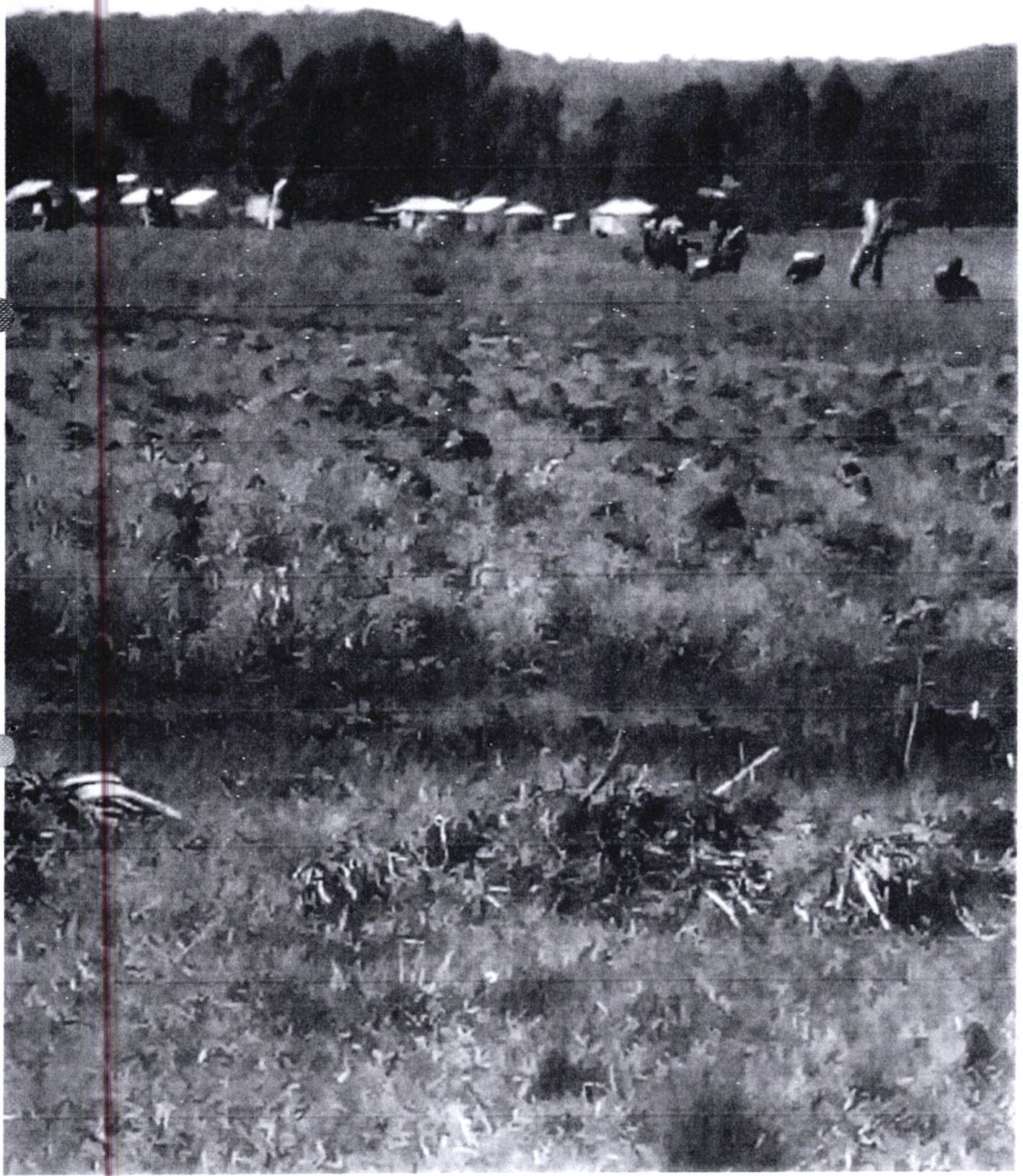
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SIANY 15



**SIANY RESIDENTS
BONYENGWE II SUB-LOCATION, NYAMUSI DIVISION,
NYAMIRA NORTH DISTRICT.
TEL NOS. 0710355937, 0722585842**

28th March 2011

The Director General
National Environment Management Authority (NEMA)
P O. Box 67839,
NAIROBI - 00200

Dear Sir,

RE: DEGRADATION OF 41 HA SIANY WETLAND

The above-referenced parcel of land, being a swampy and wetland (map and certificate of official search attached), was set aside by community members who surround it, as common grazing area during dry season. The legal status and details of an old dispute between the community and Gusii/Nyamira County Councils is as per attached letter of 21st February 2011 addressed to the District Officer, Nyamusi Division.

The wetland is a source of Kamoti, Korony and Kodingo Water Springs. The three major water springs are the only source of clean and safe drinking water within Kisumu, parts of Awach and neighbouring villages. The springs make up Konyando Stream which is a major tributary of Awach - Kabondo River. Siany was initially covered with thick bushes and local trees and grass such as: Siala, Keyo, Asawo, Ochwoga, Mosuto, Alaktar, Orembe, Musabeti, Mapera, Nyatonglo, Saka, Rabolo. It was also home to various wild animals and birds such as: Ogowang, Apouyo, Aburu, Nyajwaya, Mwanda, Kworo, Ondiegi, Ongowang, Achuth, Akuru, Oseng, Tula, Tutu, Odiero, Awendo, Ochimbo, Osogo, Oluru, Ng'ang'a, etc. The springs had indigenous fish called 'Ndhira'. The locals also had fish ponds in which tilapia and 'Ndhira' were bred.

Siany Wetland is presently affected by a serious environmental degradation mainly due to activities of two government institutions. Siany Primary School is built right in the middle of the wetland. A prison is also under construction in the wetland, its main building being two metres from Kamoti Water Spring. The prison wardens have cut down all the trees and completely cleared all the bushes covering half the wetland, leaving the land bare. They have cultivated the land up to the edge of the water springs. The two school pit latrines get full during rainy season due to high water table. Their contents are then poured into the springs then flows downstream hence consumed by human beings and domestic animals. The situation has further been exacerbated by the fact that community members have low awareness on sustainable environmental management and own small fragmented pieces of land.

