

REPUBLIC OF KENYA

PARLIAMENT OF KENYA LIBRARY

THE SENATE

FOURTH SESSION

THIRTEENTH PARLIAMENT

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

ON

A PETITION BY MBOGO'S FAMILY OF MBARI YA MBOGO CONCERNING FORGERY, PERJURY AND ILLEGAL ALIENATION OF L.R. NO'S 7153/ 1, 7153/ 2, 7153/ R ALSO KNOWN AS L.R. 12825 BY MBOGO'S FAMILY

SEPTEMBER, 2025

PAPERS LAID

DATE	7/10/2025
TABLED BY	Chairperson
COMMITTEE	—
CLERK AT THE TABLE	Chesp

Contents

ABBREVIATIONS 3

PREFACE 4

ACKNOWLEDGEMENT 7

CHAPTER I 7

INTRODUCTION 1

LEGAL BASIS FOR PETITIONS 7

CHAPTER 2 8

CONSIDERATION OF THE PETITION 8

Petitioners Submissions 8

Responses by the Cabinet Secretary, Ministry of Lands Public Works Housing and Urban Development 9

Responses by the Chairperson, National Land Commission 9

CHAPTER 3 11

ISSUES FOR CONSIDERATION 11

CHAPTER 4 13

COMMITTEE OBSERVATIONS 13

CHAPTER 5 14

COMMITTEE RECOMMENDATIONS 14

ABBREVIATIONS

MoLPWHUD -Ministry of Lands, Public Works, Housing and Urban Development

CoK -Constitution of Kenya

HLI - Historical Land Injustice

NLC -National Land Commission

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 the following Members.

1. Sen. Mohamed Mwinyihaji Faki, CBS, MP - **Chairperson**
2. Sen. Karen Nyamu, MP - **Vice-Chairperson**
3. Sen. Allan Chesang, CBS, MP
4. Sen. Johnes Mwashushe Mwaruma, MP
5. Sen. Joe Nyutu, MP
6. Sen. James Murango, MP
7. Sen. Mohamed Haji, MP
8. Sen. Mariam Sheikh Omar MP
9. Sen. Beatrice Akinyi Ogola, MP

CHAIRPERSON'S FORWARD

At a sitting of the Senate held on on 23rd May, 2023, Sen. Karungo Thang'wa, MP, reported to the Senate a Petition that was submitted by Mr. Francis Wainaina Njuguna, concerning historical injustices and illegal alienation of L.R No. 7153/1, 7153/2, 7153/R also known as L.R 12825.

The Petitioners are seeking the intervention of the Senate to:

a) That the Senate investigates the matter with a view to resolve that all beneficiaries, investors and stakeholders operating on the disputed land compensates on properties and all illegally occupied land; and
b) That the Senate orders for compensation for historical injustices, damages and losses as a result of forceful eviction towards the Mbogo family.

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 an informed 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 on the same.

The Committee proceeded to seek responses from the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development (MoLPWHUD) and the National Land Commission to address the issues raised in the Petition.

Committee Observations

Prayer One:

That the Committee recommends that the National Land Commission considers re-investigating the claims made by the petitioners and to ensure the matter is deliberated to its logical conclusion.

The Committee observed that NLC had already opened a case file and therefore the commission should further undertake to investigate the petitioner's claim of forced eviction and historical injustices so as to conclude on the matter with finality.

Prayer Two:

That the Committee recommends the immediate cessation of any forced eviction towards the petitioners

The Committee observed that based on the submissions, there have been past evictions on the disputed land and that there may be human rights abuses committed towards the petitioners. The Committee further observed that a temporary stop on all evictions should be enforced until the determination of the claim

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-

1. The National Land Commission expedites the long-standing matter prior to the expiry of their term in office and concludes the historical land injustice case file under the Claim Reference Number: **NL/HQ/053/2017** and thereafter submit a status report to the Senate by 30th December, 2025; and

2. There should be no further evictions on the disputed piece of land until the National Land Commission concludes its investigations and delivers a judgment on the claim.

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 Lands, Public Works, Housing and Urban Development and the National Land Commission for their submissions and contribution to the resolution of this matter.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Standing Committee on Land, Environment and Natural Resources on the alleged historical injustices and illegal alienation of L.R No. 7153/1, 7153/2, 7153/R also known as L.R 12825 in Kiambu County.

Signed: _____ **Date:** **30 / 09 / 2025.**

SEN. MOHAMED MWINYIHAJI FAKI, CBS, MP,
CHAIRPERSON,
SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES.

CHAPTER I

INTRODUCTION

1. At a sitting of the Senate held on on 23rd May, 2023, Sen. Karungo Thang'wa, MP, reported to the Senate a Petition that was submitted by Mr. Francis Wainaina Njuguna, concerning historical injustices and illegal alienation of L.R No. 7153/1, 7153/2, 7153/R also known as L.R 12825.

Underlying Constitutional and Statutory Provisions

1. **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.
2. **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.
3. **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."*
4. **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.*
5. **Article 40** of the CoK 2010 guarantees the protection of the right to acquire and own property and provides safeguards against arbitrary deprivation.
6. **Article 40: Protection of Right to Property**
    i. Clause 1: "Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property..." This is the petitioners' core argument: that their ancestral ownership, even if unregistered, was a property right that was violated.

ii. Clause 2: "Parliament shall not enact a law that permits the State or any person to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description." The petitioners' claim of being "forcibly evicted... killed and maimed" alleges a severe and arbitrary deprivation of this right.

7. **Article 63: Community Land**
   i. Clause 1: "Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest."
   ii. Clause 2: "Community land consists of— (a) land lawfully held in the name of group representatives under the provisions of any law; (b) land lawfully transferred to a specific community by any process of law; (c) any other land declared to be community land by an Act of Parliament; and (d) land that is— (i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; (ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities; (iii) lawfully held as trust land by the county governments..."
8. This is crucial. The petitioners' claim that their forefathers bought the land from the Dorobo community and held it under "community land tenure" (LR No. 7153/R) directly invokes this constitutional category. The failure to formally recognize this ownership is a key grievance.
9. **Article 67: National Land Commission (NLC)**
   i. Clause 2: The functions of the Commission are, (e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.
   ii. This is the constitutional basis for the petitioners taking their case to the NLC tribunal in the first place. The petition to the Senate implies a dissatisfaction with how the NLC exercised this function.
10. **The Land Act, 2012:**
   i. Part VI - Historical Land Injustices: This entire part provides the legal procedure for lodging, investigating, and remedying claims like the one

brought by the Mbogo family. It gives legal force to the NLC's mandate under Article 67.

i. Sections 14-16 (Compulsory Acquisition of Land): These sections lay out the strict, legal process for the government to acquire private land for public use, including the requirement for prompt and full compensation. The petitioners' alleged eviction likely did not follow this legal process.

11. **The Land Registration Act, 2012:** This Act consolidates the laws on registration of title to land. It is the statute under which the current titles held by developers and homeowners on the disputed land were issued. The petitioners' lack of a title, despite their historical claim, puts them at a severe disadvantage under this statute, which primarily recognizes registered proprietors as the absolute owners.
12. **The Community Land Act, 2016:** This is the specific law enacted to give effect to Article 63 of the Constitution on community land. It provides the mechanism for communities to legally register and manage their ancestral lands. The petitioners' claim is a textbook example of the type of claim this Act was designed to address. Their argument is that their land should have been protected and eventually registered under a framework like this, rather than being alienated.
13. **The National Land Commission Act, 2012:** This Act establishes the NLC, defines its powers, and outlines its procedures, including those of its tribunals. The petitioners' engagement with the NLC tribunal was conducted under the authority of this Act.

Background of the Petition

The salient issues raised in the Petition are as follows-

16. The petition is about an ownership dispute of a 933.9-acre piece of land in Kiambu County, on which multibillion shilling commercial and residential properties stand.

17. The petitioners claim that the land is situated along Kiambu Road, near Thindigua, and going by the current land rates, it is estimated to be worth over Sh100 billion.

19. Members of the Mbogo family group who claim to be the bona fide owners of the

expansive land that hosts gated housing communities, a school, and churches, were never issued with a title or lease hold. They claim that the land was grabbed from them and they were evicted in an attack that saw some of them killed and maimed.

20. The petitioners claim that their forefathers bought the property from the Dorobo community Kimokori, Kimandani, Gitaki and Ndimothi in 1930 through barter trade. They further claim that about 2,000 goats and cattle were given out in exchange for the land. However, the transaction was not in writing as that was the mode of agreement in 1930, owing to their inability to read and write.

21. The colonial settlers under the umbrella body, Kasarini Estate Ltd (the respondent), identified the land as suitable for coffee farming research. But due to confrontations and opposition from the occupants, the settlers agreed to organize the families in an association, *Kasarini Farmers' Co-operative Society, which was registered on July 20, 1964 (Settler's).*

22. The families worked on the land, registered as Number 7153/R (under community land tenure) and continued to benefit from any development on it, which included coffee that was planted by the settlers. But their woes would begin in 1974, when the settler handed the management to the *Kasarini Farmers' Co-operative Society, which was registered on July 20, 1964 (Settler's).*

23. The petitioners, representing Mbogo Family Welfare Group, filed a claim with the National Land Commission (NLC) tribunal wanting to be given the land, which is already subdivided and partly sold. The petitioners claim that NLC made a determination in favour of the Respondent, Kasarini Estate Limited, in disregarding the findings from the Ministry of Cooperatives who stated that the Kasarini Farmers' Cooperatives was a registered entity with the government.

24. The Petitioner, therefore, prayed that the Senate investigates the matter with a view to resolve that all beneficiaries, investors and stakeholders operating on the disputed land compensate the properties and all illegally occupied land. They also prayed that

the Senate orders for compensation of historical injustices, damages and losses as a result of forceful eviction towards the Mbogo family.

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

1.13 Analysis of Facts in the Complaint

25. The petitioners present a compelling and historically plausible narrative of dispossession.

i. Pre-Colonial Origin: The claim of acquisition from the Dorobo community via barter trade (2,000 goats and cattle) in 1930 is consistent with known pre-colonial land transaction practices in Kenya. The lack of written documentation is not, in itself, a fatal flaw for such a historical claim, as oral agreements and customary law were predominant at the time.

ii. Continuous Occupation: The fact that they "worked on the land" and "continued to benefit from any development on it" for decades (from the 1930s until at least 1974) is a strong factual assertion that supports a claim of adverse possession or customary ownership. It establishes a long-standing physical connection to the land.

iii. Community Land Tenure: The reference to the land being "registered as Number 7153/R (under community land tenure)" is a crucial detail. If verifiable, it is a significant piece of evidence that formal authorities, at some point, recognized their collective ownership, even if a formal title was not issued to individuals.

iv. Pattern of Injustice: The story follows a classic pattern of colonial and post-colonial land injustice: initial colonial interest ("suitable for coffee farming"), a forced or coercive restructuring of ownership ("organized the families in an association"), and an eventual takeover by a seemingly illegitimate entity leading to violent eviction ("killed and maimed"). This pattern lends

credibility to their overall story.

The Petitioners prayed that:

26. The Petitioners are seeking the intervention of the Senate to:

a) That the Senate investigates the matter with a view to resolve that all beneficiaries, investors and stakeholders operating on the disputed land compensates on properties and all illegally occupied land; and
b) That the Senate orders for compensation for historical injustices, damages and losses as a result of forceful eviction towards the Mbogo family.

LEGAL BASIS FOR PETITIONS

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

15. 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."*

16. 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-

17. *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.

18. 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

CONSIDERATION OF THE PETITION

Approach taken by the Committee

19. 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.

20. 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.

21. Thereafter the Committee invited the Cabinet Secretary, Ministry of Lands Housing Public Works and Urban Development (MoLPWHUD), the Chairperson of the National Land Commission (NLC) who provided written responses to the Committee.

Petitioners Submissions

22. Vide a letter REF: SEN/DSEC/DPEAC/LENR/2025(3) (175) dated 15th May, 2025, the Committee invited the Petitioners to physically appear before the Committee on Thursday, 29th May, 2025. Further, the petitioners also submitted written submissions and evidence.

23. Evidence submitted includes; *(copies Annexed as Annex II Petitioners Submissions)*

a. A copy of the family history eviction and compensation claim.
b. A copy of an expert report on land fraud and illegality of grant IR no. 35930 LR no. 12825.
c. A copy of the surveyors report on the land status of reference no. LR 12825.

Responses by the Cabinet Secretary, Ministry of Lands Public Works Housing and Urban Development

24. Vide Letter REF: SEN/DSEC/DPEAC/LENR/2025(3) (166), dated 8th May, 2025, the Committee had invited the Cabinet Secretary to respond to Statements and Petitions and proceeded to admit written responses with a provision to seek for further clarification should the submissions be insufficient.

The Ministry of Lands responded as follows:

Response

25. That the petition on historical injustices and illegal alienation of L.R. No. 7153/1,7153/2,7153/R, also known as L.R. 12825 in Kiambu County, with a view of compensating the petitioners can well be addressed by the National Land Commission which has the constitutional mandate of addressing land historical injustices and compensation.

Responses by the Chairperson, National Land Commission

26. The NLC opened a file under the Claim Reference Number: **NL/HQ/053/2017**

27. Initial NLC Action: The Commission heard the matter and recommended that it be referred to the next (2nd) Commission because the matter was in court.

28. Subsequent Development: The claimants withdrew the matter from court and requested the NLC to hear the matter again. (The Commission is still waiting for the court order confirming the withdrawal).

29. Current Status: The NLC received their plea and invited all parties for a physical hearing.

30. Outcome of Hearing: It emerged that there are four different parties claiming ownership of the land with reference no. LR 12825:

- Mbari ya Mbogo
- Kasarini Ancestral families' self-help group

- Kasarini Cooperative Society Limited
- Workers of Kasarini Estate

31. Final Status: This is a matter currently under active investigation by the Commission.

CHAPTER 3

ISSUES FOR CONSIDERATION

I). ***Whether there is proof of continuous occupation and community land tenure registration as claimed by the petitioners?***

The petitioners submitted as follows:

32. That the petitioners claimed that they "worked on the land" and "continued to benefit from any development on it" for decades, from the 1930s until at least 1974, and a claim of adverse possession or customary ownership is justified given their long-standing physical connection to the land they occupy.

The NLC responded as follows:

33. The NLC opened a file under the Claim Reference Number: **NL/HQ/053/2017**

34. Initial NLC Action: The Commission heard the matter and recommended that it be referred to the next (2nd) Commission because the matter was in court.

35. Subsequent Development: The claimants withdrew the matter from court and requested the NLC to hear the matter again. (The Commission is still waiting for the court order confirming the withdrawal).

36. Current Status: The NLC received their plea and invited all parties for a physical hearing.

37. Outcome of Hearing: It emerged that there are four different parties claiming ownership of the land with reference no. LR 12825:

38. Mbari ya Mbogo

39. Kasarini Ancestral families' self-help group

40. Kasarini Cooperative Society Limited

41. Workers of Kasarini Estate

42. That the matter is currently under active investigation by the Commission.

Committee Observation

43. The Committee observed that from the NLC submissions, the Commission states that, upon consideration of the lodged claim it emerged that there were four different parties claiming ownership of the land with reference no. LR 12825 and that the investigations are ongoing.

II) Whether there was evidence of historical land injustices and unfair eviction towards the petitioners;

The petitioners submitted evidence as follows:

44. The petitioners submitted that there was a chronological pattern of colonial and post-colonial land injustice with initial colonial interest (which was under coffee farming) and a forced coercive restructuring of ownership (by allegedly organizing the petitioners' families in an association), and an eventual take-over of the land through change of ownership from community land to private land tenure. This has led to violent evictions and alleged killings and maiming of petitioner's families.

The NLC responded as follows:

45. That the Commission opened a historical land injustice file under the Claim Reference Number: **NL/HQ/053/2017** and that the case is under active investigation to ascertain if there were any violent evictions and historical injustices committed towards the petitioner's families.

Committee Observation

46. The committee observed that the NLC opened a case file under the reference number **NL/HQ/053/2017** and that it is actively investigating the matter to ascertain the claims made by the petitioners.

CHAPTER 4

COMMITTEE OBSERVATIONS

Prayer One:

That the Committee recommends that the National Land Commission considers re-investigating the claims made by the petitioners and to ensure the matter is deliberated to its logical conclusion.

The Committee observed that NLC had already opened a case file and therefore the commission should further undertake to investigate the petitioner's claim of forced eviction and historical injustices so as to conclude on the matter with finality.

Prayer Two:

That the Committee recommends the immediate cessation of any forced eviction towards the petitioners

The Committee observed that based on the submissions, there have been past evictions on the disputed land and that there may be human rights abuses committed towards the petitioners. The Committee further observed that a temporary stop on all evictions should be enforced until the determination of the claim.

CHAPTER 5

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-

1. The National Land Commission expedites the long-standing matter prior to the expiry of their term in office and concludes the historical land injustice case file under the Claim Reference Number: **NL/HQ/053/2017** and thereafter submit a status report to the Senate by 30th December, 2025; and

2. There should be no further evictions on the disputed piece of land until the National Land Commission concludes its investigations and delivers a judgment on the claim.

APPENDICES

ANNEX I: MINUTES OF THE MEETINGS

a. Minutes of the 19th sitting held on Wednesday, 31st May, 2023 – Meeting with the Petitioners

b. Minutes of the 49th sitting held on Saturday, 28th October, 2023 – Consideration of the Committee Draft Report on the Petition

c. Minutes of the 27th sitting held on Thursday, 18th July, 2024 – Meeting with the NLC

d. Minutes of the 82nd sitting held on Monday, 22nd September, 2025 – Adoption of the Committee Report on the Petition.

ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS

Annex II (A) – NLC 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 of the Committee

MINUTES OF THE EIGHTY SECOND (82ND) SITTING OF THE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD AT FOUR POINTS BY SHERATON, MACHAKOS COUNTY ON MONDAY, 22ND SEPTEMBER, 2025 AT 2:00 PM

PRESENT

1. Sen. Mohamed Mwinyihaji Faki, CBS, MP - **Chairperson**
2. Sen. Johnes Mwashushe Mwaruma, MP - Member
3. Sen. James Murango, MP - Member
4. Sen. Joe Nyutu, MP - Member
5. Sen. Mariam Sheikh Omar, MP - Member

ABSENT WITH APOLOGIES

1. Sen. Karen Nyamu, MP - **Vice Chairperson**
2. Sen. Beatrice Akinyi Ogola, MP - Member
3. Sen. Abdul Haji, MP - Member
4. Sen. Allan Chesang, CBS, MP - Member

IN ATTENDANCE

1. Mr. Victor Bett
2. Ms. Ivy Nyambura
3. Mr. Andrew Nyairo
4. Mr. John Gichia
5. Ms. Keziah Muthama
6. Mr. Simon Muinde
7. Mr. Boniface Mbithi

SECRETARIAT

- Clerk Assistant I
- Clerk Assistant III
- Legal Counsel II
–Research Officer III
–Fiscal Analyst III
- Audio Officer
-Serjeant at Arms

MINUTE SEN/LENR/443/2025: PRELIMINARIES

The Chairperson called the meeting to order at 10.14 am followed by a word of prayer.

MINUTE SEN/LENR/444/2025: CONSIDERATION OF COMMITTEE DRAFT PETITION REPORTS

The Chairperson began by informing the meeting that eleven (11) draft reports in total to be considered that had been scheduled for discussion. The Secretariat then proceeded to take the Members through the reports highlighting the Petition backgrounds, engagements with various stakeholders, investigations and county visits conducted as well as the key observations and recommendations.

In the course of deliberations, the Committee examined the draft reports presented and took note of the recommendations advanced by individual Members and resolved that the necessary amendments and refinements be incorporated into the drafts.

Upon conclusion of the discussions and having satisfied itself that the reports adequately captured the issues raised in the petitions and the Committee's determinations thereon, the Committee unanimously resolved to adopt a total of eight (8) Petition Reports as amended with the three (3) remaining Petitions requiring further stakeholder engagements.

The Secretariat was accordingly directed to effect the agreed amendments and prepare the final versions of the approved and adopted reports for tabling before the Senate.

The following reports were approved and adopted with amendments as follows-

i. **Petition by the Residents of Changara in Busia County concerning delays in implementation and completion of the Changara Water Pan World Bank funded project;**
ii. **Petition on historical injustices and illegal alienation of L.R. No. 7153/1, 7153/2, 7153/R, also known as L.R. 12825 in Kiambu County;**
iii. **Petition by Nyandarua IDPs on delayed compensation and occupation of parcels of land;**
iv. **Petition regarding the plight of the landless in Muthanthara, Embu County;**
v. **Petition by Marungu residents within Mghange Mwanda Ward, Taita Taveta County on the alleged threatened eviction from their ancestral land by Mghange Catholic Parish;**
vi. **Petition on ownership dispute over Mwananchi Settlement Scheme in Mwatate Constituency in Taita-Taveta County;**
vii. **Petition concerning recognition of land ownership rights and redress of Historical Injustices in Mombasa County; and**
viii. **Petition by the Mwabundusi land squatters on delayed allocation of land by way of resettlement or compensation for their ancestral land.**

The following reports were deemed unsatisfactory and thus need further engagements with various stakeholders to be completed-

i. **Petition regarding eviction of Korogocho Community living in the Nairobi River Corridor after its declaration as a special planning area, Nairobi County;**
ii. **Petition to the Senate concerning land injustices against the Olderkesi Community Members in Narok West Constituency, Narok County concern; and**
iii. **Petition by CECARE on behalf of Pumwani residents, concerning the conversion of the LR NO. 209/ 2378/1 Pumwani Majengo from public to private land.**

MINUTE SEN/LENR/445/2025 ANY OTHER BUSINESS

There was no other business discussed.

MINUTE SEN/LENR/446/2025 ADJOURNMENT AND DATE OF NEXT MEETING

The meeting was adjourned at 6.34 pm. The date of the next meeting was to be called on notice.

SIGNED..... **DATE**..20/9/2025

SEN. MOHAMED MWINYIHAJI FAKI, CBS, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES.

MINUTES OF THE TWENTY SEVENTH (27TH) SITTING OF THE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 18TH JULY, 2024 IN COMMITTEE ROOM 4, FIRST FLOOR, MAIN PARLIAMENT BUILDING AT 11:00 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. Wamatinga Wahome, MP - Member
5. Sen. Mariam Sheikh Omar, MP - Member
6. Sen. Beatrice Akinyi Ogola, MP - Member

ABSENT WITH APOLOGIES

1. Sen. William Cheptumo Kipkiror, CBS, MP - Member
2. Sen. Issa Juma Boy, MP - Member
3. Sen. Agnes Kavindu Muthama, MP - Member

IN ATTENDANCE

A. FRIEND OF THE COMMITTEE

1. Sen. Fatuma Dullo, CBS, MP –Senator, Isiolo County

B. SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant I
2. Ms. Ivy Nyambura –Clerk Assistant III
3. Ms. Angela Kagunyi - Legal Counsel II
4. Ms. Janice Naserian - 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/132/2024: PRELIMINARIES

The Chair called the meeting to order at 11.28 am. This was followed by a word of prayer.

MINUTE SEN/LENR/133/2024: ADOPTION OF AGENDA

The agenda was adopted after having been proposed by Sen. (Dr.) Steve Lelegwe Ltumbesi, CBS, MP and seconded by Sen. Johnes Mwaruma, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Previous Minutes;
4. Matters Arising;
5. **Meeting with the National Land Commission Chairperson to consider a Bill, eight (8) Statements and four (4) Petitions pending before the Committee**;
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MINUTE SEN/LENR/134/2024: CONFIRMATION OF PREVIOUS MINUTES

The Committee confirmed the following minutes -

i. Minutes of the twenty sixth (26th) sitting held on Tuesday, 25th June, 2024 at 9.00 am as proposed by Sen. (Dr.) Steve Lelegwe Ltumbesi, CBS, MP and seconded by Sen. Mariam Sheikh Omar, MP respectively;
ii. Minutes of the twenty forth (24th) sitting held on Sunday, 16th June, 2024 at 9.00 am as proposed by Sen. Mariam Sheikh Omar, MP, and seconded by Sen. Beatrice Akinyi Ogola, MP respectively;
iii. Minutes of the twenty third (23rd) sitting held on Saturday, 15th June, 2024 at 2.00 pm as proposed by Sen. (Dr.) Steve Lelegwe Ltumbesi, CBS, MP, and seconded by Sen. Beatrice Akinyi Ogola, MP respectively;
iv. Minutes of the twenty second (22nd) sitting held on Saturday, 15th June, 2024 at 9.00 am as proposed by Sen. Beatrice Akinyi Ogola, MP and seconded by Sen. Johnes Mwashushe Mwaruma, MP respectively;
v. Minutes of the twenty first (21st) sitting held on Friday, 14th June, 2024 at 2.00 pm as proposed by Sen. (Dr.) Steve Lelegwe Ltumbesi, CBS, MP and seconded by Sen. Mariam Sheikh Omar, MP respectively; and

vi. Minutes of the twentieth (20th) sitting held on Friday, 14th June, 2024 at 9.00 am as proposed by Sen. Beatrice Akinyi Ogola, MP and seconded by Sen. Johnes Mwashushe Mwaruma, MP respectively.

MINUTE SEN/LENR/135/2024: MATTERS ARISING

There were no matters arising from the previous minutes.

MINUTE SEN/LENR/136/2024: MEETING WITH THE NATIONAL LAND COMMISSION CHAIRPERSON TO CONSIDER A BILL, EIGHT (8) STATEMENTS AND FOUR (4) PETITIONS PENDING BEFORE THE COMMITTEE

The Chairperson began noting the presence of the National Land Commission (NLC) and requested directed that a round of introductions be done. Thereafter, members raised a point of order regarding the delay in circulation of responses by the NLC which was done as the meeting was ongoing. The concern was that members did not get adequate time for Members to interrogate the responses thoroughly.

Further, the Committee through in the presence of the requester, expressed dissatisfaction with the tabled response on a Statement requested regarding the status of compensation to landowners displaced in the construction of the Horn of Africa Gateway Development Project. The requestor noted that the other than the response having taken too long it was inadequate as it lacked a detailed list of individuals compensated as well as the actual figures.

The NLC responded by conveying apologies on the delay in transition of responses attributed to internal challenges such as budgetary and logistical constraints. The Committee was informed that the Commission would be sending a team to go and assess the status from 22nd July, 2024 and therefore request for additional time to enable them give a comprehensive response.

The Committee gave guidance to NLC that, there was need for additional comprehensive responses on all the pending legislative matters sent to the Commission.

On further deliberation the Committee resolved that-

1. The National Land Commission sends additional comprehensive responses on the, eight (8) Statements and four (4) Petitions within seven (7) days as the Committee expressed dissatisfaction with the tabled responses;
2. A meeting is scheduled with the National Land Commission in the next fourteen (14) days to respond to the aforementioned Statements and Petitions; and
3. Communication done to the National Land Commission highlighting the key areas on the memoranda submitted regarding the Land (Amendment) Bill, 2022 (National Assembly Bills No.40 0f 2022).

MINUTE SEN/LENR/137/2024 **ANY OTHER BUSINESS**

There was no other business discussed.

MINUTE SEN/LENR/138/2024 **ADJOURNMENT AND DATE OF NEXT MEETING**

The meeting was adjourned at 12:21 pm. The next meeting shall be called by notice.

Signed _____ Date **18/7/24**

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

MINUTES OF THE FORTY NINTH (49TH) 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 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/281/2023 PRELIMINARIES

The Chair called the meeting to order at 9:20 am. This was followed by a word of prayer.

MINUTE SEN/LENR/282/2023 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. **Consideration of the draft report on the Petition by Mbogo's Family of Mbari ya Mbogo concerning forgery, perjury and illegal alienation of L.R. No's 7153/ 1, 7153/ 2, 7153/ r also known as L.R. 12825;**
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

MINUTE SEN/LENR/283/2023 **CONSIDERATION OF THE DRAFT REPORT ON THE PETITION BY MBOGO'S FAMILY OF MBARI YA MBOGO CONCERNING FORGERY, PERJURY AND ILLEGAL ALIENATION OF L.R. NO'S 7153/ 1, 7153/ 2, 7153/ R ALSO KNOWN AS L.R. 12825**

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 Lands, Public Works, Housing and Urban Development, the Chairperson National Land Commission and the only respondent mentioned in the Petition Ms. Margaret Nyokabi. Members then deliberated on the key issue for consideration which was Whether there was alleged forgery, perjury and illegal alienation of land in Kasarini, Kiambu County, L.R No. 7153/1, 7153/2, 7153/R also known as L.R 12825.

Having examined the Petitioners submissions and evidences as well as the responses submitted by the afore mentioned stakeholders the Committee made the following observations-

a) Given the facts presented regarding the petition before the Committee, the key matter for consideration is the ownership dispute of the 933.9-acre land in Kiambu County. It is evident that the petitioners, representing the Mbogo Family Welfare Group, have a longstanding claim to this land and have sought redress through multiple channels, including the National Land Commission (NLC) and the Environment and Land Court (ELC).
b) Further, the Committee was made aware of a case withdrawal notice that the Petitioners had submitted to Committee thus allowing the Committee to continue with its investigation on the matters raised in the Petition that had previously been considered *subjudice* given the pending case in court at the time.

c) The Committee consequently resolved that the following stakeholders to respond to the matters raised in the petition-

i. *The Cabinet Secretary, Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) Development;*
ii. *The Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development; and*
iii. *The Chairperson, National Land Commission.*

MINUTE SEN/LENR/284/2023 **ANY OTHER BUSINESS**

There was no other business discussed.

MINUTE SEN/LENR/285/2023 **ADJOURNMENT AND DATE OF NEXT MEETING**

The meeting was adjourned at 12:45 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

MINUTES OF THE NINETEENTH SITTING OF THE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 31ST MAY, 2023 IN COMMITTEE ROOM 4, FIRST FLOOR, MAIN PARLIAMENT BUILDINGS AT 8:30 AM

PRESENT

1. Sen. Johnes Mwashushe Mwaruma, MP - Member (*Chairing*)
2. Sen. William Cheptumo Kipkiror, CBS, MP - Member
3. Sen. Mariam Sheikh Omar, MP - Member
4. Sen. Agnes Kavindu Muthama, MP - Member

ABSENT WITH APOLOGIES

5. Sen. John Muhia Methu, MP - **Chairperson**
6. Sen. (Dr.) Steve Lelegwe Ltumbesi, MP - **Vice Chairperson**
7. Sen. Issa Juma Boy, MP - Member
8. Sen. Wamatinga Wahome, MP - Member
9. Sen. Beatrice Akinyi Ogola, MP - Member

SECRETARIAT

1. Mr. Victor Bett -Clerk Assistant I
2. Ms. Ivy Nyambura -Clerk Assistant III
3. Mr. Mitchell Otoro -Legal Counsel I
4. Mr. John Gichia -Research Officer III
5. Mr. Jack Lemeteki -Media Relations Officer III
6. Mr. Shirley Milimu -Audio Officer III
7. Ms. Keziah Muthama -Fiscal Analyst III
8. Ms. Lydia Kagumba -Public Communications Officer
9. Mr. Ibrahim Odindo -Sergeant-At-Arms

MINUTE SEN/LENR/114/2023: PRELIMINARIES

The Chairperson called the meeting to order at 8.50 am, followed by a word of prayer.

MINUTE SEN/LENR/115/2023: ADOPTION OF THE AGENDA

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

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Minutes;
4. Matters Arising;
5. **Meeting with the Petitioner on the Petition by Mbogo's Family concerning historical injustices and illegal alienation of L.R. No. 7153/1, 7153/2, 7153/R also known L.R. 12825;**
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MINUTE SEN/LENR/116/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

The Committee deferred the confirmation of minutes of the 18th Sitting to the next meeting.

MINUTE SEN/LENR/117/2023 MATTERS ARISING

There were no matters arising due to the deferment of confirmation of minutes.

MINUTE SEN/LENR/118/2023: MEETING WITH THE PETITIONER ON THE PETITION BY MBOGO'S FAMILY CONCERNING HISTORICAL INJUSTICES AND ILLEGAL ALIENATION OF L.R. NO. 7153/1, 7153/2, 7153/R ALSO KNOWN L.R. 12825

The Chairperson welcomed the Petitioners and invited them to present their prayers after a round of introductions.

On hearing their prayers the Committee resolved to;

i. Engage the National Land Commission on the petition to the Senate by Mbogo's family of Mbari ya Mbogo concerning historical injustices and illegal alienation of L.R No. 7153/1, 7153/2, 7153/R also known as L.R.12825 ;

ii. Invite the only surviving respondent Ms. Margaret Nyokabi to shed more light on the Petition; and

iii. Conduct a visit to Kasarini Estate, Kiambu County following the Petition before the Committee.

MINUTE SEN/LENR/119/2023 ANY OTHER BUSINESS

There was no other business discussed.

MINUTE SEN/LENR/120/2023 ADJOURNMENT AND DATE OF NEXT MEETING

The meeting was adjourned at 9.30 am. The date of the next meeting was to be held on notice.

Signed_____ Date **29/6/2023**

SEN. JOHN MUHIA METHU, MP

CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

Annex II:

Submissions by key Stakeholders

NATIONAL LAND COMMISSION

National Land Commission, 316 Upperhill Chambers, 2nd Ngong Avenue, off Ngong Road
P.O. Box 44417 – 00100, *Nairobi-KENYA*, Tel: 0111042800, Email: info@landcommission.go.ke
Website: www.landcommission.go.ke

REF:NLC/2/3 **31st July 2024**

J. M. Nyegenye, CBS,
Clerk of the Senate,
Parliament Building,
P.O. Box 41842 – 00100,
NAIROBI

Dear

PETITION BY MBOGO'S FAMILY OF MBARI YA MBOGO CONCERNING THE ALLEGED FORGERY, PERJURY AND ILLEGAL ALIENATION OF LR NO. 7153/1,7153/2,7153/R ALSO KNOWN AS LR NO. 12825;

Reference is made to your letters Ref. SEN/DSEC/E/LENR/2024(3)(34) and SEN/DSEC/DPEAC/LENR/2024(3) (50) dated 14th May 2024 and 4th July, 2024 in which you invited the Chairman of the National Land Commission (NLC) to respond to the petition stated above.

Further reference is made to the Commission's appearance to the Senate Standing Committee on Land, Environment and Natural Resources on 18th July 2024.

The Petitioner claimed that Mbari ya Mbogo lodged their claim with NLC and alleges that L.R. No. 12825 was their ancestral land. They further claim that the foundation on which of LR No. 12825 was registered is based on illegalities and irregularities.

The NLC responds as follows:

That the Commission received their claim and registered it has NL/HQ/053/2017 . It was processed to some point in 2018 but proceedings suspended by reason of the matter being active in court.

In late 2023 , the court case was withdrawn and the Claimants requested the Commission to hear and determine the same.

The Commission received their plea and invited all the parties for a physical hearing where it emerged that there were at least four claimants with different names pursuing the Historical Land Injustice claim over LR 12825. The parties were:

1. Mbari ya Mbogo
2. Kasarini Ancestral families' self-help group
3. Kasarini Cooperative Society Limited
4. Workers of Kasarini Estate

The matter is currently under active consideration by the Commission with the participation of all the parties, who are all represented by Counsel. The Petitioner, if not represented, is invited to participate in the ongoing proceedings and clarify its status and representation.

Yours

Gershom Otachi Bw'Omanwa, EBS.
CHAIRMAN, NATIONAL LAND COMMISSION

REPUBLIC OF KENYA

NATIONAL LAND COMMISSION

NATIONAL LAND COMMISSION REPORT TO THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

BY

GERSHOM OTACHI BW'OMANWA

CHAIRMAN

18th JULY, 2024

Hon. Chairperson and Committee Members, I am honoured to appear before the Departmental Committee on Lands of the Senate Assembly. I wish to thank you and your members for inviting the National Land Commission (NLC) to respond to matters raised by the Committee.

A. STATEMENTS TO THE SENATE COMMITTEE ON LAND, ENVIRONMNET AND NATURAL RESOURCES

1. STATEMENT ON COMPULSORY ACQUISITION OF LAND BY THE GOVERNMENT IN LAMU COUNTY-COMPULSORY LAND ACQUISITION OF LAND BY LAMU COUNTY GOVERNMENT

   a) Clarify whether the Government is planning to compulsorily acquire more than 400 acres of land in Maisha Masha, Jipendeni, Bopwe, Rumshi & Sinambio areas in Lamu County and if so indicate the timeframe fo the said acquisition and whether the said acquisition will be in line with Articles 40(3) of the Constitution of Kenya and all other statutes relating to Compulsory acquisition of land
   b) Outline measure the NLC has taken to ensure transparency in assessing the value of the land;
   c) State whether the NLC has conducted open and transparent public inquiries into the ownership of the land;
   d) Indicate the form of compensation contemplated in the said acquisition and the measures put in place to ensure fair and prompt compensation.

Hon Chair and Committee members,The Commission has not received a request for compulsory land acquisition for 400 acres in Lamu County. Although the Commission is bestowed with the mandate to compulsorily acquire land on behalf of the National and County Governments, it does not act on its own volition but rather implements requests submitted to it in accordance to section 107(1) of the Land Act 2012.

Therefore,the Commission recommends that the matter be referred to the acquiring agency - Lamu County for it to initiate a a request for Compulsory Land Acquisition. This should be done through a letter to the Commission by the County Executive Committee Member in charge of Lands Lamu County which is forwarded along with the other requisite documentation as provided for under the law to facilitate the Commission undertake the acquisition process.

2. STATEMENT SOUGHT BY SEN. JOSEPH KAMAU, M.P REGARDING THE ALLEGED ENCROACHMENT OF LAND IN LAMU COUNTY

Reference is made to the letter from the Clerk of the Senate Ref. No. SEN/DCS/LENR/2/2021/926) addressed to the Cabinet Secretary, Ministry of Lands and Physical Planning and the Chairperson, National Lands Commission. Attention is drawn to query No. 2 – 'Petition on the alledged illegal encroachment of land covering the villages of Pangani, Nyatha, Kaisari, Mavuno, Promoko and Widho in Lamu County by Witu Livestock Cooperative Society.

The points raised in the query are:

a) Disclose the status, in terms of ownership, of all land known as LR. No. 1405/1, measuring approximately 639,783 acres and covering Panagani, Nyatha, Kaisari, Mavuno and Poromoko villages in Lamu County;

b) Clarify whether the Ministry of Lands , Public Works, Housing and Urban Development embarked on plot demarcartion survey and squatter verification for settlement of the land occupants and it had committed to in the Financial Year 2021/2022;
c) Indicate whether Witu Livestock Cooperative Society, which claims ownership of land in the said villages, has relevant documentation to prove ownership of the land ; and
d) State whether a multi-agency approach towards the resolution of the dispute on the ownership of the land was instituded and whether public participation was conducted with a view to regularizing ownership of the land.

Hon. Chair and members, the Commission requests for more time to consult with relevant institutions in order to prepare a comprehensive response.

3. RESPONSE TO STATEMENT REQUESTED BY SEN. FATUMA DULLO, CBS, MP, REGARDING THE STATUS OF COMPENSATION TO LANDOWNERS DISPLACED IN THE CONSTRUCTION OF THE HORN OF AFRICA GATEWAY DEVELOPMENT PROJECT.

Reference is made to the above subject matter and to your letter Ref: SEN/DSEC/DPEAC/2024(3) (34) dated 14th May 2024. The matter on the subject road project is listed as Item Number 3 on your letter. The Commission provides the following answers to the questions raised: -

a) Explain the status of compensation along the Horn of Africa Gateway Project

The Commission received a request from KeNHA vide letter Ref. KeNHA/04.D/S.HoAGDP/Vol.1/01 dated 14th September, 2020 (copy attached), requesting the Commission to value the affected properties within the surveyed road corridor as per the Resettlement Action Plan (RAP) undertaken by KeNHA. The valuation was to facilitate compensation to affected persons for their structures and business only. This was to comply with World Bank Operational Policy on involuntary resettlement in line with the project's funding agreement guidelines signed between the Government of Kenya and the Development Partners. The project therefore has no land acquisition component as the project will be implemented on the demarcated road corridor.

The Commission carried out inspections of the affected properties and businesses within Phase I of the project and conducted a disclosure and document collection exercise. The Commission also prepared and served awards to the project affected persons (PAPs) and forwarded a compensation schedule amounting to KES 554,969,790/= to KeNHA vide letter Ref: NLC/1/26/417 of 18th December, 2022, as partial compensation funds for the PAPS who have not recorded any grievances and have fully signed the documents with Commission.

After awarding the Commission was invited to the Senate Standing Committee on Land Environment and Natural Resources to explain and shed light on compensation process and amounts awarded to the PAPs.The Senate Committee directed that KeNHA halts processing of the requested compensation amount sent by the Commission and the issues raised at the Senate be resolved jointly by the local leaders, KeNHA and the Commission.

The Commission has since requested facilitation from KeNHA for field visit meant to address grievances raised by PAPs so that thereafter the compensation schedule can be updated and finalized to enable a request of funds from KENHA and payment of compensation to the PAPs.

Outline the efforts NLC has made in rectifying the anomalies in calculating the previous compensation rate and furnish Senate with the current compensation formula adopted by the Commission

The commission received complaints on the awarded amounts from the PAPs and took the following steps:

- Registered the nature of complaints.
- Undertook peer review of the compensation rates adopted.
- Reviewed the basis and rates used for compensation at the valuation departmental level, Land Valuation and Taxation Committee level and Commission Plenary level.

It was ascertained that the compensation formula adopted by the Commission is as per the set out Laws and Regulations; primarily, the Land Act (No. 6) of 2012 and the Land (Assessment of Just Compensation) Rules as per the Legal Notice Number 283 of 2017.

The basis of valuation of structures is replacement cost approach derived and analyzed from the rates published by IQSK (Institute of Quantity Surveyors of Kenya) and advisories obtained from Ministry of Transport, State Department of public works. Adjustments were made to accommodate cost distortions brought about by factors like availability of construction materials and transport costs. The rates were applied on the plinth area of the structures affected. Structure owners were also compensated for loss of rent/income while tenants were compensated for relocation costs where applicable.

The following rates were adopted for various structures inspected along the corridor.

Structure description	Rates applied per sqm
Highrise stone wall	35,000 - 40,000
Double storey stone wall	30,000 - 35,000
Modern stonewall bungalows	25,000 - 30,000
Standard single storey stone walls,	20,000 - 25,000
Brick walls	15,000 - 20,000
Wooden structure on screed floor	12,000 -15,000
GCI structures	12,000 - 15,000
Mud wall	10,000 - 15,000
Dash manyattas	2,500 - 3,500

The structure values are arrived at by multiplying the compensable rates to plinth areas then an additional 15% as disturbance allowance considered to arrive at the total compensation amount payable.

b) Provide a detailed information of when the National Land Commission plans to begin compensating the land owners since the project has already began.

To progress the land acquisition and compensation process, the Commission in liaison with Kenya National Highways Authority (KeNHA), have received and analyzed a total of 468 grievances from 14-towns/market areas spread along Package I of the HoAGDP. The Commission and KeNHA have, therefore, scheduled visits to these towns. A summary of these grievances are as per the appended schedules.

To ensure that the acquisition process sails through smoothly, the Commission and KeNHA have included the active participation of NGAO and political leadership from the region for consultative meetings and public *barazas*. The dates and time for these consultative engagements and public meetings will be set and agreed upon by all the key stakeholders in the immediate future.

Secondly, the Commission has also scheduled the start of Package II (Wajir-Elwak and Modogashe – Wajir Road Section) which is to involve preliminary public participation, thereafter ground inspection and valuation of assets. Participation of the political leadership from the region is key in ensuring the process runs smoothly.

c) Table a detailed list of all beneficiaries of this project indicating the new compensation amount to each land owner. *(Annexure 1)*

The Commission is of the humble request that this information be made available after addressing the 468-grievances raised by the project affected persons.
It is worth noting that, there is no land acquisition in this project as has been stated before.

4. LAND ACQUISITION PROCESS OCCASSIONED BY THE LAPSSET PROJECT IN TURKANA COUNTY

a) State whether there was a formal engagement between the NLC and the Turkana County Government to discuss the land acquisition process ensuring transparency and consideration of the community's interests,tabling evidence of the same

LAPSSET corridor project is a regional multi modal infrastructure program that integrates roads, railway and pipeline components in Kenya, South Sudan & Ethiopia. The project is the single largest project of its nature in East and Central Africa intended to provide seamless connectivity and to enhance trade and logistics within the region. In addition, the corridor provided an alternative and strategic gateway to serve the landlocked neighboring countries of Ethiopia, South Sudan and beyond.
The scope of the trunk infrastructure includes -

i. A 32 Berth Port in Lamu intended to unlock logistics and trade and create regional transport hub.
ii. Interregional Standard Gauge Railway lines from Lamu to Isiolo, Isiolo to Nakodok and Juba (South Sudan), Isiolo to Moyale and to Addis Ababa (Ethiopia), and Nairobi to Isiolo.
iii. Interregional Highways from Lamu to Isiolo, Isiolo to Nakodok and Juba (South Sudan), Isiolo to Moyale and to Addis Ababa (Ethiopia);
iv. Crude Oil Pipeline from Juba (South Sudan) – Lokichar – Isiolo – Lamu.
v. Product Oil Pipeline from Lamu – Isiolo – to Moyale (Kenya) and Moyale to Addis Ababa (Ethiopia)

The LAPSSET Corridor is a Program designed to encompass other investment and economic activities such as International Airports, Resort Cities, Special Economic Zones, Industrial Parks, and mineral exploration. All these opportunities are to generate and harness economic and business activities to bolster viability for investment and result into overall program sustainability.

The Commission is currently spearheading land acquisition for the LAPSSET Corridor Projects. Gazettement of intention to compulsorily acquire land for all LAPSSET Program Components was done in 2016 and 2019 via Gazette Notice No. 8673, Vol. CXVIII-No.129 of 21st October, 2016 and Gazette Notice No. 1547, Vol. CXXI-No.21, dated 15th February, 2019. Inquiries were conducted pursuant to Gazette notice Nos. 3783 of 23rd April, 2021, 9850 of 20th September, 2021 & 14033 of 11th November, 2022.
In this process, The Commission has undertaken an extensive stakeholder engagement in Turkana County involving the County Government of Turkana, the affected communities, civil society Organizations, National Government Administration Officers (NGAO), business community among others. There has been an ongoing sensitization programs since 2019 by the Commission in collaboration with State Department of Lands and Physical Planning, State Department of Petroleum, Museums of Kenya and Ministry of Water and Sanitation to ensure that both Turkana County residents and the leadership are informed about the intended acquisition.

b) *Disclose whether any assessments have been conducted to evaluate the potential impacts of the LAPSSET project on the livelihoods of the Turkana community,stating the findings and mitigation measures proposed to address adverse impacts*

The impacts of projects to the affected communities and the mitigation measures are usually contained in the Relocation Action Plan (RAP) whose preparation and implementation is under the custody of the implementing agency. The Commissions mandate is limited to ensuring that the process of acquiring the identified land complies to the provision of the Land Act 2012 provided that the intended purpose is for the public interest or purpose. In this regard, the Lapsset Corridor Developments Authority (LCDA) should be invited by the committee to provide the information on the potential impacts of the projects and the available mitigation measures.

c) *Outline measures the NLC will implement to safeguard the land tenure security of the communities in affected areas in Turkana South (Kapese,Loperot) and Turkana East (Kochodin, Lopii, Elelea,Lotubae,Kangitit and Ngilukia),preventing exploitation and land grabbing in light of the compulsory acquisition published in Kenya Gazette Notice No.4388*

The Commission is required under section 118 of the Land Act 2012 to conduct final survey of the land acquired for the intended purpose and that a title is issued to the acquiring agency through a process known as vesting. In the Lapsset project, the land will be registered in the name of Lapsset Corridor Development Authority (LCDA) and neither part or whole of it will be excised or transferred to an individual or company unless the process of converting public land to private is adhered to as outlined in law. In this case, the affected communities will be given the pre-emptive rights to reacquire the land should the public purpose justifying the acquisition ceases or fails as stipulated under section 110 of the Land Act.

d) *State the legal frameworks and policies in use to ensure fair and equitable compensation for the community's loss of ancestral land considering the unregistered status of Turkana's communal land*

Land acquisition of community land is guided by the following legal framework: -

1. Constitution of Kenya 2010
   Article 40 (3) permits the State to deprive a person of property of any description for public purpose or in the public interest provided that such an acquisition is carried out in accordance with the Constitution and any Act of parliament. It demands that compensation should be prompt and just.
2. Land Act 2012
   Part VIII outlines the process of compulsory acquisition. The process include: -
   - Submission of request to the Commission by the acquiring agency providing the intended purpose of acquisition. The request should be accompanied by a list of parcels affected and areas to be acquired. Since LAPSSET affects unregistered community land in Turkana County, the land to be acquired were described using coordinates for identification purpose.
   - The Commission publishes notice of intention to acquire in Kenya gazette if satisfied that the intended purpose if for public interest. The purpose of the notice is to notify those interested in the land and the general public of the intended acquisition.
   - The Commission undertakes inspection of the affected land to assist in the assessment of compensation. During this process, the Commission identifies those who are physically occupying the land earmarked for acquisition noting the developments thereon.
   - A notice of inquiry is published in the Kenya gazette inviting those interested in the land to submit claims to the Commission. The inquiry mainly looks into issues of propriety and compensation.
   - The Commission assesses the just compensation to every individual confirmed to have interest in the land and an award is issued. The affected persons are required to either accept or accept the offer.
   - Payment is made to those who shall have accepted the offers as individuals who reject proceed to Land Acquisition Tribunal for arbitration.
   - Notices of taking possession are issued to the affected persons to vacate the acquitted land withing a given period.
   - The Commission undertakes final survey and vesting of the land.

3. Community Land Act 2016
   Pursuant to section 22 of the Act, community land can be converted to public land through compulsory land acquisition and doesn't limit the application of Land Act in the process. Further, the Act under section 6 mandates the respective County Governments to hold in trust any monies payable following compulsory land acquisition of any unregistered community land. The funds are to be released to the affected community promptly after registration with interest.
4. Land Act and Community Land Act regulations.

e) *Disclose the benefits that will accrue to the Turkana community from the LAPSSET project,stating how these benefits will be fairly distributed and how the project plans incorporate local needs and priorities inti its implementation*

The Commission's mandate is limited to full adherence to the process of compulsory land acquisition as stipulated in law provided that the land is required for public purpose or interest. The commission advises the Committee to invite Lapsset Corridor Development Authority (LCDA) to explain the benefits that will be enjoyed by the communities aside from the infrastructure developments that will connect Turkana County to other parts of the country and region.

5. STATEMENT SOUGHT BY SEN.EDWNI SIFUNA REGARDINGTHE ALLEGED GRABBING OF PUBLIC UTILITY L.R. NO.50059/86 IN MAKDARA CONSTITUENCY, NAIROBI CITY COUNTY

a) Establish the legal ownership of the parcel of land LR. No. 50059/86, which is a road reserve lying between Buru Buru Phase II and Harambee Estate:
b) Investigate the circumsatnces under which a private developer acquired the land disclosing the individuals or entities responsible and any legal action taken, and further, spell out measures taken to ensure residents regain access to the main road which is currently blocked by the pivate developer; and
c) Appraise the senate on measures taken by the government against the destruction of trees on the said parcel of land

Hon Chair and Committee members, the Commission has written to the Principal Secretary, State Department for Lands and Physical Planning requesting for the following information which will help us provide a comprehensive response;

1. A current search
2. Part Development Plan
3. Authenticated Suvey map
4. The original status of the land before it was allocated to the private developer
5. Any other relevant information which will help us adequately respond to the statement

The information sought from the Principal Secretary will enable the Commission to provide a detailed response to the Committee.

6. COMPULSORY ACQUISITION OF LAND PARCEL NO.LR. NO.2086 IN MUTITUNI MARKET MACHAKOS COUNTY BY THE GOVERNMENT

a) Provide reasons for the compulsory acquisition of land parcel No.LR.2086 in Mutituni Market,Machakos County belonging to the late Reuben Mutuma by the Goverrnment,highlighting the role played by the defunct County Council of Machakos,NLC and Ministry of Lands,Public Works,Housing and Urban Development in the transfer;
b) State reasons for the delay in compensating the owners of the said piece of land,outlining measures in place ,if any ,by the Government to ensure that the owners are compensated;
c) Spell out plans by the Government to guarantee prompt compensation to other individuals affectyed by the compulsory acquisition of land as well as projected timelines for the same.

Hon Chair and Committee members, from the records in the existing land acquisition databases the Commission is not able to relate the parcel number LR.No.2086 with the registered owner-Late Reuben Mutuma. An inquiry at the Ministry of Lands,Housing,Public Works and Urban Development under central registry records-SPRO reveals that *Parcel No.2086 belongs to "Central Land Board" for Kiminini settlement scheme File No.15641;FR.11/9 Bungoma District.*

Hon Chair and Committee members,the Commission wishes to get more information in regard to the matter to facilitate formal response.The administrators of the Estate of late Reuben Mutuma can be requested to provide ownership documents ie.copy of title deed/current search to facilitate the Commission identify the project name and the acquiring body to provide relevant information for a conclusive response.

7. ON THE ACQUISITION OF PART OF LR. NUMBER: SAMBURU/EAST WASO/1 IN SAMBURU COUNTY BY THE NATIONAL GOVENMENT

a) Provide Justification for the proposed acquisition, considering that the government is already currently leasing vast tracks of land from the Group Ranch for use by the National Intelligence Service (NIS) as well as over 80,000 acres for use by the Kenya Defence Forces (KDF), resultimg to loss of livelihoods for the pastoral community.

Hon Chair and Committee members, the Commission is mandated by the Land Act Number 6 of 2012 (Revised in 2019) to acquire land on behalf of the National and County Governments.

The Cabinet Secretary or County Executive Committee Member incharge of the acquiring ministry/entity, must make a request to the Commission in writing, for acquisition of such land for public purpose/interest.

Hon Chair and Committee members, we do confirm that we had received a request letter from the Ministry of Interior and National Administration Ref: CONF/MOINA/CS/Vol.I dated 29th February 2024 requesting for a compulsory acquisition of the subject property.

Hon Chair and Committee members, from the request letter, its clear that the Ministry of Interior and National Administration have been in occupation of this land due to its strategic location and in agreement with the host Community and has undertaken substatial improvement thereon.

Hon Chair and Committee members, its clear that the Ministry of Interior and National Administration requires this land to ensure national security for the good of the general public and all citizens.

Hon Chair and Committee members, preliminary information collected is that the subject land is largely unoccupied and no relocation will occur as a result of compulsory land acquisition.

b) State the criteria and guidelines used by the National Land Commission (NLC) in approving the request from the Ministry of Interior and National Adminstration for the acquisition of the land;

Hon Chair and Committee members, the Commission is mandated by the Land Act Number 6 of 2012 (Revised in 2019), Part VIII section 107, to prescribe a criteria for acquisition of land on behalf of any government agency.

Hon Chair and Committee members, the following are the criteria and guidelines as provided by the Land Act;

i. A request letter from the respective Cabinet Secretary.
ii. A Land Acquisition Plan showing how the proposed infrastructure excises each land parcel or Cadastral drawings where whole parcels only are to be acquired.
iii. Parcel list detailing land parcel numbers, the registered owner, total area, and affected area of each land parcel.
iv. The Environmental and Social Impact Assessment Report (ESIA) and appropriate approvals/certification for the project (optional).
v. Official searches of affected land parcels.
vi. The acquiring authority shall confirm availability of compensation funds, survey fees and registration fees to facilitate prompt and in full compensation of the persons to be affected by the project and to ensure timely completion of the exercise.

Hon Chair and Committee members, the Ministry of interior and National Administration had provided all the requested documents. The Commission is satisfied that no major Environmental impacts and damages will be caused by the state department incharge to the general neighborhood.

c) Investigate whether the proposed land for acquisition was mapped out and valued by NLC as requested under section 107 (4)(a) of the Land Act

Hon Chair and Committee members, the Land Act Number 6 of 2012 (Revised in 2019), Part VIII section 107, provide a procedure in acquisition of any land for public interests;

Hon Chair and Committee members, land acquisition is a statutory process guided by the provisions of land Act and the following are the stage of acquisition;

i. Pre-Inquiry; the Commission request for all the relevant project documents to aide its approvals and publication of the intention to acquire in Kenya Gazette
ii. Publication of intention to acquire in Kenya Gazette; activites to be carried out here include; public participation and awareness, serving of gazette notices and inspections for valuation purposes.
iii. Publication of Inquiry; this will be published at least 30 days after the publication of the intention to acquire and Inquiry will be conducted at least fifteen (15) days after publication of inquiry in Kenya Gazette. The gazette gives dates and venue for inquiry.
iv. Hold Inquiry; this is a public meeting to be held at the nearest chief's offices to hear claims on the land from any Project Affected Persons (PAPs) and to scrutinize and collect copies of land ownership documents to the land.
v. Issuance of letters of awards. This is an offer of the amount of money to be paid for the entire property.
vi. Payment
vii. Vesting and final survey

Hon Chair and Committee members, the Commission is still at stage number (ii) and we do confirm that the land has been published in Kenya Gazette via Gazette Notice Number: 4055 of 5th April 2024.

Hon Chair and Committee members, the Commission wrote a request for facilitation to the Ministry of Interior and National Administration to enable the Commission to carry out the following;

a). Public participation and sensitization,
b). Distribution of the gazette notices and
c). Inspections of the affected section/s of the entire property for valuation purposes (copy of the request letter attached).

Hon Chair and Committee members, final survey and mapping out will be carried out at the tail end of this process once the land has been acquired and registered owners compensated appropriately.

d) Indicate whether public participation was carried out by NLC or Ministry of Interior and National Administration as envisaged by Article 40 (3) and 232 (I)(d) of the Constitution, to establish the needs of Losesia Community vis-a-viz the need to develop security infrastructure and a training facility in Samburu County

Hon Chair and Committee members, the Commission has not yet carried out public participation.

Hon Chair and Committee members, the Commission always rely on the acquiring bodies to facilitate the process of acquisition including the public participation exercise.

Hon Chair and Committee members, the Commission has written to the Ministry of Interior and National Administration to facilitate the planned public participation and awareness that is to be done prior to valuation of the property.

Hon Chair and Committee members, during public participation and awareness meetings, the concerns of the affected community and all the relevant stakeholders will be heard and taken into consideration during the acquisition.

e) Provide the criteria proposed to be used by NLC in assessing the value of the community land for purposes of facilitating prompt payment of just compensation to the affected persons; and

Hon Chair and Committee members, the Commission adopts Market approach (Direct Comparison) method of valuation in determination of the current market value for this type of land. This method involves comparison of the property to be valued (professionally referred to as 'the subject property') with transactions of similar properties. Comparisons can be made in many forms including straight comparison, or analysis on a rate per area basis (such as rate per square meters (psm), or rate per hectare of land). Recent sales in the areas that we deem similar in important aspects to the subject property being valued are analyzed. The sales price and the physical, functional and location attributes of each of the properties are compared to the property under consideration to arrive at an estimate of value. After the analysis of the differences between the subject property and the comparable properties that sold, a market value for the subject property is then determined.

Hon Chair and Committee members, the Commission sources for these land sales comparable from the following areas;

i. Lands Registries; collects land sales data that have been considered for stamp duty payments.
ii. Professional valuers working practicing within the subject area or similar locality
iii. Land brokering agencies and land selling companies within the subject area
iv. Conveyancy lawyers or from sales agreements

Hon Chair and Committee members, for buildings and other improvements, we rely on Gross Replacement Costs as per Institution of Quantity Surveyors of Kenya (IQSK)guidebook while in the valuation of trees and crops we rely on rates provided by the Forestry and Agricultural offices respectively.