Effects of the degradation:

- (a) Water springs and surrounding is contaminated, hence increase in water borne diseases.
- (b) The water springs are drying up, especially during dry seasons, causing shortage of clean and safe water. During such periods, women and school going children are forced to travel for long distances in search for water. The disabled and PLWH who cannot carry water over long distances are the most affected.
- (c) Reduced timber for construction, firewood and other domestic use.
- (d) Reduction in birds and other wild animals that were depending on the ecosystem.
- (e) Reduced fruit trees which children used to eat to supplement what they ate at home.
- (f) Reduced source of employment for the youth who used to depend on trees nurseries in the wetland.
- (g) Declining availability of fish.
- (h) Lack of water for farmers who used to depend on Konyando Stream for watering their cattle.
- (i) Soil erosion, thus water emanating out of the swamp is very muddy.

The Government seem to be unconcerned with, and has ignored the community's pleas and protests regarding the destruction of the wetland. On 2nd March 2011, the Nyamusi D.O. told a delegation of five elders who took the attached letter to her office that it was not the common citizens' duty to complain about environmental degradation. This shows how provincial administration officials are still out of touch with realities of the day.

In view of the foregoing, Water Act 2002 and other environmental laws, and the District's Environment Action Plan, the entire 41 HA Siany Wetland **MUST** be conserved and preserved! The community is currently receiving some environmental conservation education, being facilitated by Konyango Women Self Help Group, Mazingira Self Help Group and a local NGO. As a result of such civic education and consultative meetings, the community has resolved to work with relevant Government organizations, such as WARMA and Ministry of Agriculture, and other stakeholders to conserve and preserve the water catchment using the following strategies:

- (a) Those who settled on the wetland such as the home shown below have already been convinced to move to the dry land leaving the old houses for bee keeping.

(b) Digging of fish ponds: 11(eleven) ponds(such as the ones shown below) have already been dug through self help groups and individuals.



(c) Plantation of napier grass and practice of bees keeping therein. This activity is already being undertaken as can be seen in the photo below.

(d) Parcel owners to prepare the land adjustment to their land for trees plantation by planting vegetable on the prepared seedbeds in accordance to the ground shown in the picture below.



- (e) Preparation of trees nurseries: This is already being done by the community members through Mazingira Self Help Group. By a copy of this letter, the District Environment Officer (DEO) is hereby requested to liaise with the Kenya Forest Services, the District Forest Officer, Ministry of Youth Affairs and other stakeholders to provide us with additional seedlings.
- (f) Your office is requested to enforce relevant environmental legislations by ordering Siany Primary School and the prison to be relocated immediately in accordance to attached copy of Inspection Report by the Ministry of Public Health and Sanitation.

We need your support and decisive action in ensuring that the whole of Siany Wetland and Water catchment is protected. Construction of the prison CANNOT, therefore, be moved from one part of the wetland to another as is being suggested since the entire land is a WETLAND. In Nyamusi Division, hilltop forests and wetlands are on the brink of extinction and measures have to be taken to control their destruction.

Involvement in corruption by the Kenya Prisons Service in acquisition of the Siany Wetland and misappropriation of public funds.

The Kenya Prisons acquired the 104 acres Siany Wetland under unclear and suspicious circumstances;

- (a) The land was acquired without the consent of community members. A meeting convened by the D.C. and attended by the then area Member of Parliament, Hon. G. Masanya never reached any agreement on the construction of the prison at the Wetland. The Commissioner of Prisons went ahead, ordered his askaris to use their guns and then started the construction.
 - (b) The Kenya Prisons visited and saw, knew or ought to have known that the land in question is a wetland. The Nyamira D.C. and Nyamusi D.O. knew that the land is a wetland. They went ahead and approved the construction.
 - (c) Mr. Julius Adero, the then Kisii Prison Chief, was shown court orders with temporary injunction against Nyamira County Council restraining them from transferring the land. The Commissioner of Prisons, therefore, knew about the disputes related to the land and that the community never consented to the construction of the prison in the wetland.
 - (d) Construction work was started in a hurry without approval plan from relevant authorities.
 - (e) Mr. Adero personally used force and literally fired several gunshots into the air to scare away residents resisting construction plan. This created bad relationship between the community and the Prisons staff as witnessed by the DEO when he visited the wetland on 18th March accompanied by the prison wardens.
 - (f) The Division has other public lands suitable for the project. These include: Kenyerere, Kiabora and Kiomara Public Lands in Bonyengwe I, Egetonto and Nyakenimo Sub-locations, respectively. The reason why a wetland was identified and singled out for construction of a prison is that some corrupt dealings took place among the Prison, County Council, Provincial Administration staff and a few influential locals.
 - (g) On 31st March 2007, Mr. Julius Adero was quoted by the Saturday Nation (copy attached) as saying that construction of a Kshs 25 million prison housing project for staff and a dispensary were nearing completion and that a water project was also in progress.
- Facts on the ground reveal that such a housing project is non-existent. The only major building at the prison site is the sinking block whose pictures are shown below. Local

construction contractors estimate the cost of the unfinished building and a few iron sheet structures currently occupied by wardens, together with some barbed wire fencing at not more than Kshs 2 million.