Hon Chair and Committee members, the Commission adds 15% to the total market value of land and developments computed as provided for by the Compensation Regulations as disturbance allowance(Land Assessment of Just Compensation Rules,2017-L.N.283/2017).

B. **PETITIONS REQUIRING RESPONSE OF THE NATIONAL LAND COMMISSION**

1. PETITION TO THE SENATE BY MBOGO'S FAMILY OF MBARI YA MBOGO CONCERNING FORGERY, PERJURY AND ILLEGAL ALIENATION OF LR NO 7153/1, 7153/2, 7153/R Also known as LR. 12825

That Mbari ya Mbogo lodged their claim with NLC and alleged that L.R. No. 12825 was their ancestral land. That the foundation of LR12825 is based on illegalities and irregularities
That NLC received their claim and registered the claim as NL/HQ/053/2017
That the Commission heard the matter and made their recommendation that the matter was in court and they referred the matter to the next 2nd Commission.
That the claimant withdrew the matter from the court and requested the Commission to hear the matter again (still waiting for the court order)
That the Commission received their plea and invited all the parties for a physical hearing where it emerged that there were four claimants with different names claiming LR 12825. The parties were:

1. Mbari ya Mbogo
2. Kasarini Ancestral families' self-help group
3. Kasarini Cooperative Society Limited
4. Workers of Kasarini Estate

This is a matter currently under active investigation by the Commission.

2. THE PETITION REGARDING THE PLIGHT OF THE LANDLESS IN MUTHANTHARA, EMBU COUNTY

- That Muthanthara Community comprises nine clans living in Muthanthara Sub-location, Kamarandi Location, Mbeere North, Embu Sub-county.
- That they have lived there for over 100 years. These are community from Tharaka and Mbeere.
- That the Tharaka People in Muthanthara are being evicted by Mbeere Community through area chief.
- That because of these threats from Mbeere and foreigners, they have written several complaint letters to government agencies/Commission/Administrative without bearing fruits.
- That the demarcation of land started in 1970 was the source of all the problems because the Tharaka Community were given notice to vacate their ancestral land.
- They allege that their land was issued to foreigners instead of the indigenous landless people.
- That Muthanthara Community filed their Historical Land Injustice Claims with National Land Commission – File No. NLC/HLI/127/2017.
- That the file was opened and the matter was subjected to admissibility criteria as per Section 15 of National Land Commission Act, 2012.
- The Commission undertook admissibility criteria for this claim among others. However, Commission requires resources to conduct investigate on this claim among others in Embu County.

3. THE PETITION ON THE DELAYED ALLOCATION OF ALTERNATIVE LAND BY WAY OF RESETTLEMENT OR COMPENSATION FOR THE ANCESTRAL LAND THAT WAS ALIENATED BY THE GOVERNMENT OF KENYA FOR CREATION OF KISII AGRICULTURAL INSTITUTE AND KISII FARMERS TRAINING CENTRE

- That the claimants are clan of Mwanyabaro with a total population of above 700 people.
- They allege that in 1953 they were displaced from their ancestral land by the colonial government with a sole purpose of giving room for Kisii Research Station (KARI)
- That the community (family) has been making frantic efforts to be compensated in various governments but in vain.
- The claimant alleges that the colonial government acquired the land under compulsory acquisition vide land utilization PC/N/2/2/2016 Plan for Kisii 1963. A total of 50 acres was acquired.
- They allege that since successive governments evicted them from their ancestral land, they are requesting for compensation and the land not being used by KARI to be given back to them.
- The Claimant lodged their HLI Claim with the Commission on 8th October 2019 and a correspondence file opened – NLC/HLI/608/2019.
- The Commission subjected the matter to admissibility criteria as per Section 15 of the NLC Act, 2012 and found that the matter is subjudice vide Environment and Land Court at Kisii (ELC Case No. 215 of 2013).
- Two tribunals cannot listen to one claim. Therefore, the claim fails.

Honourable Chair and Committee Members, I submit.

GERSHOM OTACHI BW'OMANWA
CHAIRMAN

Dated: 18th July, 2024

Annex III:

Petitioners Submissions

THE SENATE
RECEIVED
26 APR 2023
DIRECTOR LEGISLATIVE AND PROCEDURAL SERVICES

RECEIVED
26 APR 2023
DEPUTY CLERK (M.A)

Francis Wainaina Njuguna -Secretary General,
Mbogo's Family WG of Mbari Ya Mbogo,
P.O Box 745-00232 Ruiru, Kiambu/Kenya.

Date: 25th April 2023

The Clerk of the Senate,
Parliament of Kenya,
P.O BOX 41842-00100,
NAIROBI.
Email: csenate@parliament.go.ke

THE SENATE CLERKS OFFICE
RECEIVED
26 APR 2023
P.O. Box 41842 - 00100, NAIROBI

DEAR SIR,

RE: PETITION TO THE SENATE BY MBOGO'S FAMILY OF MBARI YA MBOGO CONCERNING FORGERY, PERJURY AND ILLEGAL ALIENATION OF LR NO 7153/1,7153/2,7153/R Also Known As LR.12825, THEREBY UNLAWFUL OCCUPATION OF AND TRESPASS UPON L.R. 12825, BY THEY (RESPONDENT) WHO ASSERT TITTLE THEREONTHEIR SUCCESSORS,ASSIGNS &LICENSES

I the undersigned **FRANCIS WAINAINA NJUGUNA MBOGO** Citizens of the republic of Kenya, and residents of Ruiru of Post Office Box No.745-00232 Ruiru/Kiambu County,

Draw the attention of the Senate to the following;

THAT:I am the Secretary General of Mbogo's Family Welfare Group of Mbari ya Mbogo, Certificate of Incorporation No. 32625 cited herein as the Plaintiff / Complainant to whom on their behalf among other group officials wish to submit this Petition as referenced above.

THAT: the Petition is based on Historic Injustices Meted to Mbari ya Mbogo's Family, based on, violation of the Survey Act, the Land Administration Act and the Land Registration Act.

THAT: the foundation of LR 12825 is based on illegalities and irregularities.

THAT:thematter was previously raised and heard before The National Land Commission, Historical Land Injustice Committee under Article 67(2)(e) of the Constitution of Kenya,Section 15 of National land Commission Act, In the Matters of Historical land Injustices Claim referenced No. NLC / HLI /053 / 2017 between Mbogo's Family WG of Mbari Ya Mbogo as Plaintiff /Applicant and Margret Nyokabi Mbugua and families of 9 others as Respondent

THAT: Indeed the National Land Commission proceeded to conduct a sham "Hearing" of the "Dispute" and rendered a determination thereon on 7th February 2019 in favour of the Respondent.

THAT: The family was served with a belated determination letter 12 days after the Commissioners had exited office following the lapse of their tenure of office.

THAT: the following parties comprising of five (5) families herein referred as Respondents

1. Samuel Mbugua Kibathi (*deceased*)
2. Margaret Nyokabi Mbugua
3. Samuel Githegi Mbugua (*deceased*)
4. Grace Muthoni Githegi (*deceased*)
5. Moses Mbugua Mwangi (*deceased*)
6. Christine Mithiri Mbugua (*deceased*)
7. Kabogo Kangethe (*deceased*)
8. Mary Waruri (*deceased*)
9. Kimemia Gakunju (*deceased*)
10. Ruth Njeri Gakunju (*deceased*)

fraudulently formed Kasarini Farmers 'Cooperative Society limited Certificate No. 2240 registration date 10th July 1974 to be used to illegally acquire the Kasarini Estate limited land measuring 933.9 acres.

THAT: the certificate has since then been disowned by the Commissioner of Cooperative Development in his response to enquiry by the National Land Commission disowning the society

THAT: a Tittle issued on **18th December 1981**was issued to the fake Company Disowned by the Ministry of Cooperatives. The tittle reads ''the President Of Kenya on behalf of the Government of Kenya hereby **GRANTS** unto Kasarini Farmers' Cooperative Limited, a Limited Liability Company Incorporated in the Republic of Kenya registered office in Nairobi (Post office Box 75155.)

THAT: Kasarini Estate Limited occupied this land as a demonstration farm from 1932 co-existing with original owner as Mbogo Wainaina Ancestral Family It is clear the owner of Kasarini land and the 1964 Society is Mbogo Wainaina and it appears that Kasarini Estate Limited was never issued with a Tittle or Lease Hold.

THAT: Kasarini Estate Company ltd was formed in Britain showing its liquidation process started on 9th February 1961 under **Gazette Notice Dated 19thMarch 1961** and **Gazette Notice 17th August 1975** effectively Kasarini Estate was **Dead by 1965**.

THAT: Kasarini Farmers' Cooperative Society Limited of 1974 is purporting to buy land from Kasarini Estate Limited which was under ***Liquidation 14 Years*** before

THAT: in a similar case ELC Civil Case No. 557 of 2009filed by Labourers the ruling by Judge Okon'go directed that the 2nd and 4th respondents in the suit (Margaret Nyokabi & Grace Muthoni) **had illegally sold and leased offparts** of L.R No. 7153/1, 7153/2, 12825 in violation of the subsisting court orders therein.

THAT: as a family, we have made the best efforts to have these matters addressed by various relevant authorities all of which have failed to give satisfactory response

WHEREFORE; your humble petitioners pray that the Honourable Senate-

1. Investigate the matter with a view to returning the Ancestral land back to Mbogo's Family of Mbari ya Mbogo.

2. Stop any further day to day Development, Sale and leasing off, by defendants till the matter is settled.

3. Resolve that all Beneficiaries, Investors and Stakeholders operating thereon to Compensate on properties and all illegally occupied land, and

4. Resolve on the Compensation for Historical Injustices, Damages and other Loses as a result of Forceful Eviction meted to Mbogo's Family.

SERVED BY:

SURVING CHILDREN OF MBOGO WAINAINA (AS PETITIONERS): ID NUMBER

1	Njuguna Mbogo Wainaina (**ElderSon & Family Chairperson**)	1418261
2	Elizabeth Wanjiku Wainaina **(Daughter Family Vice Chair)**	1999971
3	Mary Wangui Ndungu Daughter	4331518
4	Mathegi Mbogo Wainaina Son	0354518
5	Peter Chege Mbogo Son	6289425
6	Jane Wangui Kimani Daughter	4331537
7	Joseph Wainaina Mbogo Son	0550301
8	Lucy Wanjiku Mbogo Daughter	6289530
9	Hannah Njeri Chege Daughter	0357121
10	George Kimando Mbogo Son	0355753
	Mary Mbaire Mbogo Daughter	5712223

Inc.: Family legal adviser: **J. Harrison Kinyanjui & Co. Advocates.Tel: 0777-733-659**

UNDERSIGNED BY;

FRANCIS WAINAINA NJUGUNA MBOGO
Group Secretary General
Email; waynefn23@gmail.com Tel:**0723210856 / 0710541450**

HON.Senator Karungo Thang'wa
Senator Kiambu County

MBOGO'S FAMILY WELFARE GROUP
25 APR 2023
Sign:.....
CERTIFICATE No. 3764099

Official Stamp ----------*Common Seal*

MBOGO'S FAMILY WELFARE GROUP of MBARI YA MBOGO

DATE: 22nd Aug 2024

FRANCIS WAINAINA NJUGUNA -SECRETARY GENERAL,
MBOGO'S FAMILY WG OF MBARI YA MBOGO,
P.O BOX 745-00232 RUIRU, KIAMBU/KENYA.

GERSHOM OTACHI BW'OMANWA,
THE CHAIRMAN, NATIONAL LAND COMMISSION
NAIROBI, KENYA.

'Letter Delivered as Registered Mail Via G4s Services'

DEAR SIR,

RE: **MBARI YA MBOGO IN THE MATTERS OF NLC/HLI/O53/2017 BEFORE NATIONAL LAND COMMISSION**

First and foremost, on behalf of Mbogo's Family of Mbari ya Mbogo, I wish to thank you for this opportunity as we present and deliberate our concerns in respect of the foregoing referenced matter.

That: by a letter dated, *22nd July 2024* and a Supplementary Affidavits letter dated *14th August 2024*, we clarified and explained in extenso, ourselves as Mbari ya Mbogo in conjunction with *Purported Claimants* also referring to themselves as *"Mbari ya Mbogo & Ancestral families"* in their claims before you on the referenced land. We need not rehearse the contents of the letters.

THAT: the, cited parties also presented themselves for preliminary hearings before *Prof. Muhammad. A Swazuri* led Commission on the claimed land. but were all ruled and deferred out of the Commission hearings due to lack of *Merit* and *Legitimacy* of *Ancestral Ownership* of the referenced land, it was thereby ordered that Mbari ya Mbogo as the only validly identified complainant before his led Commission to be heard for further proceedings.

As the matters stands, we wish to retaliate that one *Mr. Machetha Kariuki* named as *Ex-Parte Applicant* of ELC/557/2009 also named as Respondent by a Sworn Affidavit by Oath in the matters filed by our lawyer ***J. Harrison Kinyanjui & Co. Advocates***, dated *20th Nov.2022* in reference of *NLC/HLI/053/2017* as referred therein, does not belong by allegiance or otherwise representing Mbari ya Mbogo in any matters concerning Kasarini land.

I further wish to refer to the *ELC/ 557/2009* case where *Mr. Machetha Kariuki* named as the Applicant/Plaintiff & (6) others laborer's) thereof. was never a party by either; Mbogo's *family by extension as a Plaintiff, Participant* or our *Presenter* on *Record* in the matters of *Review of Grants 2016* and *NLC/HLI/053/2017* proceedings before the 1st National Land Commission concerning Mbari ya Mbogo and the accused persons.

Mr. Machetha Kariuki in his sworn affidavit has not stated or indicated his personal attachment with Mbari ya Mbogo, neither did he identified his Allegiance by Birth and Ancestral Customary land rights in connection to the suited Mbogo's family property. His

claim was limited to *ELC/ 557/2009* representing (6) others, (laborers') pending in Court thereby never a party to the said *NLC/HLI/053/2017* matters of the 1st Commission, that was determined and recommended in favor of our defendants, the Gakunju's and Kibathi's Faction. The respondent herein ought to have filed fresh claims before the national land commission than citing Mbari ya Mbogo matters of *NLC/HLI/053/2017* as cited in the Kenya gazette and NLC determination on the matter refers.
In spite of the Notice of Motion by our lawyer before Hon. Justice A. Omollo, referred herein, named as respondent *Mr. Machetha Kariuki* and his legal representation of *ELC/ 557/2009* lied to the court by referring themselves as Mbari ya Mbogo, but lacked proof on the same identity, thereby the Court disagreeing with them. *They were Ordered* and *Compelled* to withdraw their pending suit or cojoin with Mbari ya Mbogo's family lawyer or else the Court Struck or Dismiss their suit in entirety.

Surprisingly the respondent by a notice of withdrawal opted to withdraw the matter as so ordered **But** citing reprieve of withdrawal with sole intention to be heard before the National Land Commission, thus citing our case *NLC/HLI/053/2017* as a basis of their claim before the Commission, of which they were never a party to hence their matter still pending in court.

I further wish to state that, Mbogo's family reached a confidential decision to relinquish representation of, ***Gatito Wango'o & Advocates*** by terminating him from family legal counsel, headed by ***Harrison Kinyanjui Co.& Advocates*** in our proceedings in the matters of *NLC/HLI/053/2017* Therefore, he no longer serves or act on behalf of Mbari ya Mbogo.

However, as earlier stated in our letter to you and the 2nd Commission cited above, I wish to comprehend on various groups before your Commission whose purported proceedings as claimants are misrepresented and just introduced to hoodwink this Commission from pursuing on illegalities surrounding the creation of ***LR. 12825*** by they who purport to be the proprietors of the said land when they are not,

It is Noteworthy, Mbogo's family and our legal advisers are however *Skeptical, Keen, Observant* and of *Immense Concern* on the *Moral Perspective*, *Intent* and *Motive* of persons *Regrouping Themselves* and *Teaming up* before your Commission in disguised *Alienation* and *Allegiance* of "*Mbari ya Mbogo and as Ancestral owners*" of the suited land, when they are ***NOT***. The property was a *Perennial Ancestral land* of Mbari ya Mbogo, therefore an *Inheritance of Mbogo's families and their descendants,* that can't be denied by any standards.

We believe that this Commission finally finds, the real truth and determines real owners by *Birth rights*, *Occupation* and *Ancestral Customary Land Rights* of the suited land, bearing in mind,

THAT; the *Defunct* ***Kasarini Farmers' Cooperative Society ltd of 1964***, the *Liquidated* ***Kasarini Farmers' Cooperative Society ltd of 1974*** and the ***Kasarini Estate ltd dissolved in 1965*** of they who purport proprietorship in the said land, *NEVER OWNED* or *LEASED* Kasarini Ancestral land which was a *PERENIAL ANCESTRAL LAND* of Mbogo's family of Mbari ya Mbogo whose Petition on the said matters is before the Hon. Senate. With no representation before this Commission as alleged.

We enclose copies concerning the said matter for your ease of reference, as below stated.

1. *Notice of motion by our lawyer J. Harrison Kinyanjui & Co. Advocates (EV.1)*
2. *Sworn affidavit by I Francis Wainaina Njuguna (EV.2)*
3. *Replying sworn affidavit by respondent Mr. Machetha Kariuki (EV.3)*
4. *Order on Notice of withdraw of suit ELC/557/2009 (EV.4)*

We thank you.

1. CC. Cabinet Secretary Lands, ***Hon. Alice Wahome.*** (*EGH*)

Inc.: Family legal adviser: **J. Harrison Kinyanjui & Co. Advocates Tel***: 0777-733-659*

UNDERSIGNED BY:

FRANCIS WAINAINA NJUGUNA MBOGO
Group Secretary General
Email; waynefn23@gmail.com Tel: *0723210856 / 0710541450*

Official Stamp ---------- *Common Seal*

MBOGO'S FAMILY WELFARE GROUP of MBARI YA MBOGO,

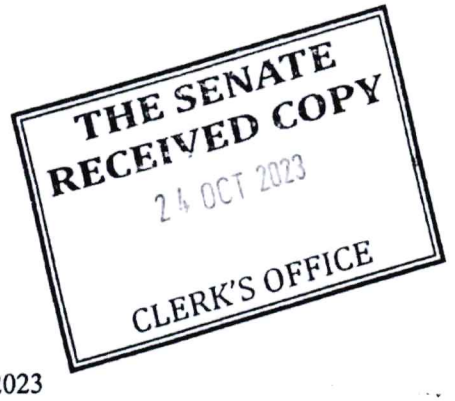
MBOGO'S FAMILY WELFARE GROUP
22 AUG 2024
Sign:.....
CERTIFICATE No. 3764099

FAMILY WELFARE GROUP
Cert. No. 3764099
MBOGO'S

Francis Wainaina Njuguna -Secretary General,
Mbogo's Family WG of Mbari Ya Mbogo,
P.O Box 745-00232 Ruiru, Kiambu/Kenya.

Date: 24th Oct. 2023

The Clerk's Chambers,
The Senate,
Parliament of Kenya,
P.O BOX 41842-00100,
NAIROBI.
Email: csenate@parliament.go.ke



1. Your Ref. SEN./13/PETITIONS/No.050/2023
2. Your Ref. SEN/DSEC/LERN/3/2023/57

24 OCT 2023

DEAR SIR,

Re: FURTHER SUBMISSIONS ON COURT MATTERS IN SUPPORT OF A PETITION BY MBOGO'S FAMILY / ANCESTRAL LAND LR.12825 DATED 26 APRIL 2023
IN
THE MATTERS OF: ELC NO. 557 OF 2009,
(MACHETHA KARIUKI & OTHERS VS. SAMUEL GITHEGI AND OTHERS)

I **FRANCIS WAINAINA NJUGUNA MBOGO** the Petitioner to the Senate (As per you're reference's) by Mbogo's Family of Mbari ya Mbogo concerning Historical Injustices surrounding our Perennial and Ancestral Kasarini land, **LR.7153/2** now LR.No.1**2825**

Further wish to draw the attention of the Senate to the following matters refer on: ELC NO. 577 OF 2009

THAT: the PETITIONERS i.e. Mbogo's Family of Mbari ya Mbogo were never a party to the above referred suit **ELC NO. 577 OF 2009**

THAT: our RESPONDENTS i.e. Margret Nyokabi Kibathi and (Nine (9) others deceased) has been using the suit to avert and subvert sermons and hearings at The National Land Commission to derail justice.

THAT: the PLAINTIFFS/ APPLICANTS in the said suit i.e. Machetha Kariuki and Maria Karaki & Others never originated neither were they born in the said Kasarini land. They were aliens and hired labourers who came to work in the coffee farm in the ancestral land belonging to Mbogo Wainaina who Co-existed with the white settlers hence for them to claim land proprietary rights and ownership. They lived in labour camps while Mbogo Wainaina

and his families lived at the ancestral home near the Historical caves known as **N'gurunga ya Mbogo**

THAT: the PLAINTIFFS/ APPLICANTS in the said suit i.e. Machetha Kariuki and Maria Karaki & Others through their lawyer made application of Notice of withdrawal of Instant Suit dated **17th November, 2022** {ANNEXED 1 & 2}

THAT: the PLAINTIFFS/ APPLICANTS in the said suit i.e. Machetha Kariuki and Maria Karaki & Others Were not a party to the case before the National land Commission i.e. **NLC/HLI/2007** which they purport to lay the grounds as the bases of their suit withdrawal Notice. As per NLC records the case was filed by Mbogo's family of Mbari ya Mbogo

THAT: the PLAINTIFFS/ APPLICANTS in the said suit i.e. Machetha Kariuki Sworn an affidavit in support of these notice of withdrawal of the instant Suit dated 17th **November, 2022** {ANNEXED 3}

THAT: on 16th OCT 2023, the matter was mentioned and ruled by the presiding judge lady justice A. Omollo and case was so order and file closed {ANNEXED 4} Orders in process.

Reasons and plea made by the plaintiffs for the notice of instant suit withdraw;

1. An order to stay the proceedings this matter and refer its hearing and determination to the National Land Commission.
2. Any other order that the court may deem necessary to grant
3. That the National Land Commission denied them justice citing the case filed before the commission by Mbogo's Family of Mbari ya Mbogo case no. **NLC/HLI/2007** so they are headed to the current commissioners to seek justice as was recommended by the outgoing commissioners (the case was not theirs neither were they a party to the)

There being no other matter in court or legal Institutions of justice challenging disputes on the said Mbogo's Family Ancestral land referred above. It's our humble prayers that our justice will be lighted in our Petition before this Honourable Senate.

Inc.: Family legal adviser: **J. Harrison Kinyanjui & Co. Advocates. Tel: 0777-733-659**

UNDERSIGNED BY;

FRANCIS WAINAINA NJUGUNA MBOGO
Group Secretary General
Email; waynefn23@gmail.com Tel: **0723 210 856 / 0710 541 450**

Official Stamp ----------*Common Seal*

CC; HON. SEN. Karungo Paul Thang'wa (Senator Kiambu County)

THE JUDICIARY

ANX 4

MILIMANI ENVIRONMENT AND LAND COURT

ENVIRONMENT AND LAND COURT

CAUSE LIST

MONDAY, 16 OCTOBER 2023

HON. LADY JUSTICE A. OMOLLO COURT 33 (2ND FLOOR)

https://bit.ly/3fEYfJh

09:00 AM

HEARING

1. ELC/259/2012 Olympic Trading Company Limited Vs Said Mohamed
2. ELC 1213/2013 Ndumberi Farmers Co Ltd Vs Vinubhai Vipral Shah & 2 Others
3. ELCC/E291/2022 Monica Atieno Kayongo Vs Christpher Kimani Gikonyo And Eglah Wanjiru Munira

HEARING OF APPLICATIONS

4. ELCC/375/2019 Martin Njue Muriuki Vs Anthony James Muhoro Njogu And Embakasi Ranching Co.ltd And 1 Others
5. ELCEPPET/3/2023 Hanningtone Malika Vs Nairobi City County And Kenya Civil Aviation Authority
6. ELCOS/E005/2020 Sophia Wairimu Gachau And Sophia Wairimu Gachau Vs Wamuhuri Kagecha

MENTION

7. ELCC/28/2009 Clean Air Systems Ltd Vs Samuel Mungai
8. ELC 557/2009 Macheta Kariuki And Others -vs- Samuel Githegi Mbugua And Others
9. ELC 612/2016 Elkana Salamba And 2 Others Vs Allan Misigo And 2 Others
10. ELC 1243/2016 Eastend Development Properties Limited Vs The Cabinet Secretary For Interior And Coordination Of National Security And 4 Others
11. ELC/110/2019 Crystal Investments Limited Vs Yusuf Hassan Elme And The Chief Land Registrar
12. ELCPET/E018/2021 Peony Management Company Limited Vs Kenya Urban Roads Authority
13. ELCLC/E046/2023 Ann Njeri Mbugua Vs Samuel Muoge And Jane Njeri And 5 Others

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MILIMANI LAW COURTS
ELC NO. 557 OF 2009

MACHETHA KARIUKI.....1ST PLAINTIFF
WAMBUI NJOROGE.....2ND PLAINTIFF
WAMBUI NJAU.....3RD PLAINTIFF
MARIA KARAKI.....4TH PLAINTIFF
NYAMBURA KABIA.....5TH PLAINTIFF
WANJIKU NGUGI.....6TH PLAINTIFF
MUTHONI NJOKA.....7TH PLAINTIFF
[Suing on their behalf & as representatives of Kasarini Farmers' Co-operative Society & Kasarini Self Help Group]

VERSUS

SAMUEL GITHEGI MBUGUA & 10 OTHERS.....DEFENDANTS

NOTICE OF WITHDRAWAL OF SUIT

(ORDER 25 RULE 1 OF THE CIVIL PROCEDURE RULES, 2010)

TAKE NOTICE that the Plaintiffs herein have wholly withdrawn the instant suit as against the Defendants in order to pursue the claim of ownership of the suit properties before the National Land Commission in line with the Ruling of Hon. Justice Okongo J. delivered on 16th May, 2018 in **Nairobi ELC Misc. App. No. [JR] No. 582 of 2016 [Republic Vs National Land Commission & 3 Others Ex-parte Samuel Githegi Mbugua & 5 Others.**

DATED at Nairobi this 11th day of October 2023

OWANG & ASSOCIATES
ADVOCATES FOR THE PLAINTIFFS

DRAWN & FILED BY
OWANG & ASSOCIATES ADVOCATES
SOLAR HOUSE, 5TH FLOOR, SUITE 505
P.O. BOX 21573-00100
NAIROBI

TO BE SERVED UPON:-

KAIRU & McCOURT ADVOCATES
CITY HOUSE, 6TH FLOOR
WEBERA STREET
P.O. BOX 51385-00200
NAIROBI

W.G. WAMBUGU'& CO. ADVOCATES
5TH AVENUE OFFICE SUITES BUILDING, 5TH NGING AVENYE
P.O. BOX 15311-00100
NAIROBI

NATIONAL LAND COMMISSION
P.O. BOX 44417-00100
NAIROBI

GATHIMA KIOI & CO. ADVOCATES
NORTH STAR, LENANA ROAD
P.O. BOX 38178-00100
NAIROBI

NDUNGU NJOROGE & KWACH ADVOCATES
INTERNATIONAL LIFE HOUSE, 12TH FLOOR
P.O. BOX 41546-00100
NAIROBI

NJUGUNA, KAHARI & KIAI & CO. ADVOCATES
THE MIRAGE, MEZZANINE 2, NNK CHAMBERS
P.O. BOX 22648-00400
NAIROBI

VOL. 2

REPUBLIC OF KENYA

IN THE MATTER OF THE NATIONAL LAND COMMISSION

AND

IN THE MATTER OF HISTORICAL INJUSTICES CLAIM ON LAND PARCELS NO. 7153/1 & 7153/2

PRELIMINARY SUBMISSIONS AND BASIC SUPPORTING DOCUMENTS ON BEHALF OF KASARINI ANCESTRAL FAMILIES SELF HELP GROUP CLAIM

A. PRELIMINARY SUBMISSIONS ON THE BASIC LAND TRANSACTION DOCUMENTS FOR THE SALE OF L.R 7153/2 MEASURING 912 ACRES

B. BASIC DOCUMENTS FOR SALE AND TRANSACTION OF L.R 7153/2

1. Agreement for Sale of L.R 7153/2 -page 1-5
2. Title for Land Parcel L.R 7153/2 (Indenture dated 30th December 1974)-page 6-10
3. Application for Land Board Consent dated 10/9/1974 -page 11
4. Land searches for Land Parcels 7153/1 & 7153/2 –page 12-13
5. Key Correspondence on the sale involving advocate P. Gichukia and naming P. Ndungu Advocate -page 14-15
6. Case relating to the death on 2nd January 1975 of Advocate for Vendors, P.Gichukia due to road accident on 24th December 1974 -page 16-32
7. Certificate of Registration of the bona fide Kasarini Farmers Co-op Society Limited– pg33
8. A prior conveyance of Land Parcel 7153/2 –page 34-36
9. A sample of a Conveyance from Njugi & Gichukia in 1970 clearly showing how they indicated the drawing of an transfer instrument – page 38-39
10. A statement in an Affidavit by key Respondent Margaret Nyokabi on legal team involved in transaction –page 40

Submissions by MOSES GATITU WANG'OO (LL.B, LL.M (University of Nairobi).

NJUGI & KAHANI KIAI ADVOCATES RECEIVED 19 JAN 2018 P.O. Box 22648-00400 Nairobi

RECEIVED 19 JAN 2018 Time 1:38

WANJA G. WAMBUGU ADVOCATE P.O. Box 9076 - 00300 NAIROBI 19 JAN 2018 TIME: 11:51am SIGN: RECEIVED

NJUGI NJOROGE & KWACH RECEIVED 19 JAN 2018 TIME: 1:29pm SIGN:

NATIONAL LAND COMMISSION LEGAL REGISTRY 19 JAN 2018 RECEIVED

A. PRELIMINARY SUBMISSIONS ON THE BASIC LAND TRANSACTION DOCUMENTS FOR THE SALE OF L.R 7153/2 MEASURING 912 ACRES

The claim by the Respondents is that the land transaction for the sale of L.R 7153/2 was undertaken by the crème de la crème of land officials and Advocates of the time i.e HHM Advocates led by P. Ndungu, Njugi & Gichukia, Kagwe & Co. and Robson & Harris Advocates.

We are amazed when we then look at the basic land transaction documents for the sale that have been obtained from the numerous Affidavits filed in court and other tribunals by the Respondents.

First the Agreement for Sale dated 31st December 1974 for the land does not state which law firm drew the documents even after involving an elite legal team.

Second, the Indenture of Conveyance dated 30th December 1974 does not also state the law firm which drew the land instrument. This is strange in light of the numerous correspondences in the sale by advocates. The document has pages that do not look alike at all and yet it is on a type writer.

More shocking is that the Indenture of Conveyance is dated 30th December, 1974 and executed on that date, this is before the Agreement for Sale is executed. The Agreement for Sale is then executed the following day and dated 31st December 1974.

To compound the shock is the Application for the Land Board Consent which is dated nearly 3 months earlier on 10/9/1974 before the Agreement for Sale is even executed.The amounts in the agreement for sale do not tally with those in the application for land board consent.

It is not conceivable that you sign an Agreement for Sale on 31st December 1974, execute a Conveyance on 30th December 1974 and attend a Land Board for Consent to transfer so as

to register the transfer on 31st December 1974. We also wonder how the elite law firms seem to have been working overtime on New Year's Eve in 1974 when traditionally most law firms and courts are on Christmas vacation.

Simply the key documents of the sale of L.R. 7153/2 are unbelievable forgeries. They have no logic or sense. For example, the Agreement for Sale provides for payment of Advocates and yet there is no participation of Advocates in execution of the document. No mention of any advocate firm in the Agreement and yet elite law firms were involved.

The searches provided by the Respondents for L.R 7153/2 indicate in entry no. 5 that a mortgage dated 31/12/1974 was registered about 2 weeks earlier on 13/12/1974. This is ridiculous.

The mortgage instrument also seems to have been registered on 13/12/1974 before the Conveyance to the mortgagor was registered on 31/12/1974.A clear impossibility.

It is clear that the transfer and mortgage required consent from the Land Board as the land was Agricultural. The transaction could simply not have been carried out between 30th and 31st December 1974.

We have further found out that the Advocate for the Purchasers P. Gichukia was in-fact involved in a serious road accident on December 1974 and went into a coma and died on 2nd January 1975. This is the period of the frenzied transaction, the key Advocate for the Purchasers was hospitalized.

We hope the Advocate for the Respondent, who participated in the transaction, P. Ndungu, can shed more light otherwise the land documents filed in numerous court cases by the Respondents are shocking.

We hope the tribunal can summon Advocate P. Ndungu to explain how the sale was conducted in a record two days between 30th & 31st December 1974.

Critically, the Agreement for Sale has no acknowledgement of receipt of any money and the Conveyance signed the day before states the money for sale is already received.

On a preliminary finding, the recitals in the Indentures of Conveyances for L.R 7153/2 do not add up and the documents fundamentally fail to state the Advocates who prepared them.

The registration of these Indentures of Conveyance of L.R 7153/2 was illegal, corrupt and unlawful.

The search for L.R 7153/2 availed by the Respondents clearly shows the land is an amalgamation of parcels that were remainders contrary to the whole narrative of the Respondents. We shall address the issue with the survey documents.

We pray for reports from the survey departments before we can make final submissions.

It is instructive from the correspondence annexed herewith that Kasarini Estate Ltd refused to sell the land L R7153/2 and only agreed to sell it's shareholding in the company. This must be because it was not registered on the land L.R 7153/2. The issues of the purported 'original Kasarini Estates Ltd' and Kasarini Estate Ltd, the purported seller in the sale herein, are fundamental and a monumental fraud. Kasarini Estate Ltd purportedly had a final meeting of shareholders for winding up in 1961 but resurrected 13 years later in 1974 to sell the land.We hope to address them as the investigations proceed and when the land file is availed.

Also the alleged Purchaser, Kasarini Farmers Co-Op Society Certificate No.2240 and the bona fide Kasarini Farmers Co-Op Society Certificate No.1167 must be conclusively

investigated. Another monumental fraud of stealing the identity of a Co-operative Society so as to steal the land asset.

In conclusion on the basic land transaction documents, the Respondent's elite lawyers seem to have completed the following processes in a record two days between 30th & 31st December 1974 notwithstanding it was a Christmas vacation;

1. Execution of Sale Agreement on 31st December 1974.
2. Execution of the Conveyance the day before 30th December 1974
3. Execution of mortgage on 31st December 1974 and backdating registration to 13th December 1974
4. Delivering Conveyance to land office for registration on 31st December 1974
5. Processing of Land Board Consent to transfer and Charge the land.
6. Paying the whole purchase price notwithstanding issues of foreign exchange and it was a loan from a bank.

The only conclusion is that L.R 7153/2 was illegally, corruptly and unlawfully acquired and should be given back to the lawful owners or as suitably provided under the tribunal mandate for redress of historical injustices.

We urge the tribunal, on a preliminary order and as provided in section 15 (5) (a) & (b) and section 15 (6) of the National Land Commission Act, to demand the land files for L.R 7153/2 ,L.R 7153/1 and survey records so that the obvious truth can be revealed.

DATED AT KIAMBU THIS.....17th.....DAY OF .....January.....2018

GATITU WANG'OO &CO
ADVOCATES FOR KASARINI ANCESTRAL FAMILIES SELF HELP GROUP

8A

DATED 31ST DECEMBER 1974

KASARINI ESTATES LIMITED

and

KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED

A G R E E M E N T

8
B

AN AGREEMENT made the 31st day of DECEMBER 1974 BETWEEN KASARINI ESTATES LIMITED a limited liability company incorporated in England and having its registered office at Grimsby England aforesaid (hereinafter called "the Vendor" which expression shall where the context so admits include its successors in title and assigns) of the one part and KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED a body corporate registered under the Co-Operative Society Act Cap.490 of the Laws of Kenya of Post Office Box Number 74414 Nairobi in the Republic of Kenya (hereinafter called "the Purchaser" which expression shall where the context so admits include its successors and assigns) of the other part

W H E R E A S the Vendor is seised for an estate in fee simple subject as hereinafter provided but otherwise free from encumbrances of all that piece or parcel of land more particularly described in the First Schedule hereto and known as Land Reference Number 7153/2 together with the buildings and improvements being thereon or on some part thereof including the 1974/1975 coffee crop whether picked or still on the trees (all of which land buildings and improvements are together hereinafter called "Kasarini Estate") and has agreed to sell the same to the Purchaser together with the movable assets specified in the Second Schedule hereto (hereinafter referred to as "the Movables")

for the consideration and subject to the terms and conditions hereinafter set forth.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

1. THE Vendor shall sell and the Purchaser shall purchase Kasarini Estate and the Movables for the sum of Kenya Shillings Four million seven hundred and forty-seven thousand two hundred and ninety-nine and Cents sixty (K.Shs.4,747,299.60) allocated as to Kenya Shillings Four million five hundred thousand (K.Shs.4,500,000.00) for Kasarini Estate and Kenya Shillings Two hundred and forty-seven thousand two hundred and ninety-nine Cents sixty (247,299.60) for the Movables (being the book value thereof as at the date of transfer hereinafter stipulated)

2. THE date of transfer shall be the 31st day of December 1974 upon which vacant possession of Kasarini Estate shall be given and the Movables shall pass by delivery

3. AS from the date of transfer the Purchaser shall be responsible for the payment of all outgoings and shall be entitled to the receipt of all rents and profits

4. THE whole of the consideration shall be due and payable to the Vendor on the date of transfer hereinbefore stipulated

5. THE parties shall each bear the cost of their own Advocates but the Purchaser shall be responsible for all Stamp Duties registration fees and the like

6. THE Purchaser having been give inspection of the

muniments of title of the said land described in the First Schedule hereto shall be deemed to have notice of all matters affecting the same whether or not such matters are referred to in the First Schedule hereto

THE FIRST SCHEDULE

Description Of Land

All that piece or parcel of land comprising 368.67 hectares or thereabouts situate North of Nairobi City in the Kiambu District in the said Republic of Kenya being Land Reference Number 7153/2 which said piece or parcel of land is delineated and described on the Plan annexed to a Conveyance dated the 17th day of May 1960 (registered in the Government Lands Registry at Nairobi in Volume N.44 Folio 164/1 File 13705 and more particularly on Land Survey Plan No. 74226 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red together with all buildings and improvements erected and being thereon subject to the easements rights and privileges granted by and to the performance and observance of the covenant on the part of the original Kasarini Estates Limited contained in an Indenture of Conveyance dated the 10th day of July 1959 and made between the original Kasarini Estates Limited of the one part and Sydney Alec Chambers (therein

8E

described) of the other part registered as aforesaid in Volume N.44 Folio 2/1 and subject also to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder

THE SECOND SCHEDULE

Particulars of Movables

	K.Shs.
Machinery, Plant, Implements and Motor Vehicles	136,292.80
Furniture, Fittings and Equipment	23,272.80
Trade Investment	74,110.00
Deposits	13,624.00
	247,299.60

AS WITNESS the hands of the duly authorized agents of the parties the day and year first before written

SIGNED by the duly authorized representative of the Vendor in the presence of:-

JOSEPH N. KARUGIA
P.O. Box 49443
NAIROBI

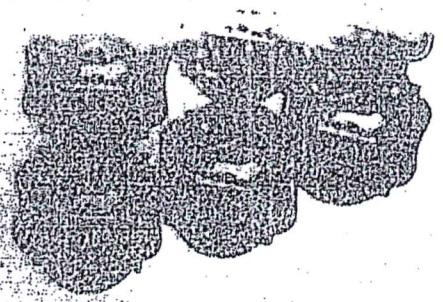
SIGNED by the duly authorized representative of the Purchaser in the presence of:-

D.T. MYRAH
P.O. [illegible]

8 F

31 Dec 57 £4500 ft

1200 ft



THIS INDENTURE is made the 30th day of December One thousand Nine hundred and Seventy-four BETWEEN KASARINI ESTATES LIMITED a limited liability Company incorporated in England and having its registered Office at Grimsby in England (hereinafter called "the Vendor" which expression shall where the context so admits include its successors and assigns) of the one part and KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED a body corporate registered under the Co-Operative Societies Act (Chapter 490) of the Laws of Kenya and of Post Office Box Number 74414 Nairobi in the Republic of Kenya (hereinafter called "the Purchaser" which expression shall where the context so admits include its successors and assigns) of the other part:

WHEREAS:

(A) By a Conveyance (hereinafter called "the Conveyance") dated the Seventeenth day of May One thousand Nine hundred and Sixty (registered in the Government Lands Registry at Nairobi in Volume N.44 Folio 164/1 File 13705 and made between Kasarini Estates Limited (therein described and hereinafter called "the original Kasarini Estates Limited") of the first part Peter Mervyn Johnson and George Rhoades Smith (therein described) of the second part and Kasarini Estates (1959) Limited (therein described) of the third part for the consideration therein mentioned ALL THAT piece or parcel of land comprising Three Hundred and Sixty Eight decimal Six Seven Hectares (368.67 Hec.) (912 Acres) or thereabouts situate

This is the Exhibit marked "MNM1" referred to in the annexed Affidavit / Declaration of Margaret Nyokabi Mbugua Sworn Declared before me this 6th day of Sept 2016 at Nairobi

Commissioner for Oaths & Notary Public

North of Nairobi City in the Kiambu District of the said Republic of Kenya being Land Reference Number 7153/2 which said piece or parcel of land is delineated and described on the plan annexed to the Conveyance and more particularly on Land Survey Plan Number 74226 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red was conveyed unto the said Kasarini Estates (1959) Limited for an estate in fee simple TOGETHER WITH all the building and improvements erected and being thereon SUBJECT to the easements rights and privileges granted by and to the performance and observance of the covenant on the part of the original Kasarini Estates Limited contained in an Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine and made between the original Kasarini Estates Limited of the one part and Sydney Alec Chambers (therein described) of the other part (registered as aforesaid in Volume N.44 Folio 2/1 AND SUBJECT ALSO to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder AND SUBJECT ALSO TO AND WITH THE BENEFIT OF the covenant on the part of the said Sydney Alec Chambers contained in the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine

By virtue of divers mesne assignments acts in the law and events and ultimately by an Indenture dated the Nineteenth day of August One thousand Nine hundred and Sixty-three and made between the said Kasarini Estates (1959) Limited of the first part the said Peter Mervyn Johnson of the second part and

8 H

8

the Vendor of the third part (registered in the Government Lands Registry at Nairobi in Volume N.44 Folio 164/3 File 13705) the said piece or parcel of land hereinbefore more particularly described and known as Land Reference Number 7153/2 together with all the buildings and improvements erected and being thereon was conveyed unto the Vendor for the consideration therein mentioned subject as aforesaid but otherwise free from all encumbrances

(C) The Vendor has agreed with the Purchaser for the sale to it the Purchaser of the said piece or parcel of land for the price or sum of Kenya Shillings Four Million Five Hundred thousand (K.Shs.4,500,000/-)

NOW THIS INDENTURE WITNESSETH as follows:

1. THAT in pursuance of the said Agreement and in consideration of the sum of Kenya Shillings Four Million Five Hundred thousand (K.Shs.4,500,000/-) paid to the Vendor by the Purchaser on or before the execution hereof (the receipt of which sum the Vendor hereby acknowledges) the Vendor as Beneficial Owner HEREBY GRANTS AND CONVEYS UNTO the Purchaser ALL THAT piece or parcel of land hereinbefore more particularly described and known as Land Reference Number 7153/2 TOGETHER WITH all the buildings and improvements erected and being thereon TO HOLD the same unto the Purchaser for an estate in fee simple SUBJECT to the said easements rights and privileges granted by the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine and to the performance and observance of the covenant on the part of the

8I

original Kasarini Estates Limited therein contained and SUBJECT ALSO to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder and SUBJECT FURTHER TO AND WITH THE BENEFIT OF the covenant on the part of the said Sydney Alec Chambers contained in the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine

2. THE Purchaser HEREBY COVENANTS with the Vendor that it the Purchaser will henceforth perform and observe the covenants on the part of the original Kasarini Estates Limited contained in the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine AND will indemnify and keep indemnified the Vendor and its estate and effects from and against all actions and demands on account of the same.

IN WITNESS WHEREOF the Vendor and the Purchaser have caused their respective Common Seals to be hereunto affixed the day and year first before written.

THE COMMON SEAL of the Vendor was hereunto affixed in the presence of:

DIRECTOR

DIRECTOR

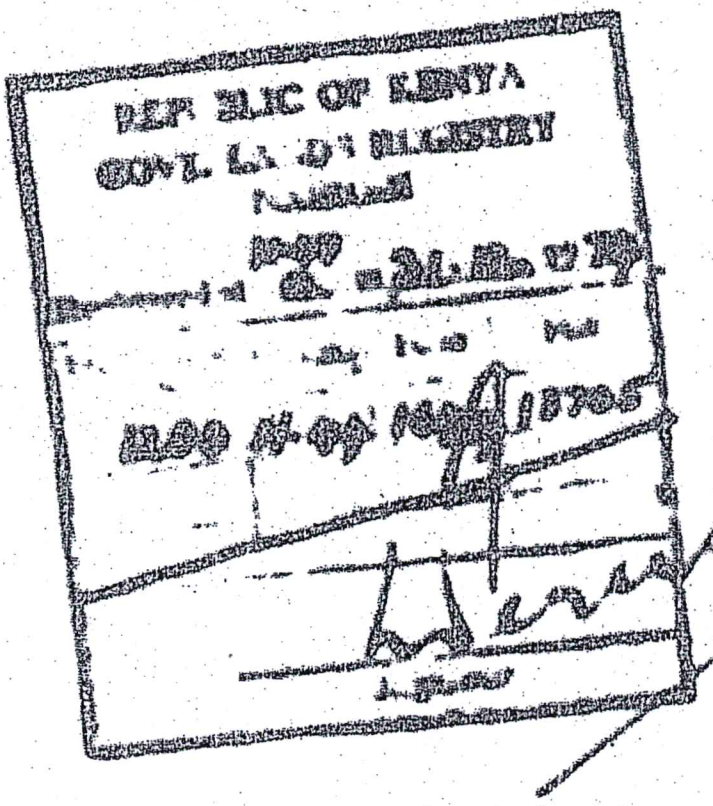
THE COMMON SEAL of the Purchaser was hereunto affixed in the presence of:

CHAIRMAN

SECRETARY

8/J

~~10~~



(86)

6. (a) Purchase price, if a sale or option ... Sh. 4.5 MILLION

Rent ... ... Sh. .....

Estimated value of the land (if a gift) ... ... Sh. .....

Amount of loan (if a mortgage or charge) ... Sh. 4,050,000

Rate of interest (if a mortgage or charge) ... ... 9 %

Any other information affecting the amount of the consideration, particularly regarding the description and area of crops with estimated yields and value thereof included in the purchase price ... Refer to attached Documents

(b) Full description and approximate value of improvements on land included in the consideration 4. MILLION SHILLINGS

(c) Any other consideration passing between the parties ... NIL

7. If a transfer or lease of the land—
Proposed development programme of purchaser, including funds available therefor with approximate date ... IMPROVEMENT OF COFFEE YIELDS -PHEPOSES TO SPEND ABOUT ONE MILLION SHILLINGS

Does the purchaser/leasee intend to reside on the land? ... NOL

8. (a) Other agricultural land registered in the name of or held under contract for sale by the proposed purchaser, transferee, lessee or allottee, or any member(s) of his immediate family, or any company in which he has an interest (state the nature of any interest in such company)—

L.R. or Parcel Nos. ... Area ...

Owner ...

Nature of interest ...

Whether contiguous to land being purchased ...

(b) Particulars of agricultural land held and disposed of by purchaser or lessee in the last three years—

L.R. or Parcel Nos. ... District ... Area ...

L.R. or Parcel Nos. ... District ... Area ...

9. Farming experience of transferee ... THE TRANSFEREE INTENDS TO RETAIN THE SERVICES OF THE PRESENT MANAGER WHO HAS MORE THAN 20 YRS EXPERIENCE

We hereby declare that the above information is true to the best of our knowledge and belief.

EJUGI & GICHUKI ... KASARINI ESTATES LTD.

Signature of purchaser, lessee, mortgagee, transferee or authorized agent or agents, etc.

Signature of owner, lessor, mortgagor, chargor or authorized agent or agents, etc.

Date 10/9/84

12

[illegible] No. 7153/1 File No. 13535

[illegible] (30.02) [illegible]

(1) [illegible] of the Will of Sydney Alec Chambers [illegible] 8/7/73 — was granted to the [illegible] Bank Limited of P.O. Box 30299, NAI, as [illegible] dated 29/7/74

(2) Memorandum of Discharge of an equitable [illegible] by deposit of document of title [illegible] 10/2/74.

(3) [illegible] dated 4/2/1974 by the Standard [illegible] as personal representative of Sydney [illegible] and Barbara Mary McCaldin [illegible] 90387 Nairobi as beneficiary [illegible] 27/7/74

(4) [illegible] between Barbara Mary McCaldin [illegible] dated 11th June '76

[illegible] Kimenia Gakunju, Samuel [illegible], [illegible] Navangi, Samuel [illegible] and Hebogo Kangethe [illegible] [illegible] Samson [illegible] [illegible] 28/7/1976

This is the Exhibit marked "MNM 2" referred to in the annexed Affidavit / Declaration of Marjorie Ntokabi Mbugua Sworn Declared before me this 6th day of Sept 2016 at Nairobi

Commissioner for Oaths & Notary Public

(13)

File No. 13705

No. 7153/2 Orig. Nos 82/1/2/R, 82/2/R and 7043/R) Kiambu District.

Area - 912 acres (368.67 Hec.)

Freehold

(1) Conveyance dated 17th May 1960
Kasarani Estates Ltd - Vendor
Peter Mervyn Johnson & George Rhodes Smith (Liquidators) Chartered Accountant
To Kasarani Estates (1959) Ltd (Purchaser)
together with and subject to Easements & subject also to the Wayleave Agreements
for Shs 1,438,211/= to fee simple.

(2) Special Resolution dated 14/6/63
Appointing Peter Mervyn Johnson as "Liquidator" of Kasarani Estates (1959) Ltd dated 17/9/63

(3) Conveyance between Kasarani Estates (1959) Ltd dated 19/8/63
To Kasarani Estates Ltd
for Kshs. 2304170/- dated 17/9/63

(4) Conveyance between Kasarani Estates Ltd dated 20/12/74
To Kasarani Farmers Co. op. Society
for Kshs. 4,500,000/- dated 31/12/74

(5) Mortgage between Kasarani Farmers Co. op. Society dated 30/12/74
To the Co. operative Bank of Kenya Ltd
dated 13/12/74 for 3,375,000/-

Advocates: H H T Matthews DATE OF SEARCH 9-6-79

(14)

NJUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

Telephone: 24304

Tusker House,
Second Floor,
Ronald Ngala Street,
(Formerly Duke Street)
P.O. Box 46693,
NAIROBI, Kenya.

OUR REF: PG/K/393

YOUR REF:

29th July, 1974

Messrs. Hamilton Harrison & Mathews,
Advocates,
Esso House
Nairobi

Dear Sirs,

RE: The Co-Operative Bank
of Kenya Ltd. and Kasarini
Farmers Co-Operative Society Ltd.
Purchase of Kasarini Estate

We refer to the Co-Operative Bank's letter to our clients, Kasarini Farmers Co-operative Ltd. dated 24th July 1974 and copied to yourselves among others in which the Co-Operative Bank confirmed approval of our client's application for a loan of Shs. 4,050,000/= to enable our clients to purchase Kasarini Estate. The writer did subsequently meet your Mr. Ndungu and confirmed that the Agreement of sale between Kasarini Estates Ltd. and Zakariah Kimemia Gakunju and four others who are incidentally members of Kasarini Co-Operative Society, Specifically provides that Messrs. Gakunju and others will purchase the total shareholding of Kasarini Estate Ltd and not the land. The Exchange Control permission to remit the total purchase price to Switzerland was granted on the basis of the Agreement of sale.

Kasarini Estates Ltd have indicated that they will not agree to transfer the land to the Co-operative Society and that they will insist on the transfer of the total shares in terms of the Agreement of sale. Your client's Bank main concern, we reckon, is to obtain a mortgage of the Estate and also to ensure that the loan goes to Kasarini Farmers Co-Operative Society Ltd. On the basis of the above the writer did put forward the following suggestions to your Mr. Ndungu:- That Kasarini Estates Limited will transfer all the shares in the Company to Messrs. Gakunju & Four others to hold upon trust for Kasarini Estates Ltd. Then Kasarini Estates Ltd. will give notice to Messrs. Gakunju & Others to hold the shares for the benefit of Kasarini Co-Operative Society Ltd. The co-operative Society will then mortgage the Estate to your client Bank.

By dealing with the transaction as suggested our clients will save an e enomous amount of Stamp Duty. Your client Bank will get the mortgage of the Estate and in our view there will be no infringement of the Co-operative Bank rules. Further there will be no breach of the agreement of sale and the Exchange Control permission.

.....2/con.

(14)

NJUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

Telephone: 24304

Tusker House,
Second Floor,
Ronald Ngala Street,
(Formerly Duke Street)
P.O. Box 46693,
NAIROBI, Kenya.

OUR REF: PG/K/393

YOUR REF:

29th July, 1974

Messrs. Hamilton Harrison & Mathews,
Advocates
Esso House
Nairobi

Dear Sirs,

RE: The Co-Operative Bank
of Kenya Ltd. and Kasarini
Farmers Co-Operative Society Ltd.
Purchase of Kasarini Estate

We refer to the Co-Operative Bank's letter to our clients, Kasarini Farmers Co-operative Ltd. dated 24th July 1974 and copied to yourselves among others in which the Co-Operative Bank confirmed approval of our client's application for a loan of Shs. 4,050,000/= to enable our clients to purchase Kasarini Estate. The writer did subsequently meet your Mr. Ndungu and confirmed that the Agreement of sale between Kasarini Estates Ltd. and Zakariah Kimemia Gakunju and four others who are incidentally members of Kasarini Co-Operative Society, Specifically provides that Messrs. Gakunju and others will purchase the total shareholding of Kasarini Estate Ltd and not the land. The Exchange Control permission to remit the total purchase price to Switzerland was granted on the basis of the Agreement of sale.

Kasarini Estates Ltd have indicated that they will not agree to transfer the land to the Co-operative Society and that they will insist on the transfer of the total shares in terms of the Agreement of sale. Your client's Bank main concern, we reckon, is to obtain a mortgage of the Estate and also to ensure that the loan goes to Kasarini Farmers Co-Operative Society Ltd. On the basis of the above, the writer did put forward the following suggestions to your Mr. Ndungu:- That Kasarini Estates Limited will transfer all the shares in the Company to Messrs. Gakunju & Four others to hold upon trust for Kasarini Estates Ltd. Then Kasarini Estates Ltd. will give notice to Messrs. Gakunju & Others to hold the shares for the benefit of Kasarini Co-Operative Society Ltd. The co-operative Society will then mortgage the Estate to your client Bank.

By dealing with the transaction as suggested our clients will save an enomous amount of Stamp Duty. Your client Bank will get the mortgage of the Estate and in our view there will be no infringement of the Co-operative Bank rules. Further there will be no breach of the agreement of sale and the Exchange Control permission.

.....2/con.

(15)

The writer understood from your Mr. Ndungu that our above suggestions will have to be put before Mr. Slade for opinion and we should be grateful if on receipt of this letter you could please attend to this aspect of the matter at your earliest convenience.

We confirm that the other members of the Co-operative Society are the wives of the Signatories to the Agreement of sale.

Yours faithfully,
NJUGI & GICHUKIA ADVOCATES

P. GICHUKIA

c.c. Messrs. Gakunju & Others
Nairobi.

Messrs. Robson Harris & Co.,
Advocates
Lullington House,
Nairobi.

(16)

KENYA LAW
Where Legal Information is Public Knowledge

IN THE COURT OF APPEAL AT NAIROBI

(Coram: Madan , Kneller & Nyarangi JJA)

CIVIL APPEAL NO 71 OF 1984

Between

MARY NJOKI .....APPELLANT

AND

JOHN KINYANJUI MUTHERU.....1ST RESPONDENT

GABRIEL KAIRA MUTHERU.....2ND RESPONDENT

MUMBI MUTHERU.....3RD RESPONDENT

WAMBUI MUTHERU.....4TH RESPONDENT

(Appeal from the High Court at Nairobi, Sachdeva J)

JUDGMEMT

February 25, 1985, **Madan JA** delivered the following Judgment.

The first named four respondents (plaintiffs) filed a summons naming the appellant, Mary Njoki, and the fifth respondent the Public Trustee as defendants for orders to permit the intended administrator the Public Trusteee to apply for grant of letters of administration alone to the estate of Peter Gachukia deceased who died intestate on January 2, 1974 to the exclusion of Mary Njoki named as the deceased's widow "and she be declared no beneficiary of the deceased's estate.

The deceased was an advocate by profession. He died in a motor car accident. The plaintiffs, John Kinyanjui Mutheru and Gabriel Kaira Mutheru deponed in two affidavits in support of the summons that they were both brothers of the deceased who left them surviving him together with his two stepmothers the third and fourth respondents Mumbi and Wambui Mutheru; that the Public Trustee erroneously included Mary Njoki (as beneficiary) as the deceased's widow she not being legally married to him either under customary law or under any statute, and she could not claim under his estate; that they were the only two persons entitled to inherit from the deceased's estate.

It was not in dispute that Mary Njoki was not married to the deceased in any recognized manner. She herself told the court that no marriage ceremony of any kind was performed between them. The issue

17

before the court between Mary Njoki and the plaintiffs was whether Mary Njoki was entitled to a share in the deceased's estate as his widow by virtue of their long cohabitation, association and sexual intercourse between her and the deceased as they lived together as husband and wife for six years from 1969 to 1975. She was saying to the court that a presumption of marriage arose from long cohabitation and reput that she was the deceased's wife, sometimes referred to "common law wife".

The Public Trustee took no part in the proceedings. The learned judge held that Mary Njoki was not wife of the deceased, and she was not entitled to inherit any part of his estate. Mary Njoki has appealed. Condensed the eight grounds of appeal urge that the learned trial judge erred in law and in fact in rejecting the evidence given on behalf of Mary Njoki which was corroborated, in particular the evidence of the independent witness Timan Ngugi; in believing that she was not married to the deceased or that the common law presumption of marriage did not apply in the circumstances of the case; in not holding that there was a marriage by repute due to the intention on the part of the deceased and Mary Njoki to marry, and long cohabitation. The *viva voce* evidence in the court below was to the following effect: John Kinyanjui Mutheru, Gabriel Kaira Mutheru agreeing with him, told the court that he came to know Mary Njoki through the Public Trustee after the death of his brother when she said she was married to the deceased; he was surprised to hear her claim.

The deceased lived in Lavington prior to his death. He and the deceased used to visit each other. Kinyanjui used to see him with many girl friends, including Mary Njoki. None of them lived with him. The deceased did not introduce him to her. If they were married he, his mothers and the family members would have known about it; they would also have been involved in any marriage negotiations but they never were. He was not aware that the deceased was living with a woman as his wife, nor was he living with Mary Njoki. He saw her once when they visited him at Eastleigh together with another girl. He was introduced to the two ladies by name.

He did not see Mary Njoki again. He did not see the deceased with her at Kiganjo. The deceased brought her to his home in 1974 after the death of their father. Mary Njoki did not have a child.

Gabriel was different. He said he did not know if Mary Njoki was married to the deceased though to his knowledge the deceased never married, that Mary Njoki was not staying with the deceased when he died.

Mumbi said the deceased considered her his mother as she brought him up when he was six years old. He would tell her everything. He told her he had not married, and Mary Njoki was never married to him.

Wambui agreed with the evidence given by John, Gabriel and Mumbi. She herself did not know where the deceased lived in Nairobi.

Mary Njoki testified. She said she knew the deceased before his death. She was staying with him as his wife. She came to know him in 1959 at Kiganjo. They were friends until 1969 when they started living together continuously until he died, first in New Pumwani from 1969 to April, 1972 in a one bed-sitting room house. The deceased then bought a house in Langata with his partner Mr. Timan Njugi. They all moved into that house, and stayed there until July, 1974. In August, 1974 she and the deceased moved into another house in Lavington which the deceased and Mr. Njugi also bought together. Mr. Njugi remained behind in the Langata house. They stayed in Lavington until the deceased died. Mary Njoki said she came to know the plaintiffs when she was living with the deceased since 1969. She and the deceased used to visit them at their home at Kiganjo. She came to know John in 1970. He had come to visit the deceased in New Pumwani. They used to visit him where he was staying. The deceased introduced her as his wife. She made the arrangements for John's wedding to Margaret Njoki at St

18

Teresa;'s Church.

She attended the wedding with the deceased. She took photographs. John and his wife had two children one named Kimani. Margaret worked as a cateress at the Mater Hospital in South "B" Nairobi. John was working with Daly and Figgis, Advocates. He never visited their home at Langata.

He came to Lavington once with his wife. They used to meet John often at his home in Kiganjo where she informed him of the deceased's accident on December 24, 1974. She met him at the hospital after Christmas, met him there very often – she, John and Mr. Njugi. They sent John home to call a step-brother also named Peter Gichukia to come and stay with her.

The step-brother stayed with her for a long time. John and his wife also used to visit her at Lavington and at Mr. Njugi's office after the deceased's death. John used to collect money from Mr. Njugi to pay school fees for the children.

Mary Njoki said she knew Gabriel since 1970. She used to meet him at home in Kiganjo where he was at school. He knew him all the time while she was living with the deceased.

Mary Njoki said she knew Mumbi and Wambui since 1969, having met them at the same time. She went with the deceased to visit them at Kiganjo.

The deceased introduced her to them. The deceased told her he considered Mumbi as his mother because she brought him up. They always visited them at Christmas. Sometimes they used to go together with Mr. Njugi and his wife.

The deceased used to go with her to visit her father's home at his farm every time he went to his home to meet her parents, brothers and sisters.

Her sister Margaret Waihihi and Nyambura, a step-sister of the plaintiffs stayed with them at their home in Lavington.

Mary Njoki said she had photographs to show that she attended the deceased's funeral who was buried at his farm at Kiganjo. Her parents, brothers and sisters also attended the funeral.

Mary Njoki said she did not undergo a marriage ceremony with the deceased although he told her he wished to formalize their marriage in the customary way. They did not solemnize any customary, religious or civil marriage. They wanted to do it but the deceased's father died. The deceased had told his father who told her father about it in March , 1974.

She based her claim upon long association and cohabitation with the deceased having lived with him continuously for six years from January, 1969 to January, 1975. He was living with her, not alone when he died.

Mary Njoki said she and the deceased used to write letters to each other when they were at school some of which she had. The deceased went to Uganda for secondary education. He was there for four years. They met only during the holidays but they used to write to each other.

The deceased left the Kenya School of Law in 1968. She was in Makerere until 1969 where she obtained a B Commerce degree. They had serious relationship in 1963. They used to have sexual intercourse. They were both Roman Catholics.

19

Mary Njoki said she wanted to formalize their marriage. They discussed it. He used to say he was getting ready. He wanted to formalize customarily in 1974. But the two families never met for any kind of ceremony owing to her brother's death. There was no *njurio*, nor *ruracio*. There was no settlement of dowry, and the clans never met for any kind of dowry. She used her maiden name throughout.

Three witnesses gave evidence on behalf of Mary Njoki. They were Wanjiku Njenga, Solomon Kahohi and Timan Ndere Njugi. Wanjiku Njenga said she had known Mary Njoki since 1967, and they were together at Makerere from 1969 to March, 1972 when they finished college and continued to be good friends; Mary Njoki lived with the deceased from 1972 in Pumwani Flat No B 22 Door 5 until August, 1972 when they moved over to Langata where they lived in a one-roomed guest house. She visited them many times.

They also visited her at Mangu many times where she was a teacher. In 1974 they moved to a house in Kingara Road in Lavington very close to where she lived. They also visited her. They lived together from 1972 until the deceased died.

Mary Njoki's father Solomon Kahohi said he came to know the deceased "very well" in 1969. The deceased used to come to his home with Njoki, Njugi and his wife. In 1969 Njoki introduced the deceased to him as her "husband because they were staying together at Pumwani in 1969. He used to visit them there.

The deceased told Solomon that he and Mary Njoki were living together, he would like to marry his daughter in the customary way, and not to worry about Mary Njoki as he would pay the dowry one day. As was the custom the deceased's father also came to discuss and told Solomon that they could know one another as his daughter was at his home, and to wait for him as he would come to see him. Solomon reminded the father about their discussion when he met him at a meeting at Kiganjo. The father died in 1974. Solomon said he visited the deceased's home with his people only during his father's funeral. When the deceased met with the accident he was living with Njoki in Nairobi. Solomon attended the deceased's funeral together with his wife and children.

Solomon pronounced that if his daughter and the deceased were staying together as they were, whether dowry was paid or not, they were regarded as husband and wife.

The third witness was Mr. Timan Ndere Njugi an advocate of the High Court of Kenya practicing at Nairobi. He said the deceased was a partner in his law firm up to the time of his death. He had known the deceased as a classmate in the Kenya School of Law since 1963. He also knew Mary Njoki with whom the deceased started associating in 1963. At that time she was at school. He knew that when she was at Makerere the deceased used to send her books and money. She used to work in Nairobi during vacation and live with the deceased as his wife. When she completed her college she actually went to stay with the deceased in Pumwani until 1972 when the three of them moved to Langata where he and deceased together bought a property there which had a guest house. The deceased and Mary Njoki lived in the guest house until they moved to Lavington where they bought another property together. The deceased and Mary Njoki stayed there until the deceased passed away.

There was no secret about the deceased and Mary staying together. Both families knew about their association. He, the deceased and Mary used to visit their respective homes now and then. The deceased's brothers and parents used to come and visit them both at Langata and Lavington. They all treated Mary as the deceased's wife, and they lived together as husband and wife during all that time. The deceased had told him to take care of Mary Njoki if anything happened to him.

20

Mr. Njugi continued that the deceased's funeral was arranged by him, John and Mary Njoki. The three of them featured very prominently in the ceremonies at the deceased's home. Mary Njoki's family were also present at the funeral. Mr. Njugi produced six photographs. Mary Njoki appears in four of them. The deceased's family members also appear in the photographs. Mary used to benefit from the deceased more than any other member of the family. She started living with him in Pumwani from March, 1972. They stayed together continuously until the deceased died. Mary was not just a girl friend of the deceased. She associated with him as his wife. They never had any children.

Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight of bearing of circumstances admitted or proved, or has plainly gone wrong the appellate court will not hesitate to decide. *Watt v Thomas*, [1947] AC 484.

Sir Kenneth O'Connor, P said in *Peters v Sunday Post* (1958) EA 424 at p 429 that he took as a guide the opinions expressed in *Watt v Thomas*. It was held in Peters that if there is documentary and other evidence which either tends strongly to confirm the appellant's evidence or, alternatively, to show that the respondent's principal witnesses were unworthy of credit, the full significance of which the trial judge had apparently not appreciated, this was a case where the appellate court ought not to allow the conclusions reached by the trial judge to stand.

The concept of presumption of marriage is not new in Kenya. It was recognized and accepted by the former Court of Appeal in *Hortensiah Wanjiku Yawe v Public Trustee* in Civil Appeal No 13 of 1976, and by this court in *Mbithi Mulu and Another v Mitwa Mutunga* in Civil Application No NAI 17 of 1983.

In *Yawe* Mustafa JA delivering the leading judgment of the court said that there is nothing in Kikuyu customary law opposed to the concept of presumption of marriage. Wambuzi P said (*ibid*) the presumption is nothing more than an assumption that the parties must be married irrespective of the nature of the marriage actually contracted. I would add also irrespective of marriage if one is not actually contracted.

It is a concept born from an appreciation of the needs of the realities of life when a man and woman cohabit for a long period without solemnizing their union by going through a recognized form of marriage, then a presumption of marriage arises. If the woman is left stranded either by being cast away by the "husband", or because he dies, occurrences which do happen, the law, subject to the requisite proof, bestows the status of "wife" upon the woman to enable her to qualify for maintenance or a share in the estate of her deceased "husband".

It is a concept which is beneficial to the union of marriage, to the status of the parties and to the issue of their union. *Yawe* (*supra*).

One reason for the learned judge's decision was his evaluation of the credit worthiness of the evidence of the plaintiffs when measured against the evidence of Mary Njoki and her witnesses.

The learned judge said he was conscious of the fact that the plaintiffs could equally tell lies to keep Mary Njoki out of a share lawfully due to her; that the plaintiffs, especially the two mothers, had impressed him as simple and truthful witnesses; that the deceased had told Wambui that he would only marry after the children had been properly brought up; that it was also admitted by Mr. Njugi that the deceased was always conscious of his responsibility towards his family. The learned judge said he accepted the plaintiffs' evidence that the deceased had many girl friends, including perhaps Mary Njoki, but he head

21

no intention of marrying any of them.

With respect, the two mothers had no worthwhile evidence to tell. The deceased never told them that he was married to Mary Njoki. That was correct. He was not. What was in issue was not an actual marriage but a presumption of marriage arising from long cohabitation and repute between the deceased and Mary Njoki. Mr. Njugi was one of the two independent witnesses at the trial. The other was Wanjiku Njenga.

When the learned judge reached the evidence of Mr. Njugi he said:

"I must confess the evidence of Mr. Njugi, an advocate of this court and a part of Peter, not only in his law firm but also in ownership of property, has caused me good deal of anxiety. I have the highest regard for Mr. Njugi as an advocate whom I have known for a considerable length of time, but in this particular case, I am satisfied after reflection, that Mr. Njugi has been less than truthful."

In view of the foregoing appraisal of Mr. Njugi, there was no calling, indeed it was totally inconsistent and unjustified, for the learned judge to say that Mr. Njugi appeared to be "bending backwards trying to get Mary Njoki some share in Peter's estate," that it seemed hardly likely that the deceased would send money and books to Mary Njoki when he himself was in Law School on a small pittance and a small allowance which he received while chambering. Well, why not! First there was no evidence before the judge about the deceased's financial resources, and people in love perform amorous acts of all kinds, some of which appear incredible to others. Love operates from a myriad of levels. Mr. Njugi, also Wanjiku Njenga, had nothing to gain personally if Mary got a share in the deceased's estate.

The learned judge was also not justified in rejecting Mr. Njugi's evidence that the deceased asked him to look after Mary Njoki if anything happened to him; or, telling him only after the accident to take care of Mary Njoki and the other members of the family if anything should happen to him and later falling into a coma from which he never recovered.

Again, why not! What Mr. Njugi related is the normal kind of stuff of which human conversation is made up when one is living with a woman, and meets with an accident. Fortunately most human beings are not amoral. The deceased did not fall into a coma voluntarily.

The learned judge continued that Mr. Njugi produced a set of photographs showing that Mary Njoki attended the deceased's funeral but so did a lot of other people, and it was not positive evidence in support of their alleged relationship of husband and wife. The lot of other people who attended the funeral had nothing to do with the matter. It was evidence which corroborated Mary Njoki's evidence, in particular it established her connection with the deceased. It was the kind of documentary evidence accepted by the former Court of Appeal in *Peters v Sunday Post Limited* (*supra*).

Mr. Njugi was the advocate for the estate of the deceased's father who pre-deceased him six months earlier. The learned judge said'Mr. Njugi did not lodge a claim on behalf of Mary Njoki who would inherit as the deceased's wife because Mr. Njugi held that she was single.

The learned judge said he underlined the word single. Mr. Njugi offered a reasonable explanation. He said Mary Njoki did need maintenance like the family of 14 children and two wives of the deceased father. In any event it was an irrelevant factor as far as the issue of the presumption of marriage was concerned.

The learned judge said that the circumstances militated against.

23

deceased had really intended to marry her there was really no impediment preventing him from doing so. He could have married her at any time since 1968 when he started his legal practice. This was another irrelevant argument introduced into the judgment.

Another reason was that Mary Njoki did not like living in sin. What she said was that she realized they were living in sin but he (the deceased) wanted to formalize in the customary way, and she agreed. It is not an unknown way of life. It happens all over the world. This couple were not the only man and woman living together as husband and wife without being actually married. We are an advanced people. We do not want to become pedantic and futile by ignoring the realities of life. Another irrelevant approach. Mary Njoki was not on trial for her morals.

Another reason for not making the presumption of marriage was that Mary Njoki claimed to have lived with and had sexual intercourse with the deceased for six years but she admitted never having a child by the deceased, that there was no evidence that there was any physical impairment on the part of either of them to having children. The learned judge's conclusion was a *non-sequitur*. Evidence to that effect was not required to be adduced, nor did the absence of such evidence establish fertility to procreate. If they were both fertile they may have decided not have a child for any number of reasons. Although a child or children would be an important factor in giving rise to a presumption of marriage, it is not a must in order to give rise to it.

As far as the evidence of Mary Njoki herself was concerned she spoke in great detail about her early association and life with the deceased, about their three places of residence in Pumwani, Langata and Lavington where they lived together, about the two houses which the deceased bought in partnership, one of them from the National Housing Corporation, about the amount of accommodation therein, about the respondent's step-sister Nyambura who stayed with them at their home in Lavington, about the deceased's visits with her to her parents' home and he knew all her family, about her knowledge of all the deceased's family well because the deceased used to take her home every Saturday to meet them, about their visits at Christmas time, about the various members of the deceased's family, the grown ups and the children, about the time when she assisted at the church wedding of the first respondent John at St Teresa's Church where they got married, the name of John's wife and the two children born to them, about the photographs she took at the wedding, about the deceased's stepbrother also named Peter who stayed with her for a long time after the deceased's death, about the deceased's funeral which she and her family members attended.

The learned judge said that none of the details regarding the alleged contacts between Mary Njoki and the deceased's family were ever put to the respondents under cross-examination. The learned judge failed to appreciate that Mary Njoki's detailed evidence raised an indefectible probability that her evidence was true. It was corroborated by the evidence of the brother John the deceased visited him with Mary Njoki in Eastleigh, and John used to see him with her. John admitted knowing that Mary Njoki did not have a child. In the words of Wambuzi, P in *Yawe* (*supra*) Mary Njoki had shown long cohabitation and repute so as to give rise to a presumption in her favour that she was married to the deceased.

For these reasons I would set aside the decree of the High Court and substitute therefore a declaration that there was a presumption in favour of Mary Njoki that she was the deceased's wife and entitled to share in his estate. I would affirm her share of the estate at thirty per centum as fixed by the Public Trustee. It is a reasonable portion. I would also award Mary Njoki the costs of the suit in the High Court and this appeal.

As Kneller and Nyarangi JJA are of the contrary opinion the appeal is dismissed with costs.

24

Kneller JA. John Kinyanjui Mutheru and Gabriel Kaira Mutheru, the brothers of the Nairobi advocate, Peter Gachukia, and Mumbi Mutheru and Wambui Mutheru, the stepmothers of Peter, claimed they were entitled to inherit a portion of the estate of Peter who died on January 2, 1974 as a result of a car accident. He died intestate.

These all spring from Gatundu division in Kiambu District and the District officer, a Mr. Waithaka, told the Kiambu District Commissioner on December 6, 1976 the deceased's estate should be divided equally between the brothers.

They in turn, told the Public Trustee the stepmothers should have 12% and 8% of the estate respectively before the balance was divided equally between the brothers. The deceased had been the only support the stepmothers and their children had while he was alive.

Miss Mary Njoki had made her claim by February 1977 as the deceased's widow which the brothers and step-mothers resisted and the Public Trustee asked the District Commissioner to investigate this and tell him the result, and, if she were his widow, what if anything, the deceased's brothers should inherit under the Kikuyu customary laws of intestate succession.

The District Officer, the same one, I think, told the District Commissioner that the Chief of Kiganjo location had told him that the lady worked for the National Christian Council of Kenya and was never married to the deceased so she could not receive anything from his estate under their customary law but the stepmothers should have their agreed percentages and the rest should be divided between the brothers for they were the only close relatives of the deceased.

The Public Trustee passed this on to the Land Registrar in Kiambu to deal with the question of who should inherit the deceased's parcel of land Kiganjo Kiamworia T106 under the relevant provisions of the Registered Land Act. This was in early March 1977.

By early May the same year, the Public Trustee had decided, despite the information from the Kiambu District Commissioner and relatives of the deceased, she had been married to the deceased and that he would divide the estate thus:-

Mary Njoki widow	- 30%
John Mutheru, brother	- 25%
Gabriel Mutheru, brother	- 25%
Mumbi, Stepmother	- 12%
Wambui, Stepmother	- 8%
100%	

and he gave the brothers five days from May 6, 1977 to apply to the High Court under Order XXXVI to determine who the heirs were if they were unhappy with this but to leave him out of it, for he was not prepared to be dragged into it. He cited the decision of the former Court of Appeal for East Africa in *Hortensia Wanjiku Yawe v The Public Trustees*, Civil Appeal 13 of August 6, 1976 (Wambuzi, P Mustafa V-P and Musoke, JA) as authority for what he proposed to do.

25

The brother and stepmothers were dissatisfied so they filed a summons in chambers in the High Court on July 4, 1977 as "surviving beneficiaries" of the deceased naming Mary and the Public Trustee as "the defendant" and they asked for orders that:

1) That Public Trustee, the intended administrator should apply for letter of administration to the estate "to the exclusion of Mary Njoki who isnamed as the deceased (sic) widow."

2) Mary Njoki be declared no beneficiary of the deceased's estate.

3) The cost of the application be provided for.

The brothers united to swear an affidavit and a supplementary one in support of that summons and from it more relevant facts emerged. The estate was likely to be worth Kshs 541,295.45. Mary was never married to the deceased under customary law or statute. They annexed the correspondence of the Public Trustee, District Commissioner and District Officer about this. There was no affidavit in reply.

The summons came before Mr. Justice Simpson (as he then was) with an advocate for the brothers and stepmothers, one for Miss Njoki and one for the Public Trustee. Mr. Muite for Mary submitted the application was misconceived and should be dismissed with costs because the issues were such that the litigation should be by suit. Mr. Kithyoma for the Public Trustee agreed and added that the Public Trustee should not have been made a party since leave of the court was not required for the Public Trustee to apply for letter alone or with anyone else. He also explained that there was a caveat lodged by the brothers and stepmothers that he should not be appointed. Mr. Kinuthia, for the relatives, stressed the absence of any replying affidavit. Finally, Mr. Muite explained this was because no directions had been obtained in this matter.

Mr. Justice Simpson in his ruling dismissed this preliminary objection and reserved its costs. The issue was simple and clear cut. Was Mary married t the deceased in accordance with Kikuyu custom" This was within the ambit of Order XXXVI rule 1.

Now after July 1, 1981, the administration of the deceased's estate had to proceed in accordance with the Law of Succession Act (cap 160); section 2 (*ibid*). The law applicable to distribution on intestacy of agricultural land and livestock from that case was the law of the deceased's community or tribe. His other property had to be divided according to the provisions of section 35 to 42 (*ibid*). So was it important to know whether Mary was his "widow" but neither "widow" nor "spouse" nor "wife" is defined in the Act, the Interpretation and General Provisions Act (cap 2), the Marriage Act (Cap 150), the African Christian Marriage and Divorce Act (cap 151), the Matrimonial Causes Act (cap 152), the Mohammedan Marriage and Divorce Registration Act (cap 155), the Mohammedan Marriage Divorce and Succession Act (cap 156), and the Hindu Marriage and Divorce Act (cap 157) etc.

The summons came before Mr. Justice Sachdeva on November 19 and 22, 1982 and he adjourned the summons into open court it seems, and recorded evidence from John, Gabriel, Mumbi and Wambui, the brothers and stepmothers, and then Mary, her friend Wanjiku Njenga, her father Solomon Kahimi, and the deceased's law partner, Timan Njugi. He delivered judgment the next day. He gave it in favour of the relatives.

They swore during the trial they knew of no relationship between the deceased and Mary. John had been to Peter's home at Lavington and found him with different girls and once Mary and another girl accompanied Peter and John's house in Eastleigh.

26

Gabriel was a school boy whom Peter supported and he visited Peter's place often but never met Mary with him. Peter told him he would not marry until all his step-brothers and step-sisters were adults. Mumbi heard him say the same and she spoke as one who brought him up from the age of 6, his own mother having died before Mumbi married his father. Every Saturday he returned to Kiganjo and he usually brought a girl friend but not Mary. Wambui lives there too and she met these girls but she had not set eyes on Mary until she saw her in court. None of these relatives had met Mary's relatives who all live in the same location.

Mary, her father, her friend Wanjiku and the deceased's partner and friend Mr. Njugi had a very different account of Peter's and Mary's relationship. They met at Kiganjo in 1959 when she was a primary school pupil and they kept in touch during their secondary and university education. Then from 1963 their friendship was replaced by their living together on and off until 1969 when they moved to a guest house. They lived there for five years as man and wife. She was well known to the relatives of the deceased whom she often visited with him.

But there had been no marriage ceremony of any sort and they had no children. The deceased had preferred to wait and marry according to their customary law though they were both Roman Catholics by baptism and could have married in *facie ecclesiae* and saved us all from this litigation.

Peter's father, according to Peter had approached Mary's father about this in March 1974 but he died before any progress had been made. His father said this had happened before March 1972. Mary and Wanjiku disagreed over the date they graduated from Makerere; said it was 1969 and Wanjiku maintained it was in 1972 and Mary's father agreed with Wanjiku it was 1972.

Timan Njugi, the deceased's partner and friend since their days together at the Law School and university when Peter was at the law school and a pupil spoke of Peter's help with Mary's fees at her school and, university. Peter had told him to look after Mary and Mary's family should anything happen to him and he had done so letting Mary occupy the guest house rent free for 5 years and organizing a second hand car for her. He had photographs of Mary at Peter's funeral.

The learned judge pointed out that there was no impediment to Peter marrying Mary at any time between, say, 1969 and, 1974 in a church, registry office or according to their custom at Kiganjo.

No friend, not even Timan Njugi, had been sent to Mary's father to negotiate a marriage. There had been no children during their alleged cohabitation which made him doubt there had been any 'real' cohabitation. Her attendance at his funeral was not necessarily an indication that they had been married. Mr. Njugi did not include her as a claimant to any share in the estate of Peter's father who died in June 1974 because there were 2 widows and 14 children who survived the father and, in Mr. Njugi's words, Mary was single. There was no reference by her or to her in any correspondence as "Mr.s Gichukia." On the other hand, when she worked at the Treasury from 1969 to 1975 she did not claim house allowance which she could have done.

The learned judge set out all this material. He realized the relatives would do better out of Peter's estate if Mary were excluded from any share in it and she would profit greatly to their loss if she were declared to be his widow and all this might taint the evidence of the relatives and Mary.

The step-mothers he found to be simple and truthful witnesses, especially Mumbi, the one who nurtured him from the age of six. All the evidence including that of Mr. Njugi, underlined the fact that peter was determined to discharge his responsibilities to his younger brothers and sister before he married anyone.

27

He did not believe Mary, her father, Wanjiku or Timan Njugi on what they said and their demeanour which he thought was partisan. So he found that there was no 'real' cohabitation between Peter and Mary or else his brothers would have known of it, Peter never intended to marry her and there had been no attempt to by them to marry one another. So he held Mary was not Peter's wife and she was not entitled to any share in his estate.

Mary's evidence in the High Court included this statement this:-

"In view of my long association and cohabitation with the deceased, I ask the court to assume that I was married to the deceased and that I should be declared to be the deceased widow and entitled to share in his estate."

Long association and cohabitation: these were, I presume, what her advocate at the trial, Mr. Njugi, and her the Public Trustee thought were the bases of the decision in *Hortensia Wanjiku Yawe v The Public Trustee* (*ibid*) which has been faithfully applied by Mr. Justice Muli on January 29, 1979 in Nairobi Civil Suit 1460 of 1970. *Duncan Gachiani Ngare v Joseck, Susan Kaniana and Rose Nyakio* which was consolidated with Nairobi Civil Suit 2602 of 1977. *In the matter of the Estate of John Gachiani and in the Matter of the Registered Land Act* (cap 300), by Platt, J, on February 8, 1983 in Nairobi Civil Suit 4093 of 1982, *Frances Jacinto Chesire v Reuben Kiplangat Chesire* and Porter J, on October 3, 1983 in Nairobi Miscellaneous Civil Cause 364 of 1981, *Kisito Charles Macharia v Rosemary Moraa, and Anna Munini and Another v Margaret Nzambi*, Mombasa High Court Civil Suit 751 of 1977 by Kneller, J, on February 1, 1985 and maybe other causes which have not been brought to my notice.

A reading of all the judgments in *Yawe's* appeal leads me to believe that it was held that:-

i) The onus of proving customary law marriage is generally on the party who claims it;

ii) The standard of proof is the usual one for a civil action, namely, one the balance of probabilities;

iii) Evidence as to the formalities required for a customary law marriage must be proved to that standard; (of *Mwagiru v Mumbi* (1967) EA 639, 642 (K);

iv) Long cohabitation as man and wife gives rise to a presumption of marriage in favour of the party asserting it.

v) Only cogent evidence to the contrary can rebut the presumption (*Taplin, Watson v Tate*, (1937) 3 All ER 105) (Ch Div);

vi) If specific ceremonies and rituals are not fully accomplished this does not invalidate such a marriage (*Sastry Velaider Aronegary v Sembecutty Vaigalie* (1880-1) AC 364 (PC); *Sheppherd, George v Thyer*, (1904) 1 on 456. And see also *Re Taylor*, (1961) 1 All ER 557 (CA)

Whether or not the presumption arose and became more than that or whether it was rebutted was a question of fact for Mr. Justice Sachdeva.

The authorities did not, to my understanding of them, go so far as to say that cohabitation and repute constitute a marriage. They can be part of a mode of proving one in that they are substituted for some missing element or elements. One of the earliest put it this way. Cohabitation, with habit and repute, in the absence of countervailing proof to the contrary, establish a marriage on the ground that the cohabitation as husband and wife is proof that the parties have consented to contract that relationship.

28

"The missing element was the consent to matrimony given at the beginning of the cohabitation because the parties went through a form of marriage in a church when the husband could not do so lawfully and so could not consent to the second one, since the time for appealing from his decree for divorce was not yet over. *Captain de Thoren v AG* (1876), 1 App case 686 (HL).

And later ones, some of which were cited in *Yawe*, stipulate there must be evidence of an intention to marry and some claim that one or other form of marriage was in fact undertaken but would not be proved satisfactorily.

Thus the claim was that it was a (Kikuyu) customary one in *Yawe* (and all those High Court actions in which it was applied) a Tamil customary one in *Sastry Velaider Aronegary v Sembecutty Vaigailie* (1881), 6 App cas (PC), a church one in *Captain de Thoren* (*ibid*), a French registry office one in *In re Shepherd, George v Thyer,* (1904) 1 Ch 456, 463, either church or registry office one in Australia in *Re Taplin, Watson v Tate,* (1937) 3 All ER 105 (Ch Div) and probably a church one in *Re Taylor* (1961) 1 All ER 55 (though this is not clear).

The cohabitation and repute were over thirty years in the French registry office case and ten or nine in the others, save for the Tamil one which was eight.

The number of children the couple had had during their cohabitation in each of these cses was at least four though it was nine in the French registry office one and only one for in the Tamil one.

Now here, if Mary and Peter were cohabiting, it was for five years and they had had no children in these years.

The learned judge distinguished Mary's claim for *Yawes* by pointing out that Peter and Mary did not attempt to carry out any ceremony or ritual required for any marriage or by their customary law as Hortensia Wanjiku claimed she and Yawe had, anyway, there had been no long cohabitation between Peter and Mary so the presumption in favour of a marriage rather than concubinage did not arise.

Now my readings of the recorded evidence and the advocates' submissions in the trial do not lead me to differ from the trial judge's analysis of them, his assessment of the credibility of the parties and witnesses, his findings of fact and his application of the law cited to him.

Then Mary briefed a different advocate, Mr. Kirundi for her appeal. He submitted the learned judge erred in law and in fact in his assessment for credibility and finding of fact but I have indicated that, in my view, he did not do so.

Mr. Kirundi submitted next that the learned judge should have found Mary had proved on the balance of probabilities she was Peter's 'common law wife'. This phrase 'common law wife' was not to be found in the affidavits or anyone's testimony in the High Court. This is a novel point and so not covered by local authority.

A common law wife is one who is married by union which though informal was recognized as valid by the common law according to Strouds' Judicial Dictionary and Words and Phrases, 4th edition, 1974 page 3014. The authority for this is said to be *Blanchett v Hanzel*, (1943) 3 WWR 175 which is not available here. I cannot find it cited in any other book.

It was not an issue that was canvassed in the High Court. Consequently, there was no evidence, law or submission about it before the judge. Mr. Kirundi argued that, nevertheless, the judge should have found

29

that there is what Mary had been to Peter, his common law wife. It was something that was known to the Wakikuyu. If Mr. Kirundi is saying a common law marriage is recognized by the customary law of the Wakikuyu it is neither notorious nor documented and by a majority of the former Court of Appeal for Eastern Africa (Newhold VP & Duffus JA Crabbe JA dissenting) in *Kimani v Gikanga & Another*, (1965) EA 735 it was held that it must be established for the court's guidance by the party intending to rely on it.

This Mary Njoki failed to do.

But Mr. Kirundi was really saying, I believe, was that it was part of the law of Kenya since "it was within the substance of the common law in England on August 12, 1897; section 3 The Judicature Act (cap 8).

And as long ago as the twelfth century a promise of present marriage (*sponsalia per verba ae praesenti*) was, by the common law of England, a recognised marriage and a promise of future marriage (*sponsalia per verba ae futuro*) became an effective one when sexual intercourse took place. Jowitt's Dictionary of English Law, 2nd edition, 1977, page 1150, though later English canon law and statute law completely excluded the notion of a common law marriage.

Assuming, however, it was part of the common law of England not only in the twelfth century and 1943 but also on August 12, 1897 there is nothing in the evidence before the learned judge on which he could also find that the circumstances of Kenya and its inhabitants permitted it to be applied here today and if the circumstances rendered it necessary to qualify it today (assuming he had found Peter and Mary had been married by an informal union).

When the learned judge answered the issue in the summons a marriage in Kenya could be contracted:

(a) in civil form; or

(b) according to customary law ceremonies where the parties followed their customary law; or

(c) in Islamic form if the husband is a Muslim; or

(d) in Hindu form if the husband is a Hindu; or

(e) in a church in the form of any recognized religion; or

(f) in Christian form if the parties are Christians; or

(g) in civil form and one of the others.

Those are, I apprehend, enough for all the peoples of this country.

For these reasons, with profound respect to the view of Madan JA, I have to disagree and so I would dismiss this appeal with costs.

Nyarangi JA. The facts relating to this appeal are set out in the judgment of Madan JA and in the judgment of Kneller JA, so I shall only recapitulate those facts in support of my reasoning.

Mr. Kirundi for the appellant argued grounds 2,3,5,6, and 7 together and submitted that the judge had erred by putting wrong emphasis on customary law which was not the issue, and thereby starting the

30

case on a wrong footing. Mr. Kirundi conceded that there was no customary, statutory or ecclesiastical marriage between the appellant and Peter Gichukia, the deceased but that the appellant's unchallenged evidence of the long cohabitation, which evidence had graphic details which only a wife could provide, together with an offer by the deceased's "very old grandmother" to share her land with the appellant gives rise to presumption of marriage.

Mr. Kirundi criticized the judge for rejecting the evidence of Timan Ndere Njugi, DW 4, and the evidence of Wanjiku Njenga, a close friend of the appellant.

Mr. Njau, for the respondents, asked us to hold and accept that the judgment of the High Court contains valid and supportable reasons for the findings therein, that the evidence of Njugi DW 4; was properly rejected and that there was no mention of common law marriage in the High Court. On the crucial issue of cohabitation, Mr. Njau invited us to disbelieve that the appellant started living with the deceased in 1969, that on the evidence, the deceased wasn't committed and that a presumption of marriage should spring only from provable facts. The concept of presumption of marriage is with us, having been recognized and approved by this court's predecessor in'*Hortensia Wanjiku Yawe v Public Trustee;* Civil Appeal No 13 of 1976.

This court did not although not expressly recognize and accept the concept of presumption of marriage in *Mbiti, Mulu and Another v Miwa Mutunga,* Civil Application No NAI 17 of 1983.

In *Yawe*, the deceased had declared to another that the appellant was his wife by general repute, there had been long cohabitation as man and wife, there was evidence of performance of marriage ceremonies and during the period of cohabitation the appellant bore the deceased man four children. In *Mbiti* (Civil Application No NAI 17 of 1983) the deceased woman had borne the respondent one child and there had been a marriage ceremony.

The presumption does not depend on the law of systems of marriage.

The presumption simply is an assumption based on very long cohabitation and repute that the parties are husband and wife.

In my judgment, before a presumption of marriage can arise, a party needs to establish long cohabitation and acts showing general repute. If the woman bears a child or better still children, so that the man could not be heard to say that he is not the father of the children, that would be a factor very much in favour of presumption of marriage. Also, if say, the two acquired valuable property together and consequently had jointly to repay a loan over a long period, that would be just what a husband and wife do and so it would be unreasonable to regard the particular man and woman differently. Performance of some ceremony of marriage would be strong evidence of the general repute that the parties are married. To sum it, there has to be evidence that the long cohabitation is not close friendship between a man and woman, that she is not a concubine but that the cohabitation has crystallized into a marriage and that it is safe to presume that there is a marriage. To my mind, these features are all too apparent in the *Yawe* and in *Mbiti* (*supra*). To my mind, presumption of marriage, being an assumption does not require proof, of an attempt to go through a form of marriage known to law.

It is common ground that there was no marriage between the appellant and the deceased. The fact that the appellant and the deceased together visited the deceased father's home or that she attended the funeral of the deceased's father is not material. The appellant was a friend of the deceased and she accompanied him to the funeral in that capacity. That is how friends treat one another. And on account of the cohabitation the appellant could not help meeting and knowing and even assisting the relatives of the

B1

deceased including the respondents. The appellant's own evidence proved that there had been no meeting between her family members and those of the deceased, and that there had been no marriage ceremony of any kind or form and that there was no meeting of mind between the father and the deceased and the appellant's father. This evidence and that of the respondents clearly proves that the appellant could not be presumed to be married, that was the cogent evidence that an essential element required for a valid Kikuyu marriage had not been satisfied. The effect of all this is to rebut a presumption of marriage.

Mr. Kirundi introduced a new and novel aspect in his contention that the trial judge should have held that the appellant had proved as required of her that she was the deceased's "common law wife".

Mr. Kirundi said the Kikuyu recognize a 'common law wife' and referred the court to section 3 (c) of the Judicature Act (cap 8), thus implying that because the concept of the common law marriage was part of the common law in England by August 12, 1897, it now forms part of the law of Kenya.

However, as Kneller JA sates, there was no evidence that the Kikuyu know about and practice common law marriage and further that the conditions in Kenya and its various groups would accommodate a common law marriage.

All in all I would say that on the evidence before the trial judge, this suit is sharply distinguishable from *Yawe* and *Mbiti*.

I would on the evidence have reached the same conclusion as the judge did but, as I have endeavoured to demonstrate, by a different route.

I would dismiss the appeal with costs.

Dated and delivered at Nairobi this 25th day of February, 1985.

C.B MADAN

.....

JUDGE OF APPEAL

A.A KNELLER

.....

JUDGE OF APPEAL

J.O NYARANGI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

32

DEPUTY REGISTRAR

creative commons While the design, structure and metadata of the Case Search database are licensed by Kenya Law under a Creative Commons Attribution-ShareAlike 4.0 International, the texts of the judicial opinions contained in it are in the public domain and are free from any copyright restrictions. Read our Privacy Policy | Disclaimer

Form 3

COLONY AND PROTECTORATE OF KENYA

THE CO-OPERATIVE SOCIETIES RULES, 1946

CERTIFICATE OF REGISTRATION

(Section 8 of ~~Ordinance~~ Act 38/1945)

CERTIFICATE OF REGISTRATION No. 1167

In the matter of the application bearing number 1167 and year 1964 in the District of NAIROBI

I hereby certify that the Society under the name of KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED and its by-laws have this day been duly registered by me in the Register of Societies in pursuance of the provisions of the Co-operative Societies Act 1945, and the Co-operative Societies Rules, 1946.

Given under my hand at Nairobi this the TWENTIENTH day of JULY 1964

I. A. N. KIBUE

~~Registrar of Co-operative Societies~~

Ag. COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

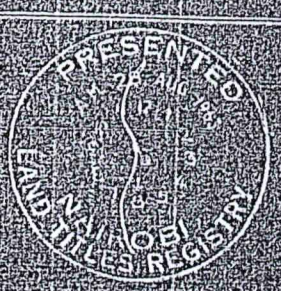
G.P.K. 2635—2,000—10/56

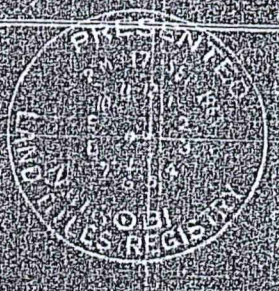
33

34

PRESENTED NAIROBI LAND TITLES REGISTRY

PRESENTED NAIROBI LAND TITLES REGISTRY





THIS INDENTURE is made the Nineteenth day of August One Thousand Nine Hundred and Sixty-three Between KASARINI ESTATES (1959) LIMITED a Limited Liability Company incorporated in Kenya and having its registered office at Nairobi in Kenya (hereinafter called "the Vendor" which expression shall where the context so admits include its successors and assigns) of the first part PETER MERVYN JOHNSON of Nairobi aforesaid Chartered Accountant (hereinafter called "the Liquidator" which expression shall where the context so admits include his successor or successors in office as Liquidator or Liquidators of the Vendors his and their assigns) of the second part and KASARINI ESTATES LIMITED a Limited Liability Company incorporated in England and having its registered office at Grimsby in England (hereinafter called "the Purchaser" which expression shall where the context so admits include its successors and assigns) of the third part.

WHEREAS:

(1) At the date of the passing of the resolution next hereinafter recited the Vendor was seised of the premises hereinafter described and intended to be hereby conveyed for an estate in fee simple in possession subject as hereinafter mentioned and had agreed with the Purchaser for the sale of the same premises to the Purchaser for a like estate subject as aforesaid and upon and subject to the terms and conditions hereinafter contained or implied but otherwise free from encumbrances at the price or sum of Shillings Two Million Three Hundred and Four Thousand One Hundred and Seventy (Sh. 2,304,170/=) but no part of the said purchase price has yet been paid to the Vendor and no assurance of the said premises has yet been executed by the Vendor in favour of the Purchaser in pursuance of the said agreement;

(2) At an Extraordinary General Meeting of the members of the Vendor duly convened and held on the Fourteenth day of June One Thousand Nine Hundred and Sixty-three a Special Resolution was duly passed that the Vendor should be wound up voluntarily and that the Liquidator should be and he thereby was appointed Liquidator of the Vendor for the purposes of such winding up;

(3) The Liquidator has agreed with the Purchaser to complete the said agreement in manner hereinafter appearing;

NOW THIS INDENTURE WITNESSETH as follows:

1. In pursuance of the said agreements and in consideration of the premisses and of the sum of Shillings Two Million Three Hundred and Four Thousand One Hundred and Seventy (Sh. 2,304,170/=) on or before the execution of these presents paid by the Purchaser to the Liquidator as such Liquidator as aforesaid (the receipt whereof the Liquidator doth hereby acknowledge) the Vendor as beneficial owner acting by the Liquidator DOTH HEREBY GRANT AND CONVEY unto the Purchaser ALL THAT piece or parcel of land containing Nine Hundred and Twelve acres or thereabouts situate North of Nairobi Municipality in the Kiambu District of Kenya and known as Land Reference Number 7153/2 which said piece or parcel of land is the premisses comprised in an Indenture of Conveyance dated the Seventeenth day of May One Thousand Nine Hundred and Sixty and made between Kasarini Estates Limited (therein described and hereinafter called "the original Kasarini Estates Limited" of the first part the said Peter Mervyn Johnson and George Rhoades Smith (both therein described) of the second part and the Vendor of the third part (registered in the Crown Lands Registry at Nairobi aforesaid in Volume R 44 Folio 164/1 File 13705) and is delineated and described on the plan annexed to the said Indenture of Conveyance and more particularly on Land Survey Plan Number 74226 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red TOGETHER WITH all buildings and other improvements now erected and being thereon TO HOLD the same unto the Purchaser for an estate in fee simple SUBJECT to the easements rights and privileges granted by and to the performance and observance of the covenant on the part of the original Kasarini Estates Limited contained in an Indenture of Conveyance dated the Tenth day of July One Thousand Nine Hundred and Fifty-nine and made between the original Kasarini Estates Limited of the one part and Sydney Alec Chambers (therein described) of the other part (registered as aforesaid in Volume R 44 Folio 2/2) AND SUBJECT ALSO to the provisions of the Crown Lands Ordinance 1902 and to the Rules for the time being in force thereunder AND SUBJECT ALSO TO AND WITH THE BENEFIT of the covenant on the part of the said Sydney Alec Chambers contained in the said Indenture of Conveyance dated the Tenth day of July One Thousand Nine Hundred and Fifty-nine.

2. The Purchaser HEREBY COVENANTS with the Vendor and the Liquidator that if the Purchaser will henceforth perform and observe the covenant on the part of the original Kasarini Estates Limited contained in the said Indenture of Conveyance dated the Tenth day of July One Thousand Nine Hundred and Fifty-nine AND WILL indemnify and keep indemnified the Vendor and the Liquidator and its and his respective estates and effects

36

from and against all actions claims and demands on account of the same.

IN WITNESS whereof the Vendor (by the direction of the Liquidator) and the Purchaser have caused their respective Common Seals to be hereunto affixed and the Liquidator has hereunto set his hand and affixed his seal the day and year first hereinbefore written.

SEALED with the Common Seal of the Vendor in the presence of:-

Liquidator

SIGNED SEALED AND DELIVERED by the Liquidator in the presence of:-

[illegible]

SEALED with the Common Seal of the Purchaser in the presence of:-

Director

Secretary

COLONY OF KENYA
CROWN LANDS REGISTRY
NAIROBI
Registered at 2 [illegible] 1963
[illegible]
[illegible]

(37)

Telegrams: "INTESTATE", Nairobi
Telephone: Nairobi 227461
Please address all communications to:
THE REGISTRAR –GENERAL.

DEPARTMENT OF
THE REGISTRAR GENERAL
P.O. Box 30031 - 00 100
NAIROBI

Our Ref : CR/RMU/
Your Ref : GW/NLC/K/2/16

4th January, 2017

GATITU WANG'OO & CO ADVOCATES
P.O.BOX 2032-00900
KIAMBU

Dear Sir

REF: KASARINI ESTATES (1959) LIMITED

We refer to the above matter and your letter dated 3rd August, 2016.

The company does not appear in our database of registered Companies.

If you have the certificate of registration, kindly submit a copy to the Registrar of Companies for cross checking and confirming.

TABITHA THUO
RMO
FOR: REGISTRAR OF COMPANIES.

38

DATED THIS 19th DAY OF April 1972

TO

I

TRANSFER OF PLOT NO.

EASTLEIGH SECTION THREE

Drawn by:
Njugi & Gichukia
Advocates
Lakhamshi House
Bazaar Street,
P.O. Box 46693
Nairobi

39

THIS INDENTURE is made the 11th day of April 19/72 One Thousand Nine Hundred and Seventy two BETWEEN _____ of Post Office Box Number 30536 Nairobi in the Republic of Kenya (hereinafter called "the Vendor" which expression shall where the context so admits include his personal representatives and assigns) of the one part and _____ of Post Office Box Number 218 Thika in the said Republic (hereinafter called "the purchaser" which expression shall where the context so admits include his personal representatives and assigns) of the other part:

AM. 20 APR 197 NAIROBI LAND TITLES REGISTRY



WHEREAS

(1) By an indenture dated the Fourth day of February One Thousand Nine Hundred and Twenty-Seven and made between His most Gracious Majesty King George the Fifth of the one part and Noor Din s/o Gower (herein described) of the other part ALL THAT piece or parcel of land measuring fifty four feet by ninety feet (54' x 90') or thereabouts situate in Eastleigh Section Three [illegible] of the Thika Province (now the Nairobi Area) of Kenya known as Plot No. the title to which is registered in Government Lands Registry in Volume No. 367 of Ax 1913) was demised to the said Noor Din S/o Gower in fee simple in possession for the consideration therein mentioned and subject to the provisions of the Grown Lands Act (now the Government Lands Act) one thousand nine hundred and two and to the Rules for the time being in force thereunder.

2. By diverse means assignments acts in Law and events the premises comprised in and demised by the hereinbefore recited indenture became legally vested in Mohamad Ramzan s/o Mohamed Nathu.

3. By an indenture dated sixth day of September One Thousand Nine Hundred and Seventy-One and made between Mohamad Ramzan s/o Mohamed Nathu (herein described) of the one part and the Vendor and Purchaser of the other part and registered in Government Lands Registry in volume No. 23 Folio 306/5 the premises comprised in and demised by the herein before recited

40

29. THAT by his own admission the Investigator's professional credibility is highly questionable as he is neither a lawyer, nor a land surveyor, nor a land economist, neither does he hold any qualification or experience in the land matters on which he is purporting to advise. The Investigator claims to have consulted lawyers, surveyor, officers at the land office and officers at the survey office, but he conveniently does not identify by name any of those professionals.

30. THAT the sale of L.R.No. 7153/2 by Kasarini Estates Limited to the Society was handled by very prominent lawyers namely Robson Harris & Company, Njugi & Gichukia, Kagwe & Company and Hamilton Harrison & Mathews. On the Government side the transactions were dealt with by the Commissioner of Lands himself assisted by several officers in his office, the Director of Surveys, the Principal Registrar of Titles, the County Council of Kiambu, and the Kiambu Land County Board. The Investigator, who has no qualifications or experience in land matters has the audacity to rubbish all the documentation handled and supervised by these reputable law firms and senior Government officers and recommends to the Commission that the transactions were illegal and were the products of " **fraud and criminality**" and should be investigated by the DPP and DCI for prosecution:

31. THAT the Respondents strongly recommend to the Commission that it should reject the affidavits referred to in paragraph 6 above and outrightly dismiss the Investigator's report, and therefore dismiss the Applicants petitions:

32. THAT what is deponed to herein is true to my knowledge, information and belief save for facts and information sources whereof have respectfully been set out.

SWORN at Nairobi by the said)
MARGARET NYOKABI MBUGUA)
this 6th day of Sept. 2016)
)
)
)
)
)
)
)
BEFORE ME)
)
)
COMMISSIONER OF OATHS)

C. V. MABACHI * P.O. Box 12500-00100 NAIROBI-KENYA * COMMISSIONER FOR OATHS

.....
DEPONENT

(1)

THE SENATE

REPUBLIC OF KENYA

PETITION

MBOGOS FAMILY OF MBARI YA MBOGO ANCESTRAL LAND

LR 7153/1, 7153/2 now LR No 12825

FAMILY HISTORY,EVICTION AND COMPESATION CLAIM

DATE: *25th APRIL 2023*

CONTACT PERSONS: ***Families Representative***

9. Francis W. Njuguna - 0723 210 856
10.Mary Wangui N. - 0711618860

For Elders Mbogo's Family of Mbari ya Mbogo Family… (*Herein referred as Petitioners)*

MBOGO'S FAMILY WELFARE GROUP
25 APR 2023
Sign:.....
CERTIFICATE No. 3764099

CONTENTS:

1. HISTORY ON MBOGO WAINAINA KASARINI LAND
2. COFFEE PLANTATION
3. STATE OF EMERGENCY
4. CONSTRUCTION OF LABOR CAMPS & KASARINI PRIMARY SCHOOL.
5. YEAR 1964: FORMATION OF KASARINI FARMERS COOPERATIVE SOCIETY C/S NO, 1167
6. YEAR 2009: ALTERATION OF KASARINI FARMERS COOPERATIVE SOCIETY C/S NO, 1167 BY LABORERS
7. EVICTION
8. AFTERMATH OF EVICTION
9. CLAIM FOR DAMANGES ON FORCEFUL EVICTION

MBOGO'S FAMILY LAND HISTORY

Mzee Mbogo Wainaina Kasarini Land Background

The Late Mbogo son of late Wainaina who lived in South East Kiambu during his later youth in late 1890's had a good relation with Ndorobo tribe and others communities settling in the area who initially owned the land as hunters and gatherers who then gave him part of the land to carry out his butter trade business of cereals, tobacco etc. Same grazed indigenous herds of sheep, goats and cows that multiplied in number then started buying and selling of the same. This was initially where St. Mary is located in the said Kasarini farm of over 933.9 acres.
Later in 1900 he negotiated and purchased the land from Ndorobo communities in exchange of some of his indigenous flocks of around 2000 goats. The land 1st edge beacon is next to mugumo tree at Kwaheri ya kuonana Exit Kiambu entering Nairobi, 2nd bounders Kaiya Farm, 3rd Ibonia farm and 4th bounders a small farm western side of Kiambu road Tarmac next to Barua Estate.

Ancestral Profiles And Homesteads (Maganjo Ma Mbogo)

1. After Mzee Mbogo purchased the land from the Ndorobo community in exchange with goats as his perennial homeland and subsistence farming. He established and settled his Maganjo at the Mau Mau caves that he named after him ***Ngurunga ya Mbogo*** now the famous Paradise Lost picnic site occupying a land mass of ***52 acre***

2. He thereby married four (4) wives respectfully (see the attached table) and build them traditional huts and his married sons that developed to a perennial home village

3. Together with his family, Mbogo tilled the land to grow crops and reared herd of livestock in his expanded land

4. Early 1900 he welcomed and consulted with the white settlers on utilizing and developing the farm as a demonstration land by planting and cultivating coffee in the ancestral land

5. He showed and directed the white settlers in identifying all the landmarks of his Kasarini ancestral land

6. Through this arrangements as the landowner, he became the Senior Foreman referred to as (Mfunga Shamba) in the farm now being managed by the whites

7. Mbogo and his family planted coffee and sons became in charge of farms Mechanics, spray tractor drivers and irrigation supervisors

8. Mbogo supervised coffee plantation and all operation in the entire Kasarini land

9. In 9140 the farm was registered by the white settlers as Kasarini Estate Limited

10. Kasarini Estate was later liquidated and ceased to exist in 1959.

11. In 1964 the white settlers together with Mbogo formed Kasarini Farmers Cooperative Society

12. He educated his children at Kasarini Primary School which was built in the land which he surrendered as a public utility land.

13. Mbogo and his Sons Fought for freedom as Mau Mau during the state of emergency from 1952

14. His sons were detained during the state of emergency and denied to go back to their homestead and separated from family.

15. His three wives and children are buried at Mbogo's Ancestral Land, the elder wife who died in 1941, her grave is marked near the cave

16. After the independence, five (5) strange men visited and begun regular visits to the land claiming to be officials sent from coffee bard, KPCU. But we later learnt their intention was to evict the white settlers and take the kasarini land from Mbogo.

17. During this period the Mbogo's and white settlers Safe where broken into and bugged at one night and all Mbogo's farm documents, farm records and cooperative documents stolen.

18. He later died a mysterious death in 1970 after a short stomach illness

19. In 1974 The five men and their families captured Mbogo's ancestral land, in 1974 they established and copy paste a similar cooperative society bearing same name and dates as that of 1964 and the difference was only the years ie. 1964/1974

20. They used the 1974 certificate to irregularly and illegally acquire from Mbogo's family. kasarini ancestral land

From Year 1914: Coffee Plantation

- In the year 1914 when the white settlers arrived they corroborated with Mr. Mbogo Wainaina by planting coffee in the ancestral land as a demonstration farm to enhance better living standards through socio economic development.
- Manure from Mbogo's livestock was used in coffee planting
- Over 560 acres of the ancestral land was planted with coffee
- Factories, Farm Machineries, Coffee Milers and Dams were Established in the farm

- Mr. Mbogo through the same arrangements as the land owner assumed the role of senior foreman who supervised all the functions and operation in the farm,
- The coffee was rated as among the best performing in the region and therefore the farm was termed as (kwamagutta)

State Of Emergency

- Three labor camps were established within the land to accommodate more resident and hired labor force from different neighbor hoods. Namely
  - Kambi, Tanganyika , Kwamera and Ndodora
- The state of emergency in 1952 found an increased population both from Ancestral Family and other laborers who later joined to working in the coffee farms
- Later the Ancestral Family was also forced to abandon their homestead and settle in the labor camps as a result of the wars during the state of emergency.
- The Ancestral Family fought in the war during the emergency
- Some were killed and others detained during the war and those who by today nobody knows their where about.

Construction of Labor Camps & Kasarini Primary School

- The expanded coffee production attracted more labor force and laborers were therefore transported from other neighboring areas to come and labor in the farm.
- In 1957 the population of the children from ancestral family and the laborers was in the rise and need to establish a learning institution was paramount
- The ancestral family erected and constructed mud structures roofed with raffia's to serve as Kasarini Primary School
- The school went up to class four (4) after which the children joined labor at the farms
- The white settlers later helped to upgrade the school into more permanent structures which provided a more conducive learning environment.

Year 1964: Formation Of Kasarini Farmers Cooperative Society C/S No, 1167

- With now a well developed farm and expanded production from the farm inputs by the ancestral family and other laborers, the ancestral families with the support from the white settlers started and registered themselves as Kasarini Farmers Cooperative Society so that they could save their money for investments and development

- The family and farm members consistently and successfully contributed money towards the cooperative with hopes of future development on their investment.

- The family and farm members also aimed to reimburse the cost that the whites had incurred in developing their land when the time comes for them to leave the land to the ancestral families to self manage.

Take notice that: It was on a sad note that the dream comes true for Kasarini farmers cooperative society could never be realized when mysterious and strange events happened

Year 2009: Alteration of Kasarini Farmers Cooperative Society C/S No. 1167 by laborers

- The five families named as respondents colluded with families of the laborers to alter records where one Mr. Kamau wa Rurinja among other farm workers conspired and altered the details and contents of the in favor of their names so that they could appear to be the owners of the Mbogo's cooperative society

- The laborers then proceeded to use this cooperative certificate to fail a case in **Court ELC No.577 of 2009** which is still pending in curt

- *The five responded are now using these matter before court as a defense that national* land commission cant not continue to prosecute Mbogo's case and render justice to us.

EVICTION

EVICTION OF MBOGO'S FAMILY FROM KASARINI ANCESTRAL LAND

That It is on sad memories that strange and mysterious events subsequently happened in the farm that shattered the dreams and turned all the efforts of the ancestral families and their descendants into the extremist of poverty.

That a few years shortly after Kenya got independence, five (5) strange men visited the farm and begun regular visits to the land claiming to be officials sent from coffee bard, KPCU. But we later learnt their intention was to evict the white settlers and take the kasarini land from Mbogo.

That during those momentous occurrence in their numerous visits to the farm, they advised that they needed to recruit new men on machinery welding and ordered for new gas cylinders and cutters and brought in their own trainer men who trained to use the new welding machines for a few days and then left the farm

That for the first time in the farm history, shortly after the trainer had left the farm, the farm office was broken into at night by buglers who used the same welding machines to break the office where two safes belonging to white settlers and Mbogo were installed. They used the same machines to cut the safe that contained Mbogo's documents, farmer's cooperative effects and money,

That it is Strange the burglars took away all the documents and cooperative details but left the cooperative money in the safe.
One week after the scene of theft in the Farm office, the same five (5) men visited the farm offices again and after some hours of closed door meeting with the whites, they emerged and informed the farmers that they were the new farm managers and had immediately taken over the farm
The five men were namely:

1. *Samuel Mbugua Kibathi*
2. *Zacharia Kimemia Gakunju*
3. *Moses Mbugua Mwangi*
4. *Samuel Githegi Mbugua*
5. *Kangethe Kabogo*

That the White Settlers who were managing the farm were dismissed and immediately left the farm without notice or farewell departure to Mbogo's families and farmers and never to be seen again ever since

That the five new farm managers took over and after a few days the entire Kasarini ancestral farm was demarcated into five portions where each one of them occupied and claimed the Ownership.

That the existing Mbogo ancestral family were then forced out of their hard earned ancestral land and moved outside the bounders where they were set free leaving them homeless, poor and

landless. Those who refused were harassed abused and beaten for refusing to show them the beacons

1. ***Take notice***: that the above series of events clearly reflects the historical injustices *applied* to the poor and how Kasarini Ancestral Land which has currently attracted a lot of envy and interest by Investor and Real Estate Developers was grabbed and taken away from Mbogo's ancestral parent and families.

2. That there are other unwarranted submissions made by various parties claiming to be part of the beneficiaries of the same parcel of land but facts has it which clearly show the rightful Ancestral owners of Kasarini Land was Mbari ya Mbogo

3. That the affected and suffering parents, together with our children and their generation kindly request the government through its relevant offices to resettle our families back to our ancestral land our inheritance.

4. That this is therefore to confirm that the descendants of the 4 Mbogo's wives who lived in their Kasarini ancestral land has widely and wisely consulted, and endorsed the same in full as accented and testified by our respective homestead

5. That Mbari ya Mbogo further nominate a member from each family as representative of all matters and proceeding of our case as undersigned below;

We believe in the rule of law and promise to abide to the spirit of the constitution of Kenya as we seek for justice to be done by the government in resettling us back to Kasarini which remains to be forever as our ancestral land.

CLAIM FOR DAMANGES ON FORCEFUL EVICTION

COMPENSATION ON DAMAGES & HARDSHIPS EXPERIENCE CLAIMS EXCEEDING ***KSH.20 BILLION***

1. Recovery of Mbogo's Ancestral land measuring 933.9 Acres

The occupational and proprietary rights of Mbogo's ancestral land measuring 933.9acres as per the 1914 map to be lighted

Land Acquisition and Entitlement.

- Issuance of land title and ownership documents to Mbogo's family

Occupational & Proprietary Rights

- Relocation of Mbogo's family back to their perennial homestead anciently known as [Maganjo ma Mbogo] at Ngurunga Ya Mbogo currently renamed Paradise Lost Pick nick site measuring 52 acres

Beacons & Land Marks

- Retain the original landmarks and beacons as previous known and identified by Mbogo's family

2. Recovery of 530 Acres of undeveloped land surrendered back Mbogo's Ancestral

According to the recent actual survey report that indicate over 530 acres of undeveloped land which should be fully acquired back to Mbogo's families

Citation to succeed all Undeveloped Land

- Reposes back all the undeveloped and un-utilized land measuring over **530 acre** as per the current survey reports.
- Compensations by the respondents for evicting Mbogo's family and benefiting and enriching themselves and their families from the farm produce for over 40 yrs

Compensation of all occupied & developed land

- Compensation of all the remaining land measuring over 403.9 acres as per the current land market value

Land in excess within the landmarks

- Any other extra land in excess of the 933.9 acre that was not covered by the aerial 1914 survey map

3. ***Compensation for Damages and suffering incurred by Mbogo's family for over 40yrs.***

After eviction where Mbogo's family was rendered landless and homeless thus exposing the parents and descendants of Mbogo's family to dangers and vulnerability that led to turmoil and languish in poverty

Forceful eviction by colonial government

- Damages resulting from forceful eviction where the whole Maganjo ma Mbogo's Homestead was set on fire during the state of emergency resulting to lose of properties and leaving the family homeless causing loses amounting in excess of. ***200 million***

Forceful eviction by the 10 respondents as named by NLC

- Damages resulting from forceful eviction from our perennial ancestral land rendering us landless and homeless causing loses amounting in excess of ***Ksh. 20 billions***

Family Incurring psychological distress

- Families of Mbogo incurring psychological torture, trauma ,injuries and sufferings amounting in excess of ***Ksh.6 billion***

Family subjected to abject poverty & hopelessness

- Exposure of Mbogo's family into Poverty, Hopelessness, Immoralities, Vulnerability to Diseases ,Poor Education Drugs and Substance, poor or no education amounting to loses in excess of ***Ksh. 2 billion***

Struggle for Resettlement after Displacement

- Family incurring expenses of relocation through effort to recover the ancestral land from the named respondent amounting loses in excess of ***Ksh.200 million***

4. ***Compensation of all utilized land by Stakeholders, Developers and Investors.***

All illegal ongoing transactions and construction activities undertaken by vendors who invest and develops the land on a day and night basis be directed and ordered to compensate on any parcel they acquired illegal in default of fake titles.