- Facts on the ground are that a dispensary under construction by the Kenya Prisons is also non-existent. The only dispensary situated at an adjacent land to the wetland is Mogongo Dispensary which was constructed by the community and CDF funds during Hon. Masanya's period. If that is the one Mr. Adero referred to then he intentionally lied to Kenyans. Records at the North Mugirango/Borabu CDF should reveal how much money was used for the purpose of the construction of Mogongo Dispensary. Similarly, inspection of the dispensary and interviews with community members on how the dispensary was constructed would reveal the truth and serve to confirm that the prison has never spent a single cent towards Mogongo Dispensary's construction.
- The prison has no water project in progress as at today. It has never started one in the wetland and its environs. The protected Kamoti Water Spring was developed and constructed by the Lutheran Church and IFAD. It has the following words on it; "South Nyanza County Development Project/IFAD dated 30.03.2009." A water borehole at Mogongo Primary School was dug and constructed by Inter Diocesan Christian Community Services (IDCCS) of the Anglican Church of Kenya. Confirmation by the said organizations would also reveal the truth.

By a copy of this letter, we are requesting the Director of Kenya Anti-Corruption Commission to investigate: (a) Methods of corruption involved in the acquisition and subsequent wastage of public funds by putting up a building on a wetland which is unsuitable for human habitation and a health hazard to human beings, including prisoners and wardens. (b) Misappropriation of Kshs 23 million by crafty staff of the Kenya Prisons Service purported to have been used for construction of a housing project.

We and other Kenyans need the KACC's support and decisive action in ensuring those bearing the greatest responsibility for the corruption crimes are held accountable for their actions to help deter future criminal transgressions.

Yours sincerely,

CONCERNED SIANY WETLAND RESIDENTS
LIST ATTACHED

CC:

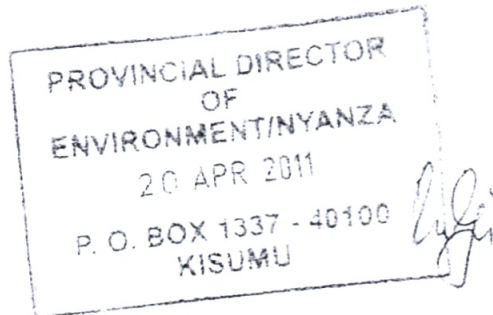
- (1) DEO, Nyamira District
- (2) KACC
- (3) PEO, Nyanza Province
- (4) WARMA
- (5) Ministry of Environment and Mineral Resources
- (6) Neem Environment Project (NGO)
- (7) Media Houses
- (8) Ministry of Lands
- (9) Executive Director, Public Complaint Standing Committee
- (10) D.C., Nyamira North District
- (11) Councillor, Magwagwa Ward
- (12) Greenbelt Movement (Kenya)
- (13) Office of the Prime minister

NEEM ENVIRONMENT PROJECT

2ND FLOOR, ALPHA HOUSE (R23, WING 'A')
P.O. BOX 2122, KISUMU - 40100
TEL: 0202442416, E-mail: neemproject-kenya@yahoo.com

April 18, 2011

Mr. Ali D. Mohamed
Permanent Secretary,
Ministry of environment and
Mineral Resources
NAIROBI.



Dear Mr. Mohamed,

RE: DEGRADATION OF 41 HA SIANY WETLAND

We are a non-governmental, not for profit, non-political, independent organization operating in Nyanza Province. We are mandated to carry out environmental conservation through advocacy, Civic and Environmental education and trees plantation among other activities. Hence, we are an interested party in the above referenced issue.

Our attention has been drawn to a massive destruction of a 41Ha Siany Wetland by the Kenya Prisons Service and a Primary School in Nyamusi Division, Nyamira North District.

The wetland has been encroached on by Prison Wardens who were encouraged to MOW down indigenous trees and natural undergrowth and replace them with patches of malnourished maize plants. The Wetland is a water catchment and a source of several water springs. Activities of the Prison Wardens and the Primary School has continuously polluted the water resources without any care in the world. Apart from pollution, the springs are dying up due to deforestation and general degradation. Efforts at mitigation have rarely succeeded due to corruption and or plain ignorance. Evidence of corruption is manifested in a Kshs. 31 million building plan for a Prison which was started on the Wetland without Environmental Impact Assessment (EIA) having been carried out, among scaring evidence articulated by Siany Residents in the attached letter.

The situation on the Wetland was brought to the attention of NEMA's District Environment Officer (DEO) and relevant Government Ministries and Institutions last year. Subsequently, the DEO stopped further construction of the prison building and issued Environmental Restoration Order in or around September, 2010. Similarly, the District Public Health Office carried out an inspection and made a sanitary inspection report dated 14th September, 2010. The report recommended that both the Prison and the School, having been put on a Wetland should be relocated within a period of four months. Neither the prison nor the school has relocated to date.

In February this year, Siany residents learnt that the DEO changed his mind and allowed the prison to continue with their activities on the Wetland and start constructing buildings on the other part of the same Wetland. The residents protested and wrote the attached letter which was hand delivered to NEMA Headquarters in Nairobi on 30th March, 2011. In response, a NEMA official, Ms Salome Machua, judicially directed the DEO to do the following; -

- (i) Constitute a district environment committee incorporating water catchment stakeholders including WARMA, Ministry of Agriculture, Kenya Forest Services, Ministry of Water and other relevant line ministries, government departments and stakeholders. The committee was to assess the land and make a formal report which was to be submitted to NEMA headquarters by Wednesday 6th April, 2011.
- (ii) Instruct the Commissioner of Prisons to carry out an EIA in accordance with EMCA before commencing any construction activity.

Predictably, the DEO, Mr. Osiemo never did either of the above. On Tuesday 5th April, 2011 he intentionally and cunningly avoided WARMA and other stakeholders, went to the land alone and made the following statements: -

- (a) That the Wetland was “both a wetland and a dry land” – that it was too technical for him to tell if it was a wetland.
- (b) That the community should allow construction to start on one part of the wetland because the Commissioner of Prisons was under pressure to spend Kshs. 25 million allocation for the construction in the current budget by June, 2011. This, he argued, should commence before EIA is conducted.
- (c) That the community should accept a win-win situation in dealing with the issue.