5 ***Compensation by Developers & Investors***

- Compensation of all developed and utilized land by all stakeholders, investors and developers on every parcel illegally acquired at the current market value per acreage

LIST OF KASARINI CURRENT BENEFICIARIES

1. The Five Families named as Respondents.

    1. *Samuel Mbugua Kibathi Family*
    2. *Samuel Githegi Mbugua Family*
    3. *Moses Mbugua Mwangi Family*
    4. *Kabogo Kangethe Family*
    5. *Kimemia Gakunju Family*

2. Samuel Mbugua Kibathi Residential Home
3. Kencom Sacco estate
4. Runda Paradise Estate
5. Iguta Homes Estate
6. Five Star Paradise Estate
7. Paradise Lost Picnic Site
8. Woodsman Vila
9. Kentwood
10. Hidden Creek Vila
11. Sabis International School
12. Brook House International School
13. St Mary's Assumption Sisters
14. Kasarini Primary and Secondary School
15. Wadi Degra Sports Club
16. UNDP Development (The Green Zone)
17. PCEA Kasarini Church
18. Ever Green Park
19. Citam Kiambu Rd Church
20. Eagles Faith Christ Centre
21. Envision Tecno Construction
22. INNEZA Service
23. Quick Matt
24. Motor Showrooms
25. Petro Station
26. Hotels and Restaurants
27. Clubs
28. Shopping Malls
29. Other upcoming Constructions

(3)

Certificate No. 3764099

Republic of Kenya

MINISTRY OF EAST AFRICAN COMMUNITY, LABOUR AND SOCIAL PROTECTION

Certificate of Registration of Self-help Group/Project

This is to Certify that

This is the exhibit marked "MHG 1" annexed to the affidavit of MARY MUERI GACHUMA sworn on the 8TH day of JUNE 2018 at Nairobi in the Republic of Kenya
Before Me
commissioner for Oaths

MBOGO'S FAMILY WELFARE GROUP
Group Name / Project

32625
Registration No.

14.2.2017
Date of Registration

KIAMBU TOWN
Sub-location / Ward

KIAMBU
Constituency

SETTLED AREA /KASARINI
Location

KIAMBU
Sub County

MUNICIPALITY
Division

KIAMBU
County

is registered with the Department of Social Development Officer

SUB COUNTY SOCIAL DEV. OFFICER
KIAMBU

Name MARY N. MWANGI Signature
County Coordinator / Sub County Social Development Officer

5.4.2018
Date of Issue

Note: The Contents of this Certificate should not be erased, altered or defaced in any way

MBOGO'S FAMILY WELFARE GROUP
- BOARD MEMBERS - 9
- PETITIONERS - 13

MBOGO'S FAMILY WELFARE GROUP
19 MAR 2017
Sign:
CERTIFICATE NO. 3764099

Republic of Kenya

MINISTRY OF LABOUR, SOCIAL SECURITY AND ~~SERVICES~~

Department of Social Development
Kiambu Sub-County
P. O. Box 866, Kiambu

List of Members of Self Help Groups, Women Groups, Youth Groups & Community Development Projects

Name of Group MBOGO'S FAMILY WELFARE GROUP
Registration Number 32625 Certificate Number 3764099
Date of registration 14-2-2017
Division MUNICIPALITY Location SETTLED AREA JKIAMBU
Membership: Male Female Totals

BOARD MEMBERS & PETITIONERS'

No	Name	Designation	ID. No	Gender	Signature
1.	MARY NJERI GACHUNGA	CHAIRPERSON	728328	F	MG
2.	BERNARD MBOGO KIBUNJA	V-CHAIR	0287328	M	
3.	FRANCIS WAINAINA NJUGUNA	G-Secretary	13841389	M	
4.	MARY WANGUI NJUGUNA	V/SECRETARY	23989358	F	
5.	MARY NJERI WAINAINA	TREASURER	0497609	F	
6.	ANTONY MURIKI MATHEGI	Co-ORDINATOR	9325962	M	
7.	JANE WANJIRA CHEGE	WELFARE OFFICER	1853622	F	
8.	PETER THUO NJUGUNA	COMMITTEE	22833650	M	
9.	JOSEPH WAINAINA MBOGO	COMMITTEE	0550301	M	
10.					
11.	PETITIONERS'				
1 12.	ELIZABETH WANJIKU WAINAINA		1999971	F	
2 13.	NJUGUNA MBOGO WAINAINA		4318261	M	
3 14.	MATHEGI MBOGO WAINAINA		0354518	M	
4 15.	PETER CHEGE MBOGO		6289425	M	
5 16.	JOHN MATHERI MBOGO		4298581	M	
6 17.	MARTHA WANJIKU WAINAINA		10202901	F	
7 18.	HANNAH WAMBUI NJUGUNA		4319122	F	
8 19.	MARY NJERI GACHUNGA		728328	F	
9 20.	JANE WANJIRA NJOROGE/CHEGE		1853622	F	
10 21.	MARY NJERI WAINAINA		0497609	F	

This is the exhibit marked "MNG 2"
annexed to the affidavit of MARY NJERI GACHUMA
sworn on the day of 8TH JUNE 2018
at Nairobi in the Republic of Kenya
Before Me
commissioner for Oaths

MBOGOS FAMILY TREE

MBOGO WAINAINA

1ST WIFE- NJOKI - 2ND - NTHENYA 3RD - NJERI - 4TH WAIRIMU

CHILDREN - 1ST GENERATION

1. Wainaina	1. Wainaina	1. Wainaina	1. Wangui
2. Mathegi	2. Numi	2. Wangui	2. Njeri
3. Kabui	3. Mathegi	3. Njuguna	3. Wainaina
	4. Kang'ara	4. Mathegi	4. Kimaido
	5. Mwangi	5. Wanjiru	5. Kabaire
	6. Kingiri	6. Njambi	6. Njambi
	7. Wangui -	7. Chege	7. Mathegi
		8. Wanjiku	

GRANDCHILDREN - 2ND GENERATION

11 Grandchildren | 42 Grand children | 48 Grandchildren | 42 Grandchildren

GREAT GRAND CHILDREN - 3RD GENERATION

44 GGC | 168 GGC | 192 GGC | 168 GGC

GREAT GREAT GRANDCHILDREN - 4TH GENERATION

88 GGGC | 336 GGGC | 384 GGGC | 336 GGGC

LATE MBOGO 1ST TO 5TH GENERATION (1)

PAPER 1 - 12

Republic of Kenya

MBOGO'S FAMILY WELFARE GROUP
19 MAR 2017
CERTIFICATE No. 3764099

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

Department of Social Development
Kiambu Sub-County
P. O. Box 866, Kiambu

List of Members of Self Help Groups, Women Groups, Youth Groups & Community Development Projects

Name of Group MBOGO'S FAMILY WELFARE GROUP

Registration Number 32625 Certificate Number 3764099

Date of registration 14/8/2017

Division MUNICIPALITY Location SETTLERS AREA / KASARANI

Membership: Male ..... Female ..... Totals .....

1ST TO 5TH GENERATION OF MBOGO WAINAINA (LATE

No	Name	Designation	ID. No	Gender	Signature
1.	MARY NJERI GACHUMA	CHAIRPERSON	727828	F	
2.	BERNARD MBOGO KIBUNJA	VICE CHAIRPERSON	028 7321	M	
3.	FRANCIS WAINAINA NJUGUNA	SECRETARY GENERAL	13843389	F	
4.	MARY WANGUI NJUGUNA	VICE SECRETARY	23989358	F	
5.	MARY NJERI WAINAINA	TREASURER	0497609	F	
6.	ANTONY MURIA MATHEGI	CORDINATOR	9325862	M	
7.	JANE WANJIRA CHEGE	WELFARE OFFICER	18F3622	F	
8.	PETER THUO NJUGUNA	COMMITTEE	22838650	M	
9.	JOSEPH WAINAINA MBOGO	COMMITTEE	0550301	M	
10.	ELIZABETH WANJIKU WAINAINA	PETITIONER	1999711	F	
11.	NJUGUNA MBOGO WAINAINA	PETITIONER	4318261	M	
12.	JOSEPH MATHEGI MBOGO	PETITIONER	0254118	M	
13.	PETER CHEGE MBOGO	PETITIONER	6289425	M	
14.	JOHN MATHERI MBOGO	PETITIONER	4298581	M	
15.	MARTHA WANJIKU WAINAINA	PETITIONER	10102910	F	
16.	MARY WANGUI NDUNGU	PETITIONER	4331518	F	
17.	HANNAH WAMBUI NJUGUNA	PETITIONER	4318122	F	
18.	VERONICAH WANGUI MBOGO	MEMBER	3095219	DECEASED	
19.	JANE WANJIKU MBOGO	MEMBER	18436521	F	
20.	WAINAINA MBOGO (KIBUNJA)	MEMBER		DECEASED	
21.	WAINAINA MBOGO STANLEY	MEMBER		DECEASED	

Republic of Kenya

MBOGO'S FAMILY WELFARE GROUP
19 MAR 2017
Sign:
CERTIFICATE No. 3754099

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

Department of Social Development
Kiambu Sub-County
P. O. Box 866, Kiambu

List of Members of Self Help Groups, Women Groups, Youth Groups & Community Development Projects

Name of Group MBOGO'S FAMILY

Registration Number 32625 Certificate Number 3764099

Date of registration 14.2.2017

Division MUNICIPALITY Location SETTLED AREA/KAHAWAI

Membership: Male ..... Female ..... Totals .....

No	Name	Designation	ID. No	Gender	Signature
53 1.	JOYCE WANJIRU MUNGAI	Member	32257137	F	
54 2.	KELVIN MATHEGE MUNGAI	"	34263330	M	
55 3.	JOHN CHEGE MACHUA	"	8536605	M	
56 4.	SAMUEL THIGO MBOGO	"	22104804	M	
56 5.	ANDREW THANDI MBOGO	"	11388067	M	
58 6.	ANNE NJERUGI KAMAU	"	10406085	F	
59 7.	JOSEPH MBOGO NJUMI	"	7246045	M	
60 8.	JANE NJERI MBOGO	"	11143018	F	
61 9.	MARGARET NJERI MATHEGE	"	11590211	F	
62 10.	GEOFFREY NGURE MATHEGE	Member	11881791	M	
63 11.	LEONARD NJUGUNA NDUNGU	"	13030515	M	
64 12.	SARAH WAITHIRA MATHEGE	"	8748406	F	
65 13.	JOHN MBOGO MATHEGE	"	27923039	M	
66 14.	MARGARET WAIRIMU NJUGUNA	"	20223233	F	
67 15.	MARIUKI KUMANJI	"		M	
68 16.	ELIZABETH WAMBUI MBOGO	"	20574508	F	
69 17.	JOSEPH KAMUYU MBOGO	"	30879865	M	
70 18.	ESTHER NJERI NDUNGU	"	6432229	F	
71 19.	PRISCILLA WANJIKU MUNGAI	"	43	F	
72 20.	KIMANI KARIUKI		7253258	M	
73 21.	GEORGE KARIUKI NJOROGE	"		M	

Republic of Kenya

MBOGO'S FAMILY WELFARE GROUP
CERTIFICATE No. 3764
19 MAR 2017
Sign:

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

Department of Social Development
Kiambu Sub-County
P. O. Box 866, Kiambu

List of Members of Self Help Groups, Women Groups, Youth Groups & Community Development Projects

Name of Group MBOGO'S FAMILY WELFARE GROUP

Registration Number 32625 Certificate Number 3764

Date of registration 16-2-2017

Division MUNICIPALITY Location SETTLED AREA/KARUNI

Membership: Male ..... Female ..... Totals .....

	No	Name	Designation	ID. No	Gender	Signature
105	1.	LUCY NJOKI NJUGUNA	Member	27079318	F	
106	2.	STEPHEN GACHUMA MUNGAI	"	3819367	M	
107	3.	NAOMI NDUTA WANGARI	"	23586903	F	
108	4.	ALEX MUNGAI KIMANI	"	7266173	M	
109	5.	JANE WANJIKU MWANGI	"	27269646	F	
110	6.	JOSEPH GICHIMU MATHEGI	"	13890900	M	
111	7.	GEORGE MBOGO WANJIKU	"	23217417	M	
112	8.	NEPHAT NJIRAINI NJOROGE	"	28233802	M	
113	9.	HANNAH NJERI NJAMBI	"	20318260	F	
114	10.	CHRISTOPHER WAINAINA MUTUNGA	"	2116378	M	
115	11.	ANTONY MBOGO NJERI	"	30896693	M	
116	12.	BEATRICE KARIUKI	"	22024105	F	
117	13.	PETER KIMANI MBOGO	Member	22579562	M	
118	14.	LUCY NJOKI WAINAINA	"	1065927	F	
119	15.	JAMES KARIUKI WAINAINA	"	1082636	M	
120	16.	ROSE POLLY NDUNGU	"	4492304	F	
121	17.	LUCY WANGARI MBOGO	"	8614026	F	
122	18.	JOSEPH NGETHE KIMANI	"	1194000	M	
123	19.	ESTHER WAIRIMU WAINAINA	"	30700 92	F	
124	20.	NANCY NJERI CHARAGU	"	10875627	F	
25	21.	LUCY WAIRIMU MATHEGI	"	27923039	F	

Republic of Kenya

MBOGO FAMILY WELFARE GROUP
19 MAR 2017
Sign:
CERTIFICATE No. 3764099

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

Department of Social Development
Kiambu Sub-County
P. O. Box 866, Kiambu

List of Members of Self Help Groups, Women Groups, Youth Groups & Community Development Projects

Name of Group MBOGO FAMILY WELFARE GROUP
Registration Number 32625 Certificate Number 3764099
Date of registration 14/2/2017
Division MUNICIPALITY Location SETTLED AREA/KASARANI
Membership: Male ..... Female ..... Totals .....

No	Name	Designation	ID. No	Gender	Signature
157	1. LEAH WANGARI WAINAINA	MEMBER	8043375	F	
158	2. PATRICK NJINANGI	"	22945211	M	
159	3. MOSES WAINAINA	"	02142572	M	
160	4. JOHN NJUGUNA MBOGO	"	25440200	M	
161	5. SAMUEL NJAURA MBOGO	"	28407559	M	
162	6. ELIZABETH WANJIKU MBOGO	"	23758141	F	
163	7. PETER ISIMANI MBOGO	"	23519562	M	
164	8. FRANCIS NJOROGE CHEGE	"	23265959	M	
165	9. CHARLES WAINAINA CHEGE	"	27497485	M	
166	10. SIMON NGIGI CHEGE	"	27273328	M	
167	11. ESTHER WANGECHU WANERU	"	28668137	F	
168	12. BEATRICE WAMBUI MUKUHA	"	24558869	F	
169	13. MARGARET WANGARI CHEGE	"	24883288	F	
170	14. JOHN MUIGAI NJOROGE	"	6037769	M	
171	15. MARTHA NJERI MATHEGI	"	3818637	F	
172	16. PAULINE WAMBUI MATHEGI	"	10140497	F	
173	17. JACINTA WANJIRA MUIRU	"	27816075	F	
174	18. MARTHA WANJIRU MUIRU	"	27530326	F	
175	19. JUDY NJAMBI MUNGAI	"	28341664	F	
176	20. JOHN NJUNGAI MATHEGI	"	5363016	M	
177	21. MBOGO MBOGO WANJIRU	"	6713899	M	

(54)

Republic of Kenya

MBOGO'S FAMILY WELFARE GROUP
19 MAR 2017
Sign:
CERTIFICATE No. 3764099

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

Department of Social Development
Kiambu Sub-County
P. O. Box 866, Kiambu

List of Members of Self Help Groups, Women Groups, Youth Groups & Community Development Projects

Name of Group ... MBOGO'S FAMILY WELFARE GROUP.....
Registration Number ... 32625 ... Certificate Number ... 3764099 .....
Date of registration ... 14·2·2017 .....
Division ... MUNICIPALITY ... Location ... SETTLED AREA / KASARINI
Membership: Male ..... Female ..... Totals .....

NO	NAME OF DESCENDANT	Sex	NO	NAME OF DESCENDANT	Sex
209	MUTONGA WAINAINA	M	232	MBOGO NJERI	M
210	WANGUI WAINAINA	F	233	WANJIRU NJERI	F
211	WANJIRU WAINAINA	F	234	MARY MAGINI	F
212	NELLY MBERE WAINAINA	F	235	NJERI MATHEGI	F
213	JOSEPH MWENDA NDUNGU	M	236	NGURE MATHEGI	M
214	WAITHERA NDUNGU	F	237	WAINAINA MATHEGI	M
215	NJERI NDUNGU	F	238	WANJIRU MATHEGI	F
216	WAMBUI NDUNGU	F	239	GAITHUMA MATHEGI	M
217	WAINAINA NDUNGU	M	240	~~JOSEPH~~ Wanuka Njuguna	
218	MBOGO NDUNGU	M	241	JANE WANJIKA MBOGO	
219	NJOROGE NDUNGU	M	242	HANNAH NJERI NJOROGE	
220	NJUGUNA NDUNGU	M	243	KATE WANJIKU NJOROGE	
221	MUCHIRI NDUNGU	M	244	MARK CHEGE NJOROG	
222	MWAURA NDUNGU	M	245	PETER MUGANGA	
223	MATHEGI NDUNGU	M	246	MBURU WANGHANGA	
224	NYOKABI WANJIRU	F	247	WAIRIMU WANGUI	
225	WANGUI WAINAINA	F	248	WANABU WANGUI	
226	WANDA WAINAINA	F			
227	WANGUI WANJIRU	F			
228	WANGUI NYOKABI	F			
229	MBOGO WANGUI	M			
230	WANJIRU MBOGO	F			
231	NJERI WAINAINA	F			

Republic of Kenya

MBOGO'S FAMILY WELFARE GROUP
19 MAR 2017
Sign:.....
CERTIFICATE No. 3764099

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

Department of Social Development
Kiambu Sub-County
P. O. Box 866, Kiambu

List of Members of Self Help Groups, Women Groups, Youth Groups & Community Development Projects

Name of Group MBOGO'S FAMILY WELFARE

Registration Number ..... Certificate Number .....

Date of registration.....

Division ..... Location.....

Membership: Male .....Female.....Totals .....

NO	NAME OF DESCENDANT	Sex	NO	NAME OF DESCENDANT	Sex
249	Wanjiku Wangui	F	272	Mungai Kimani	M
250	Gathigia Wangui	M	273	George Mbugua	M
251	Gakuru Wangui	M	274	Nancy Njeri	F
252	Wainaina Wangui	M	275	Kamau Chege	M
253	Thuku Wanggari	M	276	Mbogo Chege	M
254	Ndungu Wanggari	M	277	Jane Muthoni	F
255	Wanjiku Wanggari	F	278	John Mungai	M
256	Kanyi Wanggari	M	279	Antony Mungai	M
257	Wainaina Wanggari	M	280	George Kimando Njambi	M
258	Mwangi Wainaina	M	281	Jane Wanjiku Njambi	F
259	Kimani Wainaina	M	282	Mbogo Muhia	M
260	Mwangi Wanjiku	M	283	Lucy Wairimu Muhia	F
261	Njeri Wanjiku	F	284	Wambui Muhia	F
262	Njeri Muthoni	F	285	Mbogo Wainaina	M
263	Mwangi Muthoni	M	286	Lucy Wairimu Wainaina	F
264	Wanja Kimani	F	287	Wambui Wainaina	F
265	Mbogo Kimani	M	288	Njeri Wainaina	F
266	Kabaire Muhia Wairimu	F	289	Chege Wainaina	M
267	Mathegi Wairimu Mbogo	M	290	Njeri Wairimu	F
268	poly Wanjiku	F	291	Chege Wairimu	M
269	Ngethe Kimani	M	292	Chege Wainaina	M
270	Mbogo Kimani	M	293	Lucy Wairimu Mathegi	F
271	Esther Wairimu	F	294	Jane Njokabi Mathegi	F

Republic of Kenya

MBOGO'S FAMILY WELFARE GROUP
19 MAR 2017
Sign: .....
CERTIFICATE No. 3764099

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

Department of Social Development
Kiambu Sub-County
P. O. Box 866, Kiambu

List of Members of Self Help Groups, Women Groups, Youth Groups & Community Development Projects

Name of Group MBOGO'S FAMILY WELFARE

Registration Number ..... Certificate Number .....

Date of registration.....

Division ..... Location.....

Membership: Male .....Female.....Totals .....

NO	NAME OF DESCENDANT	Sex	NO	NAME OF DESCENDANT	Sex
379	Kimberly Wangari Kirichu	F	412	Millicent Ng'endo Maingi	F
80	Kendra Nyeri Kirichu	F	413	Caren Wambui Njoki	F
381	Shanice Nyeri Njogu	F	414	Ryan Gatuku Wachira	M
82	Ryan Njoroge Njiraini	M	415	Wainaina Mwangi	M
383	Giana Nyeri Wanjiku	F	416	Wanjiku Mwangi	F
84	Samuel Ndua Mbogo	M	417	Muthoni Mwangi	F
385	Angela Ninga Mbogo	F	418	Wainaina Mbogo	M
386	Bancy Wambui Kariuki	F	419	Wanjiku Mbogo	F
387	Brenda Wambui Kariuki	F	420	Kimani Mbogo	M
388	Emmaculate Nyeri Kariuki	F	421	Wariara Mbogo	F
89	David Nyuguna Kariuki	M	422	Mwangi Mbogo	M
390	Wambui Kariuki	F	423	Numi Mbogo	M
91	Emmanuel Nyuguna Kariuki	M	424	Wanjiru Mbogo	F
392	David Nyuguna Mbogo	M	425	Wainaina Mbogo	M
93	Joan Nyathira Wainaina	F	426	Wanjiku Thenya	F
394	Angela Wambu.. Wainaina	F	427	Kahoro Thenya	M
395	Claudine Wangu Njoroge	F	428	Wainaina Nyeri	M
96	Owen Mbiruka Njoroge	M	429	Mwangi Nyeri	M
397	Hilda Wangai Thuo	F	430	Wanjiku Nyeri	F
398	Leon Nyuguna Thuo	M	431	Wainaina Numi	M
399	Tiffany Wambui Thuo	F	432	Wanjiku Numi	F
100	Tasha Mugure Thuo	F	433	Muthoni Thenya	F
411	Morgan Nyuguna Maingi	M	434	Wainaina Wangui	M

(8)

MBOGO'S FAMILY WELFARE GROUP
19 MAR 2017
Sign:
CERTIFIED ... 8764099

Republic of Kenya

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

Department of Social Development
Kiambu Sub-County
P. O. Box 866, Kiambu

List of Members of Self Help Groups, Women Groups, Youth Groups & Community Development Projects

Name of Group MBOGO'S FAMILY WELFARE

Registration Number ..... Certificate Number .....

Date of registration.....

Division ..... Location.....

Membership: Male ..... Female..... Totals .....

NO	NAME OF DESCENDANT	Sex	NO	NAME OF DESCENDANT	Sex
529	PAUL MWANGI WAINAINA	M	552	PETER CHEGE MBOGO	M
530	MARY WANJIRU WAINAINA	F	553	MARGARET WANGARI	F
531	JAMES NJENGA WAINAINA	M	554	ALVIN CHEGE WAINAINA	M
532	ANDREW KIMANI WAINAINA	M	555	WANJIRA WAINAINA	F
533	PATRICK KIMANI WAINAINA	M	556	WAINAINA CHEGE	M
534	ANTHONY GILHINGA WAINAINA	M	557	WAMBUI CHEGE	F
535	RICHARD KARIUKI	M	558	JOHN CHEGE NGIGI	M
536	WEDDY MURUGI	F	559	JANE WANJIRA NGIGI	F
537	ELIUD NGANGA	M	560	PRISCILLA WAMBUI NGIGI	F
538	MARY WAIRIMU	F	561	JANE WANJIRA NJOROGE	F
539	DAVID WAINAINA	M	562	ROSYNE NJOROGE	F
540	DICKSON KIMANI	M	563	SIMON NGIGI CHEGE	M
541	MERCY MUTHONI	F	564	MUTHRE MATHEGI	F
542	NANCY KARI (JUNIOR)	F	565	WAMAINA MATHEGI	M
543	MARY WAIRIMU (JUNIOR)	F	566	JAMES GATHUMA	M
544	MARK CHEGE NJOROGE	M	567	WANYOIKE WAINAINA	M
545	JANE WANJIRU NJOROGE	F	568	MAINA WANJIRU	M
546	ESTHER WANGECI NJOROGE	F	569	WAMBUI WANJIKU	F
547	HANNAH NJERI NJOROGE	F	570	NJERI WAIRIMU	F
548	NANCY KANA RUTERE	F	571	NJERI MATHEGI	F
549	WANJIKU NJOROGE	F	572	LAZARUS WAIRIMU	M
550	WAIRIMU MBOGO	F	573	NGANGA MATHEGI	M
551	JANE WANJIRU MBOGO	F	574	SUZAN WANJIKU NJERI	F

Republic of Kenya

MBOGO'S FAMILY WELFARE GROUP
19 MAR 2017
Sign:.....
CERTIFICATE No. 3764739

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

Department of Social Development
Kiambu Sub-County
P. O. Box 866, Kiambu

List of Members of Self Help Groups, Women Groups, Youth Groups & Community Development Projects

Name of Group ..... MBOGO'S FAMILY WELFARE .....

Registration Number ..... Certificate Number .....

Date of registration.....

Division ..... Location.....

Membership: Male .....Female.....Totals .....

NO	NAME OF DESCENDANT	Sex	NO	NAME OF DESCENDANT	Sex
669	JOSEPH KIMOTHO	M	692	FIDELIS WANJIKU	F
670	JOHN NJOROGE	M	693	SUSAN MUNJIKU	F
671	REGINA WANGUI	F	694	ESTHER NGINA	F
672	KIMOTHO NJOKI	M	695	GABRIEL KAMAU	M
673	DORIS WANJIRU	F	696	REGINA NJAMBURA	F
674	KELVIN NJAGI NJOKI	M	697	SERAH WAMBUI	F
675	MARY KANJIKU	F	698	JOYCE WAMBUI	F
676	ESTHER WANGARI	F	699	CATHERINE NJAMBURA	F
677	JANE KANJIKU	F	700	MARGARET NJAMBURA	F
678	ALEX MUNGAI	M	701	BILHA WAIRIMU	F
679	ROBERT KARANJA	M	702	MARY NJERI MUNGAI	F
680	DAVID NDICHU	M	703	PETER KARANU	M
681	MARGARET KIAMBUI	F	704	ELIZABETH NJERI	F
682	MARGARET NJAMBI	F	705	FRANCIS MWANGI	M
683	JAMES GIKARU	M	706	SUSAN WAITHIRA	F
684	REGINA WANGARI	F	707	MARY NDUTA WAINAINA	F
685	HANNAH WANJIRU	F	708	ALICE WANJIKU	F
686	STELLA GATHONI	F	709	ESTHER NJERI	F
687	ALEX WAITITU	M	710	BEATRICE WAMBUI	F
688	WINNIE MUMBI	F	711	PAUL KAMAU	M
689	HANNAH WANGUI	F	712	NANCY NJERI	F
690	IAN KAMAU	M	713	JAMES NJAMBA	M
691	BERNARD KARIUKI	M	714	ESTHER NJERI	F

Republic of Kenya

MBOGO'S FAMILY WELFARE GROUP
19 MAR 2017
Sign: .....
CERTIFICATE No. 3764099

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

Department of Social Development
Kiambu Sub-County
P. O. Box 866, Kiambu

List of Members of Self Help Groups, Women Groups, Youth Groups & Community Development Projects

Name of Group MBOGO'S FAMILY WELFARE

Registration Number ..... Certificate Number .....

Date of registration .....

Division ..... Location .....

Membership: Male ..... Female ..... Totals .....

NO	NAME OF DESCENDANT	Sex	NO	NAME OF DESCENDANT	Sex
401	PAUL KARIUKI NJOKI	M	604	Rose Wairimu Njeri	F
402	KARIUKI NJERI	M	605	Esther Wanjiku Wainaina	F
403	GITARI NJERI	M	606	Caroline Wanjui	F
404	WAMBUI NJERI	F	607	Mukami Wangui	F
405	ANDREW MBOGO NJAMBI	M	608	Elias Mbugua	M
406	Elliud Mwaura Njambi	M	609	David Mbugua	M
407	Njeri Njambi	F	610	Rachel Wanjiku	F
408	Wanjira Wangui	M	799	Grace Waithera Kimani	F
409	Daniel Kimani Njambi	M	800	Hannah Muthoni Kimani	F
410	Tabitha Wambui Njambi	F	801	George Macici	M
501	Mercy Mduta Njambi	F	802	peter Njoroge	M
502	Mbogo Njenga	M	803	Moses Mdungu	M
503	Elishiba Wanjari	F	804	Josphine Wanjine	F
504	Catherine Wangui Njambi	F	805	Lyan Kimani	M
505	Lucy Njoki Wainaina	F	806	John Njoroge	M
506	Hannah Njeri Njambi	F	807	George Wanaina	M
507	Ann Njeri Wanjiku	F	808	Charity Gathiyia	F
508	George Mbogo Wanjiku	M	809	James Murithi	M
509	florence Wanjiru	F	810	Elizabeth Wanjiku	F
510	kangara Mbogo	M	871	Rebbeca Waithera	F
601	Thenya Wainaina	F	872	Jeff Muriuki	M
602	Caroline Thenya	F	873	Shandra Wangui	F
603	Wainaina Thenya	M	874	Ian Wainaina	M

(11)



Republic of Kenya



MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

Department of Social Development
Kiambu Sub-County
P. O. Box 866, Kiambu

List of Members of Self Help Groups, Women Groups, Youth Groups & Community Development Projects

Name of Group ...MBOGO'S FAMILY WELFARE GROUP...

Registration Number ...82625... Certificate Number ...376090...

Date of registration ...14.2.2017...

Division ...MUNICIPALITY... Location ...SETTLED AREA...

Membership: Male ...Female...Totals ...

NO	NAME OF DESCENDANT	Sex	NO	NAME OF DESCENDANT	Sex
899	NYAMBURA NGETHE	F	922	WAINAINA MUNGAI	M
900	KIMANI NGETHE	M	923	HANNAH NJERI MUNGAI	F
901	KIMANI CHEGE	M	924	LUCY NJOKI MUNGAI	F
902	WANGUI CHARAGU	F	925	WAINAINA WAIRIMU	M
903	MUCHIRI CHARAGU	M	926	KIMANI WAIRIMU	M
904	WANGUI MBUGUA	F	927	LUCY WAINAINA MBOGO	F
905	MUCHIRI MBOGO	M	928	WAINAMA MBOGO	M
906	CHEGE MBOGO	M	929	JANE WAMBUA NGIGI	F
907	KAMAU MBOGO	M	930	ESTHER NJERI THUO	F
908	WAWERU MBOGO	M	931	NDUNGU THUO	M
909	MARTIN MBUGUA	M	932	DANIEL MBUGUA	M
910	BRIAN CHEGE	M	933	CYTHIA METITO	F
911	ALICE NJERI	F	934	HALIMA MWITHAKI	F
912	NJERI MJONGE	F	935	ISAAK GITHUKU	M
913	MARY WAMBUCU	F	936	ZIPPORA NTHENYA	F
914	JAMES GACHAGUA	M	937	HELLEN KAGE	F
915	ERIC CHEGE	M	938	DOMINIC WANYOIKE	M
916	TITUS MBURU	M	939	JAMES GUCHU MUIRURI	M
917	ROSE WANJIRU	F	940	PAUL GICHUKI MWANGI	M
919	MAURINE WAITHERA	F	941	PATRICIA GATHIGIA	F
919	NJERI WAINAINA	F	942	PETER NJIRAINI	M
920	WAMBUCU WAINAINA	F	943	ANN WAITHERA THUMBI	F
921	NYATHIRA MUNGAI	F	944	GEORGE GUCHU NGANGA	M

(12)

MBOGO'S FAMILY WELFARE GROUP
19 MAR 2017
Sign:
CERTIFICATE No. 3764099

Republic of Kenya

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

Department of Social Development
Kiambu Sub-County
P. O. Box 866, Kiambu

List of Members of Self Help Groups, Women Groups, Youth Groups & Community Development Projects

Name of Group MBOGO'S FAMILY WELFARE

Registration Number 32625 Certificate Number 3764099

Date of registration 14.2.2017

Division MUNICIPALITY Location SETTLED AREA/KAJARINI

Membership: Male ..... Female ..... Totals .....

NO	NAME OF DESCENDANT	Sex	NO	NAME OF DESCENDANT	Sex
1029	Simon Kamau Mgigi	M	1052	MARTHA WANJIRU WAITHIRA	F
1030	Wanjiru Njeri	F	1053	NICHOLAS NDUNGU NGANGA	M
1031	Antony Mwangi	M	1054	JOSEPH WAINAINA MURIMI	M
1032	Mary Mwangi	F	1055	HENRY THUKU NGANGA	M
1033	Julius Karanga Kaithiro	M	1056	DAVID MAINA MURIMI	M
1034	Flora Wanjiru	F	1057	ELIZABETH WANJIKU WANGARI	F
1035	Clement Kamau Wawera	M	1058	JOSEPH WAINAINA KARIUKI	M
1036	Jeinta Wangari	F	1059	James Muriithi Murini	M
1037	Muthee Ciengu	M	1060	Charity Gathigia Murini	F
1038	Josphine Wambui	F	1061	Elizabeth Wanjiku Murini	F
1039	Margaret Mukenyi	F	1062	Caroline Kanyi Nganga	F
1040	Ndungu Kariuki	M	1063	Wainaina Mwangi	M
1041	Ndarwa Mwaura	M	1064	Wainaina Nuni	M
1042	Maina Samuel	M	1065	Beatrice Muthoni Kariuki	F
1043	Berick Ndungu	M	1066	Peter Mbogo	M
1044	Mercy Wanjiru	F	1067	Lucy Nyathira	F
1045	Agnes ~~Ngonyo~~ Wangui	F	1068	Peter Mbogo	M
1046	Daisy Wambui	F	1069	Kelvin Kabata	M
1047	Gathithia Wanjira	M	1070	Mercy Nyathira	F
1048	REN KARIGU	M	1071	James Mbugua	M
1049	BRIAN GAKUMO	M	1072	Stanely Wainaina	M
1050	SAMUEL NDIRANGU	M	1073	Faith Nduba	F
1051	Peter Mbothu	M	1074	Lucy Nyathira	F

(2)

THE SENATE

REPUBLIC OF KENYA

PETITION

MBOGOS FAMILY OF MBARI YA MBOGO ANCESTRAL Land

LR 7153/1, 7153/2 now LR No 12825

SURVEYORS REPORT

ON

LAND STATUS

DATE: *25th APRIL 2023*

CONTACT PERSONS: ***Families Representative***

5. *Francis W. Njuguna* - *0723 210 856*
6. *Mary Wangui N.* - *0711618860*

For Elders Mbogo's Family of Mbari ya Mbogo Family… (*Herein referred as Petitioners)*



Geo-acre surveys

Edipark Plaza, Opp. Thika Greens,
Along Kandara Road, 2nd Floor,
P.O. Box 910-00618, Ruaraka, Kenya.
Tel: 020-2000381/2000382
Mobile: 0729-569800
Email: geoacresurveys@yahoo.com
Website: www.geoacre.net

Our Ref: **GAS/MISS/186/22/01**

Date: 25/07/2022

Your Ref:

MBOGO'S FAMILY WELFARE GROUP
Received
25 JUL 2022
Sign:
CERTIFICATE No. 3764099

Received 25/07/2022

Mbogo's Family Welfare Group of Mbari ya Mbogo Kiambu.

Dear Sir/Madam,

RE: REPORT ON LAND REFERENCE NO. 12825 (KIAMBU ROAD)

Reference is made to the above.

Enclosed herein please find the Surveyors Report on the above referenced parcel of land.

Yours faithfully,

HON. G. GITARI
Licensed Surveyor

MicroSurvey
CAD 2004
Authorised Dealer
PIN No. P0511955877 VAT No.0127483M.

REPORT ON



L/R NO. 12825 (KIAMBU ROAD)

PREPARED BY:

GEO-ACRE SURVEYS LTD.,
P.O. BOX 910-00618,
NAIROBI.

1. EDIPARK PLAZA, 2ND FLOOR, THIKA –KANDARA ROAD.	2. USHIRIKA BANK HOUSE, SECOND FLOOR, KERUGOYA

TERMS OF REFERENCE:

We were instructed by Mbogo's Family Welfare Group of Mbari ya Mbogo to prepare a Report to the National Land Commission on the status of the constructed and unconstructed areas on parcel, L/R. No. 12825.

We therefore submit our report as follows:-

INTRODUCTION:

Client : Mbogo's Family Welfare Group of Mbari ya Mbogo

L.R No. : 12825

Locality : This property is situated in Kiambu County, along Kiambu Road

Area : L.R No. 12825 measures 377.2Ha. as per Survey Plan (F/R No. 149/43).

User : The land is currently under Agricultural, Residential and Commercial land uses.

PROCEDURE:

The exercise commenced by collecting all available relevant data which included Survey Plans F/R Nos. 149/43 showing the entire parcel before subdivision. The survey plan was digitized and the soft copy of the plan whose coordinates were transformed into UTM was converted into a KMZ file. The KMZ file was uploaded onto Google Earth and this is as shown in the attached map, *Annex 1*.

All the areas which have not been constructed were digitized on Google Earth and the total area determined. From this the area not constructed was found to be a total of **214.73Ha.** which is **57%** of the total area of the parcel and the area constructed approximately **162.39Ha.** this is **43%** of the total area.

FINDINGS

These are the findings

unconstructed area is 57%

Constructed area is 43%

The area is approximate as it was determined from Google Earth.

LIMITING CONDITIONS

1. This Report is based on the information presently available at the Survey field headquarters and in the event that such records may be incomplete, or not up-to-date, responsibility cannot be accepted for any resulting deficiency or inaccuracy in the information contained herein.

2. Where it is stated in this Report that information has been supplied to the company by another party, this information is believed to be reliable and concrete but the company cannot accept responsibility if this should prove otherwise.

Signed by:

HON. G. GITARI
Licensed Surveyor

APPENDIXES

1. A copy of Survey Plan F/R No. 149/43.

2. Overlay of parcel 12825 on satellite imagery.

(3)

THE SENATE

REPUBLIC OF KENYA

PETITION

MBOGOS FAMILY OF MBARI YA MBOGO ANCESTRAL LAND

LR 7153/1, 7153/2 now LR No 12825

PETITION TO SENATE ON MBOGO'S FAMILY LAND MATTERS

DATE: *25th APRIL 2023*

CONTACT PERSONS: ***Families Representative***

9. Francis W. Njuguna - 0723 210 856
10.Mary Wangui N. - 0711618860

For Elders Mbogo's Family of Mbari ya Mbogo Family… (*Herein referred as Petitioners)*

MBOGO'S FAMILY WELFARE GROUP
CERTIFICATE No. 3764099
Sign:
25 APR 2023

RECEIVED COPY

26 APR 2023

CLERK'S OFFICE

Francis Wainaina Njuguna -Secretary General,
Mbogo's Family WG of Mbari Ya Mbogo,
P.O Box 745-00232 Ruiru, Kiambu/Kenya

Date: 25th April 2023

RECEIVED
DATE: 23rd May 2023
TIME: 6:20 am
SIGNED:
J HARRISON KINYANJUI
& CO. ADVOCATES

The Clerk of the Senate,
Parliament of Kenya,
P.O BOX 41842-00100,
NAIROBI.
Email: csenate@parliament.go.ke

DEAR SIR,

RE: PETITION TO THE SENATE BY MBOGO'S FAMILY OF MBARI YA MBOGO CONCERNING FORGERY, PERJURY AND ILLEGAL ALIENATION OF LR NO 7153/1,7153/2,7153/R Also Known As LR.12825, THEREBY UNLAWFUL OCCUPATION OF AND TRESPASS UPON L.R. 12825, BY THEY (RESPONDENT) WHO ASSERT TITTLE THEREONTHEIR SUCCESSORS,ASSIGNS &LICENSES

I the undersigned **FRANCIS WAINAINA NJUGUNA MBOGO** Citizens of the republic of Kenya, and residents of Ruiru of Post Office Box No.745-00232 Ruiru/Kiambu County,

Draw the attention of the Senate to the following;

THAT:I am the Secretary General of Mbogo's Family Welfare Group of Mbari ya Mbogo, Certificate of Incorporation No. 32625 cited herein as the Plaintiff / Complainant to whom on their behalf among other group officials wish to submit this Petition as referenced above.

THAT: the Petition is based on Historic Injustices Meted to Mbari ya Mbogo's Family, based on, violation of the Survey Act, the Land Administration Act and the Land Registration Act.

THAT: the foundation of LR 12825 is based on illegalities and irregularities.

THAT:thematter was previously raised and heard before The National Land Commission, Historical Land Injustice Committee under Article 67(2)(e) of the Constitution of Kenya,Section 15 of National land Commission Act, In the Matters of Historical land Injustices Claim referenced No. NLC / HLI /053 / 2017 between Mbogo's Family WG of Mbari Ya Mbogo as Plaintiff /Applicant and Margret Nyokabi Mbugua and families of 9 others as Respondent

THAT: Indeed the National Land Commission proceeded to conduct a sham "Hearing" of the "Dispute" and rendered a determination thereon on 7th February 2019 in favour of the Respondent.

THAT: The family was served with a belated determination letter 12 days after the Commissioners had exited office following the lapse of their tenure of office.

THAT: the following parties comprising of five (5) families herein referred as Respondent

1. Samuel Mbugua Kibathi (*deceased*)
2. Margaret Nyokabi Mbugua
3. Samuel Githegi Mbugua (*deceased*)
4. Grace Muthoni Githegi (*deceased*)
5. Moses Mbugua Mwangi (*deceased*)
6. Christine Mithiri Mbugua (*deceased*)
7. Kabogo Kangethe (*deceased*)
8. Mary Waruri (*deceased*)
9. Kimemia Gakunju (*deceased*)
10. Ruth Njeri Gakunju (*deceased*)

Who fraudulently formed Kasarini Farmers 'Cooperative Society limited Certificate No. 2240 registration date 10th July 1974 to be used to illegally acquire the Kasarini Estate limited land measuring 933.9 acres.

THAT: the certificate has since then been disowned by the Commissioner of Cooperative Development in his response to enquiry by the National Land Commission disowning the society

THAT: a Tittle issued on **18th December 1981**was issued to the fake Company Disowned by the Ministry of Cooperatives. The tittle reads ''the President Of Kenya on behalf of the Government of Kenya hereby **GRANTS** unto Kasarini Farmers' Cooperative Limited, a Limited Liability Company Incorporated in the Republic of Kenya registered office in Nairobi (Post office Box 75155.)

THAT: Kasarini Estate Limited occupied this land as a demonstration farm from 1932 co-existing with original owner as Mbogo Wainaina Ancestral Family It is clear the owner of Kasarini land and the 1964 Society is Mbogo Wainaina and it appears that Kasarini Estate Limited was never issued with a Tittle or Lease Hold.

THAT: Kasarini Estate Company ltd was formed in Britain showing its liquidation process started on 9th February 1961 under **Gazette Notice Dated 19thMarch 1961** and **Gazette Notice 17th August 1975** effectively Kasarini Estate was **Dead by 1965**.

THAT: Kasarini Farmers' Cooperative Society Limited of 1974 is purporting to buy land from Kasarini Estate Limited which was under ***Liquidation 14 Years*** before

THAT: in a similar case ELC Civil Case No. 557 of 2009filed by Labourers the ruling by Judge Okon'go directed that the 2nd and 4th respondents in the suit (Margaret Nyokabi & Grace Muthoni) **had illegally sold and leased offparts** of L.R No. 7153/1, 7153/2, 12825 in violation of the subsisting court orders therein.

THAT: as a family, we have made the best efforts to have these matters addressed by various relevant authorities all of which have failed to give satisfactory response

WHEREFORE; your humble petitioners pray that the Honourable Senate-

1. Investigate the matter with a view to returning the Ancestral land back to Mbogo's Family of Mbari ya Mbogo.

2. Stop any further day to day Development, Sale and leasing off, by defendants till the matter is settled.

3. Resolve that all Beneficiaries, Investors and Stakeholders operating thereon to Compensate on properties and all illegally occupied land, and

4. Resolve on the Compensation for Historical Injustices, Damages and other Loses as a result of Forceful Eviction meted to Mbogo's Family.

SERVED BY:

SURVING CHILDREN OF MBOGO WAINAINA (AS PETITIONERS): ID NUMBER

1	Njuguna Mbogo Wainaina **(ElderSon & Family Chairperson)**	1418261
2	Elizabeth Wanjiku Wainaina **(Daughter Family Vice Chair)**	1999971
3	Mary Wangui Ndungu Daughter	4331518
4	Mathegi Mbogo Wainaina Son	0354518
5	Peter Chege Mbogo Son	6289425
6	Jane Wangui Kimani Daughter	4331537
7	Joseph Wainaina Mbogo Son	0550301
8	Lucy Wanjiku Mbogo Daughter	6289530
9	Hannah Njeri Chege Daughter	0357121
10	George Kimando Mbogo Son	0355753
	Mary Mbaire Mbogo Daughter	5712223

Inc.: Family legal adviser: **J. Harrison Kinyanjui & Co. Advocates.Tel: 0777-733-659**

UNDERSIGNED BY;

FRANCIS WAINAINA NJUGUNA MBOGO
Group Secretary General
Email; waynefn23@gmail.com Tel:**0723210856 / 0710541450**

HON.Senator Karungo Thang'wa
Senator Kiambu County

MBOGO'S FAMILY WELFARE GROUP
25 APR 2023
Sign:.....
CERTIFICATE No. 3764099

Official Stamp ---------- *Common Seal*

MBOGO'S FAMILY WELFARE GROUP of MBARI YA MBOGO

(5)

This is the exhibit marked "FW 1" annexed to the affidavit of FRANCIS MBOGO WAINAINA NJUGUNA sworn on the day of 25TH NOV 2022 at Nairobi in the Republic of Kenya Before Me ... Commissioner for Oaths

Certificate No. 3764099

Republic of Kenya

MINISTRY OF EAST AFRICAN COMMUNITY, LABOUR AND SOCIAL PROTECTION

Certificate of Registration of Self-help Group/Project

This is the exhibit marked "MNG 1" annexed to the affidavit of MARY NYEQI GACHUMA sworn on the day of 8TH JUNE 2018 at Nairobi in the Republic of Kenya Before Me ... Commissioner for Oaths

This is to Certify that

MBOGO'S FAMILY WELFARE GROUP
Group Name / Project

32625
Registration No.

14.2.2017
Date of Registration

KIAMBU TOWN
Sub-location / Ward

KIAMBU
Constituency

SETTLED AREA /KASARINI
Location

KIAMBU
Sub County

MUNICIPALITY
Division

KIAMBU
County

is registered with the Department of Social Development Officer.

SUB COUNTY SOCIAL DEV. OFFICER
KIAMBU

Name MARY M MWANGI Signature ...
County Coordinator / Sub County Social Development Officer

5.4.2018
Date of Issue

Note: The Contents of this Certificate should not be erased, altered or defaced in any way

GAZETTE NOTICE NO. 1994

THE LAND ACT

(*No. 6 of 2012*)

DUALLING OF SOBEA–SALGAA–MAU SUMIT ROAD PROJECT (A104)

INQUIRY

IN PURSUANCE of sections 162 (2) of Land Act, 2012, the National Land Commission on behalf of Kenya National Highways Authority (KeNHA) gives notice that inquiries for hearing of claims to compensation for interested parties in land to be acquired for Emergency Road Safety Enhancement along Kabaraka Junction to Kibunja (A8) Road Construction of a Lorry Park at Kibunja Area shall be held on the dates and places as shown in the schedule here below:

SCHEDULE

Chiefs Office at 9.30 am, on the 14th March, 2019

Registration Section	*Registered Land Owner*	*Area Acquired (Ha.)*
G.L.–Londiani Mountain Forest (L.O. 504)	G.L.–Londiani Moutain Forest (L. O. 504)	10.8062

Every person interested in the affected land is required to deliver to the National Land Commission on or before the day of inquiry a written claim to compensation, copy of identity card (ID), Personal Identification No. (PIN), land ownership documents and bank account details. Commission Offices are in Ardhi House, 3rd Floor Room 305.

Dated the 18th February, 2019.

ABIGAEL MBAGAYA-MUKOLWE,
Ag. Chairperson, National Land Commission.

MR/5810131

This is the exhibit marked FN2 "I"
annexed to the affidavit of FRANCIS WANAINA NTHUNA
sworn on the day of 25TH NOV 22
at Nairobi in the Republic of Kenya
Before Me
Commissioner for Oaths

GAZETTE NOTICE NO. 1995

NATIONAL LAND COMMISSION

INVESTIGATIVE HEARING FOR COMPLAINTS RELATING TO HISTORICAL LAND INJUSTICES

IN EXERCISE of the powers conferred by Article 67 (2) (*e*) of the Constitution of Kenya 2010 and sections 6 and 15 of the National Land Commission Act, 2012, the Chairman, National Land Commission, informs the general public that the Commission upon receipt of Historical Land Injustice claims from the National Government, County Governments and members of the public admitted and investigated the complaints to ascertain the appropriate redress. The Commission invited all the complainants, respondents and the interested parties to appear before it, inspect documents and make written representations and submissions after which the Commission undertook further investigations. Consequently, the Commission has made recommendation in respect of the following claims

The Commission calls upon the mandated authority(s) to effect the recommendations herein.

TABLE 1 KERICHO, NANDI, BOMET AND NAKURU COUNTIES

S/No	*Case No. and County*	*Parties*	*Recommendation*
1.	NLC/HLI/194/2018 Kericho County	Simon Towett Maritim (Claimant) and Jotham Muiruri Kibaru (Respondent)	The claim is dismissed. The claimant misled the Commission and could not link himself to the claimed land. The decision of the Nakuru Civil Appeal No. 292 of 2005 is affirmed.
2.	NLC/HLI/522/2018 Nakuru County	The Families/Clans of Kipboson arap Selembu And Kipkilach arap Leitich (Claimants) –vs-The Estate of Morrison Waweru Njenga, Njenga Mathu and George Mathu (Waweru Farm) and The Attorney General (Respondents)	The claim is allowed. L.R. No 8652 I.R. 14002 and LR No. 8653 I.R. 13230 to be allocated to Kipkilach Arap Leitich and Kipboson Arap Selembu families/clans for settlement. The Ministry of lands and physical planning (Department of Land Adjudication and Settlement) shall facilitate the settlement of the claimants.
3.	NLC/HLI/518/2018 Kericho County	Kabunech Squatters (Claimants) -Vs- County Government of Kericho (Respondent)	The claimants are referred to the NLC County Coordination office Kericho to fast-track the remaining process of resettling the squatters.
4	NLC/HLI/481/2018 Kericho County	Mzee Samson Chepkwony (Claimant) and A.I.C Mission Hospital-Litein (Respondents)	The claim is dismissed. The family members actually sold the claimed land to the hospital
5.	NLC/HLI/435/2018 NLC/HLI/256/2018 Nandi County	Ngerek Community, Koibem community (claimants) and Kenya Forest Service (Respondents)	The claim is allowed. The Kenya Forest Service to complete the degazettement of the area promised (Nandi South Forest) to the claimants and settle both communities (Koibem and Ngerek) on land for land basis as initially intended. The Director of Survey together with the Nandi County Government to expedite the process and hand over the land to the Ngerek and Koibem Communities.
6.	NLC/HLI/001/2017NLC/HLI/020/2017NLC/HLI/390/2018 Nandi County	Titan Squatters (392 members), Timur Nandi community (claimants) and Nandi Kaburwo council of elders, British Government (Respondent) and County Government of Nandi (Interested party)	The claim is allowed. The claim is referred to the Privatization Commission to consider setting aside land to settle the claimants (Titan Squatters, Timur Nandi community and Nandi Kaburwo council of elders) and other squatters from both Nandi and Kisumu counties including Tanzanian returnees. The Ministry of lands and physical planning to facilitate the process.
7.	NLC/HLI/246/2018 Nandi County	Pemja Community (claimant) -v- Kenya Forest Service (Respondent)	The claim is allowed. Kenya Forest services (KFS) to complete the degazettment and survey of Nandi South Forest to excise the area they had undertaken to settle Pemja community.

21

S/No.	Case No. and County	Parties	Recommendation
8.	NLC/HLI/245/2018 Nandi County	Nandi Royal Trust Claimant and Colonial Government, Miwani Sugar Company, Chemilil Sugar Company, Muhoroni Sugar Company (Respondent) and County Government of Nandi (Interested Party)	The claim do not meet Historical Land Injustice criteria. The claimants are advised to await the establishment of the Independent County Boundaries Commission as proposed under the County Boundaries Bill, 2015.
9	NLC/HLI/140 2017 Nakuru County	Moi-Ndabi Settlement Scheme (Claimant) and The Director Land Ajudication and Settlement (Respondent)	The claim is dismissed. The claimants are directed to present their claim to the Director of Land Adjudication and Settlement
10.	NLC/HLI/430/2018 NLC/HLI/016/2017 Nandi County	Former Kimondi Forest Squatters, Kimondi Forest Squatters (Claimants) and Kenya Forest Service (KFS) (Respondent) County Government of Nandi (Interested Party)	The claim is allowed The County Government in collaboration with the Ministry of Lands (Adjudication and Settlement Department) and other relevant authorities, should proceed with the resettlement of both groups of Claimants
11.	NLC/HLI/159/2017 Bomet County	Tapnyobi A. Torgotit family, Cecilia Chelangat Keiyo family (Claimants) and County Government of Bomet (Respondent)	The claim is allowed. The County Government, should ensure allocation and registration to Tapnyobi Kiruchu Torgotit and Cecilia Chelangat Keiyo of the 3.2 hectares and 2.02 hectares respectively. The County Government of Bomet should compensate the Claimants on the remaining acreage at the current market rate (4.78 ha).
12.	NLC/HLI/326/2018 NLC/HLI/065 2017 NLC/HLI/325/2018 NLC/HLI/198/2018 NLC/HLI/121/2017 NLC/HLI/346/2018 NLC/HLI/106/2017 NLC HLI/091/2017 NLC/HLI/078/2017 NLC/HLI/362/2018 NLC/HLI/361/2018 Nakuru County Kericho County Nandi County Bomet County Tranzoia County Bungoma County	Ogiek Land Injustices West South Ogiek Mau Forest Ogiek (Litein) Ogiek Welfare Council Dorobo Community Community of Chepkitale and Chepyuk Settlement Scheme Chepkitale Ogiek Council of Elders Nandi South Ogiek Community Ogiek Marginalized Lelpanget and Kipkongor squatters Ogiek of Tanzania Chepkitale Ogiek Community of Mount Elgon (claimants) -v- The Government of Kenya	The claims are allowed. The Historical land injustice claims listed herein be and are hereby forwarded to the Kenyan government Task Force on the implementation of the African Court on Human and Peoples' Rights judgment regarding the case of the indigenous Ogiek people.
13.	NLC/HLI/437/2018 Nandi County	Tinderet Forest Dorobo Squatters-Kosabei Nandi Vs. Kenya Forest Services	The claim is allowed. The Kenya Forest Service to complete the degazettement of the area set aside to settle the communities (Tinderet Forest Dorobo Squatters-Kosabei Nandi).
14.	NLC/HLI/010/2017 Nandi County	Nyando Valley Association vs Richard Ochieng Olwenge LR 3098, 3097, 3092, Chemelil Sugar Co, Gulbing Singh Panjey, Omamo Farm, Utonga Geta firm MV Plantations	The claim is allowed. It is hereby referred to the Privatization Commission for consideration of part of the land from Chemilil Sugar company L/R NO 11840 for the settlement of members of Nyando Valley Association and other communities using a predetermined formula or ratio between the people of Kisumu County and Nandi County
15.	NLC/HLI/255/2018 Nandi County	Kimasas Farmers' Cooperative Society Limited Vs. Eastern Produce Kenya Limited and Chief Land Registrar Claim	The claim is allowed. All resultant subdivisions were done illegally and should be cancelled. Land L/R No. 9285/2 is given to Kimasas Cooperative Society Limited. Chief Land Registrar, Ministry of Lands and Settlement to implement the decision.
16.	NLC/HLI/044/2017 NLC/HLI/546/2018 NLC/HLI/173/2017 Kericho County	County Governments of Kericho and Bomet on behalf of the Kipsigis and Talai Clans, Kipsigis clans and the Borowo and Kipsigis Clans Self Help Group versus The Colonial Government and the Government of Kenya.	The claims are allowed. A resurvey should be done on the lands being held by the tea estates to determine if there is any surplus land or residue to be held in trust for the community by the County Government for public purposes. The County Government and the multi-nationals sign MoU (Memorandum of Understanding) for the multinationals to provide public utilities to the community. Renewal of the leases to these lands be withheld until an agreement is reached with the respective County Governments of Kericho and Bomet. With regard to rate and rent on such lands the Commission recommends that these should be enhanced to benefit national and county governments. The Commission orders that all 999 year old leases should be converted to the Constitutional requirement of 99 years.

S/No	Case No. and County	Parties	Recommendation
17.	NLC/HLI/013/2017 NLC/HLI/033/2017NLC/ HLI/447/2018NLC/HLI/ 546/2018 Nandi County	In the Matter of Talai- Nandi	The claims are allowed. The commission recommends that: A resurvey be done on the lands being held by the tea estates to determine if there is any residue to be held in trust for the community by the County Government for public utilities. A scholarship fund to educate Talai Children be set up by the Multinational companies holding the land. The County Government and the multi-nationals sign a MoU (Memorandum of Understanding) for the multinationals to provide public utilities to the community. The Commission further recommends that the renewal of the leases to these lands be held in abeyance until an agreement is reached with the respective county governments. With regard to rates and rent on such lands, the Commission recommends that these should be enhanced to benefit national and county governments. The Commission maintains that all 999 year old leases be converted to the constitutional requirement of 99 years.

TABLE 2 NAIROBI KIAMBU, NYERI AND MURANG'A COUNTIES

S/No.	Case No. and County	Parties	Recommendation
1.	NLC/HLI/530/2018NLC/ HLI/069/2017NLC/HLI/ 063/2017NLC/HLI/006/2 017NLC/HLI/049/2017N LC/HLI/170/2018NLC/H LI/176/2018 and NLC/HLI/052/2017 Murang'a County	Gachangi Makuyu IDPs, Gaichanjiru Self Help Group, John Rugano Nthuraku, Kakuzi Development Association, Kihinganda Self Help Group, Kinyangi Squatters, Kitito Community IDPs, Makuyu Sisal IDPs (Claimants) –vs- Kakuzi Limited (Respondent) and Kenya Human Rights Commission (Interested Party)	The matter being before the High Court, the Commission will pend hearing of the Historical Injustice claim until the final determination is reached by the Court. However as the manager of public land, the Commission orders that Kakuzi Ltd should surrender all public utilities on their land including schools, markets, police stations, hospitals, public roads of access, wayleaves and easements to the national and county Governments as appropriate. Allotments and titles to be issued for public purpose only. All leases for land held by Kakuzi Limited in Muranga County should not be renewed until the Historical Land Injustice claim is heard and determined. Any 999 year leases to convert to 99 years.
2.	NLC/HLI/055/2017 Nairobi County	Wilson Mitumba Women Group Limited (Claimant) -vs- National Police Service (Respondent)	The claim is allowed. Taking into account the long standing dispute among the parties herein, the Commission directs the parties to explore Alternative Dispute Resolution (A.D.R) to amicably bring a rest the seemingly endless litigation process with a view to the National Police Service (Respondents) giving up/ surrendering a suitable amount of land to the Claimant group. The National Land Commission to lead the A.D.R process for a win-win settlement to be arrived at between the parties herein.
3.	NLC/HLI/184/2018 Nyeri County	John Ndirangu Kiboga and Others (Claimants) and The Hon Attorney General, Ministry of Education Science and Technology, Kagumo Teachers College, County Government of Nyeri (Respondents)	The claim is dismissed. The land title parcel number Aguthi/Gaki/865 be and is hereby vested fully to Kagumo Teachers Training College and the National Treasury. The Chief Land Registrar is directed to effect the changes on land parcel number Aguthi/Gaki/865 and amend the green card and all land records to be titled to the 3rd respondent, Kagumo Teachers Training College and the National Treasury. The Chief Land Registrar is directed to expunge all records relating to Minerva Nominees (E.A) Ltd on land title parcel number Aguthi/Gaki/865 from the green card and all land records;
4.	NLC/HLI/112/2017 Nairobi County	Dagoretti Nyakinyua Co-operative Savings And Credit Society (Claimant) and Dagoretti Nyakinyua Company (Respondent)	The claim is allowed. All titles emanating from the fraudulent transaction undertaken by Dagorreti Nyakinyua Company to be revoked and the same be allocated to the members of Dagoretti Nyakinyua Co-operative Savings and Credit Society Limited who are the bona-fide owners under the supervision of the Commissioner of Cooperatives. The Chief Land Registrar to facilitate and effect the recommendation herein.
5.	NLC/HLI/138/2017 Nairobi County	Taylor Adforce (E.A) Limited (Claimant) and The County Government of Nairobi, Jonathan Preston and Angela Scott, Giraffe View Limited (Respondent)	The claim is dismissed. The parties to proceed with the matter in court JR Elc Application No. 44 of 2018 Giraffe View Estate vs National Land Commission and 2 Others.
6.	NLC/HLI/068/2017 Nairobi County	Makadara Nyakinyua Self Help Group	The claim is dismissed That Makadara Self-Help Group was unable to produce any ownership documents to support their claim, neither were they able to link themselves to the said suit land.
7.	NLC/HLI/043/2017	Mugumo Tree Nursery Group	The claim is dismissed since the 7 acres of land being claimed is

S/No.	Case No. and County	Parties	Recommendation
	Kiambu County	VS County Commissioner Kiambu (Githunguri Githunguri/463)	The land is the residence of County Commissioner and is a gazetted cultural site under the National Museums of Kenya through gazette notice 344 of 14th January, 2011. The Commission recommends that National Museums of Kenya and claimants negotiate with a view to accommodate the Mau Mau shrine on the said land.
16.	NLC/HLI/509/2018 Kiambu County	Samuel Mureithi	The claim is allowed. The County Government of Kiambu to compensate the claimant at current market price for land and loss of user (Chania/Kamwangi/1197) allocated to ACK church contrary to the exchange agreement with the County.
17.	NLC/HLI/101/2017 Kiambu County	Pebewa Society	The claim is dismissed. The Commission observed that the matter is a land allocation matter. The claimant had no relevant documentation to support the claim as Historical Land Injustice. The lanf claimed belongs to a private entity.
18.	NLC/HLI/053/2017 Kiambu County	In the matter of Kasarini Estate Kasarini Co-operative Society, Kasarini Ancestral Families, Mbari ya Mbogo and Gichinga	The claim is dismissed. There are pending suits in court on the subject matter. The Commission however notes the following anomalies which it recommends to be investigated by the incoming commissioners or the Courts: How the claimants bought the land in question. If the respondents bought the land before the claimants could raise money to buy the land A clarification on the existence of the Cooperative especially in view of the correspondence from the Commissioner of Co-operatives. The legality of existence of the two entities with regard to buying and ownership of the properties.
19.	NLC/HLI/182/2018 Kiambu County	Kiang'ombe Squatters Settlement Scheme versus John Mburu Mwaura, Gladys Wangoi Mburu, Lydia Njeri Wangondu, Isaac Njoroge Mwaniki, Gabriel Njuguna Mdungu, Manager Alternative Energy Limited	The claim is dismissed. The Commission noted that the land under claim is different from the land allocated to the squatters.
20.	NLC/HLI/482/2018 Kiambu County	Muirikia Family	The claim is allowed. The commission recommends a resurvey to be undertaken by the Director of Survey together with claimants and the respondents to establish if there is any residue which should be titled as community land under the Community land Act for Mbari ya Muirikia

TABLE 3 MOMBASA, KILIFI, TAITA TAVETA AND KWALE COUNTIES

S/No.	Case No. and County	Parties	Recommendation
1.	NLC/HLI/488/2018 Kilifi County	Mwadzaya Wachanda Clan Welfare Trust (Claimant) –v- Dunda S/O Kasitu Of Mitangoni, Mwahaje Zembe (Respondent)	This claim is dismissed. The claimants are advised to proceed with the matter in Court Petition No. 26 of 2016, Malindi Ramadhan Ali Mwatsahu and others vs County Government of Kilifi, the National Land Commission and others.
2.	NLC/HLI/310/2018 Kwale County	Ali Bakari Mwadzinyeto Alias Ali Bakari Harry (Plot No. Kwale/Waa/79)	The claim is dismissed. The matter do not meet the Historical Land Injustice Criteria, the Commission refers the matter to traditional Dispute Resolution Mechanisms (Village elders)
3.	NLC/HLI/227/2018 Kilifi	Patrobas Mangi Chai (Claimant) and Dickson Choluvu Nguma (Respondent)	This claim is dismissed The parties to proceed with the matter in court on grounds of *sub-judice*.
4.	NLC/HLI/124/2017 Mombasa County	Residents Of Ziwani Majengo vs. The Estate Of Yahya Karama And Hassan Karama	The claim is allowed The claimants to apply to the court for the Deputy Registrar to facilitate the transfer of the subject parcels of land to them.
5.	NLC/HLI/061/2017 Mombasa County	Godfrey Mwambaga Allan Mjomba Girls Secondary	The claim is dismissed. The Commission refers the claim to the County Surveyor (Director of Survey) to resolve the matter.
6.	NLC/HLI/098/2017 Mombasa County	Jitoni Mwichande vs Mash Developers	The Commission noted that there is an active ADR process initiated by National Land Commission. The parties are advised to proceed with the ADR process.
7.	NLC/HLI/099/2017 Mombasa County	Bemokosi Tsango Family vs Family of The Late Bwana Juma Mwachangoma	The claim is dismissed. The claimants are advised to seek assistance from the Digo elders (traditional dispute resolution)
8.	NLC/HLI/464/2018 Kilifi County	Omar Safari Charo Vs Mohammed Hoyohoyo	The claim is dismissed. The Claimants could not link themselves to the subject land.

S/No.	Case No. and County	Parties	Recommendation
9.	NLC/HLI/485/2018 Kilifi County	Wellington M. Pazia & Hezron Mwango -vs- Kipyegon Arap Rotich	The claim is Dismissed. The claimants are advised to seek redress from the County Surveyor (Director of Surveys).
10.	NLC/HLI/487/2018 Kilifi County	Kassim Swaleh Kassim (claimants) -v- The Government of Kenya (respondent)	The claim is dismissed. The claim does not meet Historical Land Injustices claim.
11.	NLC/HLI/490/2018 Kwale County	Juma Bakari Mwandzumu (claimant) -v- Rachel Wanjala Kileta (respondent)	The claim is dismissed. Claimant could not link himself to the claimed Land.
12.	NLC/HLI/493/2018 Taita Taveta	Mwanake Mlagelaghe (claimant) -V- Land Adjudication Officer (respondent)	The Claim is dismissed. The claimant benefitted from allocation in a settlement scheme.
13.	NLC/HLI/494/2018 Kilifi County	Kibaoni Residents CBO -V- Innock Trading Limited (Respondents)	The claim is dismissed. The parties to proceed with the matter in court
14.	NLC/HLI/001/2017 Mombasa County	Utange Lamkani Vs African University Trust	The claim is allowed The Commission recommend ADR between African University Trust and the claimants led by National Land Commission.
15.	NLC/HLI/435/2018 Kwale County	Mwatende Hamisi Vs James Gakuunja Kahiu Daniel Kibuka Gikonyo, Frank Gitau Njenga, Lawrence Kinyanjui Gita, Betty Muthoni	The claim is allowed. The land reverts back to the claimant (Mwatende Hamisi) and the Chief Land Registrar to prepare the necessary ownership documents.
16.	NLC/HLI/522/2018 Kwale County	Wasini Island (Sagaff family)	The Commission upholds the decision of Court and orders that the land be issued to family of the claimants after a survey. The Chief Land Registrar to revoke any titles on land as per the court order and restore ownership to Sagaff Family and issue appropriate ownership documents to the family. ADR encouraged between the family and the squatters. NLC to facilitate negotiation between family and squarters.
17.	NLC/HLI/024/2017 Mombasa County	Utange Lamkani Village Squatters Estate of Jonathan Kagiri	The claim fails. The claimants could not link themselves to the subject land Respondent (Estate of Jonathan Kagiri) bought laud through an auction from Government. Claimants can seek alternative redress from Government.
18	NLC/HLI/489/2017 Kilifi County	Tsuma Ndaro Mbaruku -Vs- Director Land Adjudication and Settlement & Kalama Tefwa Chai	The claim is allowed. The Director Land Adjudication and Settlement to regularize Parcel Kijipwa/31 to the claimant Tsuma Ndaro Mbaruku who have lived on the land for the past 50 years.
19	NLC/HLI/486/2018 Kwale County	Tiwi Aggrieved Land Claimants Claim	The claim is allowed. The Commission, recommends that the Chief Land Registrar ensures that land Tiwi beach block13444 be restituted to the Bwika family of Tiwi and the title to this land revoked so that the land is transferred to Mwinyi Mohammed Bwika And Rashid Khamisi Bwika and family.

TABLE 4 NAROK AND KISII COUNTIES

S/No	Case No. and County	Parties	Recommendation
1.	NLC/HLI/318/2018 Narok County	Sudoi ole Nankoris (Claimant) and County Government of Narok (Respondent)	The claim is allowed. Mr. Sudoi Ole Nankoris be issued with title for plot No. 77 measuring 18 acres. The Claimant must be compensated for all the land taken against his will by the County Government of Narok namely land allocated to the dispensary (L.R. No. 79) approximately 8 acres, L.R. 77 approximately 20 acres irregularly allocated to the market and 4 acres occupied by the cattle dip (L.R. 81). The Catholic Church, and Women's group to compensate the claimant for the land they occupy at the current market rate. The National government (Cabinet Secretary for Interior & Coordination) to compensate the claimant for the land allocated to the Chief's camp (L.R. No. 80) at the current market rate. The National Government (Cabinet Secretary Ministry of Education) to compensate the claimant for L.R. No. 78 occupied by the school taken against his will. However the claimant will not be compensated for the 5 acres for the school and the 2 acres for the cattle dip, which he consented and gave voluntarily.
2.	NLC/HLI/038/2017	Ikarekeshe Group Trust (Claimants) -vs- Ololoolo Game Ranch Ltd (Respondent)	The claim is allowed Title(s) (if any) resulting from the adjudication process of

S/No	Case No. and County	Parties	Recommendation
	Narok County		Oloololo section be cancelled specifically, the title to the Respondent(Oloololo Game Ranch Ltd) be revoked as earlier intended by the Chief Land Registrar The Oloololo section be reverted back to the Community (Ikarekeshe Group Trust). The Chief Land Registrar, Ministry of Lands and the Director Land Adjudication and Settlement to implement these directives.
3.	NLC/HLI/019/2017 Narok County	Tende Community Welfare Association (Claimant) and Chief Land Registrar, Director of Land Adjudication and Settlement, County Commissioner, Narok (Respondents)	The claim is allowed. The Commission recommends restitution of the claimants, Tende Community, to Area C with integration of the current land occupants. The Chief land registrar and Director of Land Adjudication to cancel all the titles from the two adjudication sections and the land settlement to accommodate all the communities.
4.	NLC/HLI/057/2017 Narok County	Keiyan Self Help Group vs. Keiyan Group Ranch, Oolontare, Sikawa and Oldanyati	The claim is dismissed. Area A and B found to be in Migori and not part of Keiyan Group Ranch, Oolontare, Sikawa and Oldanyati of Transmara Sub County.
5.	NLC/HLI/120/2017 Narok County	Enoosupukia IDPs versus Government of Kenya	The claim is allowed. The Commission refers this claim to Department of Special Programmes in the Ministry of Interior and Coordination of National Government and the National Consultative Committee and Coordination (NCCC) of IDPs in view of settling the claimants.
6.	NLC/HLI/323/2018 Narok County	Eutuut Group Ranch versus Director Land Adjudication	The claim is dismissed. The parties are advised to proceed with the matter that is pending hearing and determination before the *Environment and Land Court in Narok*.
7.	NLC/HLI/301/2018 Narok County	Ndorobo Group Ranch versus Director Land Adjudication	The claim is allowed. The Commission upholds the decree of 8th January, 2008 by the Court adopting Land Dispute Tribunal decision. The current subdivision done by Mr Kenduiwo are null and void. The Land Registrar and District Surveyor to re-establish the proper boundaries of parcel no. Cis-mara/Lemek/40. The Director Land Adjudication and Settlement to oversee the process and ensure the claimants are allocated the Land.
8.	NLC/HLI/143/2017 Narok County	Members of Olpusimoru versus Director Land Adjudication	The claim is allowed. The Commission noted that the reversal of the adjudication process and declaration of the area as forest land occasioned the injustice. With regard to these the Commission recommends that Kenya Forest Service compensates the claimants for the loss of their land (land should be compensated as if it was compulsorily acquired) and/or alternative land be set aside for settlement of the claimants.
9.	NLC/HLI/313/2018 Narok County	Martine Nkuito versus Tinga Nkuito	The claim is dismissed. The Commission refers this matter to the Department of Land Adjudication and Settlement, Ministry of Lands and Physical Planning to resolve this case as they have all the necessary information including the original land demarcation map for Olerkurto land adjudication and settlement to enable them resolve this matter.
10.	NLC/HLI/017/2017 Narok County	Olasakwana 'B' Adjudication Section	The claim is allowed. The Commission recommends that the Chief Land Registrar and the Director of Surveys ensure that the land reverts back to the claimants' family (Ledama Ole Lokoto Family) and all the resultant titles with regard to Plot no. 69 be cancelled.
11.	NLC/HLI/092/2017 Narok County	Moitalel ole Kenta versus Director Land Adjudication; County Government of Narok	The claim is dismissed The parties are advised to proceed with the matter pending hearing and determination at the High Court Petition No. 12 and 13 of 2018 in Narok.
12.	NLC/HLI/071/2017 Kisii County	Abagusii Otenyo Freedom Fighters (Claimant) -V- County Government of Bomet (Respondent)	The claim is dismissed. The claimants are advised to await the formation of commission on boundaries as per the County Boundary Bill as their claim is an inter-county boundary matter.

TABLE 5 KISUMU, SIAYA AND KAKAMEGA COUNTIES

S/No	Case No. and County	Parties	Recommendation
1.	NLC/HLI/012/2017 and NLC/HLI/297/2018 Kisumu County	Residents of Nyafenda and Pandpieri versus Kenya Prisons Service (Kisumu)	The claims are dismissed. The Commission established that the land being claimed is on government land under the Kenya Prisons department. It was also established that the claimants were neither squatters nor IDPs.

27

S/No	Case No. and County	Parties	Recommendation
			persons
2.	NLC/HLI/103/2017 Kisumu County	Kajulu Kithumo Welfare Association (claimant) And The National Government (Respondent)	The claim is dismissed. The claimants did not establish a link to the subject land therefore the claim of ancestry fails. The Privatisation commission to set aside land to settle members of the claimants group who may be landless
3	NLC/HLI/102/2017 Kisumu County	Tobias Oriwo Apiyo (Claimant) and Kisumu County Government (Respondent)	The claim is allowed. The land, Plot 132, Manyatta A, be restored to claimant and all restrictions be removed by the chief land registrar. The Chief Land Registrar to prepare ownership documents for the claimant.
4	NLC/HLI/295/2018 Kisumu County	Kokoyo Family (Claimant) and Benson Garth Bunde (Respondent)	The matter is referred to Cabinet Secretary Ministry of Lands and Physical planning to conclude the appeal process on the ruling of Land Arbitration Board Case No. 8/68 and Land Committee Case No. 52/67 appropriately.
5.	NLC/HLI/298/2018 Siaya County	Residents of Yala Swamp Communities (Claimant) and Dominion Farms Limited (Respondent)	The claim is allowed. The Ministry of Land and Physical Planning and County Government of Siaya resurveys the swamp to determine the acreage under Dominion Farm. The Commission further recommends that if there is excess land, it should be restored to the affected communities and ownership documents prepared for the community.
6.	NLC/HLI/466/2018 Kakamega County	Joshua Lubanda Alusiola (Claimant) and Isikhi Primary School (Respondent)	The claim is dismissed. The Commission noted that there is succession cause in Kakamega High Court Succession Cause No. 317 OF 2012 and ELC No. 244 of 2015.
7.	NLC/HLI/310/2018 Kisumu County	George Onyango Obuya & Others (Claimant) And Kasule Christ Church (Respondent)	The claim is dismissed. The Commission established that there was an active Civil Case in Kisumu Land & Environment court, Case No. 2 of 2015. Kisumu, Emmanuel Oduor Opondo and 2 Others Vs Denis Miganda Okoth & 2 Others.
8.	NLC/HLI/309/2018 NLC/HLI/103/2017 NLC/HLI/126/2017 Kisumu County	Residence of Kanyakwar and South Kajulu (Claimants) Kikako Welfare Association & Kolwa Development Association -v- Government of Kenya, County Government of Kisumu (Respondents)	The claim is allowed The Commission recommends formation of a taskforce comprising the National Land Commission, Ministry of Interior and Coordination of Government functions and the County Government of Kisumu to review the compensation process and identify those who may not have been compensated or inadequately compensated with a view of fully compensating the claimants (by the acquiring body). The Privatization commission to set aside land at the sugar belt with a view of settling those who may be landless among the claimants.
9.	NLC/HLI/029/2017 Kisumu County	Mageta Island Versus Government Of Kenya	The claim is dismissed. The claimants are already settled elsewhere. The island has been adjudicated as well as the areas where the claimants have settled. It was proven that the claimants are neither squatters nor landless.
10.	NLC/HLI/045/2017 Kisumu County	Koguta Land Reclamation versus Muhoroni Sugar Company	The claim is allowed. The Commission acknowledges the report from the Privatization Commission. The Committee hereby, recommends that the Privatization Commission and Ministry of Lands and Physical Planning assist in Planning, Surveying and resettling the claimants on the said parcels of land LR. No. 3977 and LR. No. 3978

TABLE 6 UASIN GISHU, ELGEYO-MARAKWET AND TRANS NZOIA COUNTIES

S/No	Case No. and County	Parties	Recommendation
1.	NLC/HLI/002/2017 NLC/HLI/418/2018 and NLC/HLI/075/2017 Elgeyo Marakwet County	Lower Sego and Kapkomol (Lower Sego and Chepsigot Adjudication Sections)	The claims are allowed. From a cultural perspective, the adjudication was not properly done. The Commission recommends that a review of the whole adjudication process is undertaken by National Land Commission. Ministry of Lands Physical Planning, County Government of Elgeyo Marakwet and clan elders with a view to solving the claim amicably.
2.	NLC/HLI/263/2018 Trans Nzoia County	AIC Kapkoi Sec. School Vs Mrs. Jane Wakhungu	The claim is allowed. The Land Plot No 35 registered under cattle dip be reverted unconditionally to AIC Kapkoi Secondary School and be vested in the Cabinet Secretary Treasury in trust for the school. The Chief Land Registrar to revoke titles for plots Nos 401, 402, 403 and 404 issued to other parties other than the schools.
3.	NLC/HLI/164/2017	Family of Muthini Wambua vs. Miriam	The claim is allowed.

S/No	Case No. and County	Parties	Recommendation
	Trans Nzoia County	Nyangara Murumbi	National Land Commission recommends to the chief Land Registrar to cancel the title Kakamega/Sirigoit/145 given to Miriam Nyangara Murumbi and register the same to Wambua Muthini.
4.	NLC/HLI/046/2017 Uasin Gishu County	Kibirgen Kimaiyo, Abdi Sitiene, Elias Busienei, Kipsang Masai, John Kisugut Too, Sylvester Arap Choge, Philip Sawe Tonui (claiming as shareholders of Kaptuktuk Farm Ltd) -versus- Justice Philip Tunoi (Rtd) (Respondent)	The claim is allowed. The Chief Land Registrar should revoke all titles resulting from the subdivision of 400 acres excised from LR No 8409/1 and revert the same to members of Kaptuktuk Farm Limited In the alternative, the Claimants should seek compensation from the Respondent, for their 400 acres of LR 8409/1 at current market price. That should the Claimants apply to the Chief Justice, the Commission prays that the Chief Justice show kindness to the Claimants and allow the reopening of the case out of time since Section 15, 3 (11) of the National Land Commission Act 2012 as amended by Section 38 of Land Laws Amended Act, 2016 waives restrictions of Section 7 of the Limitations Actions Act in respect of historical land injustice claim
5.	NLC/HLI/112/2017 Uasin Gishu County	Betty Rono (Suing as Executrix of the Estate of the Late David Rono) Claimant and Almer Farm Limited (Respondent)	The claim is allowed. The Commission recommends that Abraham Kiptanui restitutes for the 400 acres being claimed by the executrix of estate of the late David Rono. The Chief Land Registrar and Director of Survey to excise the 400 acres and Cabinet Secretary Ministry of Lands, Ministry of Interior and NLC assist the estate to get the land back. The Estate of the late Biwott is absolved from the claim.
6.	NLC/HLI/036/2017 Uasin Gishu County	Human Relief and Disaster Reduction Society Organization (TARBO) (Claimant) Government of Kenya (Ministry of Interior and Coordination of National Government) (Respondent)	The claim is allowed. The Commission refers this claim to Department of Special Programmes in the Ministry of Interior and Coordination of Government functions and the National Consultative Committee and Coordination (NCCC) of IDPs in view of settling the claimants.

TABLE 7 MACHAKOS, MAKUENI AND OTHER COUNTIES

S/No	Case No. and County	Parties	Recommendation
1.	NLC/HLI/130/2017 Meru County	Francis Mwiraria Methaiba versus Director Land Adjudication	The claim is allowed. The Commission recommends that County Government of Meru compensates the claimant for the loss of 4 acres of his land at current market rate.
2.	NLC/HLI/259/2017 Machakos County	Gregory Kavivya Muvevi versus Gideon Muli	The claim is allowed. The Commission recommends that the land reverts back to the original owner owing to the fact that the respondent never paid the money to the claimant as directed by the then District Commissioner. The Chief Land Registrar to lift the restriction on the land and make necessary adjustments to the records.
3.	NLC/HLI/025/2017 Meru County	Ontulili Forest Squatters versus Family of the late Hon. J. H. Angaine	The claim is allowed. The Commission noted that the land under question was excised for the squatters. The Commission recommends that the Chief Land Registrar reverts the land to the claimants. Alternatively, the respondent (family of the late Angaine) should give the claimants alternative land of equal size and value. The Chief Land Registrar registers the land in the name of the squatters and they should be settled with the assistance of the Director Land Adjudication and the Director of Surveys.
4.	NLC/HLI/039/2017 Machakos County	Ndithini Squatters versus Matungulu Farmers Company Limited and 8 others	The claim is dismissed. The parties are advised to proceed with Civil Case No. 1104 of 1999 pending in the Environment and Land Court.
5.	NLC/HLI/439/2018 Embu County	Ruthundi family versus Embu County Government; University of Embu; KALRO; KSG	The Claim is dismissed. The claimants could not link themselves to the specific land parcels.
6.	NLC/HLI/450/2018 Tharaka Nithi County	Magundu ma Chuka versus Kenya Forest Service	The claim is allowed. The Commission, recommends that Kenya Forest Service considers excising 10,000 acres in favour of the claimants and 2,000 acres for the claimants' community forest. The community forest to act as a buffer zone between the claimants and the forest. The Chief Land Registrar, Director of Settlement and Tharaka Nithi County Government to establish a conventional settlement scheme for them within the parameters of Land Settlement Scheme.
7.	NLC/HLI/048/2017	JK Maroo and Phares Kariuki Gakuya vs	The claim is allowed

S/No	Case No. and County	Parties	Recommendation
	Meru County	Director of Land Adjudication and Settlement	The Commission recommends that Plot no 1471 and 3791 be registered to Phares Kariuki and JK Maroo respectively and the position on the map and ground be rectified by the Director of Survey, the Chief Land Registrar and the Director of Land Adjudication and Settlement.
8.	NLC/HLI/483/2018 Nyandarua County	Samuel Korio Mbugua (Claimant) Versus Kipkering Arap Rop and Jacob Kimaru Machira (Respondents)	The claim is allowed. The Commission recommends that the Chief Land Registrar revokes the title deed to Jacob Kimaru Machira The Ministry of Lands and Physical Planning through the Director of Land Adjudication and Settlement is directed to regularize the title to Mr. Kipkering Arap Rop.
9.	NLC/HLI/128/2017 Laikipia County Nyeri County	Kabaru Ndathi Forest Squatters (Residing in Mt Kenya Forest)	The claim is dismissed. The Claimants are advised to enjoin themselves in the pending case in Court to claim their stake in Solio Ranch with a view to getting themselves settled in the Ranch. The government should, however resettle squatters who were left out of Solio Ranch. In the alternative the Ministry of Lands to investigate all parcels of land that were not allocated to squatters or IDPs so that the land can be allocated to deserving squatyers and landless Kenyans.
10	NLC/HLI/051/2017 Laikipia County	Kanu Ex-War versus Solio Ranch (LR No.11571)	The matter is dismissed. The parties are advised to proceed with the matter before court.
11.	NLC/HLI/545/2018 Kajiado County	Ilkeekonyokie-Olmorogi Trust Versus Ministry of Agriculture	The claim is allowed. The Commission recommends that National Land Commission, Ministry of Lands and Physical Planning and the County Government of Kajiado undertakes to ensure that: The land under claim is resurveyed That all the public utilities and agencies are given sufficient land taking into consideration future land requirements And the residue land revert back to Ilkeekonyokie to be registered as community land. Any land irregularly given to private entities is reversed back to Ilkeekonyokie

TABLE 8 THE FOLLOWING MATTERS HAVE BEEN DIFFERED FOR FURTHER INVESTIGATIONS TO THE NEXT COMMISSION

S/No.	Case No	County	Parties
	NLC/HLI/064/2017	Muranga County	Makenji Squatters-Muranga vs County Government of Muranga
	NLC/HLI/139/2018	Kiambu and Nairobi County	Tutua clan Self Help Group VS. The University of Nairobi
	NLC/HLI/504/2017	Kiambu County	Mbari ya Hinga Society vs. Government of Kenya (Alliance Boys High School, P.C.E.A church and Mission hospitals Thogoto, Kikuyu Day High School, Musa Gitau Pri School, Thogoto Teachers College, Nairobi University Kikuyu Campus, Dagoretti Children Home, Red Cross Karen and Muhu Kangari Sec School)
	NLC/HLI/009/2017	Kiambu County	Mbari ya Gatonye wa Munene vs. Kenya government, Sigona Golf Club, Sigona Settlement Scheme, Lands, KALRO, KEFRI, KFS, Muguga Jet Schenie University of Nairobi Kabete Campus
	NLC/HLI/456/2018	Kiambu County	Mbai ya Gichamba Association vs. Messrs Cooper and Harrison.
	NLC/HLI/504/2018	Kiambu County	Mbari ya Gicheru and Munjuga Association vs. Government of Kenya and Colonial government
	NLC/HLI/218/2018	Kiambu County	Mbari ya Githua Mutonga Association vs. Government of Kenya (allocation to various institutions) and Colonial Government.
	NLC/HLI/413/2018	Kiambu County	Mbari ya Kabocha Association vs. Government of Kenya, Colonial Government
	NLC/HLI/500/2017	Kiambu County	Mbari ya Muthemba vs. Kenya government, Kenya School of Government, University of Nairobi Kabete Campus
	NLC/HLI/446/2018	Kiambu County	Mbari ya Ngecha (K) Association vs. Government of Kenya
	NLC/HLI/037/2017	Nairobi & Kiambu County	Mburu Njoroge vs.53 Institutions Claim
	NLC/HLI/162/2018	Kiambu County	Mbari ya Ngotho Association vs. Kenya government, Maramba Tea Estate,Kimera Medical Centre, Kimlea Technical Training Centre, Oakridge Gardens, Ombi Rubber Rollers, Dinham Resort Gardens, Tigoni Tea Estate
	NLC/HLI/405/2018	Kiambu County	Mbari ya Wahothi Social Welfare Group VS. Kenya Government
	NLC/HLI/008/2017	Kericho County	1988 Kipkelion Evictees
	NLC/HLI/038/2017	Kisumu County	Dorsila Ajuoga Owuor versus Jackton Osino
	NLC/HLI/521/2018	Kisumu County	Estate Of Kibinot Rongoei Versus Yuda Awour and Alfred

S/No.	Case No.	County	Parties
			Owner
	NLC/HLI/305/2018; NLC/HLI/304/2018, NLC/HLI/317/2018; NLC/HLI/021/2017	Narok County	Anglo- Maasai Kingdom
	NLC/HLI/208/2018; NLC/HLI/444/2018	Nakuru County	Bararget Settlement Scheme and Tachasis Mosop Community versus Kenya Forest Service
	NLC/HLI/532/2018	Makueni County	Family of Late Ndiku Wambua versus Family of Joel Mulinge Malombe and Makuli Company Limited
	NLC/HLI/093/2017	Kiambu County	Mbo-i-Kamiti Welfare Group versus Mbo-i-Kamiti Farmers Company Ltd
	NLC/HLI/154/2017	Baringo County	Lembus Torongo
	NLC/HLI/007/2017	Mombasa County	Utange Lamkani Vs African University Trust
	NLC/HLI/495/2018	Mombasa County	The Communities of Vipingo Lands, Residents of Vipingo Sisal Plantation, Mjuma Lands Association versus Vipingo Estate Limited, Hussein Dairy Farm, Mombasa Cement Ltd, Rea Vipingo
	NLC/HLI/023/2017	Nairobi County	Litha Katumbi Kathumba versus Kenya Airports Authority (KAA)
	NLC/HLI/007/2017	Mombasa County	Residents Of Pendua Maweni Versus The Late Mwanakombo Abdalla Family
	NLC/HLI/135/2017	Elgeyo Marakwet County	Saniak Tiliol Clan Foundation vs Tambach High School
	NLC/HLI/072/2017	Kiambu County	Tigoni Lands Claim
	NLC/HLI/472/2018	Mombasa County	Emmanuel Ngade vs Simba Colt Claim
	NLC/HLI/CF/2018	Kisumu County	Kogony Land Council of Elders and Kenya Aiports Authority, Attorney General of Kenya, National Land Commission and County Government of Kisumu

The full determination may be collected after twenty one (21) days of this gazette notice, from the National Land Commission offices, Historical Land Injustice Registry, 4th Floor, ACK Gardens-Annex, 1st Ngong Avenue, from Monday to Friday, 8.00 a.m. to 5.00 p.m., during official working hours.

Dated the 18th February, 2019.

ABIGAEL MBAGAYA MUKOLWE,
Vice-Chairperson,
National Land Commission.

MR/5816071

GAZETTE NOTICE NO. 1996

THE KENYA ACCREDITATION SERVICE ORDER

(L.N. 55 of 2019)

KENYA ACCREDITATION SERVICE

CONFORMITY ASSESSMENT BODIES

PURSUANT to section 13 of the Kenya Accreditation Service Order, 2009, (Legal Notice No. 55 of 2009), it is notified for the information of the general public that the following are the Conformity Assessment Bodies accredited by Kenya Accreditation Service as at 7th February, 2019. The detailed Scopes of Accreditation of these Accredited Bodies are provided on our website (www.kenas.go.ke). Reference should be made to the Scopes of Accreditation of the respective Conformity Assessment Bodies all times.

1. Calibration Laboratories

Cab Name and Address	*Normative Standard*	*Date of Expiry*
KENAS/CL/ 02 SONIC QUALITY INSPECTORS LIMITED; Mirage Plaza, Mombasa Road; P.O. Box 6063-00200 Nairobi, Kenya; Tel: +254-20-60007509; Email: sonicinspections@yahoo.com, info@sqi-sonicinspections.com	ISO/IEC 17025:2005	21-Feb-2021
KENAS/CL/07 ELISTERS 2000 LIMITED; Buruburu Complex -Mumias Road; P.O Box 9091 00100 Nairobi, Kenya; Tel: 020- 7784338; Fax: 020 -788000; Email: info@elisters2000.com	ISO/IEC 17025:2005	20-Sep-2022
KENAS/CL/08 ESTEC LIMITED; Chromato House, Bungoma Road, off Baricho Road; P.O. Box 12143-00400 Nairobi, Kenya; Tel. No. +254-20-537709/10; E-mail: info@esteckenya.com	ISO/IEC 17025:2005	21-Feb-2021
KENAS/CL/ 10 QUALITY ASSURANCE SYSTEMS LIMITED; QAS PLAZA-Mombasa Road; P.O. Box 56871-00200 Nairobi, Kenya; Tel: +254-20-2049892 / 2034681; Email: info@qas-limited.com	ISO/IEC 17025:2005	13-Sep-2022
KENAS/CL/19 LABCRS SERVICES LTD; Park Place, Magadi Road off Langata Road ; P.O. Box 791 – 00511 Ongata Rongai, Nairobi, Kenya;Tel: +254722858041, 020 – 2323520; Email: info@labcrsservices.com ; labcrs.services@gmail.com	ISO/IEC 17025:2005	03-Dec-2021
KENAS/CL/ 18 NYERI WATER AND SEWARAGE COMPANY LIMITED; NYERI WATER AND SEWERAGE COMPANY – HEADQUARTERS; P. O. BOX 1520-10100 Nyeri, Kenya;	ISO/IEC 17025:2005	22-Nov-2020

Cab Name and Address	*Normative Standard*	*Date of Expiry*
Tel: 2034548 / 2034623; Email: info@nyewasco.co.ke		
KENAS/CL/21 KENYA POWER AND LIGHTING COMPANY LIMITED, Meter Central Laboratory, Ruaraka, off Thika super highway, P.O. Box 30099-00100 Nairobi, Kenya; Tel. No. +254-20-3201623; +254-711312623; Email: endung'u@kplc.co.ke	ISO/IEC 17025:2005	15-Jan-2020
KENAS/CL/22 TRACEBLE MEASUREMENT CENTER LIMITED; Trance Towers, Tsavo Road Plot No.209/16439 P.O. Box 1140-00521 Nairobi; Tel: +254 202 495 010; Email:tracemeasure@gmail.com	ISO/IEC 17025:2005	17-Jun-2022
KENAS/CL/24 LYNX AFRICA LIMITED; Epren Centre, Buruburu, Block Two, 3rd Floor, Room 25; P. O. BOX 3052- 00506 Buruburu, Nairobi, Kenya; Tel. 0723 – 697586; 0733 – 524124; 0714 – 718479; Email: info@lynxafrica.co.ke	ISO/IEC 17025:2005	03-Dec- 2023
KENAS/CL/25 BIOLOGIC SOLUTIONS LIMITED; Panari Sky Centre, Mombasa Road; P. O. BOX 15078 – 00100 Nairobi , Kenya; Tel: +254 731076764; +254722156001; +254722947010; Email: info@biologic.co.ke	ISO/IEC 17025:2005	17-Sep-2022
KENAS/CL/26 KENYA AIRWAYS LIMITED; Kenya Airways, Technical Department- Calibration Centre; P. O. Box 19002- 00501; Tel: +254 20 642 2451; Fax: +254 20 823 488; Email: Leah.Andeso@kenya-airways.com	ISO/IEC 17025:2005	12-Nov-2019
KENAS/CL/27 IDEAL QUALITY TRAIL SYSTEMS LTD; PAT Plaza, Kitengela -Opp. Red Heron Centre; P. O. BOX 62689 - 00200 Nairobi , Kenya; Tel: 020 2587291; 0734 994079- 0734 077479; Email: idealqualitysystems@gmail.com	ISO/IEC 17025:2005	14-Aug- 2019
KENAS/CL/28 GOOD MANUFACTURING PRACTICE SERVICES LTD; GMPGC Complex, Woodlands Road; P.O. Box 39769-00623 Nairobi, Kenya; Tel: +254 20 2713078, 2713152; Fax: +254 20 2713121; Mobile: +254 725 744688; E-mail: info@gmpacel.com	ISO/IEC 17025:2005	21-Jan- 2021
KENAS/CL/30 ENDEAVOUR INSTRUMENT AFRICA LIMITED; Pemba Street, Off Lusaka Road, Industrial Area; P. O. BOX 14818 – 00100 Nairobi , Kenya; Tel: +254 20 6531415/6/7; +254 721 362098; +254 733 551893; Email: qualitymgmt@endeavourkenya.co.ke	ISO/IEC 17025:2005	17-Sep-2022
KENAS/CL/32 AVIOTEQ PRECISION LIMITED; Wilson Airport; P.O. Box 3509-00506 Nairobi, Kenya; Tel. No. +254 719682464; +254 727400315; +254 734038476; Email: avioteqprecision@gmail.com; info@avioteqelectronics.co.ke	ISO/IEC 17025:2005	14-Sep-2020
KENAS/CL/ 33 PROFESSIONAL AVIATION SUPPORT LIMITED: DESERT LOCUST HANGAR, WILSON AIRPORT; P. O. BOX 47720-00100 NAIROBI, KENYA, Tel: +254 020 267 9581, +254 721384923; Email: sales@proav-support.com; calibration@proav-support.com	ISO/IEC 17025:2005	30-Nov-2020
KENAS/CL/34 BUFFMAC LINK LTD; Arch Business Centre, Eastern by-pass East Block 1 Plot No. 4044 3rd Floor Suites No.16 & 17; P.O. Box 10640-00400 Ruiru, Nairobi Kenya; Tel. No. +254 723985228; +254 739211076; Email: buffmaclink@gmail.com	ISO/IEC 17025:2005	13-Sep-2022
KENAS/CL/36 MAZINGIRA AND ENGINEERING CONSULTANTS LIMITED; Malaba Heights, First Floor P.O. Box 6857 Thika; Tel: +254 721203898; Email: info@mazingiraconsultants.com	ISO/IEC 17025:2005	13-Jan-2023

2. Certification Bodies

Cab Name and Address	*Normative Standard*	*Date of Expiry*
KENAS/CB/ 01 KENYA BUREAU OF STANDARDS (KEBS);Popo Road, off Mombasa Road; P.O. Box 54974 Code 00200 Nairobi, Kenya; Tel: +254 20 6005480; +254 20 6948263; Email: outac@kebs.org	ISO/IEC 17021-1:2015	16-Mar-2020
KENAS/CB/ 03 BUREAU VERITAS CERTIFICATION KENYA LIMITED; First Floor, ABC Place, Waiyaki Way, P.O. Box 34378-00100 Westlands, Nairobi, Kenya ;Tel: 254 20 4450560-4; Email. sam.kimotho@ke.bureauveritas.com	ISO/IEC 17021-1:2015	17-Feb-2020

3. Inspection Bodies

Cab Name & Address	*Normative Standard*	*Date of Expiry*
KENAS/IB/01 AVANT-GARDE ENGINEERS AND CONSULTANTS (P) LTD CHENNAI, INDIA; TYPE C INSPECTION BODY; 68 A, Porur Kundrathur High Road, Porur, Chennai, INDIA: Tel: + 91 44 24828717-720; Fax: +91 44 24828531; Email: avantgarde@vsnl.com	ISO/IEC 17020:2012	22-Nov-2020
KENAS/IB/03 INTERTEK TESTING SERVICES E.A. (PTY) LIMITED; TYPE A INSPECTION BODY; David Kayanda Road, Kizingo; P.O. Box 611 MOMBASA; Tel: (254) (41) 222464/2222629; Fax: (254) (41) 2228251/2222862; Email: ops.cbe-mombasa@intertek.com	ISO/IEC 17020:2012	12-Nov- 2019
KENAS/IB/ 05 INSPECTORATE (EA) LTD; TYPE A INSPECTION BODY, Rothmans Building, Kizingo; P.O. Box 42327, Post Code 80100 MOMBASA; Tel: 254-41-2317318/2317303 Office: Tel: 254-722-305872; Fax: 254-41-2317303; Email: admin@inspectorate-ea.com	ISO/IEC 17020:2012	21-Jan-2021

REPUBLIC OF KENYA

IN THE MATTER OF THE NATIONAL LAND COMMISSION

AND

IN THE MATTER OF HISTORICAL INJUSTICES CLAIM

AND

IN THE MATTER OF LAND PARCEL NO. 7153/2

BETWEEN

MBARI YA MBOGO'S FAMILY
WELFARE GROUP.....APPLICANTS

AND

MARGARET NYOKABI MBUGUA & OTHERS.....RESPONDENTS

AFFIDAVIT

I, **MARY NJERI GACHUMA**, a resident of Ruiru, and of Post Office Box Number 745-00232 RUIRU, do make oath and state as follows: -

1. I am the daughter of Njuguna Mbogo, son of 3rd wife of Mbogo Wainaina. I was born in 1966 December 1st at the homestead of (Maganjo) of my late grandfather who died in 1970. The homestead which was next to Ngurunga ya Mbogo also called the Mau Mau caves and now named paradise lost of Kasarini farm and part now owned by the late Moses Mbugua Mwangi as an income generating site. I annex hereto and marked as exhibit *"MNG 1"* a copy of our Certificate of Incorporation.

2. The information I gathered was when my grandmother got her right leg amputated due to diabetes in 2003 when the family gave me the role of offering her home based care at my father's home in Ruiru.

3. My grandmother told me the Gatharaini farm was owned by Mbogo her husband who purchased from Ndoruba with exchange of 2000 goats and cattle. Mbogo who was born in late 1870's where his history beyond 1900 is not well defined.

4. Hence was a member of the family of the late mzee Mbogo and Wanjiku Gichinga "Wadino" who died in 1967 and was buried at a place they called

"FN3"
Affidavit
FRANCIS
WAINAINA NJUGUNA
25th Nov 22

Gatitu the now owned by the KCB Sacco where they used to bury their family members of Mbogo's family.

5. Just like other Gikuyu families Mbogo's thingira (traditional hut for a Kikuyu household) alongside 4 traditioanl houses of his wives at now the paradise lost. He had a large animal shed that held capacity of over 5000 goats/sheep and over 500 cattles at now the place where the late Samuel Mgugua Kibathi home is established.

6. As evolution state of the white settlers invented the productive land for agriculture activities that included coffee. They met Mbogo and negotiated on using his land for planting coffee which later be beneficial to Mbogo and family after the white settler left the country.

7. They agreed on both getting involved where Mbogo shall be the foreman in recruiting workers from the neighbouring villages. The sons of Mbogo were trained and access literate education to handle the machine used in the farm. Out of the good relationship the white settler coffee farm employees also worked for Mbogo farm where coffee was not planted by growing subsistence crops.

8. The manure from the animal shed was used to plant the coffee and before the tractors came they used Mbogo's cattle to plough the farm. Mbogo's family lives changed instantly to modern living.

9. During the MAUMAU rebellion the colonial government suspected Mbogo's son for were confirmed that they used to give oath to men and women of Gikuyu and hide in the Mbogo caves. The animals used as sacrifice were donated by Mbogo and the food for MAUMAU as well.

10. The white settle due to the good relationship with Mbogo's family stood for the family. Even after breaking the Colonial laws.

11. During the fight of emergency Mbogo's households were burned on 1953 by the colonial government for they noted the MAUMAU activities were vigorously in place for men and women from different places came to take oath.

12. The white settle assisted the family to shift and establish another homestead called Ndondora village. Mbogo later died due to stroke and his belongings were burnt into ashes.

13. The white settler felt and assisted the family for burial where Mbogo was buried near his caves.

14. The five men by the names Kibathi Mbugua, Mwangi Mbugua, Samuel Githegi, Zakary Gkunju came and mobilized all the laborers and the Mbogo's family too. They informed them that they had been sent by K.C.P.U. to manage the coffee farm for the settler will soon leave the farm and were working on handling over. Mbogo's family were astonished for they had not discussed with the settler about their position.

15. A few days later the Mbogo's sons were called by one of the men and asked the youngest Chege who was a mechanic to get in the car and take him around and show him the beacons. He said he cannot access them for only his late father Mbogo who knew where they were located.

16. The man was furious with Chege and asked him to pack his belongings and leave the farm immediately. He ordered the watchman to ensure he has left. He took his young wife who was pregnant and went to rent to a nearby village called Muriruthi where they had a miserable life for the place was a slum and the environment did not favor them.

17. My father was the next and was ordered to leave and had no option he left to another shamba called Kaiya Estate with his family and luckily was employed there at low paid job. The other simultaneously were ordered to leave one after the other where some got displaced to various parts of Kenya that include, Nakuru, Murang'a and about 3 brothers up to date nobody knows their whereabouts.

18. The eldest son Wainaina Kibunja who was a mechanic was allowed to remain to guide them where the machinaries were and also access other information about the farm but he remained dump. Later after 20 years one of the men Mr. Samuel Mbugua Kibathi called my father and his brother Numi back to work and were employed as tractor drivers and were transferred to their shamba in Laikipia thus separated them completely with their families where Numi died and buried at public cemetery in Kangoya Kiambu.

19. My father Njuguna again was told to leave the work for he was suspected that he planned with thieves who stole the spare parts of the tractor. They also retained one of the daughters of Mbogo by the name Wanjiru Mbogo who served as a househelp to Mr. Samuel Kibathi residence and served his wife Margaret Nyokabi who is a key defendant to this case. Wanjiru Mbogo died in 2010 at an old age to unknown disease.

20. My aunt said she be counted out even though she was single and urged them in the meeting that when we get back the land her children should not be given a share.

21. The siblings were embarrassed even suspected her of already betrayed the family. The Mbogo family had no capacity for the new constitution was the only way to go for they had been in courts since colonial time.

22. He was the first to be chased out of the land in 1933 for always complaining but Mbogo had a good relationship with the white settler because the land belonged to him. I annex hereto and marked as exhibit *"MNG 2"* our ancestral family tree in confirmation of our bona fides.

23. I presenting the 3rd generation of Mbogo's grandchildren faced a lot of challenges for our parents were stressed and had been brainwashed even caring for their children. Access to education was shuttered down and the children especially those in the coffee plantations experienced child labour, rape, died of HIV/AIDS, early marriage and other indulged in illicit brew taking, now called the 2nd generation which has been declared the National disaster.

24. Even today, most live in slums and affected by drugs and some have no families due to depression.

25. The Mbogo's family has the concern after the proceedings in the land on 29th April 2018. ACK House, 7th floor. Issues of self interest raised up the third parties who initially were put off by the Commission in various mentioning and Court proceedings. They requested as third parties to be allowed for a fair hearing as interested parties.

26. Mbogo family came to learn after being given platform by the land commission for the same to express their interest they claimed the land is theirs and took advantage of the elderly who came to farm to seek employment as laborer. Mbogo's family got shocked hearing that they now claimed to be ancestral owners of the farm but the land was owned and belonged to Mbogo's family. I now annex hereto and marked as exhibit *"MNG 3"* copies of the forged certificates of title.

27. Wambui came from Githunguri Division and came to seek employment in the farm and got married to Njoroge who was employed as a farm clerk by Mbogo and lived in the labor camps.

28. Njeri wa Mugo came from Muchatha village to seek employment she met Mugo from Kanunga and got married and lived in the labor camps within the farm where they brought up their family.

29. Maria Karaki came from Turitu and was commuting every day to come to work in Kasarini later was married to Karaki Mwangi who was a caretaker employee of the water pumps to facilitate irrigation in the coffee farm but supervised by Mr. Mathengi son of Mbogo.

30. Mbari ya Mutuguti came from Cheleta village from Munderu's family who was offered to live with his family and also were employees.

    i) Therefore Githiko Mutuguti now the petitioner never owned the land but employee in the farm and were never born there.
    ii) Wangui Mutuguti came as an employee and was married to Mutuguti who was a tractor operator
    iii) Wangari came from Nyeri with his father Kamotho who came seeking employment in the farm. She got married to Mutuguti's family thereby became their inlaw.

31. Other petitioners who never testified but had sworn affidavit were;
    a) Gathoi Ngugia,
    b) Naymbura Kabia
    c) Njeri Mbindio
    d) Wambui Wamwehia

32. Reasoning that Mbogo and his partner the white settler whose corporate exercised good and effective performance management in motivating the employees by providing them with labour camps built within the farm, space for kitchen gardens, space to keep poultry, built a primary school for the employees and support them with maize to take them for a week to meet their families diertary needs.

33. However like other Corporate who provides their employees with this motivation materials doesn't mean that they are the owner of the farm. The farm belonged to Mbogo family and his co-partner the white settler who facilitated the planting and management of coffee.

34. Therefore Mbogo family request the National Land Commission to investigate these witnesses thoroughly and make a conclusive decision to the rightful owners of the farm who are the Mbogo family.

35. THAT what is deposed to herein above is true and within my personal knowledge, save what is based on information and belief the bases of which I have duly indicated.

MBOGO'S FAMILY WELFARE GROUP
08 JUN 2018
Sign:
CERTIFICATE No. 3764099

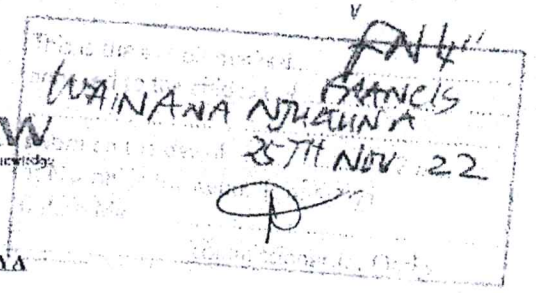
SWORN AT NAIROBI
BY THE SAID, MARY NJERI GACHUMA
ON THIS 8TH DAY OF JUNE 2018

BEFORE ME

WAMBUGU MURIUKI
ADVOCATE &
COMMISSIONER FOR OATHS
P.O. Box 69567 - 00400 NAIROBI.

COMMISSIONER FOR OATHS

DRAWN & FILED BY:
J. HARRISON KINYANJUI & CO. ADVOCATES
ST. ELLIS HOUSE
4TH FLOOR, SUITE 416
P.O. BOX 10024-00100
NAIROBI



KENYA LAW
Where Legal Information is a Public Knowledge

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC SUIT NO. 557 OF 2009

MACHETHA KARIUKI.....1ST PLAINTIFF

WAMBUI NJOROGE.....2ND PLAINTIFF

WAMBUI NJAU.....3RD PLAINTIFF

MARIA KAROKI.....4TH PLAINTIFF

NYAMBURA KABIA.....5TH PLAINTIFF

NJERI MUNYAO.....6TH PLAINTIFF

NJERI MBINDYO.....7TH PLAINTIFF

(Suing on their behalf and as representatives of Kasarani Farmers Co-operative Society)

VERSUS

SAMUEL GITHEGI MBUGUA.....1ST DEFENDANT

GRACE MUTHONI GITHEGI.....2ND DEFENDANT

SAMUEL MBUGUA KIBATHI.....3RD DEFENDANT

MARGARET NYOKABI MBUGUA.....4TH DEFENDANT

RUTH NJERI KABOGO.....5TH DEFENDANT

MOSES MBUGUA MWANGI.....6TH DEFENDANT

CHRISTINE MITHIRI MBUGUA.....7TH DEFENDANT

ZACHARIAH KIMEMIA GAKUNJU.....8TH DEFENDANT

MARY WARURII GAKUNJU.....9TH DEFENDANT

39

COMMISSIONER OF LANDS.....10TH DEFENDANT

REGISTRAR OF TITLES, NAIROBI.....11TH DEFENDANT

RULING

What I have before me is a Notice of Motion application dated 5th June, 2018 brought by the 1st plaintiff seeking the following orders:

1. That this honourable court cites the 2nd defendant, Grace Muthoni Githegi and the 4th defendant, Margaret Nyokabi Mbugua for contempt of court orders given on 5th March 2015 and issued on 24th March, 2015.

2. That this honourable court does order the arrest and committal of the 2nd defendant, Grace Muthoni Githegi and the 4th defendant, Margaret Nyokabi Mbugua to jail for a term of six (6) months or such time or terms as the honourable court may deem fit for contempt of the said court order.

3. That this honorable court does issue an order to purge the said acts of contempt of court and invalidate/ cancel all the acts done on the suit properties namely, L.R 7153/1, L.R No. 7153/R, L.R 7153/2, L.R 12825 and the subdivisions thereof by the 2nd and 4th defendants in contempt of the said court order and to declare the said acts illegal, null and void *ab initio*.

4. That this honorable court does issue an order to purge the said acts of contempt of court and invalidate/ cancel all the acts done on the suit properties namely, L.R 7153/1, L.R No. 7153/R, L.R 7153/2, L.R 12825 and the subdivisions thereof by the 1st to 11th defendants/respondents during the pendency of this suit from 2nd November, 2009 and be pleased to declare the said acts illegal, null and void *ab initio* under the doctrine of *lis pendens*.

5. That this honourable court does issue an order to purge the contempt of court by the defendants/respondents and, land and survey documents be provided to the court for the purge of the contempt.

6. That the respondents to bear the costs of the application.

The application that was supported by the affidavit sworn by the 1st plaintiff on 5th June, 2018 was brought on the grounds that, on 5th March, 2015, the court made an order directing that the status quo relating to L.R 7153/1, L.R No. 7153/R, L.R 7153/2, L.R 12825 and the subdivisions thereof (hereinafter referred to only as "the suit properties") be maintained. The 1st plaintiff (hereinafter referred to only as "the applicant" where the context so permits) averred that the 2nd and 4th defendants had disobeyed the said orders and had refused and/or neglected to comply with the same. The applicant averred that the 2nd and 4th defendants had in blatant disobedience of the said order proceeded to sell and transfer the suit properties. The applicant averred that the 2nd and 4th defendants had also disobeyed the said order by constructing structures on the suit properties. The applicant averred that the 2nd and 4th defendants were aware of the said order which was obtained by their advocates. The applicant averred that the said acts of disobedience of the said court order was continuing. In his affidavit in support of the application, the applicant annexed: a copy of the court order said to have been disobeyed by the 2nd and 4th defendants, copies of agreements for sale and leases said to have been entered into by the 2nd and 4th defendants in violation of the said court order and copies of photographs said to have been taken on the suit properties showing the structures that had been put up thereon by the 2nd and 4th defendants.

The 1st plaintiff's application was opposed by the 4th defendant through grounds of opposition dated 13th June, 2018 and a replying affidavit of the same date. The 4th defendant averred that the order the subject of the 1st plaintiff's application was made in her favour and as such there was no way she could disobey it. The 4th defendant averred that the 1st plaintiff did not seek any order restraining the 4th defendant from dealing with the suit properties and as such the alleged disobedience of the said court order had no basis. The 4th defendant contended that the 1st plaintiff's application was bad in law as the same was brought contrary to the provisions on section 34 of the Contempt of Court Act, 2016. The 4th defendant averred further that the substantive reliefs sought in the application by the 1st plaintiff could not be granted before the hearing of the suit. The 4th defendant averred that the order of status quo was directed against the plaintiffs and as such the 4th defendant could not disobey the same.

The 4th defendant averred that she was the registered proprietor of L.R No. 12825/8, 9,10 and 17 and part of the subdivisions of the land originally known as L.R No. 7173/1 and L.R No. 7173/2. The 4th defendant averred that she had occupied the said properties peacefully for over 40 years and had developed some of the properties and sold others to third parties. The 4th defendant averred that the 1st plaintiff's application was intended to derail the hearing of the main suit and urged the court to dismiss the same.

The application was heard on 3rd December, 2019. In his submission in support of the application, Mr. Gatitu advocate for the 1st plaintiff/applicant reiterated the grounds on the face of the application and the supporting affidavit of the applicant. Mr. Gatitu submitted that the applicant had demonstrated that the 2nd and 4th defendants (respondents) had disobeyed the order that was made by the court on 5th March, 2015 for the maintenance of status quo in relation to the suit properties. Mr. Gatitu urged the court to grant the orders sought in the application. He submitted that the 2nd and 4th defendants should be arrested and committed to jail and an order should be made reinstating the suit properties to the state in which they were prior to the 2nd and 4th defendants' acts of contempt complained of. Mr. Gatitu submitted that the affidavit filed by the 4th defendant in response to the application supported the applicant's case.

In her submission in opposition to the application, Ms. Mwachiro advocate for the 4th defendant relied on the 4th defendant's grounds of opposition and replying affidavit. Ms. Mwachiro submitted that for the 2nd and 4th defendants (hereinafter referred to only as "the respondents" where the context so permits) to be found guilty of contempt, it had to be demonstrated that there was a clear order made by the court that was disobeyed by the 2nd and 4th defendants. Ms. Mwachiro submitted that it had to be established also that the disobedience of the order was deliberate. Ms. Mwachiro submitted that the order made by the court on 5th March, 2015 restrained the plaintiffs from interfering with the peaceful and quiet occupation of the suit properties. She submitted that there was no order restraining the respondents from dealing with the suit properties. Ms. Mwachiro submitted further that some of the transactions alleged to have been undertaken in breach of the said court order took place prior to the date of the order. Ms. Mwachiro submitted further that some of the orders sought by the applicant were final in nature and as such could not be granted at an interlocutory stage. She submitted that the court could not cancel titles held by third parties who were not parties to the suit and were not before the court. Ms. Mwachiro submitted that the respondents did not disobey the court order made on 5th March, 2015 and urged the court to dismiss the 1st plaintiff's application.

Ms. Gatuhi who appeared for the 2nd defendant informed the court that the 2nd defendant was deceased and as such the application could not lie as against her. Ms. Kinuva and Ms. Odongo who appeared for the 1st defendant and the interested party respectively left the matter to the court. In his submission in reply, Mr. Gatitu argued that a party to a suit cannot have a free hand to deal with a property the subject of a suit. Mr. Gatitu submitted that the respondents admitted to selling the suit properties to third parties and as such the court must order them to purge their contempt. He submitted that if the said acts of contempt were not purged, it would not be possible to prosecute the suit. He urged the court to consider the effect of the doctrine of *lis pendens* on the transactions undertaken by the respondents.