According to EMCA Legal Notice No. 19 of 13th February, 2009, “Wetlands” means areas permanently or seasonally flooded by water where plants and animals have become adapted: and includes swamps, areas of marsh, peat land, mountain bogs, banks of rivers, vegetation, areas of impeded drainage or blackish, salt or alkaline: including areas of marine water the depth of which at low tide does not exceed 6 metres. It also incorporates riparian and coastal zones adjacent to the wetland.

Other definitions include: A **Wetland** is an area of land whose soil is saturated with moisture either permanently or seasonally. Such areas may also be covered partially or completely.

- Mr. Osiemo’s suggestion that the land is both a wetland and dry land is, therefore, professionally wrong.

The same legal notice provides that an environmental officer within whose jurisdiction activities likely to degrade or are degrading, river banks, lake shores or the sea shore are taking place, shall ensure that the communities living near such areas participate in conservation activities and assist them in implementing these Regulations and any other law that protects.

The legal notice further stipulates that a developer intending to undertake a project which may have a significant impact on a wetland, river bank, lake shore or the sea shore shall carry out an environmental impact assessment in accordance with the provisions of the Act. This was not done by the Commissioner of Prisons before commencing a project of such a magnitude on a wetland! And the same officer who stopped further construction is now telling the Prisons to continue destroying the water catchment!

Subsequent to his un-procedural visit, the Prison Wardens have embarked on unlawful eviction of community members from their fish ponds and other activities being carried out in line with conservation practices. The Wardens’ statement is that they have NEMA’s authority to cultivate and use the land for other purposes.

We do not wish to take community's information for granted, given the suspicious conduct of the NEMA official on the ground, and the manner in which the Kenya Prisons Service has conducted its activities on the Wetland.

The common view adopted by the community and stakeholders in this matter is that:

- Mr. Osiemo may not be a suitable officer to handle conservation and preservation of Siany and other wetlands in Nyamira County. We recommend that he be re-deployed to serve in other capacities elsewhere.
- NEMA seems to be lacking capacity to handle issues of encroached Wetlands and other environmental protection issues in Nyamira County and many other rural areas.
- A report compiled by Mr. Osiemo under the said circumstance is rejected.

As an organization, we are equally concerned about the community's alleged corruption surrounding the buildings which are purported to have been put up on the Wetland at a cost of Kshs. 31 million, when such buildings are not there, as is already reported to KACC in accordance to attached confirmation letter.

The purpose of this letter, therefore, is to:

1. Request you to advise NEMA to perform its duties as mandated by law.
2. Request you to advise the Commissioner of Prisons to follow legal procedure before putting up buildings on Siany and other wetlands, river banks, etc.
3. Request you to instruct the Commissioner of Prisons to immediately stop further destruction of Siany wetland. He should instruct prison wardens to stop cultivating and vacate the land within one month from the date of this letter. If he does not stop interfering with the water catchment within the said period then we shall mobilize interested CSOs and other stakeholders to carry out independent professional assessment in accordance to the relevant laws. Subsequently, we shall institute court proceedings against him in accordance to provisions of the relevant laws of Kenya.

Yours faithfully,

Rosebella Arthur
for **Rosebella Arthur**
DIRECTOR
NEMA ENVIRONMENT PROJECT
P.O. Box 2722
KISUMU

Cc.

1. The Director General, NEMA Headquarters, Nairobi
2. Provincial Director of Environment, Nyanza Province
3. The CEO, Water Resources Management Authority (WARMA), Nairobi
4. Professor Wangari Mathaai, Greenbelt Movement International
5. National Council of NGOs, Nairobi
6. The European Union
7. The Commissioner of Prisons, Kenya Prisons Service, Nairobi.
8. Permanent Secretary, Ministry of Education, Nairobi.
9. District Environment Committee, Nyamira North District.
10. District Public Health Officer, Nyamira North District
11. Permanent Secretary, Ministry of Lands
12. Provincial Public Health Officer, Nyanza Province
13. Provincial Director of Education, Nyanza province
14. Office of the Prime Minister

NEEM ENVIRONMENT PROJECT

2ND FLOOR, ALPHA HOUSE (WING "A"), OGINGA ODINGA STREET

P.O. BOX 2722, KISUMU - 40100

TEL: 0202442416, E-mail: neemproject_kenya@yahoo.com

May 8, 2012

The Director for Compliance and Enforcement
National Environment Management Authority
Popo Road, off Mombasa Road
P.O. Box 67839-00200
NAIROBI.

PROVINCIAL DIRECTOR
OF
ENVIRONMENT/NYANZA
22 MAY 2012
P. O. BOX 1337 - 40100
KISUMU

Dear Sir,

**RE: PUBLIC MEETING ON ENVIRONMENTAL IMPACT ASSESSMENT STUDY FOR
THE PROPOSED NYAMIRA GK PRISON PROJECT ON 41 HA SIANY WETLAND (L.R.
NO. NORTH MUGIRANGO/ MAGWAGWA/II/403), NYAMIRA COUNTY-FRIDAY 4TH
MAY 2012**

We are a non-governmental, not for profit, non-political, independent organization operating in Nyanza Province. We are mandated to carry out environmental conservation through advocacy, civic and environmental education and trees plantation among other activities. We are an interested party in the above-referenced subject, having worked with communities around the Wetland on its conservation and preservation.

Our attention is hereby drawn to a public meeting which was supposed to be convened by Africa Waste and Environment Management Centre for the purpose of collecting views from the general public and any other party who in any way will/might be affected by construction of a prison on the above-referenced Wetland (Community Land). Our management and field staff managed to be at the Wetland on the material day.

Notice of the public meeting was given to the "public" through the attached notice as follows, upon which the following events took place:

- (1) A copy of the notice was placed at the Nyamusi Division Officer's notice board (about 3 km from the project site) in the evening or at night on Wednesday 2nd May 2012 while another copy was placed by prison warders at Karota Sunshine Academy at 10 a.m. on Thursday 3rd May 2012; effectively giving members of the local community and stakeholders 24 hours' notice. Going by the magnitude of the intended project and sensitivity of the ecosystem which is affected by the Kenya Prisons Service activities, we request that a notice for such a meeting should be publicized both locally and in the media including the two major daily newspapers for a period of not less than one week, as is shown by the attached copy of the Daily Nation of Thursday, April 12, 2012 regarding a similar project.
- (2) The notice did not indicate the specific site of the proposed project within the 104 acres of the Wetland- hence ambiguity about the meeting place. Members of the public and stakeholders gathered at Siany Primary School while the area assistant chief, who was the senior most member of the Provincial Administration present, and his village elders sat within the adjacent Prison Camp, an area which is usually a no-go-zone for members of the public and CSOs working on the Wetland. It is our view that the Kenya Prisons Service should come out openly and tell the communities, Kenyans and interested organizations the specific part of the Wetland on which they are carrying out EIA. Such meetings should take place at the exact site, which should be indicated in all public notices.

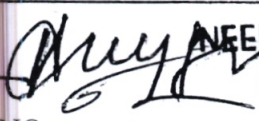
- (3) Going by experience, the horrible and brutal attacks which have been suffered by the community members on the hands of prison warders, we invited the local press to attend and cover proceedings during the meeting. About 200 members of the local community, two members of our staff, a few neighbors from the downward stream of the ecosystem in Kabondo Division and one media house were present around the Wetland from 9.30 a.m. The gathering moved to Siany Primary School at 9.50 a.m. and waited up to 12.16 p.m. after which prayers were conducted before the gathering dispersed. (Please refer to 9 p.m. Citizen TV news bulletin of Saturday, 6th May 2012 for confirmation). The EI Assessors were not there, neither was there any information regarding their inability to reach the venue, which could have been passed on to the gathering by the assistant chief or any of his elders, who by then had moved from the Prison Camp and joined the public at the School. Indeed, the gathering dispersed with the elders' permission. In our view, the convener of such an important meeting and interested parties must respect and abide by the meeting starting time.
- (4) We have since learnt that the Assessors later visited the Prisons Camp where they interviewed warders and a few people who were called by the same warders from the nearby road. The few were given copies of a questionnaire (sample attached) which they were asked to fill as directed by the warders. The warders also filled the same. It is our understanding that such a meeting should be conducted publicly in an open place and should be chaired by, at least, a district commissioner.

Please note that people who are directly and most affected by the Prisons and individual warders activities on the Wetland, hence a major target population in this particular case, are the communities living around the affected ecosystem, and, especially those whose land parcels are adjacent to the wetland. These are the people who set aside Siany Wetland for grazing purpose. They collect water for domestic use from springs and streams originating from the Wetland, among other beneficial activities. The EIA experts should, therefore, be guided accordingly.

In view of the foregoing, it is our humble submission and understanding, being one of the organizations interested in the Wetland's conservation and preservation, that public participation as a requirement of the EMCA 1999 Section 58, and the Constitution has not been carried out with the relevant members of the local community/neighbors to the Wetland and interested parties. If this has been done then it is not enough. What has taken place so far and the Prison's continued destruction of the Wetland is challengeable and will be challenged in the Courts of Law.

Yours sincerely,

NEEM ENVIRONMENT PROJECT


NEEM ENVIRONMENT PROJECT
P.O. Box 2722
KISUMU

J. OTIENO
DIRECTOR/CEO

Cc.

1. The Provincial Director of Environment, Nyanza province
2. Permanent Secretary, Ministry of Environment and Mineral Resources
3. Christian Legal Education Aid & Research
4. District Commissioner, Nyamira North District

SIANY RESIDENTS
BONYENGWE II SUB-LOCATION-NYAMUSI DIVISION
NYAMIRA NORTH DISTRICT
TEL. NO. 0710 355 937

May 23, 2012

The Director General,
National Environment Management Authority
P.O. Box 67839 – 00200

NAIROBI. **Attn: Director for Compliance and Enforcement**

Dear Sir,

RE: PUBLIC PARTICIPATION – PROPOSED NYAMIRA GK PRISON FACILITY ON SIANY WETLAND

We refer to the above subject and wish to state that public participation exercise has never been carried out. A public meeting which was supposed to take place at 10.00a.m. on Friday, 4th May, 2012 never took place. Members of the local community assembled at Siany Primary School and waited for the experts from Africa Waste and Environment Management Centre up to 12.30p.m. but they did not come.

We wish to inform you that subsequent to the failed meeting, Prison Warders have embarked on harassing and arresting people who turned up for the meeting and, especially the few who stayed on and presented their views when the Experts later arrived. The fake meeting appears to have been arranged with a view of exposing community members with negative views regarding Prison activities on the Wetland. It is hard to believe that the meeting was organized for the purpose of Environmental Impact Assessment Report.

Please note that people affected by the proposed project have not given their views in any public meeting organized for the purpose of Environmental Impact Assessment. Public participation exercise has not been carried out as required by EMCA 1999 Section 58.

By a copy of this letter, we humbly wish to request the Government through the Commission on Administrative Justice (CAJ) to urgently help us to stop continuous harassment and intimidation by the Prison Warders.

Yours faithfully,

SIANY WETLAND RESIDENTS

LIST ATTACHED

- cc. - The Commission on Administrative Justice
 - Kenya National Commission on Human Rights
 - P.S, Ministry of Environment and Mineral Resources