I have considered the 1st plaintiff's application together with the supporting affidavit. I have also considered the replying affidavit and grounds of opposition filed by the 4th defendant in opposition to the application. Finally, I have considered the submissions of counsels and the authorities referred to in support thereof. In Hardkinson v Hardkinson [1952] ALL ER 567, it was held that:

"It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it unless and until it was discharged and disobedience of such order would as a general rule result in the person disobeying being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt".

The conditions that an applicant must satisfy before an order of committal for contempt of court is made were laid down in Republic v Nairobi City County Ex-Parte, David Peter Ndambuki [2015] eKLR where the court stated as follows:

"It is trite law that where committal is sought for breach of an order, it must be made clear what the defendant is alleged to have done. The notice of motion must state exactly what the alleged contemnor has done or omitted to do which constitutes a contempt of court with sufficient particularity to enable him to meet the charge. The necessary information must be given in the notice itself. The slightest ambiguity to the order can invalidate an application for committal as ambiguity can in turn lead to the standard of proof, which is higher than the standard in civil cases but lower than criminal standard, not being attained especially on affidavit evidence. Therefore, the law is that no order requiring a person to do or abstain from doing any act may be enforced by contempt unless a copy of the order has been served personally and endorsed with a notice

informing him that if he disobeys the order he is liable to the process of execution."

I am aware that courts have since moved from the position that the order alleged to have been breached must be personally served on the person sought to be punished together with a penal notice before contempt can be proved. Knowledge of a court order has been held to be sufficient thereby dispensing with personal service for the purposes of contempt proceedings.See,Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR. In Mutitika v Baharini Farm Ltd [1985] KLR 227 it was held that:

(i) A person who knowing of an injunction, or an order of stay, willfully does something, or causes others to do something, to break the injunction, or interfere with the stay, is liable to be committed for contempt of court as such a person has by his conduct obstructed justice.

(ii) The standard of proof in contempt proceedings must be higher than proof on a balance of probabilities and almost but not exactly beyond reasonable doubt.

(iii) The principle must be borne in mind that the jurisdiction to commit for contempt should be carefully exercised with great reluctance and anxiety on the part of the court to see whether there is no other mode which can be brought to bear on the contemnor.

The 2nd and 4th defendants have been accused of disobeying the orders that were made herein on 5th March, 2015. I have looked at the extracted order which is attached to the 1st plaintiff's affidavit in support of the application and the actual order that was made by the court on 5th March, 2015. According to the proceedings of 5th March, 2015, the court made the following orders;

"1. The Plaintiffs to file and serve their Replying Affidavit to the Defendants' Notice of Motion dated 20th February, 2015 within 14 days of today. The Defendants to also file their Replying Affidavit to the Plaintiffs' Notice of Motion dated 15th September, 2014 within 14 days of today. Parties granted leave to file Further Affidavits if need be. Mention on 5th May, 2015 for direction on the status quo to be maintained pending the hearing and determination of the Notice of Motion dated 9th July, 2012 and also to reserve a ruling date for the Notice of Motion dated 9th July, 2012.

2. In the meantime the status quo to be maintained with respect to the properties that are the subject of the Defendants' Notice of Motion dated 20th February, 2015 shall be that the Plaintiffs, their agents or servants shall not in any manner interfere with the Defendants' peaceful occupation and possession of the said property."

It is not clear from the record as to which firm of advocates extracted the order that was made by the court on 5th March, 2015. There is no doubt however from the order of the court I have reproduced above that the order that was extracted was not in accord with the order that was given by the court. Contrary to the terms of the extracted order, the court only gave one order of status quo in favour of the defendants on the following terms:

"2. In the meantime the status quo to be maintained with respect to the properties that are the subject of the Defendants' Notice of Motion dated 20th February, 2015 shall be that the Plaintiffs, their agents or servants shall not in any manner interfere with the Defendants' peaceful occupation and possession of the said property."

I am in agreement with the 4th defendant that the order of status quo that was made on 5th March, 2015 was in favour of the defendants. The order restrained the plaintiffs from interfering with the defendants' peaceful occupation and possession of the properties which were the subject of the defendants' Notice of Motion application dated 20th February, 2015. It follows therefore that the court did not make any order restraining the 2nd and 4th defendants from selling, transferring or leasing the suit properties. In the absence of such order, the 1st plaintiff's allegation that the 2nd and 4th defendants breached the said court order made on 5th March, 2015 has no basis.

The 1st plaintiff had also sought the prayers in his application on the basis of the doctrine of *lis pendens*. In Mawji v US International University & Another [1976-80] 1 KLR 229 Madan J. cited Bellamy v Sabine (1857) 1 De G & J 566, 584, where Turner L J stated as follows on the doctrine of *lis pendens*:

"It is ... a doctrine common to the Courts both of law and equity, and rests, as I apprehend, upon this foundation – that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations *pendente lite* were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings *de novo*, subject again to be defeated by the same course of proceeding."

In the same case, Madan L J also cited Gour, on the Indian Transfer of Property Act, 7th Edition, Volume 1 at page 579 where the author stated that:

"Every man is presumed to be attentive to what passes in the Courts of justice of the State or Sovereignty where he resides. Therefore, purchase made of property actually in litigation, *pendente lite*, for a valuable consideration, and without any express or implied notice in point of fact affects the purchaser in the same manner as if he had such notice, and he will accordingly be bound by the judgment or decree in the suit."

In Bernadatte Wangare Muriu v National Social Security Fund Board of Trustees & 2 others [2012] eKLR, the court cited Fredrick Joses Kinyua and Peter Kiplangat Koech v G.N. Baird, Nairobi Hccc No. 4819 of 1989 as consolidated with Nairobi Hccc No. 6587 of 1991 George Neil Baird and Wanda Baird v Fredrick Joses kinyua and Peter Kiplangat Koech in which G.S. Pall J. stated as follows:

"The doctrine of lis Pendens under section 52 of TPA is a substantive law of general application. Apart from being in the statute, it is a doctrine equally recognized by common law. It is based on expedience of the court. The doctrine of lis pendens is necessary for final adjudication of the matters before the court and in the general interests of public policy and good effective administration of justice. It therefore overrides, section 23 of the RTA and prohibits a party from giving to others pending the litigation rights to the property in dispute so as to prejudice the other..."

In Patrick Gathitu Kariuki v Hottensiah Wambui Hinga & another [2020] eKLR, this court stated as follows on the effect of the doctrine of *lis pendens*:

"It is not correct as claimed by the plaintiff that the sale transaction between the 1st defendant and 2nd defendant was carried out in breach of a court order issued herein. From the record, the order restraining the 1st defendant from among others selling the suit property was made on 15th March, 2016 while the agreement for sale between the 1st defendant and the 2nd defendant was made on 18th March, 2015. I am however in agreement with the plaintiff that the transaction was carried out in breach of the *lis pendens* rule. Breach of the *lis pendens* rule *per se* in my view does not nullify a sale transaction. What is does is to make the transaction subject to the outcome of the court proceedings which were pending when the transaction involving the land in question was carried out. It follows therefore that, whereas the sale transaction between the 1st and 2nd defendants was valid and enforceable as between them, the same is subject to the outcome of this suit."

I still hold the same view. If the 2nd and 4th defendants sold or leased the suit properties while this suit was pending, the said transactions breached the doctrine of *lis pendens*. However, whether or not the said transactions should be cancelled or nullified can only be determined at the trial of the suit and not at this stage. Due to the foregoing, the 1st plaintiff's application cannot also succeed on the basis of the doctrine of *lis pendens*. The upshot of the foregoing is that the plaintiffs' Notice of Motion application dated 5th June, 2018 is not for granting. The application is dismissed with costs to the 4th defendant.

Delivered and Dated at Nairobi this 4th Day of June 2020

S. OKONG'O

JUDGE

Ruling delivered through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Mugo h/b for Mrs. Wambugu for the Interested Party

Ms. Gatuhi h/b for Mr. Njagi for the 9th Defendant

Ms. Mwachiro for the 4th Defendant

Mr. Mbuthia for the 10th Defendant

Ms. C. Nyokabi- Court Assistant

creative commons While the design, structure and metadata of the Case Search database are licensed by Kenya Law under a Creative Commons Attribution-ShareAlike 4.0 International, the texts of the judicial opinions contained in it are in the public domain and are free from any copyright restrictions. Read our Privacy Policy | Disclaimer

KENYA LAW
Where Legal Information is Public Knowledge

"FN5"
FRANCIS
WAINAINA NJUGUNA
25th NOV 22

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO. 373 OF 2016

BETWEEN

ASSUMPTION SISTERS OF NAIROBI REGISTERED TRUSTEES....1ST PETITIONER

NDUNDE INVESTMENTS LIMITED..... 2ND PETITIONER

AND

THE NATIONAL LAND COMMISSION ..... RESPONDENT

AND

MBARI YA MBOGO .....1ST INTERESTED PARTY

KASARINI FARMERS CO-OPERATIVESOCIETY..... 2ND INTERESTED PARTY

WORKERS OF KASARANI ESTATE.....3RD INTERESTED PARTY

KASARINI ANCESTRAL FAMILIES SELF-HELP GROUP.....4TH INTERESTED PARTY

SAMUEL GITHEGI MBUGUA.....5TH INTERESTED PARTY

GRACE MUTHONI GITHEGI.....6TH INTERESTED PARTY

MARGARET NYOKABI MBUGUA.....7TH INTERESTED PARTY

CHRISTINE MITHIRI MBUGUA ..... 8TH INTERESTED PARTY

RUTH WANJIKU, ESTHER NJERI & PAUL NDUNGU ALL

AS EXECUTORS OF THE ESTATE OF MARY

WARURII GAKUNJU ..... 9TH INTERESTED PARTY

45

RULING

Introduction

1. The 1st Petitioner, the Assumption Sisters of Nairobi Registered Trustees, describes itself as a body corporate incorporated under the provisions of the **Trustees (Perpetual Succession) Act, Chapter 164** of the **Laws of Kenya**; and the 2nd Petitioner, Ndunde Investments Limited, describes itself as the registered owner of the parcel of land known as 12825/15.They instituted the present proceedings against the 1st Respondent, the National Land Commission, a constitutional body established pursuant to **Article 67** of the **Constitution, 2010** alleging violation of the Constitution as a result of its actions in undertaking investigations in relation to certain parcels of land, which the Petitioners claim they are the rightful owners.

2. Subsequently, the Interested Parties were enjoined to these proceedings.

3. In their Petition dated 6th September, 2016, the Petitioners seek the following orders:

(a)A declaration that the Respondent is in gross violation of Article 67 of the Constitution by entertaining matters touching on private lands and hence, its actions are unlawful and a nullity.

(b)An order of certiorari do issue to bring forth to this Court to quash the decision of the Respondent to hear the claim before it.

(c)That an order of prohibition do issue directed to the Respondent prohibiting, barring and/or stopping it from further proceeding with the dispute before it or in any other manner conducting proceedings touching on the suit lands.

(d)A declaration do issue to the effect that the violation of the clear and mandatory provisions of Article 40, 67 and 165 of the Constitution by the Respondent is unconstitutional and hence invalid.

(e)The costs of the suit be borne by the Respondent.

4. The Petition was filed under a certificate of urgency and on 7th September, 2016, this Court not only certified the matter as urgent but also granted an order prohibiting the Respondent from proceeding with the dispute before it or in any other manner conducting proceedings touching on various parcels of land, namely, L.R Nos. 7153/1, 7153/2, 12825 and I.R No. 35930 (hereafter jointly 'suit property').

5. Then the 4th Interested Party raised a Preliminary Objection dated 21st September, 2016, contesting Petition.

The 4th Interested Party's Preliminary Objection

6. In the Preliminary Objection, the 4th Interested Party stated that the Application and Petition are an abuse of Court process as there are multiplicity of proceedings already before this court in the High Court at Nairobi **Misc. J.R. No. 153 of 2016, Misc. J.R. No. 321 of 2016,** and **ELC Misc. No. 582 of 2016** and that the present Petition seeks the same orders, to prohibit the Respondent from hearing the case on the same lands.

7. That the issue of the Respondent's jurisdiction requires evidence and investigation into the status and

history of the land and can be properly raised before the National Land Commission Tribunal. Finally the 4th Interested Party states that the Petition is defective, incompetent and bad in law.

8. According to the 4th Interested Party, based on the definitions of 'public land' under **Article 62** of the **Constitution**, the issue is one that requires an investigation of the laws that were enacted prior to the Constitution and hence, the issues pertaining to history and status of land cannot be raised in the present Petition. Further, that the Petition is misconceived as the issues pertaining to jurisdiction raised herein, do not form any basis for a constitutional Petition.

9. The 4th Interested Party stated further that the issue of public land and private land cannot be determined based on a title that is sought to be revoked due revoked due to illegality or an alleged forgery. Accordingly, that **Article 68 (v)** of the **Constitution** provides for review of all dispositions of public land and this Court therefore ought to defer the present matter and allow the Respondent to undertake its constitutional mandate and that in any event, the jurisdictional issues pertaining to the mandate of the Respondent ought to be raised before its Tribunal in the first instance and not in the present Petition.

10. It was the 4th Interested Party's other contention that the review of grant of public land essentially means a review of how public land ended up in private hands and in the present dispute, the complaints relate to land that had been gazetted as public land or by law had reverted to the Government pursuant to **Section 340** of the **Companies Act, Chapter 486** of the **Laws of Kenya**. Furthermore, that the registration of the suit properties under the **Government Lands Act, Chapter 280** of the **Laws of Kenya (Repealed),** meant that the properties were originally public land and within the jurisdiction of the National Land Commission.

11. Learned Counsel Mr. Gatitu argued the Preliminary Objection,on behalf of the 4th Interested Party, he reiterated the above assertions. Counsel further submitted that as the previous matters were filed under **Order 53** of the **Civil Procedure Rules, 2010,** all the parties ought to have been served and they are prohibited from raising the same issues in their own case. Counsel added that in any event the Petitioners who have also appeared before the Respondent are aware of all the cases.

12. It was Counsel's argument that the Petitioners are playing lottery with the Courts as they are moving from Court to Court seeking similar orders. Counsel highlighted on the various suits before the Courts filed in the present matter and concluded that the matters raised herein ought to be canvassed in another forum.

13. While conceding that indeed the Court has the jurisdiction to entertain the matter, Counsel argued that this jurisdiction ought to be properly invoked and as such, he urged the Court to allow the Preliminary Objection and strike out the Petition.

The Response

The Petitioners' Case

14. The Petitioners opposed the Preliminary Objection and Learned Counsel Ms. W.G Wambugu argued their case. It was Counsel's submission that their case is clear and that neither the Respondent nor the other Parties have shown that they (the Petitioners) have participated in the previous proceedings.

15. Counsel argued that the Petitioners have a specific claim to be determined from a specific title and that there is nothing placed before the Court to show that the Court lacks the jurisdiction to entertain the

Petition. Accordingly, that the Constitution empowers the Court to hear matters before it and it has original jurisdiction to hear and interpret the Constitution and also to determine whether the Respondent has the powers it seeks to exercise in the present matter.

16. Furthermore, that the appearance before the Respondent does not mean that they submitted to the Respondent's jurisdiction and that in any event, the present Preliminary Objection is bad in law as it does not meet the threshold to warrant the striking out of the Petition and the discharge of the conservatory orders that were granted.

17. While urging the Court to dismiss the Preliminary Objection, Counsel submitted further that the same does not meet the standards set out in the case of **Mukisa Biscuit Co. *vs.* West End Distributors Ltd, [1969] EA**.

The Respondent's Case

18. Learned Counsel Mbuthia argued on behalf of the Respondent, who supported the Preliminary Objection. Counsel was in agreement with the submissions by the 4th Interested Party. Counsel contended that the Petitioners and the 5th to 9th Interested Parties are trying to re-litigate on the same issues that have already been addressed by Courts of competent jurisdiction and that they are merely raising them in isolation. Counsel highlighted the cases in which similar issues have been raised and concluded that they can raise the present issues in **J.R 582 of 2016** or the Respondent and that there must be an end to litigation.

The 5th – 9th Interested Parties' Cases

19. In response to the Preliminary Objection, Learned Counsel Mr. Njagi appeared on behalf of the 5th to 9th Interested Parties, and argued in opposition.

20. Their case was that the genesis of the present litigation is **ELC Civil Case No. 557 of 2009**, and that the facts of the remedies sought herein are on all fours as the remedies sought before the Respondent in regard to L.R No. 12825. That the Plaintiffs in that suit are now the Petitioners before the Respondent but have now split into amorphous groups who are all acting for a common purpose to wrestle the ownership of the land and that unfortunately, they did not bother to prosecute the case and that as the defendants therein, they filed an application for the dismissal of the suit.

21. It was their contention that during the pendency of the said Application, the 1st to 4th Interested Parties, filed a constitutional Petition, being **Petition No. 462 of 2012**, with an Application for conservatory orders under Certificate of Urgency and they therein centered their claim on ancestral claims to the land registered in their (the 5th to 9th Interested Parties) names and other numerous innocent third Parties who had purchased subdivisions of the land.That the said suit was however struck out by Majanja J.

22. Further, that following the disposal of the said suit, the 1st to 4th Interested Parties registered a new entity known as Kasarini Ancestral Families Self-help Group on 29th September, 2015 and filed a Petition at the Respondent seeking a renewal of titles to the parcels of land known as L.R Nos. 7153/1, 7153/2, 12825 and sub-divisions therein.

23. In their Affidavit, they largely deponed as to the events surrounding the present matter and they stated that the Preliminary Objection herein is argumentative and the facts raised therein are not assumed to be agreed by the Parties herein. As such, it was their contention that the present matter

cannot be finally settled by the same and that there are weighty constitutional issues that need to be canvassed through a full hearing.

24. Learned Counsel Mr. Njagi, on their behalf, highlighted on the various existing suits touching on the suit properties and distinguished them from the present matter. It was his argument that the 5th to 9th Interested Parties are not abusing the Court process and that it is the 1st to 4th Interested Parties who have occasioned the present situation.

25. Counsel reiterated that the Petitioners have never taken part in any of the aforesaid proceedings and that in any event, the present Preliminary Objection is bad in law as it does not meet the threshold set out in the **Mukisa Biscuit Case (supra)**.

The 10th Interested Party's Case

26. Learned Counsel Mr. Otenyo appeared on behalf of the 10th Respondent and reiterated the submissions by the Petitioners and the 5th to 9th Interested Parties. In that regard, Counsel urged the Court to dismiss the Preliminary Objection with costs.

Determination

27. Based on the Parties' respective submissions, the key issue for determination is whether the Preliminary Objection ought to be upheld. The first contention however raised by the Petitioners and the 5th to 9th Interested Parties is that the present Preliminary Objection is bad in law and that it does not meet the threshold set out in the **Mukisa Biscuit Case (supra)**. On that note, it should not be lost to the Parties that a Preliminary Objection must be founded on the law as it was stated in the **Mukisa Case** where Law JA pointed out that:

"So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."

Similarly Sir Charles Newbold in the same case stated thus:

"The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. This improper practice should stop."

28. The Supreme Court has however broadened the grounds upon which a Preliminary Objection may be upheld by acknowledging, in **Lady Justice Kalpana H. Rawaland 2 Others *vs.* Judicial Service Commission and 6 Others [2016]eKLR**, (as per Mutunga CJ.) thus:

"[28] I have already stated that Mr Omtatah's Preliminary Objection is not anchored on jurisdiction although it is labelled as such. Does that disqualify it as a Preliminary Objection" MrPheroze says yes. It is important to note that although Preliminary Objections are, more often

than not, based on lack of jurisdiction, it is not the only ground. It is for that reason that, Law JA in Mukisa BiscuitCo. gave jurisdiction and limitation of time only as examples of the grounds of raising a Preliminary Objection. The list should not therefore be regarded as closed. Depending on the facts and circumstances of a particular case, they may be other grounds for raising a Preliminary Objection. The instant case is a good example.It is a case that has arisen in the post 2010 Constitutional era and the unique and exceptional facts, which all parties have attested to,will require this Court to interpret Mukisa Biscuit Co.,in light of the provisions of the Constitution." (Emphasis added)

29. The Supreme Court thus contemplated the existence of such circumstances that may warrant a Court to examine the circumstances of a case in addressing its mind to a Preliminary Objection raised in a matter before it. It therefore follows, that this Court is under an obligation to examine the present matter in light of the materials placed before the Court, including the pleadings filed by the Parties, in order to satisfy itself on whether the Preliminary Objection ought to be upheld. Rather it is the purpose not nature of the preliminary object that matters.

30. On that note, at the core of the Applicant's case is that the matters raised in the Petition have been duly addressed and or are pending in other suitable forum and hence, the Court ought to strike out the present Petition. It is uncontested that the suit properties herein have been the subject matter of various proceedings including **Misc. J.R. No. 153 of 2016, Misc. J.R. No. 321 of 2016,** and **ELC Misc. No. 582 of 2016.** It is also not in dispute that the Petitioners are not parties to any of the said suits. The question then that begs for answers is whether this is the appropriate forum for addressing the issues raised in the Petition. My answer to that question must be in the negative. I hold so because, as per the materials before this Court, the present claim is limited to a portion of the greater property which is the subject matter in a dispute pending before another Court of competent jurisdiction. As far as the Petitioner's case is concerned, their argument is that the Respondent does not have the mandate and jurisdiction of examining the validity of their title to their property which forms part of the larger parcel of land.

31. I note that in **ELC Civil Case No. 557 of 2009**, the Plaintiffs therein sought certain orders in regard to various parcels of land, namely, L.R Nos. 12825/7, 12825/26, 12825/11, 12825/6, 12825/23, 12825/23, 12825/22, 12825/24, 128/25/15, 12825/18, 12825/2, 12825/5 and 12825/8.Nyamweya J. on 5th March, 2015 granted orders of stay, maintaining the status quo of the said properties pending the hearing and determination of the Notice of Motion Applications dated 9th July, 2012, and 20th February, 2015, that had been filed before the Court.

32. In **Misc. J.R. Application No. 582 of 2016**, the Plaintiffs therein were granted leave by Gacheru J. on 13th June, 2016, to apply for orders of prohibition against the Respondent prohibiting it from hearing, either by itself or a committee of itself, a petition, complaint or dispute referred by Kasarini Farmers Co-operative Limited or its officials in ELC Civil Case No. 557 of 2009 and/or reviewing or in any way encumbering, interfering with or revoking or recommending for revocation to the Registrar the titles to Land Reference Nos. 12825/10, 12825/14, 12825/9, 12825/17, 12825/19, 12825/16, 12825/7, 12825/26, 12825/11, 12825/6, 12825/23, 12825/22, 12825/24, 12825/15, 12825/18, 12825/25, 12825/21, 12825/5, 12825/8, 12825/20, and 12825/16.

33. In **Petition No. 462 of 2013**, the Petitioners therein had sought for declarations to the effect that their right to property under **Article 40** of the **Constitution** had been violated in regard to the property known as L.R No. 7153/R, which was acquired by the Respondents therein, upon the de-registration of the Kasarini Farmers Co-operative Society Limited. The said suit land subsequently became to be known as L.R No. 12815.

34. The foregoing cases highlight on the unfortunate scenario underlying the issue surrounding the suit property, namely L.R No. 12825, which has been sub-divided into various portions.

35. At the heart of the aforementioned disputes is however, the question in regard to the jurisdiction of the National Land Commission in regard to investigating the titles to the suit properties. In the circumstances, it would not be in order for this Court to address itself on the issues raised in the Petition as the best forum for doing so would be in **ELC Civil Case No. 557 of 2009**. The ELC is well seized with the matter, and being a Court of competent jurisdiction, it retains the jurisdiction to determine the questions raised in the Petition, including whether there has been any violation of the Petitioners' constitutional rights.

36. It will further be absurd for this Court to give conflicting orders pertaining to the suit properties in light of the decision that shall be reached in **ELC Civil Case No. 557 of 2009**, which is properly seized of the matter pertaining to the larger parcel of the suit property. In the circumstances, it would not be in order for this Court to address its mind to a smaller portion, the Petitioners' parcel, of the larger parcel. In any event, the order in regard to the mandate and jurisdiction of the Respondent in investigating title to the suit properties is also sought in the said suit and hence, it would not be in the interest of justice for this Court to sit and address the same issue which is well before another court of even and competent jurisdiction.

37. Additionally, it is clear that what is at stake in this suit as well as ELC Civil Case No. 557 of 2009 ultimately revolve around the remedies sought before the Respondent which touch on and concern Land Reference No 12825 (No.IR 35930)- original No 7153/R and 7153/1.The parties are not the same but the subject matter and the substratum of the suits, including the instant Petition, is substantially the same.

38. The above findings notwithstanding, Learned Counsel Ms. W. G Wambugu, appearing on behalf of the Petitioners, failed to inform the Court of the existence of the other suits touching on the mandate of the Respondent in regard to the same suit property, and as this Court is now well appraised of the material facts of this case, it is therefore necessary that the interim orders issued on 7th September, 2016 be vacated. It is not that counsel was not aware of the existence of the suits. She was. The 4th Interested Party's counsel demonstrated that the contest has been raised before the Respondent where all the parties before me are already embroiled. It would be inappropriate to allow the orders to subsist.

39. As I conclude, I must reiterate the holding by Aburili J. in **Samuel Githegi Mbugua and Others *vs.* the National Land Commission and Others, Misc. J.R App. No. 321 of 2016**, where the Learned Judge while addressing her mind to the issues surrounding the suit properties herein pointed out thus:

"I also note that in ELC JR No. 582 of 2016, the pleadings did not specifically name the officials of Kasarini Ancestral Family Self-help Group, which officials are named herein. Nonetheless, this Court finds that the option available to the applicants herein was to revert back to ELC 557/2009 or ELC JR 582/2016 to obtain a specific order for stay proceedings pending before the National Land Commission between the same parties hereto and not file a separate Judicial Review matter in the High Court seeking for stay. To duplicate proceedings in my humble view, is to seek to confuse the cause of justice and to conflict the Court which are likely to issue contradictory orders and in the end, this could embarrass the Judicial Officer making such orders. The application for stay is therefore found to be wanting in merit and I decline to grant stay orders as prayed. The prayer therefore is dismissed."(Emphasis added)

40. It is therefore in the interest and course of justice that the present matters raised in the Petition be canvassed in one forum where the whole suit property is the subject of adjudication.

41. I would however not strike out the Petition as I had been urged by Mr. Gatitu. Instead, I would let the Petitioners advance their case before the same court already adjudicating over the same parcel(s) of land and that is the Environment and Land Court at Nairobi. That will avoid a situation where two courts of equal status end up with asymmetrical determinations.

Disposition

42. For the above reasons, I order that :

(1)The present matter, being Petition No. 373 of 2016, be transferred to the Environment and Land Court at Nairobi and be placed before the presiding judge , with a view to further directions on the hearing thereof, if possible, alongside ELC Civil Case No. 557 of 2009.

(2)The interim orders granted on 7th September, 2016 are hereby discharged and vacated.

(3)I make no order as to costs on the preliminary objection.

Dated signed and delivered at Nairobi this 31st day of October 2016

J.L. ONGUTO

JUDGE

creative commons While the design, structure and metadata of the Case Search database are licensed by Kenya Law under a Creative Commons Attribution-ShareAlike 4.0 International, the texts of the judicial opinions contained in it are in the public domain and are free from any copyright restrictions. Read our Privacy Policy | Disclaimer

Mr.Warui Karoki for Njeri Munyao

Mr.Muli Masika for Wambui Njau

Miss Kioi for Maria Karoki

Mr.Makori and Mr.Omindo for Wambui Kambia

Mr.Senda for part 1st Claimants

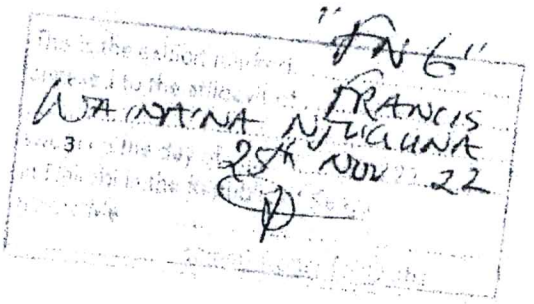
Mr.Otenyo for Kencom Sacco

Mr.Mambiri for Njeri Mbindyo

Mr. McCourt for Samuel Mbugua Githegi

Background and the Claimants' Case

1. The National Land Commission received a complaint from M/S Mbogo Wainaina and Kariuki Gichinga for Mbari ya Mbogo ancestral land families and Kasarini Co-operative Society Ltd (also known as workers of Kasarini Estate Ltd) invoking our powers under Section 14 of the National Land Commission Act 2012 requesting review of the following titles; **L.R. NO. 7153/1, 7153/2, 12825 and I.R NO. 35930.**
2. Consequently, a number of interested Parties were invited to appear for a review of Grants and Disposition hearing initially slated for **17th June, 2016**, and were requested to submit their presentations attaching all relevant documents of acquisitions.



3. Some of the Interested Parties i.e **Samuel Githegi Mbugua, Grace Muthoni Githegi,Margaret Nyokabi Mbugua,Christine Mithiri Mbugua,Ruth Wanjiku, Esther Njeri & Paul Ndungu,**(as executors of the estate of **Mary Wairii Gakunju**) immediately filed a **Miscellaneous Civil Application [JR] No. 582 of 2016** to prohibit the said hearing.The Commission attended Court and managed to convince the Court not to stop the hearing and the Court agreed that the hearings proceed on the said day.

4. The same parties being dissatisfied moved to another Court and filed another case being ***Miscellaneous Civil Application [JR] 153 of 2016*** seeking the same orders to stop the intended hearings. No orders were granted and they withdrew the second case and filed another case being High ***Court at Nairobi Miscellaneous Civil Application [JR] 321 of 2016*** seeking the same orders.The Commission attended court and argued this was an abuse of the court process and the court dismissed the application and no orders of stay were granted.

5. A group styling itself as **Assumption Sisters of Nairobi Registered** and **Ndunde Investment Limited** moved to the Constitutional Division of the High Court and filed a petition seeking to stop the said reviews. The Gakunju group was enjoined as interested Parties. The Commission again attended court and argued that the matter was *res judicata* (already decided by court).The court through a ruling read on 31st October 2016 agreed and directed the matter be transferred back to the Environment and

civil suit No.557 of 2009 which was still pending. The interim orders that had been granted temporarily stopping the review were lifted.

6. The upshot of the foregoing is that the court allowed the Commission to conduct reviews over the Kasarini Land but the mandate of the Commission lapsed before the Commission could conduct the said review. Parties were last in Court on **25th September 2017** and we were hard pressed to explain why the Commission had not conducted any reviews over the suit property. The Commission pleaded for more time to allow it get directions on whether the mandate to review will be extended and also explore ways of resolving the dispute.

The claims

7. Kasarini Farmers Co-op Society Ltd (1964) filed a complaint as a historical land injustice claim on 25/04/17 with the commission. They claimed that they were members of a co-operative society known as **Kasarini Framers Co-operative Society Ltd** registered on **20/07/64.**

8. They note that most founder members of the society are over 80 years and the rest are deceased. The society was registered to help members acquire land and benefit from them economically. Prior to the registration of the society the members of the society had been in occupation of land in

Kiambu County which was their ancestral home. The land that they also considered communal land was unsurveyed.

9. After staying in the land for a while and growing coffee on it the community with the help of the government registered themselves as a cooperative society called **Kasarini Farmers Co-op Society Ltd** with certificate of Registration Number **CS1167/1964** in 1964.In the meantime part of the communal land belonging to the complainants and their ancestors was given registration number **LR No.7153/R** and reserved for the community.

10. However, in the 80s the complainants claim that hired goons and shadowy individuals kicked them out of the land leaving their members destitute and landless. They claim that unknown to them their society was deregistered and liquidated in 1974 but a new society with similar names was registered barely four months after. The new society had new members who are not known to them. They claim the new members registered are: **Samuel Mbugua Kisathi (deceased) and his wife Margaret Nyakabi Mbugua, Samuel Githegi Mbugua and his wife Grace Muthoni Githegi,Moses Mbugua Mwangi (deceased) and his wife Christine Mithiri Mbugua, Zachariah Kimemia Gakunju (deceased) and his wife Mary Warurii Gakunju and Kabogo Kangethe and his wife Ruth Njeri Kabogo (both deceased).**

unlawful and illegal as it was not sanctioned by members in any meeting.

12. A second historical injustice claim over the parcels dated 15/11/2017 has been filed by the family of **Mbari ya Mbogo Wainaina and Kariuki Gichinga** who number 16 families. They also claim to be members of **Kasarini Farmers Co-op Society Ltd** with the same certificate of Registration Number **CS1167/1964** registered in 1964.They state that the settlers organized the ancestral families into the Kasarini Farmers Cooperative Society.

13. They claim ownership over land parcels number **LR Nos.7153/1,7153/2 and 12825 and LR 35930.**They state that they purchased the land in 1930 from the Dorobo community who occupied the land before and exchanged it with them through barter trade (goats and sheep for land).The land measured approx.911 acres or 399.2 ha.They further state that the land is located along Kiambu-Nairobi Road.

14. There are more claimants making claim to the parcels as is evident from the multiplicity of suits. Most of them apart from the two above have not formally lodged their claims with the commission.

The Response

15. The Commission received various responses from the Respondents. First, through Advocate Paul Ndungu who filed two affidavits dated 29/01/18 and 04/04/18 on behalf of Samuel Kibathi, Margaret Mbugua, Samuel Mbugua, Grace Githegi, Ruth Kabogo, Moses Mwangi, Christine Mbugua, Zachariah Gakunju and Mary Gakunju.

16. Kencom Sacco Society Limited an interested party also filed their response dated 31/01/18.

17. Margaret Nyokabi Mbugua a Respondent, also raised oral and written objections to the Commission's jurisdiction on the various dates when the matter came up for hearing. She filed a notice of preliminary objection dated 19.04.18.

18. Mr. Paul Ndungu on behalf of the respondents stated that the claimants claims cannot be sustained as quite a number of the persons named as Respondents are deceased and hence non-suited.

19. Mr. Ndungu noted that the affidavits by Peter Chege Mbogo, Nganga wa Kimani, Elizabeth Wanjiku,Machetha Kariuki and Mathagi Mbogo Wainaina all contain general statements that are not supported by any evidence or documents. That Kasarini Farmers Co-operative Society Limited registered on 10/07/1974 under number C/52240 acquired LR No.7153/2 from Kasarini Estates Limited pursuant to a conveyance dated 30/12/1974 registered in the Government Lands Registry at Nairobi in Volume N44 Folio 164/4 File 13705.

20. That by a conveyance dated 11/06/1976 Barbara Mary MCcaldin sold and transferred LR No.7153/1 to Zacharia Kimemia Gakunju, Samuel Githegi, Mbugua Mwangi, Mbugua

the Commissioner of lands for consolidation and subdivision of LR No.7153/1 and 7153/2.

21. That on 09/11/1979 the Commissioner of Lands wrote to the Society advising that for the consolidating and subdivision of LR No.7153/1 and 7153/2 to be approved, the registered owners of LR Nos 7153/1 should transfer the land to the Society which the Society did and the two properties were issued with LR No.12825 being Grant number I.R 35930.

22. The Society then proceeded to get LR No.12825 subdivided into subdivision numbers 12825/1-12825/26 and surrendered public utility plots to the government. The rest of the plots were shared among the members of the society and transferred to the members and each member was issued with his or her title deed.

23. They proceeded to state that they are protected under Articles 40 and 47 of the Constitution of Kenya and Section 23 (1) of the repealed Registration of Titles Act (Cap 281).

24. They also claimed that the matter is *sub judice* because of **Nairobi ELC No.557 of 2009** that is currently before court.

25. They further noted that the claimants herein claim to be members of Kasarini Farmers Cooperative Society yet the Society had been deregistered 35 years earlier in February 1974 and liquidated.

26. The Respondents claimed that the claim by Mbari ya Mbogo clan based purchase of the subject land from the Dorobo remains unsubstantiated. They noted that a similar claim having been presented and adjudicated to finality before the 1932

Kenya Land Commission (Carter Commission), the same cannot be re-adjudicated by another commission and therefore is *res judicata*.

27. The Respondents prayed that the Commission should reject and dismiss this claim based on the reasons aforementioned.

28. The firm of Kairu & McCourt Advocates representing various respondents filed their responses dated 04/04/18.They associated themselves fully with the sentiments of Advocate Paul Ndungu though they added that the claimants have failed to meet the threshold set out by the very law they have set out to rely on being Section 15 of the National Land Commission Act.

29. Kencom Sacco Society Limited who are interested parties in this matter filed an affidavit through their General Secretary one, Josephat Mutuku dated 31/01/18.Mr.Mutuku associated himself with the submissions of the Respondents but added that they bought 20 acres of land on 01/03/12 innocently without notice of any kind that the land in question was private land. He stated that they proceeded to take a loan and constructed two hundred maisonettes that have since been sold off to third parties.

30. The rest of the Respondents did not file any documents with us.

Response from Commissioner for Co-operative Development

31. The Commission wrote to the Commissioner for Co-operative Development on 16/02/18 who in turn responded on 05/04/18.The Commissioner For Co-operative Development stated that:

60

under CS 1167 is Kasarani Farmers Co-operative Ltd and not Kasarini Co-operative Society Limited as pointed out in your letter. As per our records this society was registered in 1964.We do not have any knowledge of the society winding up or having subsequent fresh registration. On the matter pertaining to the current status of the society, we would kindly direct you to the office of the Director for Co-operatives, Nairobi County. On the CS 1964 the society registered is Njoki Kulima Co-operative Society Ltd and not Kasarini Farmers Co-operative Society Ltd. In case of further clarification, do not hesitate to contact us."

Investigative Hearing

32. When the matter came up for hearing on 04/12/2017 the Respondents objected to the hearing proceeding on two grounds. Firstly, the matter was before court on account of **Nairobi ELC No.1358 of 2016** and **Nairobi High Court Judicial Review No.582 of 2016** hence *sub judice* and secondly they had just been served with the claims and they needed time to adequately prepare.

33. The matter also proceeded on 11/01/18 where despite protestations from the Respondents not to hear the matter the Commission indicated that since the court did not stop the Commission from hearing it would proceed to hear the matter. The matter was fixed for mention on 01/02/18.

34. On 01/02/18 the matter was adjourned to 26/03/18 but was then rescheduled for 06/04/18.It was again adjourned to 20/04/18 for hearing.

35. On 20/04/2014 the claimants proceeded with their case despite the respondents objecting and more specifically Mr.Kahari raising a preliminary objection on jurisdiction that was overruled by the Commission.

36. Mr.Wanjohi Kimani spoke on behalf of Kasarini Ancestral Families, Mbari ya Mbogo and Mbari ya Gichinga.Mary Njuguna,Kariuki Gichinga,Mathenge Mbogo Wainaina, Peter Chege Mbogo,Nganga Kimani wa Kariuki, Alice Wangare,Mbugua Kivathi,Mbugua Mwangi,Wangui Joseph, Gladwell Njeri,Jacinta Wangui and PMG Kamau.

37. At this point the Commission closed the proceedings without the respondents oral input and proceeded to close the case.

Discussion

38. We have examined all the documents before us and entertained oral submissions by the parties. We opine as follows.

39. Justice Okong'o proceeded to issue his judgement on 16/05/18 in the case where the Commission was sued as the respondent to wit **Nairobi ELC Judicial Review No.582** where the judge stated:

> **"As to whether the respondent could proceed with the review of the said grants and dispositions in respect of the suit properties at the instance of the 1st interested party while there were pending proceedings that had been instituted by the 1st interested party before this court touching on the same subject matter, I am in agreement with the ex parte applicants that it would amount to an abuse of judicial process for the respondent to engage in such exercise. I am of the**

seized of a matter, the court must be given an opportunity to pronounce itself on such matter before any other or further proceedings relating to the same matter are considered.

I am in agreement with the decision of W. Korir J. in the case of Republic vs. National Land Commission & Another Exparte Muktar Saman Olow (2015) eKLR where he was faced with a situation similar to the one before me. The judge stated as follows:

> *"The attempt by the Respondent to review the grant in question while there are court cases geared towards addressing that issue is clearly an abuse of power bordering on contempt of court."*

Mumbi J. also dealt with a similar situation in the case of Josephine Akoth Onyango vs. National Land Commission & 3 Others (2015) eKLR in which the respondent had also purported to initiate investigations in respect of a property that was the subject of an ongoing court case in the High Court. The Judge agreed with the decision of W. Korir J. that I have referred to above and stated that:

> *"I am satisfied that the orders sought by the petitioner on this matter are merited on the face of it, the respondent is overreaching on entering into a matter that is already before the court which has jurisdiction to deal with it."*

The respondent and the 1st and 2ndinterested parties had also argued that apart from the power that was conferred upon the respondent under section 14 of the Act, the respondent also has power under section 15 of Act to investigate and adjudicate on historical land injustices."

40. On the present proceedings before the Historical Land Injustice Committee, the Judge had this to say:

> "Section 15(3) of the Act, provides as follows:
>
> *"A historical land claim may only be admitted, registered and processed by the commission if it meets the following criteria-*
>
> *(a) .....*
>
> *(b) The claim has not or is not capable of being addressed through the ordinary court system on the basis that-*
>
> *(i) The claim contradicts a law that was in force at the time when the injustice began; or*
>
> *(ii) The claim is debarred under Section 7 of the Limitation of Actions Act or any other law;"*
>
> It is clear from the foregoing that it was not the intention of the legislature that the respondent becomes a substitute for the court in the adjudication of historical land injustices. The role of the respondent is supposed to be complementary. The respondent does not have exclusive power to adjudicate on historical land injustices. It is the 1st interested party who filed a suit in court (ELC No. 557 of 2009) challenging the ex parte applicants' titles over the suit properties. What this means is that the 1st interested party's claim over the suit properties is capable of being addressed through the court system and as such the claim cannot be entertained by the respondent under section 15 of the Act as it does not meet the criteria set out above.
>
> I am of the view that it is not open to the 1st interested party to move both the court and the respondent to adjudicate on the same subject matter. I am not persuaded by the respondent and the interested

64

complaints before the respondent and before this court are different. I am of the view that the 1st interested party has to make an election. If it wishes to pursue its claim before the respondent, it should withdraw its suit which is pending before this court.

The upshot of the foregoing is that I find merit in the ex parte applicants' Notice of Motion dated 14th June, 2016. The application is allowed in terms of prayer 1 thereof. Each party shall bear its costs of the application."

41. It is clear from the court's decision that the Commission cannot exercise concurrent jurisdiction with the court as the matter is ***sub judice*** by dint of the two cases that are now alive in court namely **Nairobi ELC NO.557 of 2009 and Nairobi High Court Petition No.373 of 2016(now Nairobi ELC Petition No.1358 of 2016).**

42. Secondly, as the Judge observed the claim does not meet the criteria of Section 15(3) as the claim is capable of being addressed through the court system.

43. Lastly, the judge advises the claimants herein that if they wish to proceed before the Historical Land Injustice Committee then they ought to withdraw the suit or suits pending before the courts.

44. For this reasons and in light of the court's judgment the claimants' claim therefore fails.

Recommendation

45. We therefore are of the considered view that the claimants ought to proceed with the suits they have filed in court or withdraw the suits if they elect to come before us for redress.

46. Each party shall bear its own costs.

47. The Commission wishes to thank all parties for their able presentations and the cordial manner in which they conducted themselves.

Dated and delivered at Nairobi this 7th **day of** February **, 2019.**

Signed:

Commissioner Dr. Samuel Tororei

Chairman,

Historical Land Injustice Committee, National Land Commission

Signed:

Commissioner Dr. Rose Musyoka

Member,

Historical Land Injustice Committee, National Land Commission

Signed:

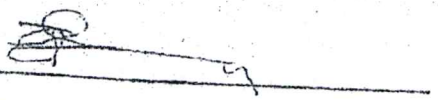
Commissioner Emma Njogu

Member,

Historical Land Injustice Committee, National Land Commission

66

Signed:
Commissioner Dr. Clement Lenachuru



Member
Historical Land Injustice Committee, National Land Commission

EV 2

THE NATIONAL LAND COMMISSION

HISTORICAL LAND INJUSTICE COMMITTEE

In the matter of Article 67 (2) (e) of the Constitution of Kenya

In the matter of Section 15 of National Land Commission Act

In the matter of Historical Land Injustice Referenced No.

NLC/HLI/053/2017

Kasarini Farmers Co-operative Society Ltd.....1st Claimant

Kasarini Ancentral Families Self Help Group

Mbari ya Mbogo Wainaina and Kariuki Gichinga.....2nd Respondent

And

Estate of Samuel Mbugua Kisathi

Margaret Nyakabi Mbugua,

Samuel Githegi Mbugua

Grace Muthoni Githegi,

Estate of Moses Mbugua Mwangi

Christine Mithiri Mbugua,

Estate of Zachariah Kimemia Gakunju

Mary Warurii Gakunju

Estate of Kabogo Kangethe

Estate of Ruth Njeri Kabogo.....All Respondents

And

Assumption Sisters of Nairobi Registered as Ndunde Investment Limited

Kenya Commercial Bank Savings and Credit Society Limited....All interested parties

DETERMINATION

Hearing: 04/12/17, 11/01/18, 01/02/18 & 20/04/18

Panel:
Commissioner Dr. Samuel Tororei -Chairman
Commissioner- Emma Njogu- Member
Commissioner Dr. Rose Musyoka- Member
Commissioner Dr. Clement Lenachuru- Member

Appearances:
Mr.Gatitu for the 1st Claimants

Mr.Paul Ndung'u and Miss.Elizabeth Gatugi for Gakunju Family

Mr.Joseph Kahari and Miss Mwachiro for Margaret Nyokabi Mbugua

EV 2

THE NATIONAL LAND COMMISSION

HISTORICAL LAND INJUSTICE COMMITTEE

In the matter of Article 67 (2) (e) of the Constitution of Kenya

In the matter of Section 15 of National Land Commission Act

In the matter of Historical Land Injustice Referenced No.

NLC/HLI/053/2017

Kasarini Farmers Co-operative Society Ltd.....1st Claimant

Kasarini Ancentral Families Self Help Group

Mbari ya Mbogo Wainaina and Kariuki Gichinga.....2nd Respondent

And

Estate of Samuel Mbugua Kisathi

Margaret Nyakabi Mbugua,

Samuel Githegi Mbugua

Grace Muthoni Githegi,

Estate of Moses Mbugua Mwangi

Christine Mithiri Mbugua.

Estate of Zachariah Kimemia Gakunju

Mary Warurii Gakunju

Estate of Kabogo Kangethe

Estate of Ruth Njeri Kabogo.....All Respondents

And

Assumption Sisters of Nairobi Registered as Ndunde Investment Limited

Kenya Commercial Bank Savings and Credit Society Limited....All interested parties

DETERMINATION

Hearing: 04/12/17, 11/01/18, 01/02/18 & 20/04/18

Panel:
Commissioner Dr. Samuel Tororei -Chairman
Commissioner- Emma Njogu- Member
Commissioner Dr. Rose Musyoka- Member
Commissioner Dr. Clement Lenachuru- Member

Appearances:
Mr.Gatitu for the 1st Claimants

Mr.Paul Ndung'u and Miss.Elizabeth Gatugi for Gakunju Family

Mr.Joseph Kahari and Miss Mwachiro for Margaret Nyokabi Mbugua

Mr.Warui Karoki for Njeri Munyao

Mr.Muli Masika for Wambui Njau

Miss Kioi for Maria Karoki

Mr.Makori and Mr.Omindo for Wambui Kambia

Mr.Senda for part 1st Claimants

Mr.Otenyo for Kencom Sacco

Mr.Mambiri for Njeri Mbindyo

Mr. McCourt for Samuel Mbugua Githegi

Background and the Claimants' Case

1. The National Land Commission received a complaint from M/S Mbogo Wainaina and Kariuki Gichinga for Mbari ya Mbogo ancestral land families and Kasarini Co-operative Society Ltd (also known as workers of Kasarini Estate Ltd) invoking our powers under Section 14 of the National Land Commission Act 2012 requesting review of the following titles; **L.R. NO. 7153/1, 7153/2, 12825 and I.R NO. 35930.**
2. Consequently, a number of interested Parties were invited to appear for a review of Grants and Disposition hearing initially slated for **17th June, 2016**, and were requested to submit their presentations attaching all relevant documents of acquisitions.

3. Some of the Interested Parties i.e **Samuel Githegi Mbugua, Grace Muthoni Githegi,Margaret Nyokabi Mbugua,Christine Mithiri Mbugua,Ruth Wanjiku, Esther Njeri & Paul Ndungu,**(as executors of the estate of **Mary Wairii Gakunju**) immediately filed a **Miscellaneous Civil Application [JR] No. 582 of 2016** to prohibit the said hearing.The Commission attended Court and managed to convince the Court not to stop the hearing and the Court agreed that the hearings proceed on the said day.

4. The same parties being dissatisfied moved to another Court and filed another case being ***Miscellaneous Civil Application [JR] 153 of 2016*** seeking the same orders to stop the intended hearings. No orders were granted and they withdrew the second case and filed another case being High ***Court at Nairobi Miscellaneous Civil Application [JR] 321 of 2016*** seeking the same orders.The Commission attended court and argued this was an abuse of the court process and the court dismissed the application and no orders of stay were granted.

5. A group styling itself as **Assumption Sisters of Nairobi Registered** and **Ndunde Investment Limited** moved to the Constitutional Division of the High Court and filed a petition seeking to stop the said reviews. The Gakunju group was enjoined as interested Parties. The Commission again attended court and argued that the matter was *res judicata* (already decided by court).The court through a ruling read on 31st October 2016 agreed and directed the matter be transferred back to the Environment and

orders that had been granted temporarily stopping the review were lifted.

6. The upshot of the foregoing is that the court allowed the Commission to conduct reviews over the Kasarini Land but the mandate of the Commission lapsed before the Commission could conduct the said review. Parties were last in Court on **25th September 2017** and we were hard pressed to explain why the Commission had not conducted any reviews over the suit property. The Commission pleaded for more time to allow it get directions on whether the mandate to review will be extended and also explore ways of resolving the dispute.

The claims

7. Kasarini Farmers Co-op Society Ltd (1964) filed a complaint as a historical land injustice claim on 25/04/17 with the commission. They claimed that they were members of a co-operative society known as **Kasarini Framers Co-operative Society Ltd** registered on **20/07/64.**

8. They note that most founder members of the society are over 80 years and the rest are deceased. The society was registered to help members acquire land and benefit from them economically. Prior to the registration of the society the members of the society had been in occupation of land in

Kiambu County which was their ancestral home. The land that they also considered communal land was unsurveyed.

9. After staying in the land for a while and growing coffee on it the community with the help of the government registered themselves as a cooperative society called **Kasarini Farmers Co-op Society Ltd** with certificate of Registration Number **CS1167/1964** in 1964.In the meantime part of the communal land belonging to the complainants and their ancestors was given registration number **LR No.7153/R** and reserved for the community.

10. However, in the 80s the complainants claim that hired goons and shadowy individuals kicked them out of the land leaving their members destitute and landless. They claim that unknown to them their society was deregistered and liquidated in 1974 but a new society with similar names was registered barely four months after. The new society had new members who are not known to them. They claim the new members registered are: **Samuel Mbugua Kisathi (deceased) and his wife Margaret Nyakabi Mbugua, Samuel Githegi Mbugua and his wife Grace Muthoni Githegi,Moses Mbugua Mwangi (deceased) and his wife Christine Mithiri Mbugua, Zachariah Kimemia Gakunju (deceased) and his wife Mary Warurii Gakunju and Kabogo Kangethe and his wife Ruth Njeri Kabogo (both deceased).**

unlawful and illegal as it was not sanctioned by members in any meeting.

12. A second historical injustice claim over the parcels dated 15/11/2017 has been filed by the family of **Mbari ya Mbogo Wainaina and Kariuki Gichinga** who number 16 families. They also claim to be members of **Kasarini Farmers Co-op Society Ltd** with the same certificate of Registration Number **CS1167/1964** registered in 1964.They state that the settlers organized the ancestral families into the Kasarini Farmers Cooperative Society.

13. They claim ownership over land parcels number **LR Nos.7153/1,7153/2 and 12825 and LR 35930.**They state that they purchased the land in 1930 from the Dorobo community who occupied the land before and exchanged it with them through barter trade (goats and sheep for land).The land measured approx.911 acres or 399.2 ha.They further state that the land is located along Kiambu-Nairobi Road.

14. There are more claimants making claim to the parcels as is evident from the multiplicity of suits. Most of them apart from the two above have not formally lodged their claims with the commission.

The Response

15. The Commission received various responses from the Respondents. First, through Advocate Paul Ndungu who filed two affidavits dated 29/01/18 and 04/04/18 on behalf of Samuel Kibathi, Margaret Mbugua, Samuel Mbugua, Grace Githegi, Ruth Kabogo, Moses Mwangi, Christine Mbugua, Zachariah Gakunju and Mary Gakunju.

16. Kencom Sacco Society Limited an interested party also filed their response dated 31/01/18.

17. Margaret Nyokabi Mbugua a Respondent, also raised oral and written objections to the Commission's jurisdiction on the various dates when the matter came up for hearing. She filed a notice of preliminary objection dated 19.04.18.

18. Mr. Paul Ndungu on behalf of the respondents stated that the claimants claims cannot be sustained as quite a number of the persons named as Respondents are deceased and hence non-suited.

19. Mr. Ndungu noted that the affidavits by Peter Chege Mbogo, Nganga wa Kimani, Elizabeth Wanjiku,Machetha Kariuki and Mathagi Mbogo Wainaina all contain general statements that are not supported by any evidence or documents. That Kasarini Farmers Co-operative Society Limited registered on 10/07/1974 under number C/52240 acquired LR No.7153/2 from Kasarini Estates Limited pursuant to a conveyance dated 30/12/1974 registered in the Government Lands Registry at Nairobi in Volume N44 Folio 164/4 File 13705.

20. That by a conveyance dated 11/06/1976 Barbara Mary MCcaldin sold and transferred LR No.7153/1 to Zacharia Kimemia Gakunju, Samuel Githegi, Mbugua Mwangi, Mbugua

77

Commissioner of Lands for consolidation and subdivision of LR No.7153/1 and 7153/2.

21. That on 09/11/1979 the Commissioner of Lands wrote to the Society advising that for the consolidating and subdivision of LR No.7153/1 and 7153/2 to be approved, the registered owners of LR Nos 7153/1 should transfer the land to the Society which the Society did and the two properties were issued with LR No.12825 being Grant number I.R 35930.

22. The Society then proceeded to get LR No.12825 subdivided into subdivision numbers 12825/1-12825/26 and surrendered public utility plots to the government. The rest of the plots were shared among the members of the society and transferred to the members and each member was issued with his or her title deed.

23. They proceeded to state that they are protected under Articles 40 and 47 of the Constitution of Kenya and Section 23 (1) of the repealed Registration of Titles Act (Cap 281).

24. They also claimed that the matter is *sub judice* because of **Nairobi ELC No.557 of 2009** that is currently before court.

25. They further noted that the claimants herein claim to be members of Kasarini Farmers Cooperative Society yet the Society had been deregistered 35 years earlier in February 1974 and liquidated.

26. The Respondents claimed that the claim by Mbari ya Mbogo clan based purchase of the subject land from the Dorobo remains unsubstantiated. They noted that a similar claim having been presented and adjudicated to finality before the 1932

under CS 1167 is Kasarani Farmers Co-operative Ltd and not Kasarini Co-operative Society Limited as pointed out in your letter. As per our records this society was registered in 1964.We do not have any knowledge of the society winding up or having subsequent fresh registration. On the matter pertaining to the current status of the society, we would kindly direct you to the office of the Director for Co-operatives, Nairobi County. On the CS 1964 the society registered is Njoki Kulima Co-operative Society Ltd and not Kasarini Farmers Co-operative Society Ltd. In case of further clarification, do not hesitate to contact us."

Investigative Hearing

32. When the matter came up for hearing on 04/12/2017 the Respondents objected to the hearing proceeding on two grounds. Firstly, the matter was before court on account of **Nairobi ELC No.1358 of 2016** and **Nairobi High Court Judicial Review No.582 of 2016** hence *sub judice* and secondly they had just been served with the claims and they needed time to adequately prepare.

33. The matter also proceeded on 11/01/18 where despite protestations from the Respondents not to hear the matter the Commission indicated that since the court did not stop the Commission from hearing it would proceed to hear the matter. The matter was fixed for mention on 01/02/18.

34. On 01/02/18 the matter was adjourned to 26/03/18 but was then rescheduled for 06/04/18.It was again adjourned to 20/04/18 for hearing.

35. On 20/04/2014 the claimants proceeded with their case despite the respondents objecting and more specifically Mr.Kahari raising a preliminary objection on jurisdiction that was overruled by the Commission.

36. Mr.Wanjohi Kimani spoke on behalf of Kasarini Ancestral Families, Mbari ya Mbogo and Mbari ya Gichinga.Mary Njuguna,Kariuki Gichinga,Mathenge Mbogo Wainaina, Peter Chege Mbogo,Nganga Kimani wa Kariuki, Alice Wangare,Mbugua Kivathi,Mbugua Mwangi,Wangui Joseph, Gladwell Njeri,Jacinta Wangui and PMG Kamau.

37. At this point the Commission closed the proceedings without the respondents oral input and proceeded to close the case.

Discussion

38. We have examined all the documents before us and entertained oral submissions by the parties. We opine as follows.

39. Justice Okong'o proceeded to issue his judgement on 16/05/18 in the case where the Commission was sued as the respondent to wit **Nairobi ELC Judicial Review No.582** where the judge stated:

> **"As to whether the respondent could proceed with the review of the said grants and dispositions in respect of the suit properties at the instance of the 1st interested party while there were pending proceedings that had been instituted by the 1st interested party before this court touching on the same subject matter, I am in agreement with the ex parte applicants that it would amount to an abuse of judicial process for the respondent to engage in such exercise. I am of the**

seized of a matter, the court must be given an opportunity to pronounce itself on such matter before any other or further proceedings relating to the same matter are considered.

I am in agreement with the decision of W. Korir J. in the case of Republic vs. National Land Commission & Another Exparte Muktar Saman Olow (2015) eKLR where he was faced with a situation similar to the one before me. The judge stated as follows:

> *"The attempt by the Respondent to review the grant in question while there are court cases geared towards addressing that issue is clearly an abuse of power bordering on contempt of court."*

Mumbi J. also dealt with a similar situation in the case of Josephine Akoth Onyango vs. National Land Commission & 3 Others (2015) eKLR in which the respondent had also purported to initiate investigations in respect of a property that was the subject of an ongoing court case in the High Court. The Judge agreed with the decision of W. Korir J. that I have referred to above and stated that:

> *"I am satisfied that the orders sought by the petitioner on this matter are merited on the face of it, the respondent is overreaching on entering into a matter that is already before the court which has jurisdiction to deal with it."*

The respondent and the 1st and 2ndinterested parties had also argued that apart from the power that was conferred upon the respondent under section 14 of the Act, the respondent also has power under section 15 of Act to investigate and adjudicate on historical land injustices."

40. On the present proceedings before the Historical Land Injustice Committee, the Judge had this to say:

"Section 15(3) of the Act, provides as follows:

"A historical land claim may only be admitted, registered and processed by the commission if it meets the following criteria-

(a) .....

(b) The claim has not or is not capable of being addressed through the ordinary court system on the basis that-

(i) The claim contradicts a law that was in force at the time when the injustice began; or

(ii) The claim is debarred under Section 7 of the Limitation of Actions Act or any other law;"

It is clear from the foregoing that it was not the intention of the legislature that the respondent becomes a substitute for the court in the adjudication of historical land injustices. The role of the respondent is supposed to be complementary. The respondent does not have exclusive power to adjudicate on historical land injustices. It is the 1st interested party who filed a suit in court (ELC No. 557 of 2009) challenging the ex parte applicants' titles over the suit properties. What this means is that the 1st interested party's claim over the suit properties is capable of being addressed through the court system and as such the claim cannot be entertained by the respondent under section 15 of the Act as it does not meet the criteria set out above.