SIANY RESIDENTS

NO.	NAME	ID/NO	SIGNATURE
1.	JAMES ONYANGO OBIANLGO	5464001	
2.	MULCENI ANLGO ONYANGO	5323284	
3.	JOHNA & SON ODONGO	2816882	
4.	SARA AKINYI ODONGO	1526146	
5.	JOSEPHNY AUMA ONYANLGO	246792	
6.	EMANUEL ONYANLGO SAKKE	2354467	
7.	ESTHER AWOOR OTIENO	21545618	
8.	Lilian Adhiambo Odongo	26271066	
9.	JOSPHAT Odongo SAKKE	6424798	
10.	HAVA. A. OMONDI ZRT	2777136	HAVA
11.	RELIAN OMONDI	6956714	
12.	VICOR OMONDI	8971312	
13.	HENRY Owino Ganga	9912088	
14.	Rose Achueng	2234567	Rose
15.	JOSEPH OMONGO	4374072	
16.	PAMELLA OMONGO	6524698	
17.	PHILIMON OMONGO	22184397	
18.	MILLCENT OCHLENG	2155849	
19.	JEMFA AKILO GANGA-	588896	
20.	HESRON OUMA	28063764	
21.	MILDREN OUMA	2345671	
22.	GILBERT OKETCH	24147585	
23.	SILVIA OKETCH	2288412	
24.	ADRIIS JUMA	5888941	
25.	JOSEPH OBIERO MARRAO	7282919	x-x-x
26.	JOSEPHINE MORAA OBIERO	1605808	x-x-x
27.	Omondi Francis MARRAO	3869181	
28.	Mam A. Omondi	3869021	Mam
29.	Bernard Juma	4603102	
30.	Constatov Ogungo	21602669	C.A.O
31.	Raphael Ogungo	6522589	
32.	Ken Omondi	22229811	

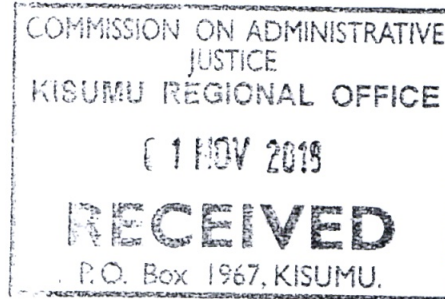
33.	Magret Atieno	9912131	AA
34.	John Dehiambo	03706433	J Dehiambo
35.	Daniel Omolo	50021573	D Omolo
36.	Nashglor Kimony	22127223	N Kimony
37.	KEVIN OTIENO	24903806	K Otieno
38.	Rahema Akinyi	29391457	R Akinyi
39.	Magret Adhumbi Odiyo	8252569	M Adhumbi Odiyo
40.	MICHEL ONYANGO	11113615	M Onyango
41.	NKORU KIMORI	22702919	N Kimori
42.	Rose Kimony	26988894	R Kimony
43.	Jackie Atieno	12509581	J Atieno
44.	Richard Malomo	4110721	R Malomo
45.	BOSTON JOHN	28838741	B John
46.	Jack Omollo Malomo	7222372	J Omollo Malomo
47.	MILKA AKOCH OMOLLO	25584408	M Akoch Omollo
48.	Isiah Yogo Wambe	3821817	I Yogo Wambe
49.	John Omollo Wambe	3821680	J Omollo Wambe
50.	JUDITH AKOCH OCHIAI	24640291	J Akoch Ochi
51.	Syprine Owino	3986110	S Owino
52.	Samuel Owino Oriango	1368231	S Owino Oriango
53.	RENITA ATIENO OWINO	24353429	R Atieno Owino
54.	OWINO EBWIN OKOTH	27328892	O Okoth
55.	ROSE AUMA SAMBA	26988461	R Auma Samba
56.	Simion Samba Akumu	23987462	S Samba Akumu
57.	MICHAEL OTIENO OWINDO	21855490	M Otieno Owindo
58.	POLINE AKOCH OTIENO	26456923	P Akoch Otieno
59.	CELESTINE JUMA OWINDO	5866395	C Juma Owindo
60.	DICKSON OTIENO SAMBA	9974627	D Otieno Samba
61.	MILICENT ANYANGO	29169770	M Anyango
62.	BENARD OTILA	20902426	B Otila
63.	EVERLINE ODIENO	2311996	E Odieno
64.	HELEN AUMA	8922871	H Auma
65.	PETER ADINYA GANJA	1445889	P Adinya Ganja
66.	ELIDAH AUMA	5103223	E Auma

67.	KENNEDY ODHAMBO AKUMU	20300850	AKUMU
68.	EUKARETH AKUMU AKOFF	5888932	AKUMU
69.	MILCENT OCHIENG	2185549	AKUMU
70.	MARGRET ATIENO ONDIEK	2930562	X-X-X
71.	DANISH-O. ONYANGO	1382858	AKUMU
72.	NELSON O. ONYANGO	5887385	NELSON
73.	LINET ADHIAMBO ONDIEK	2894601	LINET
74.	MILLEAH ATIENO	2201604	AKUMU
75.	JOSHUA ONDIEK	2297261	AKUMU
76.	ELLY ONDIEK	2277760	AKUMU
77.	DOROTHY ATIENO ONYANGO	2878502	AKUMU
78.	NANCY ATIENO	2294805	AKUMU
79.	JEREMIAH ONDIEK	2141233	JEREMIAH
80.	JEREMIAH ONDIEK	2186789	JEREMIAH
81.	PELLE ONYANGO NYANJO	1629758	AKUMU
82.	MILCENT ADHIAMBO	2773156	AKUMU
83.	LEAH ODHAMBO	1356793	AKUMU
84.	JANE ANIMO	1545889	AKUMU
85.	SIPROSA OKINDO	1495312	AKUMU
86.	MARY ATIENO AKUMU	5889772	X-X-X
87.	SAMUEL ONDIEK ONYANGO	5887345	X-X-X
88.	CAROLINE ACHIENG ONYANGO	2547526	CAROLINE
89.	CAROLINE ACHIENG ONDIEK	2644352	AKUMU
90.	IRINE ATIENO ONDIEK	29430434	AKUMU
91.	FREDRICK ONDIEK ONDIEK	29430419	AKUMU
92.	AJELINA ATIENO ONYANGO	5887377	X-X-X
93.	LILIAN DAWUD OTIENO	27001069	AKUMU
94.	PAMELA ADHIAMBO ODEK	13091204	PAMELA
95.	SAMUEL ODEK OGETA	5889330	AKUMU
96.	DAMALIS ADHIAMBO ARONI	6957591	X-X-X
97.	ELBA AKUMU OPOTH	23652761	AKUMU
98.	JANE ADAMO MWALO	0774928	X-X-X
99.	HARSON ANWIND NBIERO	3261543	X-X-X
100.	TOBIAS OUMA OTILA	25395915	ILENYA

SIANY RESIDENTS
BONYENGWE II SUB-LOCATION-NYAMUSI DIVISION
NYAMIRA NORTH SUBCOUNTY

November 1, 2018

The Commission on Administrative Justice
"Office of the Ombudsman"
Kisumu Branch Office
Oginga Odinga Street
P.O. Box 1967 - 40100,
KISUMU.



**RE: DESTRUCTION OF 41HA SIANYA WETLAND – NYAMUSI DIVISION,
NYAMIRA COUNTY (LR NO. NORTH MUGIRANGO/MAGWAGWA II/403**

The above-referenced wetland is a community land. The wetland is currently being destroyed by a group of prison warders, aided by the National Environment Management Authority (NEMA) and other key stakeholders as outlined below. Affected communities' complaints and disagreements regarding a 'proposed construction of a prison, among other issues have never been taken into consideration as confirmed by attached letters and protest reports.

1 (a) Prison warders led by Mr. Mongare Sitino, PF NO. 95015383, are destroying the wetland through illegal settlement and farming. They destroyed all the trees and vegetation on the land and have been actively engaged in farming since 2007.

(b) The prison warders are forcefully cultivating a portion of a private land adjacent to the wetland (NORTH MUGIRANGO/MAGWAGWA II / 360 REGISTERED IN THE NAME OF MICHAEL ODHIAMBO MUGA).

(c) Prison warders sent away Awach Water Resources Users Association (WRUA) who wanted to carry out conservation activities on the water springs from the wetland.

(d) Prison warders act as the sole proprietor and decision makers on the wetland and are busy managing the wetland affairs by ensuring that it is completely dry.

(e) Prison warders arrest, touch and intimidate any community members who speak out against their activities on the land. They take community members to court with fictitious charges and cases take long and are usually very expensive.

2 (a) NEMA stopped construction of a prison on the land in 2010 on ground that it was being put up on a wetland. However, on 20th February, 2013 NEMA rescinded its original decision and issued the Ministry of Home Affairs, Prisons Department Nyamira Prisons with attached Conditional Environmental Impact Assessment Licence valid for two years. NEMA's decision was based on a fake ENVIRONMENTAL

IMPACT ASSESSMENT STUDY REPORT compiled by an organization known as Africa Waste and Environment Management Centre.

(b) NEMA has failed in its mandate to prevent destruction of a sensitive ecosystem and has instead participated in its destruction.

3 (a) The Nyamira County Government is in the process of sub-dividing the community land without following legal procedures. They are assisted by the local national administration led by the area assistant chief, Mr. Amos Osuga and Nyamusi Division assistant county commissioner.

(b) The County Government has failed to fence and protect the wetland from degradation. Siany is the only wetland and community land that is still intact in the county.

4. Water Resources Management Authority (WRMA) was informed about the degradation of the wetland which is a source of fresh water River Konyando but took no action to protect the destruction of several springs emanating from the wetland. The springs are now drying up due to human activities on the wetland.

5. Siany Primary School is situated on the wetland. A warning issued by the Ministry of Public Health against its existence on the land was ignored by the Ministry of Education.

6. Buildings currently under construction on the land are not approved by the Kenya National Construction Authority. They are being carried out without following various acts of parliament and without following laid down procedures. Furthermore, they are being carried out using expired Environmental Impact Assessment Licence issued by NEMA.

7. After prison warders invaded the land and cleared it by cutting and burning trees, some local residents have also engaged on harmful cultivation practices on one side of the wetland.

We are petitioning your office to carry out various investigations with a view of ensuring that the wetland is preserved and conserved in accordance to the wishes of community members. Any activity on the wetland should be undertaken in accordance to the Environmental Management and Co-ordination Act, 2009.

Prison warders should be removed from the wetland since their continued stay on the land is not supported by any law.

Yours faithfully,

SIANY RESIDENTS - LIST ATTACHED

	NAME	SIGNATURE	ID/NUMBER	MOBILE
33	HELLEN AKUMU		8922671	07113903
34	ROSE Samba		26988461	070061366
35	SIMION AKUMU		22405486	07170957
36	PAULINE STRONG		26456923	
37	MICHAEL OTIENO		21855490	0729323
38	JANE ATIENO A.		5887385	
39	MILUCENT AWOR O.		27000899	
40	ELIVICE AKUMU		27001003	0725750
41	EXPPOSE ANNA SKINDO		32689489	
42	GILBERT OKETCH SAMBIA		24147585	0712151830
43	SILVIA OKETCH		33084919	070234616
44	IBRAHIM OKEYO		33010713	07234562
45	DONIS JUMA Samba		5888941	07088390
46	EVERLINE AKINGI		33090026	07056824
47	HEZBON ODANGO		23947020	07359476
48	JOSEPH JUMA		1309264	
49	ROSE ACHIENG		31276805	
50	BENARD OWINO		13567553	07192516
51	JANE AKOTH		9041526	070883106
52	VICTOR OMONDI		29154878	07206503
53	MUBAK ODIANG		9911827	
54	HENRY OWINO		9912088	
55	LILIAN ADHIAMBO		26271066	07021550
56	JOSEPHAT SAKWE		23340711	07299346
57	ESTHER AWOR		21575918	0702879743
58	BANSON ODHIAMBO		5451206	072613049
59	JENIPHA AKELO		5888956	
60	PETER ADINYA		31346998	070389613
61	SARAH AKINGI			
62	ESTHER ODENYI		1527966	
63	JOSHUA A ODANGO		2816832	071190212
64	EMMANUEL OYAROKO		24065626	070581913

NAME

SIGNATURE ID NUMBER

MOBILE

65. BENITA AIGNE OWING
66. SAMUEL C. ORIANO
67. SUPRINEA OPIYO
68. OWING EDWIN OTOH
69. Washington Ogo Owing
70. Alice Anyango

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~~[Signature]~~
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24353429
1368231
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27328892
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30315222

0718218454
071152722
071413939
0723049309
0720-83924

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



THE
COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"

OUR REF: CAJ/KSM/NEMA/038/17/18-AO

January 17, 2019

James Ayieko and Michael Odhiambo
P.O Box 2722 - 40100
KISUMU

Dear Sir,

RE: YOUR COMPLAINT OVER NORTH MUGIRANGO/ MAGWAGWA II/403

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

The Commission is a Constitutional entity established under Article 59(4) of the Constitution and the Commission on Administrative Justice Act, 2011. The Commission has a mandate, *inter-alia*, to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

Further, the Commission is the oversight agency of the right to access to information as provided for by the Access to Information Act, 2016.

In the conduct of its functions, the Commission has powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue Summons and require that statements be given under oath, adjudicate on matters relating to Administrative Justice, obtain relevant information from any person or Governmental authorities and to compel production of such information.

We write to acknowledge receipt of your complaint dated 1st November 2018 which we have carefully reviewed and make the following observations;

1. That the issue at hand basically revolves around ownership of North Mugirango/ Magwagwa II/403.
2. That there are several allegations of trespass and destruction of property, which are criminal in nature.

WESTERN NYA 17A NEWS 13

WESTERN NYA 17A NEWS 13

HERDSMAN SHOT



Mr Tony Masikonde is comforted by his father, Mr David Kilesi, after he was shot at the Dalamere Soysambu ranch on Wednesday. Two guards at the ranch have been arrested and the police also

confiscated a shotgun suspected to have been used in shooting the 21-year herdsman, who was admitted at Nakuru's Rift Valley Provincial General Hospital. Photo/JOSEPH KIHERRI

BRIEFLY

NYAHURURU

Churchman out on bond in killing case

A church elder alleged to have stabbed to death a teenager after a brawl over a bundle of firewood was yesterday released on bond. Mr John Mitugo Wainaina, 75, who denied committing the offence, was released on a Sh200,000 bond with a surety in the same amount. The accused was charged that on March 5, 2007, at Nyairoko village in Nyandarua District, he killed Mr Samwel Githuka by stabbing him with a knife. The case will be heard on May 30, 2007.

KAPSABET

Confusion in plan to sell State houses

Confusion was evident among civil servants over the intended sale of Government houses whose bids were closed yesterday. Although local leaders and the Kapsabet municipal council insist plans to sell 50 houses had been quashed, the Housing ministry maintained the sale was on. More than 200 civil servants had by yesterday paid the mandatory 20 per cent deposit required for any applicant bidding for the purchase. Kapsabet mayor Michael Rono said the council would fight to the bitter end to retain the houses.

Presidential aspirants join reforms team

By NATION Reporter

ODM Kenya yesterday named three presidential aspirants to their team that will negotiate with the Government on minimum reforms.

In what appeared to be a change of mind, the party picked leader of the Official Opposition Uhuru Kenyatta as team leader, Mr Raila Odinga and Mr William Ruto to join the group.

To other negotiators are MPs Kenneth Marende, Amina Abdalla, Otieno Kajwang, Nyiva Mwendwa, Linah Kilimo, Abdullahi Ali, Ochillo Ayacko, Joe Khamisi and Joseph Nkai-sery.

List released

The aspirants did not feature in a list released on Monday that mainly featured MPs.

The new list of 12 members sent to Vice-President Moody Awori yesterday, also contains another one of 24 members from the civil society.

However, Mr Awori had asked the Opposition through Mr Kenyatta to send only 10 members to the talks on April 10 that will decide civil society representation.

Presidential aspirants Julia Ojiambo, Kalonzo Musyoka, Najib Balala, Joseph Nyaga and Musalia Mudavadi were named in a separate list as alternate members.

Those in the alternate list will take the places of those in the main one in case they did not attend the meetings.

Others in the alternate list are interim chairman Henry Kosgey, secretary-general Anyang' Nyong'o, and MPs Omingo Magara, Musa Sirma, Moses Cheboi, Chris Okemo and Joseph Kamotho.

MPs Mutula Kilonzo and Justin Muturi, Law Society of Kenya chairman Erick Okong'o O'Mogeni and Centre for Multiparty Democracy executive director Njeri Kabeberi will be ex-official members.

Wrote to Awori

Prof Nyong'o and Mr Cyprian Nyamwamu, a member of the Joint Dialogue Committee wrote to the VP informing him about the team.

They said: "It is our understanding that the goal of the dialogue talks shall henceforth focus on the priority enactment of the essential reforms to entrench the review process, level the ground for free and fair General Election."

The group recommended that each side comes with proposals on what they want.

They proposed the first dialogue meeting be held between Monday and Wednesday next week at Safari Park Hotel.

Awori had asked
Opposition
through Kenyatta
to send only 10
members

NYAMIRA

104 acres acquired for a new prison

A 104-acre land has been acquired for the construction of a new prison in Nyamusi Division. Kisii prison chief Julius Adero said his office was following up on the title deed application for the plot. The construction of the prison, to be based at Esiangi, is aimed at decongesting Kisii prison, he added.

Mr Adero also said the construction of a Sh25 million housing project for staff and a dispensary were nearing completion. He said a water project was also in progress.

VIHIGA

Official suspended in council probe

A chief officer at the county council has been suspended for financial mismanagement. Western provincial local government officer Jeremiah Onchieku said a team of auditors from the Local Government ministry was expected at the council next week to investigate the matter. Some councillors had written to minister Musikari Kumbo calling for the audit. They asked why the council paid their colleagues nearly Sh500,000 as allowances to attend last year's Afri-cities conference in Nairobi when each council was allowed to send only four delegates. Some did not even travel to Nairobi, they said.