I am of the view that it is not open to the 1st interested party to move both the court and the respondent to adjudicate on the same subject matter. I am not persuaded by the respondent and the interested

82

complaints before the respondent and before this court are different. I am of the view that the 1st interested party has to make an election. If it wishes to pursue its claim before the respondent, it should withdraw its suit which is pending before this court.

The upshot of the foregoing is that I find merit in the ex parte applicants' Notice of Motion dated 14th June, 2016. The application is allowed in terms of prayer 1 thereof. Each party shall bear its costs of the application."

41. It is clear from the court's decision that the Commission cannot exercise concurrent jurisdiction with the court as the matter is ***sub judice*** by dint of the two cases that are now alive in court namely **Nairobi ELC NO.557 of 2009 and Nairobi High Court Petition No.373 of 2016(now Nairobi ELC Petition No.1358 of 2016).**

42. Secondly, as the Judge observed the claim does not meet the criteria of Section 15(3) as the claim is capable of being addressed through the court system.

43. Lastly, the judge advises the claimants herein that if they wish to proceed before the Historical Land Injustice Committee then they ought to withdraw the suit or suits pending before the courts.

44. For this reasons and in light of the court's judgment the claimants' claim therefore fails.

Recommendation

45. We therefore are of the considered view that the claimants ought to proceed with the suits they have filed in court or withdraw the suits if they elect to come before us for redress.

46. Each party shall bear its own costs.

47. The Commission wishes to thank all parties for their able presentations and the cordial manner in which they conducted themselves.

Dated and delivered at **Nairobi** this 7th day of February, **2019.**

Signed:

Commissioner Dr. Samuel Tororei

Chairman,

Historical Land Injustice Committee, National Land Commission

Signed:

Commissioner Dr. Rose Musyoka

Member,

Historical Land Injustice Committee, National Land Commission

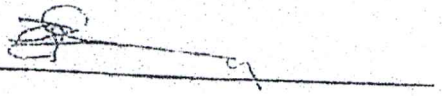
Signed:

Commissioner Emma Njogu

Member,

Historical Land Injustice Committee, National Land Commission

Signed:
Commissioner Dr. Clement Lenachuru



Member
Historical Land Injustice Committee, National Land Commission

1. **THAT** I Francis Wainaina Njuguna of ID No. 13841359 , Secretary Mbari ya Mbogo's Family Self-Help Group P.O Box 745-00232 Ruiru, Kiambu seek to have the registration of LR no 12825 be cancelled as a matter of urgency
2. **THAT** the petition is based on violation of the Survey Act, the Land Administration Act and the Land Registration Act.
3. **THAT** the foundation of LR 12825 is based on illegalities and irregularities.
4. **THAT** the following parties
   a) Samuel Mbugua Kibathi
   b) Margaret Nyokabi Mbugua
   c) Samuel Githegi Mbugua
   d) Grace Muthoni Githegi
   e) Moses Mbugua Mwangi
   f) Christine Mithiri Mwangi
   g) Kabogo Kangethe
   h) Mary Waruri
   i) Ruth Njeri Gakunju
   j) Kimemia Gakunju

Who fraudulently formed Kasarini Farmers 'Cooperative Society limited certificate number 2240 registration date 10th July 1974.

5. **THAT** the certificate has since then been disowned by the Commissioner of CooperativeDevelopment in his response to enquiry by the National Land Commission disowning the society where the commissioner wrote ''according to our record, the society registered under CS 1167 is Kasarini Farmer's Cooperative Limited and not Kasarini Cooperative Society Limited as pointed out in your letter.as our record this society was registered in 1964.we do not have any knowledge of the society winding up or having sub a sequent fresh registration. On the matter pertaining to the current status of the society we would kindly direct you to the office of the director for cooperatives, Nairobi county on the CS 1964 the society registered is NJOKI KURIMA cooperative society limited and not Kasarini Farmers Cooperative Society Limited. in case of further clarification do not hesitate to contact us''
6. **THAT**In a tittle issued on 18th December 1981 the tittle was issued to the fake company disowned by the cooperative. The tittle reads ''the president of Kenya on behalf of the government of Kenya hereby GRANTS unto Kasarini Farmers'

Cooperative Limited, a limited liability company incorporated in the republic of Kenya registered office in Nairobi (Post office Box 75155.)

7. **THAT** It is clear the owner of the society is Mbogo Wainaina.
8. **THAT** It is clear the Kasarini Farmers' Cooperative Society Limited of 1974 was forged to be used to illegal acquire the Kasarini Estate limited land measuring 933.9 acres.
9. **THAT** The Kasarini Estate Limited owned this land as a demonstration farm from 1932 co existing with original owner Mbogo ancestral family
10. **THAT** It appears the Kasarini Estate Limited was never issued with a tittle or lease hold.
11. **THAT** Kasarini Estate Company ltd was formed in Britain showing its liquidation process started on 9th February 1961 under gazette notice dated 19th march 1961 and gazette notice 17th august 1975 effectively Kasarini Estate was dead by 1965.even with this knowledge the Kasarini Farmers' Cooperative Society of 1974 with their fake forged certificate applied to the land control board application number 5743 purporting to buy from Kasarini Estate Limited 911 acres LR 7153/2 (12825) seeking transfer of LR no 7153/2, (12825) for 911 acres for ksh 4,050,000/=
12. **THAT** Kasarini Farmers' Cooperative Society Limited of 1974 is purporting to buy land from Kasarini Estate Limited which was under liquidation 14 years before
13. **THAT** by a letter dated 10th September 1974 the commissioner of land was dragged in and asked to enter into these illegalities apparently this process failed.
14. **THAT** When this process of the land control board failed,Kasarini Estate Limited received a letter on 12thApril 1974 from Njugi and Gichukia advocate. in which P GICHUKIA advocate for Kasarini Farmers Cooperative Society wrote a letter a headed RE: proposed sale of 50,000 shares of sh 20 each held in Kasarini Estate Limited to Kabogo Kangethe and others who were members of the forged Kasarini Farmers' Cooperative Society Limited of 1974.in their second para ''ourclient will purchase the total shareholding at a price of Kenya shillings 300,000. The total purchase price shall be paid in full in Swaziland subject however to the central bank Kenya granting the necessary consent' 'this letter is dated 12th April 1974 and without anyone to sell the company so they tried through land control board manoeuvre but failed.
15. **THAT** the land control board could not succeed in absence of a tittle, a search certificate and the physical person or a legal person in the name of Kasarini Estate Ltd

MANUPULATION OF SURVEY RECORD

1. **THAT** the original numbers for LR 12825,appear to have been 7153/2 then 7153/1 then 7153/R a process that is technically and professionally not possible for the following fact:-
   a) In a 1914 map the original number was 7153/2 for 933.9 acres while the LR 12825 is 911 acres (what happened to the 20 acres)?
   b) In 1957,the land was sub divided into two one potion 21 acres given the LR no. 7153/1,while the other potion was given LR no.7153/R
   c) A subdivision of a private land then would have given 7153/2/3/4 but it would never go backward. You cannot subdividean LR number ending with 2 to create 1 it can only create 7153/2/1.
   d) This sub division gave rise to a LR no.153/R which is not registrable,(R means remainder only used for government land. Even at this early stage there is admission of government land). Please note there is no authority authorising this 1957 sub division. The most serious offence was creation of 12825 with existence of two maps, at the same time LR 7153/2,was subdivided in 26 potions the same day the plot was consolidated into one (1) potion now given the LR No. 12825 and in November 1981 the president of the republic of Kenya issued tittle number 12825 as a grant to the said individuals, now consolidated in February 1982 then the land was sub divided into 26 parcels namely 12825/1-26.
   e) In representation and affidavit sworn by Margaret Nyokabi a member of Kasarini Cooperative Society shows an agreement dated 30th December 1974,between the dead Kasarini Estate Limited which died in 1961 and Kasarini Farmers Cooperative Society Limited forged in 1974 entered into agreement for purchase of Kasarini Estate Limited transferring Kasarini Estate farm 7153/2, and all properties therein
   f) The agreement was signed by the Gichukia and co advocate on 31st December 1974 whereby the following transaction are heavily questionable

      -Execution of sale agreement on 31st December 1974

      -Execution of the conveyance the day before 30th December 1974

-Execution of mortgage on 31st December 1974 and backdating registration to 13th December 1974

-Delivering conveyance to land office for registration on 31st December 1974

-Processing of land board consent to transfer and charge the land.

-Paying the whole purchase price not withstanding issues of foreign exchange and it was loan from the bank.

g) The lawyer purporting to have execute this document had a fatal accident on 24th December 1974 and he died on 2nd January 1975 only one week after the accident there is no doubt that this process were illegal and irregular

h) The indenture for conveyance was dated 30th December 1974 a day before the agreement (which should come first). How can you have conveyance on 31st December before the agreement? The Land Control Board on10th /9/1974 and the agreement for sale after control board.

i) It is not conceivable that you sign agreement for sale on 31st December 1974,execute a conveyance on 30th December 1974 and attend a land board for consent to transfer so as to register a transfer on 31st December 1974.we also wonder how the elite law firm seem to have been working overtime on new year in 1974 when traditionally most law firms are on charismas vacation. Simply the key documents of the sale of LR 7153/2 areunbelievableforgeries. There is no logic or sense. Forexample, the agreement for sale provides for payment for advocate and yet there is no participation of advocates in execution of the document.no mention of any advocate firm in the agreement and yet elite law firm were involved

j) The searches provided by the Respondents for LR 7153/2 indicate in entry no 5 that a mortgage dated 31/12/1974 was registered about 2 weeks earlier on 13/12/1974.this is ridiculous.

k) The mortgage instrument also seems to have registered on 13/12/1974 before the conveyance to the mortgagor was registered on 31/12/1974. A clear impossibility.

l) It is clear that the transfer and mortgage required consent from land board as the land was agricultural. The transaction could simply not have been carried out between 13th and 31stDecember 1974.

m) We have further found out that the advocate for the purchaser P.GICHUKIA was on fact involved in serious road accident on December 1974 and went into

a coma and died on 2nd January 1975.this is the period of the frenzied transaction, the key advocate for the purchase was hospitalized

n) Critically, the agreement for sale has no acknowledgement of receipt of any money the conveyance signed the day before states the money for sale is already received

o) On a preliminary finding, the recitals in the indenture of conveyances LR 7153/2 do not add up and the documents fundamentally fail to state the advocates who prepared them.

p) The registration of this indenture of conveyance of LR 5153/2 was illegal, corrupt and unlawful.

q) The proprietors of the former Kasarini Farmers' Cooperative Society Limited continued sub dividing the land without the approval of the Local Land Control Board, the County Government Director Planning, but stillselling and developing the land day and night with impunity.

r) Most interesting is that they have sold the land using fake manufactured LR numbers from LR numbers**LR No 35830/14-LR NO.35930/1**,numbers that does not exist at the survey of Kenya,

LAND ADMINISTRATION ACT

i. In our opinion there is a bleach of land administration act 1557 2012.the occupation of the land by members of Kasarini Farmers' Cooperative Society Limited of 1974
ii. There has been total bleach of section 16 to 23 provisions that guide survey.
iii. Valuable consideration which is subject of a riding of interest of others.
iv. There have been a bleach of section 30 to35 which provides section 33 on production of tittles 12825 namely on registration and certificate of tittles,the strong room have no evidence whatsoever of tittle LR no 7153/2 with further entry of subdivision and transfer simplythe land has no entry at all
v. The tittles for Kasarini cannot comply with section 31

vi. The Kasarini Farmers' Cooperative Society Limited have never made an attempt to declare loss of LR 7153 tittle.LR 7153/1 Which combined the parcels.

our attempt to carryout searches under section 34 of land registration act have been fruitless simply because files do not exist. Equally our attempt to get any evidence of any payment from banking hall have been fruitless yet everyday there is sale of land

vii. In our view all members of Kasarini Farmers' Cooperative Society limited of 1974 and their inheritanceand administrators are in bleach of land administration act section 103 and are reliable to criminal proceedings

SURVEY ACT

1. All survey plan and maps have not complied with section 24 of survey plan.
2. At the directorate of survey there is non-compliance with section 30 of the survey plans and record for LR numbers and reference 7153/2,7153/1/,7153/R,12825.withoutthisrecord therefore, there is everyday alteration which are illegal under section 30 sub section 2.
3. Not a single plan under section 32,that have been authenticated by director of survey, for this reasons all subdivisions are illegal under section 32.
4. Not a single plan by Kasarini Farmers' Cooperative Society Limited of 1974 have be executed and signed by the director survey
5. We have not been able to exercise our mandate under section 44 Since not a single plan for Kasarini Famers Cooperative Society Limited of 1974 have been gazetted.
6. In right of illegalities and irregularities we seek from the court
    a) That this matter be heard under certificate pf urgency
    b) That a permanent injunction be accorded to us to stop any development, anyconstruction, any sub division, any sale until this matter is heard and determined.
    c) That the chief land registrar be ordered to take immediate custody of all documents and filed related to LR 7153/R 7153/1 and 12825.
    d) That the director of survey be ordered to submit all survey plan survey scheme and deed plans for LR 7135/R,7153/1,12825.

LIST OF EVIDENCE

1. The Original Certificate approved today by commissioner of cooperative development C/S NO, 1167 dated 20/07/1964
2. National land Commission Determination
3. Search/Kasarini Rejected Certificate
4. Fake Title for 1981
5. Kenya Gazette Notice dated 9/02/1960 and 14/3/1961
6. Kenya Gazette Notice Dated 17/8/1965
7. Land Control Board Application
8. Commissioner of land letter dated 10/9/1974 showing him being persuaded to give consent
9. Attempt to Purchase of Shares dated 29/7/1974
10. Attempt to Purchase of Shares dated 12/4/1974
11. Fake Map 7153/1-2 while the original 1914 map number was 7153/2.it cannot give birth to 7153/1
12. Sub Division 1957 creating 7153/R which means remainder.
13. Creation of LR.no.7153/1 not possible from 7153/2
14. Sub Division of 26 potion dated 3/2/1981
15. Consolidation of the 26 parcels dated 3/2/1981 same day this is magical.
16. Conveyance done on 30th December 1974 before the Agreement for sale made on 31st December 1974,while local control Board was on September1974
17. Fake indenture
18. Very strange transaction in the tittle ''conveyance dated 30/12/1974 to Kasarini Farmers Cooperative Society for 4,500,000/= Dated 31/12/1974''how would agreement be done 30/12/1974 and transact the same day?
19. The lawyer Mr.Gachukia who transacted on 3/12/1974 accident 24/12/1974 and then died 2/1/1975 see 18 inside.
20. Using fake LR NO's to sell land numbers that do not exist at survey of Kenya.
21. Section 155 Land Reg Act, Unlawful Occupation by Kasarini Farmers Cooperative Society limited sub section 1(a,b,c)
22. The power to alter boundary
23. Approval for Survey and Subdivision
24. Maintenance of Boundary and Interference of Boundaries
25. Combination and Sub Divisions
26. Certificate of Tittles and Production of Tittles
27. Searches for Tittles
28. Overriding Interest
29. Authentication of Plans
30. Offences Committed on False Information of Tittles

Form 3

COLONY AND PROTECTORATE OF KENYA

THE CO-OPERATIVE SOCIETIES RULES, 1946

CERTIFICATE OF REGISTRATION

(Section 8 of ~~Ordinance~~ Act 38/1945)

CERTIFICATE OF REGISTRATION No. 1167

In the matter of the application bearing number 1167 and year 1964 in the District of NAIROBI

I hereby certify that the Society under the name of KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED and its by-laws have this day been duly registered by me in the Register of Societies in pursuance of the provisions of the Co-operative Societies Act 1945, and the Co-operative Societies Rules, 1946.

Given under my hand at Nairobi this the TWENTIENTH day of JULY 1964

J. A. N. KIBUE

Ag. COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

G.P.K. 2635—2,000—10756

ENVO

T.E.D.

ENVO

33

61

EV 2

THE NATIONAL LAND COMMISSION

HISTORICAL LAND INJUSTICE COMMITTEE

In the matter of Article 67 (2) (e) of the Constitution of Kenya

In the matter of Section 15 of National Land Commission Act

In the matter of Historical Land Injustice Referenced No.

NLC/HLI/053/2017

Kasarini Farmers Co-operative Society Ltd.....1st Claimant

Kasarini Ancentral Families Self Help Group

Mbari ya Mbogo Wainaina and Kariuki Gichinga.....2nd Respondent

And

Estate of Samuel Mbugua Kisathi

Margaret Nyakabi Mbugua,

Samuel Githegi Mbugua

Grace Muthoni Githegi,

Estate of Moses Mbugua Mwangi

of Nairobi

Mr.Warui Karoki for Njeri Munyao

Mr.Muli Masika for Wambui Njau

Miss Kioi for Maria Karoki

Mr.Makori and Mr.Omindo for Wambui Kambia

Mr.Senda for part 1st Claimants

Mr.Otenyo for Kencom Sacco

Mr.Mambiri for Njeri Mbindyo

Mr. McCourt for Samuel Mbugua Githegi

Background and the Claimants' Case

1. The National Land Commission received a complaint from M/S Mbogo Wainaina and Kariuki Gichinga for Mbari ya Mbogo ancestral land families and Kasarini Co-operative Society Ltd (also known as workers of Kasarini Estate Ltd) invoking our powers under Section 14 of the National Land Commission Act 2012 requesting review of the following titles; **L.R. NO. 7153/1, 7153/2, 12825 and I.R NO. 35930**.
2. Consequently, a number of interested Parties were invited to appear for a review of Grants and Disposition hearing initially slated for **17th June, 2016**, and were requested to submit their presentations attaching all relevant documents of acquisitions.

ELC civil suit No.557 of 2009 which was still pending. The interim orders that had been granted temporarily stopping the review were lifted.

6. The upshot of the foregoing is that the court allowed the Commission to conduct reviews over the Kasarini Land but the mandate of the Commission lapsed before the Commission could conduct the said review. Parties were last in Court on **25th September 2017** and we were hard pressed to explain why the Commission had not conducted any reviews over the suit property. The Commission pleaded for more time to allow it get directions on whether the mandate to review will be extended and also explore ways of resolving the dispute.

The claims

7. Kasarini Farmers Co-op Society Ltd (1964) filed a complaint as a historical land injustice claim on 25/04/17 with the commission. They claimed that they were members of a co-operative society known as **Kasarini Framers Co-operative Society Ltd** registered on **20/07/64**.

8. They note that most founder members of the society are over 80 years and the rest are deceased. The society was registered to help members acquire land and benefit from them economically. Prior to the registration of the society the members of the society had been in occupation of land in

to them as the purported deregistration of their society was unlawful and illegal as it was not sanctioned by members in any meeting.

12. A second historical injustice claim over the parcels dated 15/11/2017 has been filed by the family of **Mbari ya Mbogo Wainaina and Kariuki Gichinga** who number 16 families. They also claim to be members of **Kasarini Farmers Co-op Society Ltd** with the same certificate of Registration Number **CS1167/1964** registered in 1964.They state that the settlers organized the ancestral families into the Kasarini Farmers Cooperative Society.

13. They claim ownership over land parcels number **LR Nos.7153/1,7153/2 and 12825 and LR 35930.**They state that they purchased the land in 1930 from the Dorobo community who occupied the land before and exchanged it with them through barter trade (goats and sheep for land).The land measured approx.911 acres or 399.2 ha.They further state that the land is located along Kiambu-Nairobi Road.

14. There are more claimants making claim to the parcels as is evident from the multiplicity of suits. Most of them apart from the two above have not formally lodged their claims with the commission.

The Response

Kibarni and Kabogo Kangethe.That in 1977 the society applied to the Commissioner of lands for consolidation and subdivision of LR No.7153/1 and 7153/2.

21. That on 09/11/1979 the Commissioner of Lands wrote to the Society advising that for the consolidating and subdivision of LR No.7153/1 and 7153/2 to be approved, the registered owners of LR Nos 7153/1 should transfer the land to the Society which the Society did and the two properties were issued with LR No.12825 being Grant number I.R 35930.

22. The Society then proceeded to get LR No.12825 subdivided into subdivision numbers 12825/1-12825/26 and surrendered public utility plots to the government. The rest of the plots were shared among the members of the society and transferred to the members and each member was issued with his or her title deed.

23. They proceeded to state that they are protected under Articles 40 and 47 of the Constitution of Kenya and Section 23 (1) of the repealed Registration of Titles Act (Cap 281).

24. They also claimed that the matter is *sub judice* because of **Nairobi ELC No.557 of 2009** that is currently before court.

25. They further noted that the claimants herein claim to be members of Kasarini Farmers Cooperative Society yet the Society had been deregistered 35 years earlier in February 1974 and liquidated.

26. The Respondents claimed that the claim by Mbari ya Mbogo clan based purchase of the subject land from the Dorobo remains unsubstantiated. They noted that a similar claim having been presented and adjudicated to finality before the 1932

According to our records the society registered under CS 1167 is Kasarani Farmers Co-operative Ltd and not Kasarini Co-operative Society Limited as pointed out in your letter. As per our records this society was registered in 1964.We do not have any knowledge of the society winding up or having subsequent fresh registration. On the matter pertaining to the current status of the society, we would kindly direct you to the office of the Director for Co-operatives, Nairobi County. On the CS 1964 the society registered is Njoki Kulima Co-operative Society Ltd and not Kasarini Farmers Co-operative Society Ltd. In case of further clarification, do not hesitate to contact us."

Investigative Hearing

32. When the matter came up for hearing on 04/12/2017 the Respondents objected to the hearing proceeding on two grounds. Firstly, the matter was before court on account of **Nairobi ELC No.1358 of 2016** and **Nairobi High Court Judicial Review No.582 of 2016** hence *sub judice* and secondly they had just been served with the claims and they needed time to adequately prepare.

33. The matter also proceeded on 11/01/18 where despite protestations from the Respondents not to hear the matter the Commission indicated that since the court did not stop the Commission from hearing it would proceed to hear the matter. The matter was fixed for mention on 01/02/18.

34. On 01/02/18 the matter was adjourned to 26/03/18 but was then rescheduled for 06/04/18.It was again adjourned to 20/04/18 for hearing.

view that once a court of competent jurisdiction is seized of a matter, the court must be given an opportunity to pronounce itself on such matter before any other or further proceedings relating to the same matter are considered.

I am in agreement with the decision of W. Korir J. in the case of Republic vs. National Land Commission & Another Exparte Muktar Saman Olow (2015) eKLR where he was faced with a situation similar to the one before me. The judge stated as follows:

> *"The attempt by the Respondent to review the grant in question while there are court cases geared towards addressing that issue is clearly an abuse of power bordering on contempt of court."*

Mumbi J. also dealt with a similar situation in the case of Josephine Akoth Onyango vs. National Land Commission & 3 Others (2015) eKLR in which the respondent had also purported to initiate investigations in respect of a property that was the subject of an ongoing court case in the High Court. The Judge agreed with the decision of W. Korir J. that I have referred to above and stated that:

> *"I am satisfied that the orders sought by the petitioner on this matter are merited on the face of it, the respondent is overreaching on entering into a matter that is already before the court which has jurisdiction to deal with it."*

The respondent and the 1st and 2ndinterested parties had also argued that apart from the power that was conferred upon the respondent under section 14 of the Act, the respondent also has power under section 15 of Act to investigate and adjudicate on historical land injustices."

parties' arguments that the 1st interested party's complaints before the respondent and before this court are different. I am of the view that the 1st interested party has to make an election. If it wishes to pursue its claim before the respondent, it should withdraw its suit which is pending before this court.

The upshot of the foregoing is that I find merit in the ex parte applicants' Notice of Motion dated 14th June, 2016. The application is allowed in terms of prayer 1 thereof. Each party shall bear its costs of the application."

41. It is clear from the court's decision that the Commission cannot exercise concurrent jurisdiction with the court as the matter is ***sub judice*** by dint of the two cases that are now alive in court namely **Nairobi ELC NO.557 of 2009 and Nairobi High Court Petition No.373 of 2016(now Nairobi ELC Petition No.1358 of 2016).**

42. Secondly, as the Judge observed the claim does not meet the criteria of Section 15(3) as the claim is capable of being addressed through the court system.

43. Lastly, the judge advises the claimants herein that if they wish to proceed before the Historical Land Injustice Committee then they ought to withdraw the suit or suits pending before the courts.

44. For this reasons and in light of the court's judgment the claimants' claim therefore fails.

Signed:
Commissioner Dr. Clement Lenachuru



Member
Historical Land Injustice Committee, National Land Commission

54

42

10.9

REPUBLIC OF KENYA

MINISTRY OF CO-OPERATIVE DEVELOPMENT AND MARKETING
OFFICE OF THE COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

...ic Address "CO-OPS"
...ROBI
...ne 020 – 2731531
...ying please quote

SOCIAL SECURITY BUILDIN
BISHOP ROAD,
P.O. Box 40811 – GPO - 00100
NAIROBI

Date 12TH JANUARY 2012

...ARIA GAKARIA&ASSOCIATES
...ANKARDASS HOUSE
...LOOR
...WING MOI AVENUE
...Box 70662-00400
...airobi

EV3

SEARCH ON KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED C/S NO 2240

We refer to the above and your letter to us dated 12TH day of JANUARY 2012 which we reply and advice as below

Date And Year Of Registration

The society was duly registered in accordance with the provisions of the co-operative societies Act on the 10th day of July 1974.

Status Of The Society

Our records for the said society indicate that the society is dormant following the cancellation therefore in liquidation.

Current Officials

Owing to the dormancy there are no current officials on behalf of the society

Last Officials

The last officials on record for the society were as follows

1. Z K. Gakunju-Chairman
2. S M Kabathi-Secretary

EV-3

(55)

(43)

110

Mbugua M. Mwangi-Treasurer
S.M.Githego –Member
K.Kangethe-Member

Date And Year Of Liquidation

The society was liquidated on the 9th day of April 1983

Members of the society

1. Mbugua Mwangi
2. Grace Muthoni
3. Kabogo Kangethe
4. Mary Waruni
5. Samuel Githegi
6. Christine Mithiri
7. Kimemia Gakunju
8. Margaret Nyokabi
9. Ruth Njeri
10. Mbugua Kibathi

I hope the information given to you will be of help

Yours faithfully

SULEIMAN WANDATI
LEGAL OFFICER
FOR COMMISSIONER FOR CO-OPERATIVES

44

111

THE CO-OPERATIVE SOCIETIES ACT

(CAP - 490, SECTION 7)

APPLICATION FOR REGISTRATION OF A CO-OPERATIVE SOCIETY

The Commissioner for
Co-operative Development,
P.O. Box 40811,
NAIROBI.

1. Name of proposed society KASARINI
2. Area of operation NAIROBI
3. Type of society ~~FARMING AND CREDIT SOCIETY~~ FARM PURCHASE
4. Whether limited or unlimited liability is desired LIMITED
5. Language in which the books of accounts will be kept ENGLISH
6. Name of person appointed to perform the duties of secretary of the society SAMUEL MBUGUA KIBATHI
7. Registered office and postal address of the society BOX 74414 NAIROBI

We, the undersigned, hereby apply for the registration of the above society under the Act, and enclose four copies of the proposed By-laws in English.

NAME	OCCUPATION	AGE	PLACE OF RESIDENCE	SIGNATURE
MBUGUA MWANGI	TRADER	41	NAIROBI	
GRACE MUTHONI	FARMER	35	NAIROBI	G. Muthoni
ABOGO KANGETHE	FARMER	53	NAIROBI	Kabogo Kangethe
MARY WARURU	FARMER	38	NAIROBI	Mary Waruru
SAMUEL GITHEKU	BUSINESSMAN	43	NAIROBI	
SURITUHE MUTHIRI	HOUSEWIFE	33	NAIROBI	
KIMEMIA GAKUNJU	TRADER	42	NAIROBI	
MARGARET MYOKABI	TEACHER	32	NAIROBI	Mayokabi
RUTH NJERI	HOUSEWIFE	45	NAIROBI	R. Njeri
MBUGUA KIBATHI	BUSINESSMAN	41	NAIROBI	

57

45

Farm Purchase
Cooperative Soc

BY-LAWS
OF

KASARINI FARMERS

CO-OPERATIVE SOCIETY LIMITED

(Registered under the Co-operative Societies Act,
Chapter 490, Laws of Kenya)

NAME

The name of the Society shall be:-

THE KASARINI FARMERS

CO-OPERATIVE SOCIETY LIMITED

REGISTERED ADDRESS

The registered address of the Society shall be

INTERPRETATION

these By-laws unless the context otherwise requires:-

"Commissioner or his representative" shall mean the Commissioner for Cooperative Development and persons appointed to assist such Commissioner under the provisions of the Co-operative Societies Act;

"Manager" shall mean the paid employee appointed under By-law 43; "Act" shall mean the Cooperative Societies Act and all subsidiary legislation made thereunder;

"Secretary" shall mean the officer of the Society appointed under By-law 2;

"Treasurer" shall mean the officer of the Society appointed under By-law 2.

OBJECTS

The objects for which the Society is established are to organise and promote the economic interests of its members in accordance with co-operative principles and in particular to:-

acquire land, buildings, equipment and stock for the purpose of managing and developing as a collective farm for the benefit of the members of the Society;

co-operatively market the produce of the farm in the most profitable way;

promote good farming practice in accordance with the advice of the government departments;

insure members against accidents, death, illness or other inflictions and to insure the properties of the farm against fire and other risks;

To achieve the objects set out in By-Law 4 the Society may form and carry on such functions of a co-operative society as are permitted under the provisions of the Co-operative Societies Act and

(58) (46)

113

for loans from members and non-members by issuing debentures or mortgaging the property of the Society or by any other means up to a maximum amount to be determined by the Commissioner, provided that the Society may not sell any land or equipment to which it has title for the purpose of raising funds during such period as any loan raised for the purpose of purchasing land or equipment remains as a liability of the Society;

(2) negotiate with any person or corporation for the acquisition of land or equipment in pursuance of the objects of the Society;

(3) employ such technical and administrative staff and labour as shall be necessary for maximising the economic use of the land provided that any lender of sums in excess of twenty-five per cent of the gross value of any land with respect to the Society may make it a condition of borrowing that the Society shall employ subject to such conditions as may be agreed such technical and administrative staff as the lender may consider necessary to secure the revenue productivity of the asset;

(4) provide remunerative employment to all members of the Society and to relatives of the members duly authorised to live on the Society whose age is not less than fourteen or more than sixty-five years.

MEMBERSHIP

Members shall consist of:-

(a) original members who signed the application for registration; and

(b) new members subsequently admitted in accordance with these ByeLaws.

A person shall be eligible for membership who possesses all of the following qualifications:-

(1) is of good character;

(2) is not less than eighteen years of age except in the case of a nominated minor heir of a deceased member;

(3) is physically fit and able to actively carry out the farming duties required of a member.

Application for membership shall be made in writting to the Secretary of the Society and shall include a declaration by the applicant stating the personal name, age, sex and relationship of each relative who the applicant will expect to live on the land of the Society and in his homestead.

All applications shall be put before the Management Committee which may admit the applicant or reject any application without

59

47

be admitted unless and until he has paid such entrance fees and such minimum contribution of share capital as shall be prescribed in these By-laws.

114

10. On admission to membership of the Society the Secretary of the Society shall cause each member, including those who signed the application for registration, to sign the Register of Members which act shall constitute an acceptance by the member of the binding nature of the Act, Rules, and By-Laws of the Society.

11. On admission to membership of the Society the Secretary of the Society shall cause each member, including those who signed the application for registration, to nominate in writing the name of one person to whom on the death of the member his shares and interest shall be transferred. The name of such nominee shall be written in the Register of Members and shall be duly witnessed by the nominating member and the Secretary of the Society.

12. The liability of a member shall be limited to the nominal value of the shares held by him unless the General Meeting, with the Commissioner's permission accepts additional liability in respect of a specific sum on specific terms.

13. A member may withdraw from the Society only at the end of each financial year, and then only if he shall previously have given 3 month's notice in writing to the Secretary of the Society of his intention to withdraw from the Society.

14. Membership of the Society shall cease with effect from the date of a member:-

(1) dying;

(2) ceasing to hold the qualifications for membership specified in By-Law 7;

(3) being expelled from the Society;

(4) voluntarily withdrawing from the Society in accordance with the provisions of By-law 13;

(5) ceasing to hold a share in the Society in accordance with the provisions of By-Law 20;

(6) becoming of unsound mind.

15. (1) On the death of a member or if a member is certified to be of unsound mind, his nominee, if eligible for membership under By-Law 7 may apply and be admitted as a full member without paying further entrance fee, and shall acquire all assets and rights and assume all debts and responsibilities of the member by whom he was nominated.

(2) If ineligible only on grounds of age, such nominee shall be granted all the rights and liabilities of the deceased member except [illegible]

(3) If the nominee does not wish to ~~become~~ a member he may be paid the value of the shares or asset less any sum due from the deceased member to the Society.

(1) A member may be suspended from membership by the Management Committee pending a final decision on expulsion by the General Meeting, against whose decision an appeal may be made to the Commissioner under section 80 of the Act for one or more of the following reasons:-

(a) any action adjudged to be prejudicial to the Society and the spirit of Cooperation including malicious illnatured slanderous remarks about any member of the Committee or an employee of the Society;

(b) repeated failure to comply with the regulations of the Society made under these By-laws;

(c) imprisonment for more than three months for a criminal offence.

(2) Any person ceasing to be a member may be repaid, after deduction of any debts owed by him to the Society the following:-

(a) the value of his shares unless the Society holds loans or deposits from non-members;

(b) any bonus, dividend or interest due to him at the date on which his membership ceased;

(c) any deposit or sum held by the Society on his behalf, provided that where a member is expelled, (a) and (b) shall not be paid but forfeited to the Society and credited to the Statutory Reserve Fund of the Society.

Part VI.

FUNDS

The Funds of the Society shall consist of:-

(1) entrance fee of Shs. 10/- ..... each;

(2) an undetermined number of shares of the value of Shs. 1000/- ..... each;

(3) deposits from members;

(4) loans from members or non-members subject to By-law 5(1);

(5) a Statutory Reserve Fund and any other funds established with the approval of the Commissioner;

(6) Surplus funds resulting from the operations of the Society.

The rate of interest on any deposit or loan from members shall not exceed six per cent per annum except with the written permission of the Commissioner.

(61)

49

SHARES

20. Every member shall hold at least one full share in the Society and no member shall hold more than one-fifth of the total shares. Non-members shall not hold shares.

21. Shares shall be paid for in full on application.

22. With the approval of the Management Committee a member may at any time, provided that he has been a member for not less than three years, transfer his shares to another member but not to any other person.

23. All transfers of shares must be registered with the Secretary of the Society and no transfer is valid unless so-registered. A fee of Shillings Twenty (Shs. 20/=) shall be paid by the transferee to the Statutory Reserve Fund of the Society for every such transfer.

Part VII MANAGEMENT COMMITTEE

24. The affairs of the Society shall be managed by a Management Committee which shall consist of at least five and not more than nine members over the age of twenty-one years elected at the Annual General Meeting and shall include the Chairman, Honorary Secretary and an Honorary Treasurer. Provided that the Management Committee may appoint from amongst its members a Farm Committee which should be responsible to the Management Committee for the day to day conduct of the affairs of the Society.

25. The Chairman of the Management Committee shall be the Chairman of the Management Committee.

26. The Management Committee shall permit access to its sessions of the representative of any vendor of capital funds to the Society, for the purpose of listening to and advising with respect to any aspect of the business of the Society.

27. Members of the Management Committee shall be elected for three years and shall be eligible for re-election provided that not less than one third of the Committee shall retire annually; and provided that during the first two years from the date of the first General Meeting electing the Committee, the retiring members shall be determined by lot.

28. The Chairman of the Management Committee shall be chosen by the members of the Committee at its first meeting next following the election of new members under the provision of By-Law 48(3).

29. The Honorary Secretary of the Society and Honorary Treasurer of the Society shall be eligible for electing

50

The duties of the Honorary Secretary shall be to:-

(1) ensure that the Society's correspondence is correctly attended to;

(2) ensure the recording of minutes of Committee and General Meetings;

(3) keep Society's seal securely under lock and key. The seal shall be used only by and in the presence of all the officers authorised to sign on behalf of the Society under By-law 40.

The duties of the Honorary Treasurer shall be to:-

(1) Check all payments and to countersign all vouchers;

(2) keep a general surveillance of the money management of the Society.

Unless decided otherwise by the General Meeting, all documents, contracts and cheques shall be signed on behalf of the Society by the holders of the following officers:-

The Chairman with
the Honorary Secretary and
the Honorary Treasurer.

A member of the Management Committee shall cease to hold office if he:-

(1) ceases to be a member of the Society;

(2) applies for insolvency or is declared insolvent;

(3) becomes certified of unsound mind;

(4) is convicted of any criminal offence involving dishonesty or is imprisoned for three months;

(5) is removed from office at a General Meeting;

(6) absents himself from more than three consecutive meetings without reasonable excuse, or prior permission of the Management Committee.

Meetings of the Management Committee shall be held regularly once a month and at any other time when necessary. One half of the members shall form a quorum provided that either the Chairman or the Honorary Treasurer or the Honorary Secretary shall be one of the quorum.

The Management Committee shall exercise all the powers of the Society except those reserved for the General Meeting Subject to any regulations duly laid down by the Society in General Meeting or in the By-Laws and, in particular, shall have the following powers and duties:-

(1) to regulate, control, plan and administer the Management of the land and property of the Society;

(2) to issue new shares and approve transfers of shares;

(3) to prepare for the Annual General Meeting a crop production programme

(4) to prepare for the Annual General Meeting an estimate of expenditure for the financial year next following the Annual General Meeting;

(5) to determine the duties and remuneration of members for work done and to cause an account to be kept of the same provided that such determination shall be submitted for approval to the General Meeting;

(6) to assess and authorise the employment of additional employees as shall be requisite for the achievement of the objects of the Society;

(7) to recommend for adoption by the Annual General Meeting the commission rate to be charged against the produce of the Society sufficient to cover all liabilities and obligations both outstanding and anticipated for the financial year next following the Annual General Meeting;

(8) to submit to the General Meeting for presentation and approval by the Commissioner with the consent of the General Meeting in accordance with Section 45 and 46 of the Act proposals for the disposal of any surplus at the end of the financial year, subject to Rule 49 A of the Cooperative Societies Rules 1965, and in particular such proposal may include provision for:-

(a) payment of a dividend on share capital at a rate not exceeding ten per cent per annum;

(b) payment of a patronage bonus to members proportionate to their labour contribution to the Society and to their remuneration, and

(c) any other purpose determined by resolution and approved by the Commissioner.

(9) to maintain or to cause to be maintained a true and accurate account of all monies received and expended and a record wherein members labour contributions are clearly recorded;

(10) to keep or cause to be kept a true account of the assets and liabilities of the Society;

(11) to prepare and lay before the Annual General Meeting accounts and balance sheets duly audited, provided that these shall be prepared within a period of not more than three months after the close of the financial year;

(12) to prepare or cause to be prepared quarterly balance sheets and accounts for the guidance of the Committee;

(13) to examine or cause to be examined the accounts, to sanction contigent expenditure and to supervise or cause to be supervised the maintenance of all books of account;

(14) to review each quarter:-

(iii) the position of all outstanding loans against or to the Society;

(15) to take such action as shall be necessary to meet all obligations to creditors within a period not exceeding three months of the incurring of a debt;

(16) to proceed against any debtor whose obligation shall have been in existence for a period in excess of three months;

(17) to supervise the maintenance of the Register of Members in accordance with the provisions of the Act;

(18) to consider the inspection reports of officers of the Department of Cooperative Development and to take action on such reports;

(19) to enter into contracts and to execute documents in furtherance of the objects of the Society;

(20) subject to the requirements of these By-Laws and of the Act to make such provisions for borrowing as shall be necessary in furtherance of the objects of the Society;

(21) to summon meetings;

(22) to co-opt members to fill vacancies on the Committee;

(23) to appoint, suspend, or dismiss any paid servant of Society and to regulate and supervise their work;

(24) to impose fines in accordance with any rules made under By-Law 48(2).

36. All business discussed or decided at a General Meeting shall be recorded without erasures in a Minute Book which within one week of the Meeting shall be signed by the Chairman of the Meeting and at least one other Committee member who was present at the meeting to indicate that in their opinion the record is a true and complete record of all important matters which were discussed or decided at the meeting.

At the next meeting after approving any alterations or variations which shall be immediately written below the above signatures and not as alterations to the original record, the meeting shall by resolution authorise its Chairman to sign and date the final record.

37. No payment in any form shall be made by the Treasurer unless it has been first authorised, admitted and confirmed by the Committee.

38. No expenditure shall be authorised by the Committee unless and until formally approved in the Annual General Meeting provided that a Special General Meeting may be convened

94

Commissioner or his representative in the area, or within fourteen days of receipt by the Secretary of a written demand from not less than half the total membership.

12

46. Notice of Annual or Special General Meeting shall be given not less than fourteen days prior to the day on which the meeting is proposed and such notice shall include a statement of the items of business to be transacted, and the time and the place of the meeting.

47. Except when convened by the Commissioner or by his representative in the area, the presence of not less than one half of the members, shall constitute a quorum. In the absence of a quorum the Chairman shall adjourn the meeting and shall fix a date within one month for the adjournment meeting and notice shall be given as required in By-law 45. If at such a meeting a quorum is again not present the Chairman shall declare the meeting open and proceed with the business with those present.

48. The following business shall be transacted in a General Meeting:-

(1) Amendment of the By-laws or enactment of new By-laws in accordance with the provisions of the Act;

(2) Make or amend rules in furtherance of the objects of the Society for:-

(a) restricting the residence of strangers on the land of the Society

(b) restricting the unauthorised use of the land or other property of the Society,

(c) restricting the unauthorised sale of livestock and produce of the land of the Society which may include the sale of produce and livestock from any land to which a member is granted an approved user.

(d) the levy of fines.

(3) election, suspension and removal of members of the Management Committee.

(4) confirmation or otherwise of the action of the Management Committee in accepting, refusing or suspending or expelling members;

(5) consideration of the report of the Committee;

(6) consideration of the annual statement of account and balance sheet and of the auditor's report and of any inspection report of the Commissioner or his representati-

(7) The disposal of the annual surplus in accordance with the Act and these By-Laws;

(8) The fixing subject to the approval of the Comm...

(9) Such other business as may be relevant or necessary including rules for tenancies, conditions of loans and all matters relevant thereto, subject to the approval of the Commissioner.

55

12

GENERAL

49. The financial year of the Society shall be from ...1ST JULY..... to ...30TH JUNE.....

50. Auditors shall be appointed and their duties regulated in accordance with provisions of section 23 or the Act.

51. A copy of the balance Sheet and trade account, duly signed by the auditor and his report attached thereto shall be open to inspection of the members at the office of the Society at least fourteen days before the date fixed for the Annual General Meeting.

52. Notwithstanding the registration of the Society, no purchase of land shall be undertaken unless and until such purchase is approved by the Commissioner.

53. Consent to the acquisition of land by the Society shall be in the discretion of the Commissioner provided that :-

(1) the Society shall first have accumulated sufficient share capital of at least one quarter of the purchase price of the land before engaging in the loan transaction.

(2) The Society shall first make an assessment of the revenue productivity of the land sought to be acquired and such revenue productivity shall be related to the loan liability incurred in acquiring the aforesaid land. Such assessment to be made in writing and laid before a Special General Meeting of the Society.

(3) That such assessment shall be considered by a Special General Meeting and approved by a resolution of the meeting as the economic basis on which the Society shall be permitted to engage in the transaction.

54. The Seal of the Society may be a rubber stamp bearing the words "Seal of the ...KASHKIM FAMERS..... Co-operative Society Ltd., and shall be different from the name stamp of the Society. The Seal shall be kept securely under lock and key by the Secretary and shall be used only by and in the presence of all the officers authorised to sign on behalf of the Society under By-law 32.

55. Any dispute arising out of these By-laws or concerning the business of the Society which cannot be settled by the Committee or General Meeting, shall be referred to the Commissioner as provided in section 80 of the Act.

12

ACCEPTED for and on behalf of the Society by :-

CHAIRMAN ..... K. GAKUNGU .....

SECRETARY ..... S. M. KIRATH .....

TREASURER ..... MBUGUA MWANGI .....

CERTIFIED that the foregoing by-laws of the KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED (Registered No. 2240) have been approved by me and duly registered.

GIVEN under my hand at Nairobi this the 10th day of July 19 74.

DEPUTY COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT.

EV 4 (I) 69

60

18 DEC 1981

792

REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT
(CHAPTER 281)

GRANT NUMBER I.R. 35930

F R E E H O L D

KNOW ALL MEN BY THESE PRESENTS that in pursuance of a surrender registered in the Government Land Registry at Nairobi in Volumes N.44 Folio 2/11 and N.44 Folio 164/7 THE PRESIDENT OF THE REPUBLIC OF KENYA on behalf of the Government of Kenya hereby GRANTS Unto KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED a limited liability company incorporated in the Republic of Kenya and having its registered office at NAIROBI (Post Office Box Number 75155) hereinafter called 'the Grantee) ALL THAT piece of land situate S.E. of Kiambu Town in the KIAMBU DISTRICT of the Republic of Kenya containing by measurement three seven seven decimal two (377.2) hectares or thereabouts that is to say Land Reference Number 12825 which said piece of land with dimensions abuttals and boundaries thereof is delineated and edged red on the Plan Number 111458 deposited in the Survey Records Office at Nairobi TO HOLD the same in fee simple SUBJECT and together with (a) Easements and/or Wayleave agreements registered in Volume N. 12 Folio 75/15 & 17, 79/16, 18, 20 & 21 and 114/6 & 8 (b) the Government Lands Act (Chapter 280) and (c) the following special conditions (namely):- contained in a conveyance registered in Volume N.44 Folio 164/1

S P E C I A L C O N D I T I O N S

- NIL -

IN WITNESS THEREOF I, CAMES RAYMOND [illegible] the Commissioner of Lands have by Order of the President hereunto set my hand this 3rd day of November One thousand nine hundred and eighty-one in the presence of:-

[signature]

35930/1

Presented 18th December 81
Time 10.35 a.m.

[illegible]

Registrar of Titles

THIS IS THE EXHIBIT MARKED H
ANNEXED TO THE AFFIDAVIT/DECLARATION
OF Maria Maraki
SWORN BEFORE ME ON THIS 10 21st OF [illegible]
DECLARED
[illegible] NAIROBI
[illegible]
COMMISSIONER FOR OATHS.

DEPARTMENT OF LANDS SCANNED

18.12.1981

THE FOLLOWING [illegible] HAS BEEN REGISTERED
Surrender to the Government of the Republic of Kenya in respect of 3.0[illegible] Land Reference Number 12825/3

705 18.12.1981

GAZETTE NOTICE No. 649

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

BANKRUPTCY AND WINDING-UP CAUSE No. 3 OF 1960

IN THE MATTER OF THE COMPANIES ORDINANCE

(*Cap.* 288)

AND

IN THE MATTER OF KISUMU TIMBER AND HARDWARE LIMITED

(*In Voluntary Liquidation*)

NOTICE is hereby given that a petition for the winding up of the above-named Company by the Supreme Court of Kenya at Nairobi was, on the 22nd day of January, 1960, presented to the said Court by British East Africa Corporation Limited, a limited liability company, having its registered office situate at Colls House, Eliot Street, Nairobi, a creditor of the above-named Company.

And that the said petition is directed to be heard before the Court sitting at the Law Courts, Nairobi, at 10.30 o'clock in the forenoon on the 11th day of March, 1960, and any creditor or contributory of the said Company desirous of supporting or opposing the making of an order on the said petition may appear at the time of hearing in person or by his advocate for that purpose, and a copy of the petition will be furnished to any creditor or contributory of the said Company requiring the same, by the undersigned, on payment of the regulated charge for the same.

HAMILTON, HARRISON AND MATHEWS,
Advocates for the Petitioner,
Stanvac House, Queensway,
P.O. Box 30333, Nairobi.

Note.—Any person who intends to appear on the hearing of the said petition must serve on or send by post to the above-named Hamilton, Harrison and Mathews, advocates, for the petitioner, notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person or firm or his or their advocate (if any), and must be served, or if sent by post must be sent by post in sufficient time to reach the above-named not later than 4 o'clock in the afternoon of the 10th day of March, 1960.

GAZETTE NOTICE No. 650

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

MISCELLANEOUS CAUSE No. 1 OF 1960

IN THE MATTER OF EAST AFRICA VENTURES LIMITED

AND

IN THE MATTER OF THE COMPANIES ORDINANCE

(*Cap.* 288)

NOTICE is hereby given that a petition presented to Her Majesty's Supreme Court of Kenya at Nairobi on the 20th day of January, 1960, for confirming the reduction of the capital of the above-named Company from Sh. 4,000,000 to Sh. 2,180,000 by returning capital which is in excess of the wants of the Company is directed to be heard by the said Court on Friday, the 26th day of February, 1960. Any creditor or shareholder of the said Company desiring to oppose the making of an Order for confirmation of the said reduction of capital should appear at the time of hearing by himself of his Counsel for that purpose. A copy of the petition will be furnished to any person requiring the same by the undersigned on payment of the regulated charge for the same.

Dated the 29th day of January, 1960.

ARCHER AND WILCOCK,
Advocates for the Company,
Mutual Building, Hardinge Street,
P.O. Box 10201, Nairobi.

GAZETTE NOTICE No. 651

IN THE MATTER OF THE COMPANIES ORDINANCE

(*Cap.* 288)

AND

IN THE MATTER OF KASARINI ESTATES LIMITED

MEMBERS' VOLUNTARY WINDING UP

NOTICE is hereby given that at an extraordinary general meeting of the members of Kasarini Estates Limited held at Berners Hotel, Berners Street, London, W.1, on Friday, 22nd January, 1960, the following special resolution was duly passed:—

"THAT the Company be wound up voluntarily and that Mr. P. M. Johnson, Chartered Accountant, of Nairobi, and Mr. G. R. Smith, Chartered Accountant, of Grimsby, be appointed joint liquidators for the purpose of such winding up."

This notice is in respect of a members voluntary winding up for the purpose of re-organization and the farming assets of the Company will continue under the ownership of a new company named Kasarini Estates (1959) Limited.

Dated at Nairobi, this 29th day of January, 1960.

P. M. JOHNSON,
Joint Liquidator,
Livingstone House, Hardinge Street,
P.O. Box 92, Nairobi.

GAZETTE NOTICE No. 652

THE COMPANIES ORDINANCE

(*Cap.* 288)

PURSUANT to section 284, subsection (5) of the above Ordinance, it is hereby notified that the undermentioned companies have this day been struck off the Register of Companies and the companies are dissolved:—

Molo Furniture House Limited.
Blacklaws and Brown Limited.

Nairobi,
5th February, 1960.

D. J. COWARD,
Registrar of Companies.

GAZETTE NOTICE No. 653

THE COMPANIES ORDINANCE

(*Cap.* 288)

PURSUANT to section 284, subsection (3) of the above Ordinance, it is hereby notified that at the expiration of three months from the date hereof, the name of the undermentioned company will, unless cause be shown to the contrary, be struck off the Register of Companies and the company will be dissolved:—

Bharat Service Stores Limited.

Nairobi,
5th February, 1960.

D. J. COWARD,
Registrar of Companies.

GAZETTE NOTICE No. 654

THE MARRIAGE ORDINANCE

(*Cap.* 144)

NOTICE

NOTICE is hereby given that in exercise of the powers conferred by section 6 of the Marriage Ordinance, I have licensed the undermentioned places of worship to be places for the celebration of marriages.

Name.—The Kenya High School Chapel.
Place.—Nairobi.
District.—Nairobi Extra Provincial District, Nairobi.

Name.—St. Barnabas' Church.
Place.—Kapsabet.
District.—Nandi, Kapsabet.

Nairobi,
3rd February, 1960.

D. J. COWARD,
Registrar-General.

(12)

79

THE KENYA GAZETTE

Published under the Authority of His Excellency the Governor of the Colony and Protectorate of Kenya

(Registered as a Newspaper at the G.P.O.)

Price Sh 1

Vol. LXIII—No 11 NAIROBI, 14th March, 1961

CONTENTS

GAZETTE NOTICES	PAGE
Appointments, etc	294
The Commissions of Inquiry Ordinance—Commission	294
The Kenya (Constitution) Orders in Council—	
Declaration of Incapacity of Minister	294
Appointment of Temporary Minister	294
The Diplomatic Privileges (Extension) Ordinance—Notice	295
Central Whitley Council—Appointments	295
Danish Consular Representation	295
The Asian Officers Family Pensions Ordinance—Appointments	295, 296
The Education Ordinance—Appointments	296
The Courts Ordinance—Appointment, etc	296
The Aerodromes (Control of Obstructions) Ordinance—Declaration of Aerodromes	296
The Water Ordinance—	
Appointment	297
Corrigendum to G N 6008/60	297
Applications	301
The African District Councils Ordinance—Appointments	297
The Oil Production Regulations—Oil Exploration Licence No 5	297
The Prevention of Cruelty to and Neglect of Children Ordinance—Appointments	297
East African Railways and Harbours—Amendment to Tariff Book No 3	297
The Legislative Council Election Rules—Election Results	298, 299
H M Supreme Court of Kenya—Petition No 1 of 1961	299
The Cattle Cleansing Ordinance—Cattle Cleansing District	299
The Agriculture Ordinance—Membership of Sub-committees	299
The Police Ordinance—Closure and Appointment of Police Stations	299
The Native Authority Ordinance—Appointment	300
Royal National Parks of Kenya—Closed Season	300
Supreme Court Easter Vacation	300
Uganda Protectorate—Ministry of Health—Registrarships	300
East Africa High Commission Stock	300
The Air Services (Licensing) Regulations—Application for Licence	300
East African Customs and Excise—Customs Tariff Interpretation	301
Vacancies	302
Language Examinations—Results	302
H M Supreme Court—Criminal Sessions	303
Transport Licensing	303
Nairobi Cost of Living Indices	303
The Registration of Titles Ordinance—Issue of Provisional Certificates	303, 319
Tenders	304
The Crown Lands Ordinance—	
Plot for Petrol Service Station at Turbo	305
Plots for Workshop, Garages and Godown at Kisumu	307, 308
The Patents (Registration) Ordinance—Letters Patent	309-313
Trade Marks	314
Liquor Licensing	314
Revocation of Power of Attorney	314, 315
Probate and Administration	316
Bankruptcies	316
Deed of Arrangement	316, 317
The Companies Ordinance	317
The Societies Ordinance—Registrations, etc	317, 319
County City and District Council Notices	320
The Trust Land Ordinance—	320-331
Plot at Machakos	332
Setting apart of Land	332
Loss of Policies	332
Loss of Passbook	332
Dissolution of Partnership	332
Notice of Change of Name	

SUPPLEMENT No 14 *Legislative Supplement*	PAGE
LEGAL NOTICE No	
152—The Stock and Produce Theft Ordinance—Proclamation	265
153—The Agriculture Ordinance (Third Schedule) (Amendment) Order 1961	265
154—The Hospital Treatment Relief (Asian and Arab) (Allowances) (Amendment) Rules, 1961	266
155—The Hospital Treatment Relief (Asian and Arab) Ordinance, 1959—Notice	267
156—The Public Roads and Roads of Access Ordinance—Order Dedicating a Line of Public Travel	267
157—The Naivasha County Council (European Education Poll Rate) Order, 1961	268
158—The Dairy Industry (Licensing of Retailers) Regulations 1961	269
159—The Dairy Industry (Inspectors) Regulations, 1961	273
160—The Dairy Industry (Cess on Retailed Milk) Regulations, 1961	275

GAZETTE NOTICE No 1235

THE BANKRUPTCY ORDINANCE
(Cap 30)
NOTICE OF INTENDED DIVIDEND

Debtor's name —Sir Thomson McLintock, Baronet (deceased)
Address —Formerly c/o J Bickerton Williams, Esq., advocate, P O Box 12219, Nairobi
Description —Chartered Accountant
Court —H M Supreme Court of Kenya at Nairobi
No of matter —B C 20 of 1960
Last day for receiving proofs —30th March 1961
Name of trustee —Official Receiver
Address —Office of the Official Receiver, Crown Law Office, P O Box 30031 Nairobi

Nairobi,
10th March, 1961

D J COWARD
Official Receiver

GAZETTE NOTICE No 1236

THE BANKRUPTCY ORDINANCE
(Cap 30)
NOTICE OF DIVIDEND

Debtor's name —Bruce Draper Bolton
Address —P O Box 31, Rumuruti
Description —Farm Manager
Court —H M Supreme Court of Kenya at Nairobi
No of matter —B C 21 of 1959
Amount per £ —Sh 6/90
First or final or otherwise —First
When payable —22nd March, 1961
Where payable —Office of the Official Receiver, Crown Law Office P O Box 30031, Nairobi

Nairobi,
10th March, 1961

D J COWARD
Official Receiver

GAZETTE NOTICE No 1237

THE BANKRUPTCY ORDINANCE
(Cap 30)
RECEIVING ORDER AND ADJUDICATION ORDER

Debtor's name —Narshi Prabhu, trading as Settler's Footwear
Address —P O Box 147, Nyeri
Description —Trader
Date of filing petition —8th March 1961
Court —H M Supreme Court of Kenya at Nairobi
No of matter —B C 18 of 1961
Date of order —8th March, 1961
Date of adjudication order —8th March, 1961
Whether debtor's or creditors' petition —Debtor's
Act or acts of bankruptcy —Presentation of bankruptcy petition

Nairobi,
10th March, 1961

D J COWARD
Official Receiver

GAZETTE NOTICE No 1238

THE BANKRUPTCY ORDINANCE
(Cap 30)
GENERAL MEETING OF CREDITORS

Debtor's name —Ambalal Shivabhai Patel, trading as Advance Traders
Address —Princess Marie Louise Road Mombasa
Description —Ration merchant
Court —H M Supreme Court of Kenya at Mombasa
No of matter —B C 22 of 1960
Date of meeting —21st March, 1961
Hour —10 a m
Place —At my office, Old Customs House, Fort Jesus Road Mombasa

Dated this 6th day of March 1961

PREETAM SINGH
Deputy Official Receiver
P O Box 366, Mombasa

GAZETTE NOTICE No 1239

THE BANKRUPTCY ORDINANCE
(Cap 30)
FIRST MEETING OF CREDITORS

Debtor's name —Ronald Ernest Shanks
Address —P O Box 251, Malindi
Description —Building Contractor
Court —H M Supreme Court of Kenya at Mombasa
No of matter —B C 2 of 1961
Date of first meeting of creditors —22nd March 1961
Time and place —2.15 p m at Old Customs House Fort Jesus Road, Mombasa

Dated this 6th day of March 1961

PREETAM SINGH
Deputy Official Receiver
P O Box 366, Mombasa

GAZETTE NOTICE No 1240

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI
IN BANKRUPTCY CAUSE No 43 OF 1956
Re *Walter Furlong bankrupt*

THE bankrupt having applied to the Court for his discharge, the Court has fixed Thursday, the 23rd day of March 1961 at 10.30 o'clock in the forenoon, at Nairobi for hearing the application

Dated this 10th day of March 1961

D. J. DEVINE
Deputy Registrar
Supreme Court of Kenya

GAZETTE NOTICE No 1241

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI
IN BANKRUPTCY CAUSE No 83 OF 1958
Re *Wilfred Douglas Maxted Massey bankrupt*

THE bankrupt having applied to the Court for his discharge the Court has fixed Tuesday, the 21st day of March, 1961 at 10.30 o'clock in the forenoon, at Nairobi for hearing the application

Dated this 7th day of March 1961

D. J. DEVINE
Deputy Registrar
Supreme Court of Kenya

GAZETTE NOTICE No 1242

DEED OF ARRANGEMENT REGISTERED DURING MARCH 1961

No —4 of 1961
Names of debtors —(1) Shah Virpar Dahya, (2) Somchind Virpar Shah and (3) Hemchand Virpar Shah
Address of debtors —P O Box 2448, Mombasa
Names of trustees —(1) Vaghji Ramji Malde and (2) Harakchand Rajpal Shah
Addresses of trustees —(1) P O Box 147, Mombasa, and (2) P O Box 639, Mombasa

Nairobi,
10th March, 1961

D J COWARD
Registrar-General

GAZETTE NOTICE No 1243

IN THE MATTER OF THE COMPANIES ORDINANCE
(Cap 288)
AND
KASARINI ESTATES LIMITED
(Members Voluntary Winding Up)
FINAL MEETING OF SHAREHOLDERS

NOTICE is hereby given that the final meeting of the shareholders of Kasarini Estates Limited will be held at Livingstone House, Hardinge Street, Nairobi, on Tuesday, 11th April, 1961, at 11 a m, for the purpose of having the liquidator's accounts laid before the meeting, showing the manner in which the winding up has been conducted and the property of the Company disposed of and of hearing any explanation that may be given by the liquidator and also for the purpose of determining by extraordinary resolution how the books and papers of the Company and of the liquidator are to be disposed of

Nairobi,
7th March, 1961

P M JOHNSON,
Liquidator

EV
EV 6

14

81

Certified true copy ... of ...

THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. LXVII—No. 38 NAIROBI, 17th August 1965 Price: Sh. 1

CONTENTS

GAZETTE NOTICES

	PAGE
Appointments, etc.	978
The Constitution of Kenya—Designation, etc.	978
The Interpretation and General Provisions Act—Transfers of Powers	978
The Land Adjudication Act—Appointment	978
The Canning Crops Act—Appointment	978
The Cotton Lint and Seed Marketing Act—Appointments	979
The Broadcast Receiving (Licensing) Act, 1965—Appointments	979
The Agriculture Act—Management Orders, etc.	979
The Agriculture (Crop Production) Rules—Planting Dates	980
The Prisons Act—Cancellations	980
E.A. Currency Board—Circulation Return	980
E.A. Railways and Harbours—Amendments to Tariff Book	980
The Weights and Measures Act—Notice to Traders	980
Vacancies	981
Industrial Licensing	982
The East African Licensing of Air Services Regulations, 1965—Applications	982
The African Christian Marriage and Divorce Act—Licensed Ministers	982
The Industrial Court—Award	983
The Registration of Persons Act—Compulsory Registration, etc.	984
The Trade Unions Act—Registration	984
Lost Policy	984
Tender	986
E.A. Customs and Excise Department—Tariff Interpretation	987

GAZETTE NOTICES—(Contd.)

	PAGE
The Water Act—Applications	988
The Chief's Authority Act—Appointments	988
Transport Licensing	988
Liquor Licensing	993
Probate and Administration	994
Bankruptcy Jurisdiction	994
The Companies Act—Winding-up Notices, etc.	995
The Societies Act—Registrations, etc.	996
Local Government Notices	996
Changes of Name	998
Business Transfers	999

SUPPLEMENT No. 66

Bills, 1965

SUPPLEMENT No. 67

Legislative Supplement

LEGAL NOTICE No.	PAGE
215—The Customs Tariff (Dumping and Subsidies) (Steel *Karais* and Aluminium Holloware) Order, 1965	345
216—The Imports, Exports and Essential Supplies (Imports) (Amendment) (No. 7) Order, 1965	346
217—The Registered Land (Land Registration District) (Amendment) Order, 1965	347
218—The Kenya Local Government Officers' Superannuation Fund (Amendment) Rules, 1965	347
219—The Kenya Local Government Officers' Superannuation Fund (Amendment) (No. 2) Rules, 1965	348

GAZETTE NOTICE No. 3083

IN THE MATTER OF THE COMPANIES ACT
(*Cap.* 486)
AND
IN THE MATTER OF TEROTO ESTATES LIMITED
(*Members' Voluntary Winding Up*)

NOTICE

NOTICE is hereby given that the final meeting of the above-named Company will be held in Silopark House, Queensway, Nairobi, on Friday, 17th September 1965 at 10 a.m., in accordance with the provisions of and for the purposes laid down in Section 283 (1) of the Companies Act (Cap. 486).

Dated this 9th day of August 1965.

P. M. JOHNSON,
Liquidator,
P.O. Box 92, Nairobi.

GAZETTE NOTICE No. 3084

IN THE MATTER OF THE COMPANIES ACT
(*Cap.* 486)
AND
IN THE MATTER OF KASARINI ESTATES (1959) LTD.
(*Members' Voluntary Winding Up*)

NOTICE

NOTICE is hereby given that the final meeting of the above-named Company will be held in Silopark House, Queensway, Nairobi, on Saturday, 25th September 1965, at 10 a.m. in accordance with the provisions of and for the purposes laid down in section 283 (1) of the Companies Act (Cap. 486).

Dated this 13th day of August 1965.

GAZETTE NOTICE No. 3085

THE COMPANIES ACT
(*Cap.* 486)

PURSUANT to section 339, subsection (3) of the above Act, it is hereby notified that at the expiration of three months from the date hereof, the names of the undermentioned companies will, unless cause be shown to the contrary, be struck off the Register of Companies and the companies will be dissolved:—

Slagment East Africa Limited.
Suzanne Limited.

Dated this 13th day of August 1965.

O. M. SAMEJA,
Assistant Registrar of Companies.

GAZETTE NOTICE No. 3086

THE SOCIETIES ACT
(*Cap.* 108)

PURSUANT to section 9 (1) of the Societies Act (Cap. 108), having reason to believe that the Societies listed in the Schedule hereto have ceased to exist, I hereby call upon the said societies to furnish me with proof of their existence within three months of the date hereof.

SCHEDULE

Kenya Federation of Labour.
Kenya Chamber of Commerce and Industry.
Kenya Chamber of Commerce and Industry, Trans Nzoia Branch, Kitale.
Kenya Chamber of Commerce and Industry, Central Nyanza Branch.
Kenya Chamber of Commerce and Industry, Kericho Branch.
Kenya Chamber of Commerce and Industry, Kirinyaga Branch.
Kenya Chamber of Commerce and Industry, Nairobi Branch.
Kenya Chamber of Commerce and Industry, Bunyore Branch.
Kenya Chamber of Commerce and Industry, Mombasa Branch.
Kenya Chamber of Commerce and Industry, Naivasha Branch.
Kenya Chamber of Commerce and Industry, Nyandarwa Branch.
Nanyuki Surat District Association.

Dated this 12th day of August 1965.

O. J. BURNS,
Acting Registrar of Societies.

GAZETTE NOTICE No. 3087

THE SOCIETIES RULES
(*Cap.* 108, *Sub. Leg.*)

PURSUANT to rule 17 of the Societies Rules notice is hereby given that—

(*a*) the societies listed in the First Schedule hereto have been registered, and

(*b*) the societies listed in the Second Schedule hereto have been refused registration,

under the provisions of the Societies Act (Cap. 108).

FIRST SCHEDULE

Name of Society	*Date Registration Effected*
Kenya National Tenants' Association, Nairobi Branch	6-8-65
Kolunje Union	9-8-65
Kisumu Chamber of Commerce and Industry	9-8-65

SECOND SCHEDULE

Name of Society	*Date of Refusal*
East African National Society, Donyo Sabuk Branch Dispensary	11-8-65
East African National Society, Karia Branch Dispensary	11-8-65
East African National Society, Mathari Valley Branch Dispensary	11-8-65

Dated this 12th day of August 1965.

O. J. BURNS,
Acting Registrar of Societies.

GAZETTE NOTICE No. 3088

THE SOCIETIES RULES
(*Cap.* 108, *Sub. Leg.*)

PURSUANT to rule 17 of the Societies Rules notice is hereby given that the exemption from registration of the societies listed in the Schedule hereto have been rescinded under the provisions of the Societies Act (Cap. 108).

SCHEDULE

Name of Society	*Date of Rescission*
East African National Society (Dispensary)	11-8-65
East African National Society (Dispensary), Karatina Branch	11-8-65

Dated this 12th day of August 1965.

O. J. BURNS,
Acting Registrar of Societies.

GAZETTE NOTICE No. 3089

SIRIKWA COUNTY COUNCIL

UASIN GISHU SOUTH AREA COUNCIL

NOTICE OF ELECTION

NOTICE is hereby given that an election is to be held of a councillor to serve on the Uasin Gishu South Area Council for the following ward:—

Electoral Division	*Registration Unit No.*	*Retiring Councillor*
Plateau	1017	Vacant

Nomination papers may be delivered by the candidates to the Deputy Returning Officer at the District Commissioner's Office, Eldoret, between the hours of eight o'clock in the morning and noon on 20th August 1965.

Forms of nomination may be obtained at the District Commissioner's Office, Eldoret, on any week-day between the hours of nine in the morning and noon. The Deputy Returning Officer will prepare the nomination paper for signature at the request of the voter.

Dated this 5th day of August 1965.

R. A. RIYAMY,
Deputy Returning Officer.

NOTE

1. The attention of candidates and persons nominating is drawn to the rules for filling up nomination papers and other provisions relating to nomination contained in the Local Government (Elections) Rules, 1963. Persons nominated must be entitled to be enrolled as voters for the County Division.

2. Every person guilty of a corrupt or illegal practice will, on conviction, be liable to the penalties imposed by the Election Offences Act.

upon a certified copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last-known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered postal address or, if no postal address has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

340. Property of dissolved company to be *bona vacantia*

Where a company is dissolved, all property and rights whatsoever vested in or held in trust for the company immediately before its dissolution (including leasehold property but not including property held by the company in trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under section 338 or section 339, be deemed to be *bona vacantia*, and shall accordingly belong to the Government.

[Act No. 9 of 1967, Sch.]

341. Power of Government to disclaim title to property vesting under section 340

(1) Where any property vests in the Government under section 340, the Government's title thereto under that section may be disclaimed by a notice signed by the Attorney-General.

(2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Government under section 340, and subsections (2) and (6) of section 315 shall apply in relation to the property as if it had been disclaimed under subsection (1) of section 315 immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Government either expressly or by taking possession or other act evincing that intention.

(4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date on which the vesting of the property as aforesaid came to the notice of the Attorney-General, or, if an application in writing is made to the Attorney-General by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the court which would have

EV7 (80) (7) 74

REPUBLIC OF KENYA

Form 1

THE LAND CONTROL REGULATIONS, 1968

APPLICATION FOR CONSENT OF LAND CONTROL BOARD

To be submitted in TRIPLICATE in respect of each transaction and sent to or left at the appropriate office of the Commissioner of Lands

To: THE KIAMBU

LAND CONTROL BOARD,

L.C.R. No. 5743

I HEREBY apply to the KIAMBU Land Control Board for its consent to the transaction described below, and give the following information:—

1. (a) Present registered holder of interest (full name in BLOCK LETTERS): KASARINI ESTATES LIMITED

(b) Nationality BRITISH

(c) Address P.O. BOX 49443 NAIROBI

2. (a) Proposed purchaser, transferee, mortgagee, chargee, allottee, etc. (full name in BLOCK LETTERS) KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED

(b) If a limited liability company, names of directors, authorized and issued share capital and principal shareholders: if a co-operative society, names of chairman, secretary and treasurer and total number of members—

CHAIRMAN - ZAKARIAH KIMEMIAH GAKUNJU

SECRETARY-SAMUEL MBUGUA KIBATHI

TREASURER- MBUGUA MWANGI

Total Number of Members - Ten

(c) Nationality KENYAN Certificate No. 2240

(d) Address P.O. BOX 74414 NAIROBI

3. Nature of transaction (e.g. sale, gift, lease, mortgage, charge, etc.: if sale or allotment of shares name of company, number and particulars of shares to be transferred)

SALE

4. Term (i.e. the length of time for which the land affected is to be transferred or leased: if sale or allotment of shares, authorized share capital of the company and numbers of shares issued at date of application)

5. Description of Land—

L.R. or Parcel No. 7153/2

Area 911 acres approximately

Locality KIAMBU

(86) (8)

75

6. (a) Purchase price, if a sale or option ... Sh. 4.5 MILLION

Rent ... Sh. ...

Estimated value of the land (if a gift) ... Sh. ...

Amount of loan (if a mortgage or charge) ... Sh. 4,250,000

Rate of interest (if a mortgage or charge) ... 9 %

Any other information affecting the amount of the consideration, particularly regarding the description and area of crops with estimated yields and value thereof included in the purchase price ... Refer to attached Documents

(b) Full description and approximate value of improvements on land included in the consideration 4 MILLION SHILLINGS

(c) Any other consideration passing between the parties ... NIL

7. If a transfer or lease of the land—

Proposed development programme of purchaser, including funds available therefor with approximate date ... IMPROVEMENT OF COFFEE YIELDS -PROPOSES TO SPEND ABOUT ONE MILLION SHILLINGS

Does the purchaser/leasee intend to reside on the land? ... NOL

8. (a) Other agricultural land registered in the name of or held under contract for sale by the proposed purchaser, transferee, lessee or allottee, or any member(s) of his immediate family, or any company in which he has an interest (state the nature of any interest in such company)—

L.R. or Parcel Nos. ... Area ...

Owner ... /

Nature of interest ...

Whether contiguous to land being purchased ...

(b) Particulars of agricultural land held and disposed of by purchaser or lessee in the last three years—

L.R. or Parcel Nos. ... District ... Area ...

L.R. or Parcel Nos. ... District ... / ... Area ...

9. Farming experience of transferee ... THE TRANSFEREE INTENDS TO RETAIN THE SERVICES OF THE PRESENT MANAGER WHO HAS MORE THAN 20 YRS EXPERIENCE

We hereby declare that the above information is true to the best of our knowledge and belief.

KJUGI & GICHURIA
Advocates
Signature of purchaser, lessee, mortgagee, charger or authorized agent or agents, etc.

KASARINI ESTATES LTD.
Signature of owner, lessor, mortgagee, charger or authorized agent or agents, etc.

EV 8 MNM6/96

9

JUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

This is the exhibit marked "MNM 8" referred to in the annexed Affidavit of MARGARET NYOKABI MBUGUA Sworn Declared before me this 16th day of SEPTEMBER 2013 at Nairobi.

Tusker House
Second Floor
Ronald Ngala Street
(Formerly Duke Street)
P.O. Box 46093
NAIROBI, Kenya

OUR REF. PGK/393

YOUR REF

Commissioner for Oaths

EV

10th September, 1974

The Commissioner of Lands,
Nairobi

Dear Sir,

SALE OF L.R. NO. 7153/2 FROM KASARINI ESTATES LIMITED TO KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED

We act for Kasarini Farmers Co-Operative Society Ltd. We enclose herewith the Application for consent of the Kiambu Land Control Board to the above proposed transaction and should be grateful if you could forward the application to the said Board at your earliest convenience.

Yours faithfully,
NJUGI & GICHUKIA ADVOCATES

This is the Exhibit marked "MNM6" referred to in the annexed Affidavit / Declaration of MARGARET NYOKABI MBUGUA Sworn Declared before me this 2ND day of JUNE 2016 at Nairobi

Commissioner for Oaths & Notary Public

GICHUKIA

56

Mr. Kydd

CVO Agric.

Please arrange for an early valuation of this property & enable Lands Section to send the application to the Board

WHEN REPLYING PLEASE QUOTE OUR REFERENCE

14/9/74

THE KENYA GAZETTE

Published under the Authority of His Excellency the Governor of the Colony and Protectorate of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. LXII—No. 9 NAIROBI, 9th February, 1960 Price: Sh. 1

CONTENTS

GAZETTE NOTICES

	PAGE
Appointments, etc.	132
The Courts Ordinance—Appointments	132
The Criminal Procedure Code	132
The Education Ordinance—Appointments, etc.	132
The Registration of Persons Ordinance—Appointment	132
The Factories Ordinance—Appointment	133
The African District Councils Ordinance—Appointments	133
The Museums Trustees Ordinance—Appointment	133
The Animal Diseases Rules—Appointment	133
The Townships Ordinance—Appointments	133
Coast Labour Committee—Appointments	134
The Oil Production Regulations—Renewal of Licence	134
The Rice Factory Rules—Application for Licence	134
The Firearms Ordinance—Authorization, etc.	134
Tenders	134
The Native Lands Trust Ordinance—Setting apart of Land	135–149
Liquor Licensing	149
Vacancies	149, 150
H.M. Supreme Court of Kenya at Nyeri and Kisumu—Cause Lists	151
Language Examinations—Results	151
The East African Industrial Licensing Ordinance—Application for Licence	151
Loss of Share Certificates	151
Colony and Protectorate of Kenya—Exchequer Return	152
Loans for Higher Education	153
The Water Ordinance—Qualified Engineers	153
Applications	153
Kenya Stock	154
Transport Licensing	154
The Production of Food Crops Rules—Earliest and Latest Planting Dates	154
The Pharmacy and Poisons Ordinance—Registered Pharmacists	155
The Records (Disposal) Ordinance—Destruction of Records	156
Resident Magistrates Court—Unclaimed Legal Deposits	156
City Council of Nairobi—Election of Councillors	157–162
Imposition of Charges	162

GAZETTE NOTICES—(*Contd.*)

	PAGE
Municipal Council of Mombasa—Assessment Rate	162
Township of Malindi—Supplementary Valuation Roll	162
Trade Marks	163
Bankruptcies	164, 165
The Companies Ordinance	166
The Marriage Ordinance—Licensing of Place of Worship	166
The Trade Unions Ordinance—Registration	167
The Societies Ordinance—Registrations, etc.	167
Probate and Administration	167, 168
The Fraudulent Transfer of Businesses Ordinance	168
Dissolution of Partnerships	168, 169
Revocation of Power of Attorney	169
Notice of Change of Name	169

SUPPLEMENT No. 10

Bills, 1960

SUPPLEMENT No. 11

Legislative Supplement

LEGAL NOTICE NO.	PAGE
74—The Crown Lands (Amendment and Miscellaneous Provisions) Ordinance, 1959—Appointment of day of Operation	185
75—The Agriculture (Scheduled Crops) (Prices) (No. 2) (Amendment) Order, 1960	185
76—The Boards of Governors for Government Schools (Amendment) Order, 1960	186
77—The African District Councils Ordinance, 1950—Prescribed Occupation	186
78—The Nanyuki Urban District Council (Public Markets) By-laws, 1959	187
79—The Nyeri Urban District Council (Public Markets) By-laws, 1959	192
80—The Thomson's Falls Urban District Council (Public Markets) By-laws, 1959	197
81—The Naivasha Urban District Council (Licensing of Premises and Traders) By-laws, 1959	202
82—The Naivasha Urban District Council Dangerous and Offensive Trades) By-laws, 1959	206
83—The Traders Licensing Ordinance, 1951—Exemption	207
84—The African Courts (Hearing of Charges) (No. 4) Order, 1960	207
85—The Detained and Restricted Persons Regulations, 1960—Place of Detention	208

NJUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

Telephone: 24304

Tusker House,
Second Floor,
Ronald Ngala Street,
(Formerly Duke Street)
P.O. Box 46693,
NAIROBI, Kenya.

OUR REF: PG/K/393

YOUR REF:

29th July, 1974

Messrs. Hamilton Harrison & Mathews,
Advocates,
Esso House
Nairobi

Dear Sirs,

RE: The Co-Operative Bank
of Kenya Ltd. and Kasarini
Farmers Co-Operative Society Ltd.
Purchase of Kasarini Estate

We refer to the Co-Operative Bank's letter to our clients, Kasarini Farmers Co-operative Ltd. dated 24th July 1974 and copied to yourselves among others in which the Co-Operative Bank confirmed approval of our client's application for a loan of Shs. 4,050,000/= to enable our clients to purchase Kasarini Estate. The writer did subsequently meet your Mr. Ndungu and confirmed that the Agreement of sale between Kasarini Estates Ltd. and Zakariah Kimemia Gakunju and four others who are incidentally members of Kasarini Co-Operative Society, Specifically provides that Messrs. Gakunju and others will purchase the total shareholding of Kasarini Estate Ltd and not the land. The Exchange Control permission to remit the total purchase price to Switzerland was granted on the basis of the Agreement of sale.

Kasarini Estates Ltd have indicated that they will not agree to transfer the land to the Co-operative Society and that they will insist on the transfer of the total shares in terms of the Agreement of sale. Your client's Bank main concern, we reckon, is to obtain a mortgage of the Estate and also to ensure that the loan goes to Kasarini Farmers Co-Operative Society Ltd. On the basis of the above, the writer did put forward the following suggestions to your Mr. Ndungu:- That Kasarini Estates Limited will transfer all the shares in the Company to Messrs. Gakunju & Four others to hold upon trust for Kasarini Estates Ltd. Then Kasarini Estates Ltd. will give notice to Messrs. Gakunju & Others to hold the shares for the benefit of Kasarini Co-Operative Society Ltd. The co-operative Society will then mortgage the Estate to your client Bank.

By dealing with the transaction as suggested our clients will save an enomous amount of Stamp Duty. Your client Bank will get the mortgage of the Estate and in our view there will be no infringement of the Co-operative Bank Rules. Further there will be no breach of the agreement of sale and the Exchange Control permission.

.....2/con.

WHEN REPLYING PLEASE QUOTE OUR REFERENCE

(15) 43

The writer understood from your Mr. Ndungu that our above suggestions will have to be put before Mr. Slade for opinion and we should be grateful if on receipt of this letter you could please attend to this aspect of the matter at your earliest convenience.

We confirm that the other members of the Co-operative Society are the wives of the Signatories to the Agreement of sale.

Yours faithfully,
NJUGI & GICHUKIA ADVOCATES

P. GICHUKIA

c.c. Messrs. Gakunju & Others
Nairobi.

Messrs. Robson Harris & Co.,
Advocates
Lullington House,
Nairobi.

7.0

5

EV 10

EV

NJUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

Telephone 24304

Tusker House,
Second Floor,
Ronald Ngala Street,
(Formerly Duke Street)
P.O. Box 46662,
NAIROBI, Kenya.

OUR REF: PG/K/393

YOUR REF:

12th April, 1974

Messrs. Kasarini Estates Limited,
P.O. Box 49443,
Nairobi

Dear Sirs,

RE: Proposed Sale of 50,000 Shares of Shs. 20/= each held in Kasarini Estates Ltd. to Kabogo Kangetha and others

We act for Messrs. Kabogo Kangetha and others. Your letter of 19th March, 1974 addressed to our above named clients have been placed in our hands with instructions to writs to you as follows:

Our clients will purchase the total shareholding at a price of K. £300,000. The total purchase price shall be paid in full in switzerland subject however to the Central Bank of Kenya granting the necessary consent.

Condition 2 of the terms and conditions contained in your letter of offer is acceptable to our clients.

As regards conditions 3 and 4, our clients suggest that vacant possession be given on 31st July, 1974 which in effect will be the completion date and that our client be responsible for all the expenses on the farm as from 1st July, 1974.

Our clients will pay 10% of the purchase price on signing the agreement of sale.

If the above conditions are acceptable to yourselves, please instruct your advocates to prepare draft Agreement of sale for approval by ourselves.

Yours faithfully,
NJUGI & GICHUKIA ADVOCATES

P. GICHUKIA

c.c. Kabogo Kangetha & Others
P.O. Box 74414
Nairobi.

WHEN REPLYING PLEASE QUOTE OUR REFERENCE

71

MNMS

(18)

NJUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

Telephone: 24304

Tusker House,
Second Floor,
Ronald Ngala Street,
(Formerly Duke Street)
P.O. Box 48693,
NAIROBI, Kenya.

OUR REF: PG/K/393

YOUR REF: K/153/1

3rd May, 1974

M/s. Robson, Harris & Co.,
Advocates,
Lullington House,
NAIROBI.

Dear Sirs,

Kasarini Estates Ltd. to Kabogo Kangethe & Others

We acknowledge receipt of your letter of 30th April, 1974 the contents of which are noted.

You will no doubt appreciate that the question of transfer of funds from Kenya to Overseas is indeed a difficult one. Our clients therefore need ample time to negotiate the transfer of the funds with the Central Bank of Kenya. They will certainly be required to produce the Agreement of Sale. In this connection, we would suggest that you arrange to let us have the Agreement of Sale for execution by our clients as urgently as possible if the transaction is going to be completed on the 31st of May 1974.

Yours faithfully,
NJUGI & GICHUKIA ADVOCATES,

P. GICHUKIA

c.c. Kabogo Kangethe & Others,
P.O. Box 74414,
Nairobi.

This is the exhibit marked "MNM7" referred to in the annexed Affidavit of MARGARET NYOKABI MBUGUA sworn

before me this 16th day of OCTOBER 2013

at Nairobi.

(31)

S

72

File No. 2225/5

Commissioner for Oaths

L.R. 7153/2 - KASARINI ESTATE - SIZE ACRES

Please refer to my minute at (6) and subsequent discussion which we held in your office together with Mr. Pandya. On Monday 30th September 1974 three representatives of Kasarani Co-operative Society came to see me. They were M/s. Zakaria Gakunju (Chairman), Samuel Githegi (Vice Chairman) and Mbugua Mwangi (Treasurer). I informed them that the Government was interested in obtaining 225 acres from L.R. 7153/2 which their Co-operative Society was intending to buy. It was the wish of the Government that before they buy this land they should enter into a written agreement with the Government to the effect that after they have purchased this land they will sell to the Government 225 acres at the market price at the time the Government purchases the land possibly late next year. I further informed them that the quoted purchase price of 5.4 million shillings is considered by Government Valuers excessive. In the opinion of Government Valuers the land and improvements should not be sold for a price exceeding 4.5 million shillings. While the 3 representatives of the Co-operative have no objection to the Government taking over 225 acres they requested me to put the Government wishes in writing to the Co-operative so that this matter can be discussed with the other 7 members of the Co-operative Society. These 3 representatives felt that they did not have full mandate to commit the other group but they thought that it is likely that there will be no difficulties in convincing the other 7 that it is appropriate to agree to sell 225 acres to the Government.

On Tuesday the 1st October, accompanied by Mr. Mbugua Mwangi who is the Treasurer of this Co-operative I visited Kasarani Estate. Bulk of the land is covered with coffee and there are 3 dams which are used for irrigating coffee. Whichever part of the farm the Government takes from them for residential development it will be necessary to up-root considerable number of coffee trees. I consider that before making decision on the best portion to take for Government residential development it may be a good idea to seek the recommendations of officials of Physical Planning Department. As far as possible areas occupied by permanent buildings and coffee mill and factory should be avoided. Subject to your views I recommend that for now a letter should be addressed to the Co-operative informing them that the Government intends to acquire either by mutual agreement or compulsory acquisition an area of 225 acres from this Estate for public purposes. In addition the Co-operative should be advised that the proposed purchase price is excessive and that this Department will not recommend the purchase of that land at that price to Kiambu Land Control Board. The Co-operative should therefore negotiate the purchase price with the Estate owners with a view of reducing the purchase price.

Please let me have your instructions.

D.C.C.

September, 1974.

C/Lands

5

13 6

60

73

File 2455/6

L.R. 7153/2, NAGARINI ESTATE - 912 ACRES

The original file is missing and a temporary cover has been opened to enable the Department to deal with the application to the Board for the purchase of this Estate.

An African Co-operative consisting 10 members wish to purchase this Estate. As the price exceeds £270,000 I referred it to Mr. Kydd for valuation. He has held discussion with Mr. Pandya and they jointly consider that the price asked for by the owners i.e. £270,000 is too high. They consider a price of £225,000 to be more realistic.

Mr. Kydd will take 3 to 4 days to produce a detailed valuation report. According to Mr. Pandya the Government would like to purchase this farm for future housing and if the whole farm cannot be purchased Mr. Pandya has suggested that a 225 acre portion be purchased by the Government.

The African Co-operative has already paid the owners a deposit of Rs. 600,000/-. Since June 1974 this Co-operative took for the management of the estate and meets all the farm expenses including the salaries of the workers. The African Co-operative has not yet received any monies from the sale of coffee. This farm has an area of 560 acres covered with coffee.

Since the Government has no money to acquire this Estate in next few years and since the owners are no longer managing the farm I suggest that the owners should be permitted to sell the farm to the African Co-operative less the 225 acres which should be sold to the Government for future housing estate. Alternatively the Treasury can raise the £225,000 the Government can buy the farm and then lease it to the African Co-operative until the Co-operative but I am sure the Co-operative will be happy to the estate less 225 acres rather than a lease of uncertain price for housing. This latter suggestion may not appeal to the Co-operative but I am sure the Co-operative will be happy to the estate less 225 acres rather than a lease of uncertain price.

For your instructions please.

D.C.L.

1974.

149/43 4 24/245
34/39 (Laikipia)

ORIGINAL
REPUBLIC OF KENYA *75/4

OFFICIAL RECEIPT C 8458682

Station Nub Date 11/12 20 15

RECEIVED from Francis Nguona

Shillings Three Hundred

cents Only=

on account of 7153/24 12825

Vote Head Dep 36

Sub-Head Rev

Item Search fee

Cash Cheque No. Cash

KSh. 300/= cts.

Ac. No. 26/4/2012

Signature of Officer receiving remittance

FORM 6

GPK (SP) 7469—10m b.

EV 11
EV 12
EV 13
EV 14
EV 15

Receipts for purchase of maps from survey of Kenya

ORIGINAL

REPUBLIC OF KENYA

OFFICIAL RECEIPT C/ 8458710

Station Nyb Date 11/12 20 15

RECEIVED from Francis Njugoha

Shillings Two hundred

cents Only=

on account of 149/43

Vote/Head Dep 36

Sub-Head Rev

Item. Print fee

Cash Cheque No. Cash

KSh. 200/= cts.

Ac. No. 0361420212

Signature of Officer receiving remittance

for Director of Survey

FORM

GPK (SP) 7469—10m B.

ORIGINAL
REPUBLIC OF KENYA
OFFICIAL RECEIPT B 4477649

Station NB Date 7/5/2018

RECEIVED from Joseph Njuguna Kibiru

Shillings One thousand only

cents

on account of FR no. 149/43, 149/45, 9/12, 11/61, 77/78

Vote Head Dep 36

Sub-Head Dev

Item Dvt

Cash Cheque No. Cash

KSh 1000/- cts

Ac. No. 036-1420212

Signature of Officer receiving remittance

FOR

GPK (SP) 7469 – 10m Bks. – 04/2015

For: DIRECTOR OF SURVEY

EV 15 (201) 87

(20

This is the exhibit marked "MNM 13" referred to in the annexed affidavit of MARGARET NYUKABI MBUGUA Sworn before me this 19th day of SEPTEMBER 2013 at Nairobi.

MINISTRY OF LANDS AND SETTLEMENT

Grams: "LANDS"
Phone: 27471-ext. .....
Replying please quote
No. 65100/36
and date

DEPARTMENT OF LANDS
P.O. Box 30089, NAIROBI

Commissioner for Oath

19th March, 1979

The Secretary,
Kasarani Farmers Co-Operative Society Ltd,
P.O. Box 75155,
NAIROBI

PROPOSED CONSOLIDATED AND SUB-DIVISION OF L.R. NO. 7153/1 and 7153/2

I refer to your letters dated 30th January, 1979 and dated 14th March, 1979 and enclose herewith one copy of the subdivisional plan duly approved, subject to the following conditions:-

1. Surrender to the Government free of charge the sites earmarked for Nursery School, Church and Primary School.

2. Surrender to the Government free of charge all road reserves.

3. Construction of the said road reserves to a standard acceptable to the Local Authority.

JSKM/am

for: (J. S. K. Mutitu)
COMMISSIONER OF LANDS:

The Town Clerk,
Kiambu Town Council,
P.O. Box 176,
Kiambu - with a plan.

The Director of Surveys,
Nairobi (with a plan)

The Director of Physocal Planning
Nairobi with a plan)

The Land Registrar,
P.O. Box 291,
Kiambu

(21)

7

200

88

PROPOSED AMALGAMATION OF
LR NO 7/153/1 & LR 7/153/2



PROPOSED SUB-DIVISION SCHEME
OF LR NO 7/153/1 & 7/153/2

EV 16 EV 20

DATED 31st December 1974

KASARINI ESTATES LIMITED

and

KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED

A G R E E M E N T

282

AN AGREEMENT made the 31st day of DECEMBER 1974 BETWEEN KASARINI ESTATES LIMITED a limited liability company incorporated in England and having its registered office at Grimsby England aforesaid (hereinafter called "the Vendor" which expression shall where the context so admits include its successors in title and assigns) of the one part and KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED a body corporate registered under the Co-Operative Society Act Cap.490 of the Laws of Kenya of Post Office Box Number 74414 Nairobi in the Republic of Kenya (hereinafter called "the Purchaser" which expression shall where the context so admits include its successors and assigns) of the other part

W H E R E A S the Vendor is seised for an estate in fee simple subject as hereinafter provided but otherwise free from encumbrances of all that piece or parcel of land more particularly described in the First Schedule hereto and known as Land Reference Number 7153/2 together with the buildings and improvements being thereon or on some part thereof including the 1974/1975 coffee crop whether picked or still on the trees (all of which land buildings and improvements are together hereinafter called "Kasarini Estate") and has agreed to sell the same to the Purchaser together with the movable assets specified in the Second Schedule hereto (hereinafter referred to as "the Movables")

for the consideration and subject to the terms and conditions hereinafter set forth.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

1. THE Vendor shall sell and the Purchaser shall purchase Kasarini Estate and the Movables for the sum of Kenya Shillings Four million seven hundred and forty-seven thousand two hundred and ninety-nine and Cents sixty (K.Shs.4,747,299.60) allocated as to Kenya Shillings Four million five hundred thousand (K.Shs.4,500,000.00) for Kasarini Estate and Kenya Shillings Two hundred and forty-seven thousand two hundred and ninety-nine Cents sixty (247,299.60) for the Movables (being the book value thereof as at the date of transfer hereinafter stipulated)

2. THE date of transfer shall be the 31st day of December 1974 upon which vacant possession of Kasarini Estate shall be given and the Movables shall pass by delivery

3. AS from the date of transfer the Purchaser shall be responsible for the payment of all outgoings and shall be entitled to the receipt of all rents and profits

4. THE whole of the consideration shall be due and payable to the Vendor on the date of transfer hereinbefore stipulated

5. THE parties shall each bear the cost of their own Advocates but the Purchaser shall be responsible for all Stamp Duties registration fees and the like.

6. THE Purchaser having been give inspection of the

muniments of title of the said land described in the First Schedule hereto shall be deemed to have notice of all matters affecting the same whether or not such matters are referred to in the First Schedule hereto

THE FIRST SCHEDULE

Description Of Land

All that piece or parcel of land comprising 368.67 hectares or thereabouts situate North of Nairobi City in the Kiambu District in the said Republic of Kenya being Land Reference Number 7153/2 which said piece or parcel of land is delineated and described on the Plan annexed to a Conveyance dated the 17th day of May 1960 (registered in the Government Lands Registry at Nairobi in Volume N.44 Folio 164/1 File 13705 and more particularly on Land Survey Plan No. 74226 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red together with all buildings and improvements erected and being thereon subject to the easements rights and privileges granted by and to the performance and observance of the covenant on the part of the original Kasarini Estates Limited contained in an Indenture of Conveyance dated the 10th day of July 1959 and made between the original Kasarini Estates Limited of the one part and Sydney Alec Chambers (therein

described) of the other part registered as aforesaid in Volume N.44 Folio 2/1 and subject also to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder

THE SECOND SCHEDULE

Particulars of Movables

	K.Shs.
Machinery, Plant, Implements and Motor Vehicles	136,292.80
Furniture, Fittings and Equipment	23,272.80
Trade Investment	74,110.00
Deposits	13,624.00
	247,299.60

AS WITNESS the hands of the duly authorized agents of the parties the day and year first before written

SIGNED by the duly authorized representative of the Vendor In the presence of:-

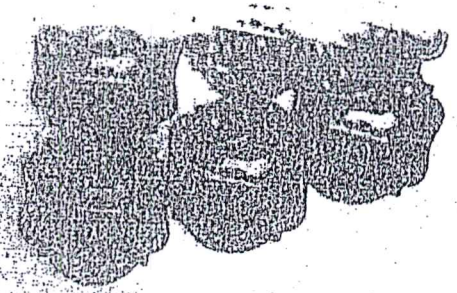
JOSEPH N. KARUGIA
P.O. Box 49443
NAIROBI

SIGNED by the duly authorized representative of the Purchaser in the presence of:-

D.T. NYAGAH
P.O. Box [illegible]

EV 16320 (6)

31 Dec 74 1200 45.00/1 JB 86/12



THIS INDENTURE is made the 30th day of December One thousand Nine hundred and Seventy-four BETWEEN KASARINI ESTATES LIMITED a limited liability Company incorporated in England and having its registered Office at Grimsby in England (hereinafter called "the Vendor" which expression shall where the context so admits include its successors and assigns) of the one part and KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED a body corporate registered under the Co-Operative Societies Act (Chapter 490) of the Laws of Kenya and of Post Office Box Number 74414 Nairobi in the Republic of Kenya (hereinafter called "the Purchaser" which expression shall where the context so admits include its successors and assigns) of the other part:

WHEREAS:

(A) By a Conveyance (hereinafter called "the Conveyance") dated the Seventeenth day of May One thousand Nine hundred and Sixty (registered in the Government Lands Registry at Nairobi in Volume N.44 Folio 164/1 File 13705 and made between Kasarini Estates Limited (therein described and hereinafter called "the original Kasarini Estates Limited") of the first part Peter Mervyn Johnson and George Rhoades Smith (therein described) of the second part and Kasarini Estates (1959) Limited (therein described) of the third part for the consideration therein mentioned ALL THAT piece or parcel of land comprising Three Hundred and Sixty Eight decimal Six Seven Hectares (368.67 Hec.) (912 Acres) or thereabouts situate

LCB — 10-Sep-1974

Agreement for Sale 30/12/74

This is the Exhibit marked "MNM1" referred to in the annexed Affidavit / Declaration of [illegible] Mukabi Mbugua Sworn Declared before me this 6th day of Sept 2016 at Nairobi

Commissioner for Oaths & Notary Public

North of Nairobi City in the Kiambu District of the said Republic of Kenya being Land Reference Number 7153/2 which said piece or parcel of land is delineated and described on the plan annexed to the Conveyance and more particularly on Land Survey Plan Number 74226 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red was conveyed unto the said Kasarini Estates (1959) Limited for an estate in fee simple TOGETHER WITH all the building and improvements erected and being thereon SUBJECT to the easements rights and privileges granted by and to the performance and observance of the covenant on the part of the original Kasarini Estates Limited contained in an Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine and made between the original Kasarini Estates Limited of the one part and Sydney Alec Chambers (therein described) of the other part (registered as aforesaid in Volume N.44 Folio 2/1 AND SUBJECT ALSO to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder AND SUBJECT ALSO TO AND WITH THE BENEFIT OF the covenant on the part of the said Sydney Alec Chambers contained in the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine

---

By virtue of divers mesne assignments acts in the law and events and ultimately by an Indenture dated the Nineteenth day of August One thousand Nine hundred and Sixty-three and made between the said Kasarini Estates (1959) Limited of the first part the said Peter Mervyn Johnson of the second part and

the Vendor of the third part (registered in the Government Lands Registry at Nairobi in Volume N.44 Folio 164/3 File 13705) the said piece or parcel of land hereinbefore more particularly described and known as Land Reference Number 7153/2 together with all the buildings and improvements erected and being thereon was conveyed unto the Vendor for the consideration therein mentioned subject as aforesaid but otherwise free from all encumbrances

(C) The Vendor has agreed with the Purchaser for the sale to it the Purchaser of the said piece or parcel of land for the price or sum of Kenya Shillings Four Million Five Hundred thousand (K.Shs.4,500,000/-)

NOW THIS INDENTURE WITNESSETH as follows:

1. THAT in pursuance of the said Agreement and in consideration of the sum of Kenya Shillings Four Million Five Hundred thousand (K.Shs.4,500,000/-) paid to the Vendor by the Purchaser on or before the execution hereof (the receipt of which sum the Vendor hereby acknowledges) the Vendor as Beneficial Owner HEREBY GRANTS AND CONVEYS UNTO the Purchaser ALL THAT piece or parcel of land hereinbefore more particularly described and known as Land Reference Number 7153/2 TOGETHER WITH all the buildings and improvements erected and being thereon TO HOLD the same unto the Purchaser for an estate in fee simple SUBJECT to the said easements rights and privileges granted by the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine and to the performance and observance of the covenant on the part of the

original Kasarini Estates Limited therein contained and SUBJECT ALSO to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder and SUBJECT FURTHER TO AND WITH THE BENEFIT OF the covenant on the part of the said Sydney Alec Chambers contained in the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine

2. THE Purchaser HEREBY COVENANTS with the Vendor that it the Purchaser will henceforth perform and observe the covenants on the part of the original Kasarini Estates Limited contained in the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine AND will indemnify and keep indemnified the Vendor and its estate and effects from and against all actions and demands on account of the same.

IN WITNESS WHEREOF the Vendor and the Purchaser have caused their respective Common Seals to be hereunto affixed the day and year first before written.

THE COMMON SEAL of the Vendor was hereunto affixed in the presence of:

DIRECTOR

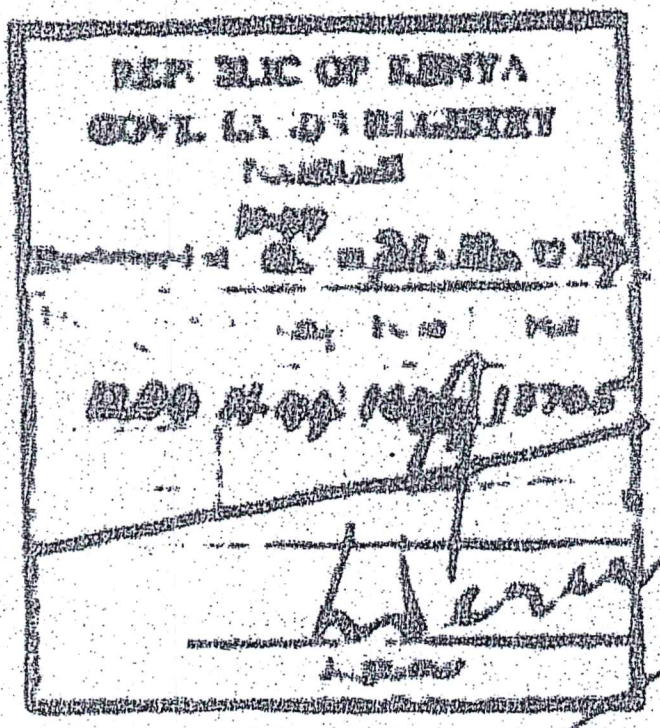
DIRECTOR

THE COMMON SEAL of the Purchaser was hereunto affixed in the presence of:

CHAIRMAN

SECRETARY

10



EV 17 34 EV

62

PRESENTED NAIROBI LAND TITLES REGISTRY

PRESENTED NAIROBI LAND TITLES REGISTRY

THIS INDENTURE is made the Nineteenth day of August One Thousand Nine Hundred and Sixty-three Between KASARINI ESTATES (1959) LIMITED a Limited Liability Company incorporated in Kenya and having its registered office at Nairobi in Kenya (hereinafter called "the Vendor" which expression shall where the context so admits include its successors and assigns) of the first part PETER MERVYN JOHNSON of Nairobi aforesaid Chartered Accountant (hereinafter called "the Liquidator" which expression shall where the context so admits include his successor or successors in office as Liquidator or Liquidators of the Vendors his and their assigns) of the second part and KASARINI ESTATES LIMITED a Limited Liability Company incorporated in England and having its registered office at Grimsby in England (hereinafter called "the Purchaser" which expression shall where the context so admits include its successors and assigns) of the third part:

WHEREAS:

(1) At the date of the passing of the resolution next hereinafter recited the Vendor was seised of the premises hereinafter described and intended to be hereby conveyed for an estate in fee simple in possession subject as hereinafter mentioned and had agreed with the Purchaser for the sale of the same premises to the Purchaser for a like estate subject as aforesaid and upon and subject to the terms and conditions hereinafter contained or implied but otherwise free from encumbrances at the price or sum of Shillings Two Million Three Hundred and Four Thousand One Hundred and Seventy (Sh. 2,304,170/=) but no part of the said purchase price has yet been paid to the Vendor and no assurance of the said premises has yet been executed by the Vendor in favour of the Purchaser in pursuance of the said agreement:

(2) At an Extraordinary General Meeting of the members of the Vendor duly convened and held on the Fourteenth day of June One Thousand Nine Hundred and Sixty-three a Special Resolution was duly passed that the Vendor should be wound up voluntarily and that the Liquidator should be and he thereby was appointed Liquidator of the Vendor for the purposes of such winding up:

(3) The Liquidator has agreed with the Purchaser to complete the said agreement in manner hereinafter appearing:

FAKE INDENTURE

NOW THIS INDENTURE WITNESSETH as follows:

1. In pursuance of the said agreements and in consideration of the premises and of the sum of Shillings Two Million Three Hundred and Four Thousand One Hundred and Seventy (Sh. 2,304,170/=) on or before the execution of these presents paid by the Purchaser to the Liquidator as such liquidator as aforesaid (the receipt whereof the Liquidator doth hereby acknowledge) the Vendor as beneficial owner acting by the Liquidator DOTH HEREBY GRANT AND CONVEY unto the Purchaser ALL THAT piece or parcel of land containing Nine Hundred and Twelve acres or thereabouts situate North of Nairobi Municipality in the Kiambu District of Kenya and known as Land Reference Number 7153/2 which said piece or parcel of land is the premises comprised in an Indenture of Conveyance dated the Seventeenth day of May One Thousand Nine Hundred and Sixty and made between Kasarini Estates Limited (therein described and hereinafter called "the original Kasarini Estates Limited") of the first part the said Peter Mervyn Johnson and George Rhoades Smith (both therein described) of the second part and the Vendor of the third part (registered in the Crown Lands Registry at Nairobi aforesaid in Volume R 44 Folio 2/2, File 13705) and is delineated and described on the plan annexed to the said Indenture of Conveyance and more particularly on Land Survey Plan Number 74226 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red TOGETHER WITH all buildings and other improvements now erected and being thereon TO HOLD the same unto the Purchaser for an estate in fee simple SUBJECT to the easements rights and privileges granted by and to the performance and observance of the covenants on the part of the original Kasarini Estates Limited contained in an Indenture of Conveyance dated the Tenth day of July One Thousand Nine Hundred and Fifty-nine and made between the original Kasarini Estates Limited of the one part and Sydney Allen Chambers (therein described) of the other part (registered as aforesaid in Volume R 44 Folio 2/1) AND SUBJECT ALSO to the provisions of the Crown Lands Ordinance 1902 and to the Rules for the time being in force thereunder AND SUBJECT ALSO TO AND WITH THE BENEFIT of the covenant on the part of the said Sydney Allen Chambers contained in the said Indenture of Conveyance dated the Tenth day of July One Thousand Nine Hundred and Fifty-nine.

2. The Purchaser HEREBY COVENANTS with the Vendor and the Liquidator that it the Purchaser will henceforth perform and observe the covenants on the part of the original Kasarini Estates Limited contained in the said Indenture of Conveyance dated the Tenth day of July One Thousand Nine Hundred and Fifty-nine AND THAT indemnify and keep indemnified the Vendor and the Liquidator and its and his respective estates and effects

36

64

from and against all actions claims and demands on account of the same.

IN WITNESS whereof the Vendor (by the direction of the Liquidator) and the Purchaser have caused their respective Common Seals to be hereunto affixed and the Liquidator has hereunto set his hand and affixed his seal the day and year first hereinbefore written.

SEALED with the Common Seal of the Vendor in the presence of:-

Liquidator

SIGNED SEALED AND DELIVERED by the Liquidator in the presence of:-

[illegible]

SEALED with the Common Seal of the Purchaser in the presence of:-

Director

Secretary

COLONY OF KENYA
CROWN LANDS REGISTRY
NAIROBI
Registered 2.30 [illegible] 9 1963
[illegible]
[illegible]

(13)

39

EV 17

EV 18

No. 7153/2 Orig. Nos 82/1/2/R, 82/2/R File No. 13705
and 7043/R) Kiambu District.

Area - 912 acres (368.67 Hec.)
Freehold

(1) Conveyance dated 17th May 1960
Kasarani Estates Ltd - Vendor
Peter Mervyn Johnson & George Rhodes Smith
(Liquidators) Chartered Accountant
To Kasarani Estates (1959) Ltd (Purchaser)
Together with and subject to Easements &
subject also to the Wayleave Agreements
for Shs 14,382.11/= to fee simple

(2) Special Resolution dated 14/6/63
Appointing Peter Mervyn Johnson as Liquidator
of Kasarani Estates (1959) Ltd dated 17/9/63
between Kasarani Estates (1959) Ltd

(3) Conveyance dated 17/8/63
To Kasarani Estates Ltd
for Kshs 2304170/= dated 17/9/63
between Kasarani Estates Ltd

(4) Conveyance dated 30/12/74
To Kasarani Farmers Co-op. Society
for Kshs 4,500,000/= dated 31/12/74
between Kasarani Farmers Co-op. Society

(5) Mortgage dated 30/12/74
To the Co-operative Bank of Kenya Ltd
dated 13/12/74 for 3,375,000/=

Advocates: H.H.T. Matthews Date of search 9-4-79

How would agreement be made on 30th Dec 1974 and Transact on the same day.

EV 1 (12) 38

[illegible] No. 7153/1 File No. 13535

EV

[illegible] (Sec. [illegible]) [illegible]

[illegible] of the will of Sydney Mec Chambers [illegible] 9/7/73 — who granted to the [illegible] Bank Limited of Po. Box 30279, Nairobi as [illegible] dated 29/7/74

[illegible] Memorandum of Discharge of an equitable [illegible] by deposit of Document of Title [illegible] 29/2/74.

[illegible] dated 4/2/1974 by the Standard [illegible] as personal representative of Sydney [illegible] and Barbara Mary McCaldin [illegible] Nairobi as beneficiary [illegible] 27/7/74

[illegible] Barbara Mary McCaldin [illegible] dated 11th June '76

[illegible] Kimenia Gakunja, Samuel [illegible] Mwangi, Samuel [illegible] and Hedogo Kangethe [illegible]

[illegible]

This is the Exhibit marked "MNM 2" referred to in the annexed Affidavit / Declaration of Mwangi Mtokabi [illegible] Sworn Declared before me this 6th day of Sept 2016 at Nairobi

Commissioner for Oaths & Notary Public

EV19

Mary Njoki v John Kinyanjui Mutheru [1985] eKLR

(16)

4

~~EV 18~~

KENYA LAW

Wesen Legal Information to Public Knowledge

EV19

IN THE COURT OF APPEAL AT NAIROBI

(Coram: Madan , Kneller & Nyarangi JJA)

CIVIL APPEAL NO 71 OF 1984

Between

MARY NJOKI .....APPELLANT

AND

JOHN KINYANJUI MUTHERU.....1ST RESPONDENT

GABRIEL KAIRA MUTHERU.....2ND RESPONDENT

MUMBI MUTHERU.....3RD RESPONDENT

WAMBUI MUTHERU.....4TH RESPONDENT

(Appeal from the High Court at Nairobi, Sachdeva J)

JUDGMEMT

see 18

February 25, 1985, Madan JA delivered the following Judgment.

The first named four respondents (plaintiffs) filed a summons naming the appellant, Mary Njoki, and the fifth respondent the Public Trustee as defendants for orders to permit the intended administrator the Public Trusteee to apply for grant of letters of administration alone to the estate of Peter Gachukia deceased who died intestate on January 2, 1974 ST to the exclusion of Mary Njoki named as the deceased's widow "and she be declared no beneficiary of the deceased's estate.

The deceased was an advocate by profession. He died in a motor car accident. The plaintiffs, John Kinyanjui Mutheru and Gabriel Kaira Mutheru deponed in two affidavits in support of the summons that they were both brothers of the deceased who left them surviving him together with his two stepmothers the third and fourth respondents Mumbi and Wambui Mutheru; that the Public Trustee erroneously included Mary Njoki (as beneficiary) as the deceased's widow she not being legally married to him either under customary law or under any statute, and she could not claim under his estate; that they were the only two persons entitled to inherit from the deceased's estate.

It was not in dispute that Mary Njoki was not married to the deceased in any recognized manner. She herself told the court that no marriage ceremony of any kind was performed between them. The issue

The Lawyer MR GACHUKIA WHO TRANSACTED ON 30,31 DEC 1974. ACCIDENT 24/12/74 ... 2/1/75

17

before the court between Mary Njoki and the plaintiffs was whether Mary Njoki was entitled to a share in the deceased's estate as his widow by virtue of their long cohabitation, association and sexual intercourse between her and the deceased as they lived together as husband and wife for six years from 1969 to 1975. She was saying to the court that a presumption of marriage arose from long cohabitation and reput that she was the deceased's wife, sometimes referred to "common law wife".

The Public Trustee took no part in the proceedings. The learned judge held that Mary Njoki was not wife of the deceased, and she was not entitled to inherit any part of his estate. Mary Njoki has appealed. Condensed the eight grounds of appeal urge that the learned trial judge erred in law and in fact in rejecting the evidence given on behalf of Mary Njoki which was corroborated, in particular the evidence of the independent witness Timan Ngugi; in believing that she was not married to the deceased or that the common law presumption of marriage did not apply in the circumstances of the case; in not holding that there was a marriage by repute due to the intention on the part of the deceased and Mary Njoki to marry, and long cohabitation. The *viva voce* evidence in the court below was to the following effect: John Kinyanjui Mutheru, Gabriel Kaira Mutheru agreeing with him, told the court that he came to know Mary Njoki through the Public Trustee after the death of his brother when she said she was married to the deceased; he was surprised to hear her claim.

The deceased lived in Lavington prior to his death. He and the deceased used to visit each other. Kinyanjui used to see him with many girl friends, including Mary Njoki. None of them lived with him. The deceased did not introduce him to her. If they were married he, his mothers and the family members would have known about it; they would also have been involved in any marriage negotiations but they never were. He was not aware that the deceased was living with a woman as his wife, nor was he living with Mary Njoki. He saw her once when they visited him at Eastleigh together with another girl. He was introduced to the two ladies by name.

He did not see Mary Njoki again. He did not see the deceased with her at Kiganjo. The deceased brought her to his home in 1974 after the death of their father. Mary Njoki did not have a child.

Gabriel was different. He said he did not know if Mary Njoki was married to the deceased though to his knowledge the deceased never married, that Mary Njoki was not staying with the deceased when he died.

Mumbi said the deceased considered her his mother as she brought him up when he was six years old. He would tell her everything. He told her he had not married, and Mary Njoki was never married to him.

Wambui agreed with the evidence given by John, Gabriel and Mumbi. She herself did not know where the deceased lived in Nairobi.

Mary Njoki testified. She said she knew the deceased before his death. She was staying with him as his wife. She came to know him in 1959 at Kiganjo. They were friends until 1969 when they started living together continuously until he died, first in New Pumwani from 1969 to April, 1972 in a one bed-sitting room house. The deceased then bought a house in Langata with his partner Mr. Timan Njugi. They all moved into that house, and stayed there until July, 1974. In August, 1974 she and the deceased moved into another house In Lavington which the deceased and Mr. Njugi also bought together. Mr. Njugi remained behind in the Langata house. They stayed in Lavington until the deceased died. Mary Njoki said she came to know the plaintiffs when she was living with the deceased since 1969. She and the deceased used to visit them at their home at Kiganjo. She came to know John in 1970. He had come to visit the deceased in New Pumwani. They used to visit him where he was staying. The deceased introduced her as his wife. She made the arrangements for John's wedding to Margaret Njoki at St

(18) 46

Teresa;'s Church.

She attended the wedding with the deceased. She took photographs. John and his wife had two children one named Kimani. Margaret worked as a cateress at the Mater Hospital in South "B" Nairobi. John was working with Daly and Figgis, Advocates. He never visited their home at Langata.

He came to Lavington once with his wife. They used to meet John often at his home in Kiganjo where she informed him of the deceased's accident on December 24, 1974. She met him at the hospital after Christmas, met him there very often – she, John and Mr. Njugi. They sent John home to call a step-brother also named Peter Gichukia to come and stay with her.

The step-brother stayed with her for a long time. John and his wife also used to visit her at Lavington and at Mr. Njugi's office after the deceased's death. John used to collect money from Mr. Njugi to pay school fees for the children.

Mary Njoki said she knew Gabriel since 1970. She used to meet him at home in Kiganjo where he was at school. He knew him all the time while she was living with the deceased.

Mary Njoki said she knew Mumbi and Wambui since 1969, having met them at the same time. She went with the deceased to visit them at Kiganjo.

The deceased introduced her to them. The deceased told her he considered Mumbi as his mother because she brought him up. They always visited them at Christmas. Sometimes they used to go together with Mr. Njugi and his wife.

The deceased used to go with her to visit her father's home at his farm every time he went to his home to meet her parents, brothers and sisters.

Her sister Margaret Waihihi and Nyambura, a step-sister of the plaintiffs stayed with them at their home in Lavington.

Mary Njoki said she had photographs to show that she attended the deceased's funeral who was buried at his farm at Kiganjo. Her parents, brothers and sisters also attended the funeral.

Mary Njoki said she did not undergo a marriage ceremony with the deceased although he told her he wished to formalize their marriage in the customary way. They did not solemnize any customary, religious or civil marriage. They wanted to do it but the deceased's father died. The deceased had told his father who told her father about it in March , 1974.

She based her claim upon long association and cohabitation with the deceased having lived with him continuously for six years from January, 1969 to January, 1975. He was living with her, not alone when he died.

Mary Njoki said she and the deceased used to write letters to each other when they were at school some of which she had. The deceased went to Uganda for secondary education. He was there for four years. They met only during the holidays but they used to write to each other.

The deceased left the Kenya School of Law in 1968. She was in Makerere until 1969 where she obtained a B Commerce degree. They had serious relationship in 1963. They used to have sexual intercourse. They were both Roman Catholics.

(19)

Mary Njoki said she wanted to formalize their marriage. They discussed it. He used to say he was getting ready. He wanted to formalize customarily in 1974. But the two families never met for any kind of ceremony owing to her brother's death. There was no *njurio*, nor *ruracio*. There was no settlement of dowry, and the clans never met for any kind of dowry. She used her maiden name throughout.

Three witnesses gave evidence on behalf of Mary Njoki. They were Wanjiku Njenga, Solomon Kahohi and Timan Ndere Njugi. Wanjiku Njenga said she had known Mary Njoki since 1967, and they were together at Makerere from 1969 to March, 1972 when they finished college and continued to be good friends. Mary Njoki lived with the deceased from 1972 in Pumwani Flat No B 22 Door 5 until August, 1972 when they moved over to Langata where they lived in a one-roomed guest house. She visited them many times.

They also visited her at Mangu many times where she was a teacher. In 1974 they moved to a house in Kingara Road in Lavington very close to where she lived. They also visited her. They lived together from 1972 until the deceased died.

Mary Njoki's father Solomon Kahohi said he came to know the deceased "very well" in 1969. The deceased used to come to his home with Njoki, Njugi and his wife. In 1969 Njoki introduced the deceased to him as her "husband because they were staying together at Pumwani in 1969. He used to visit them there.

The deceased told Solomon that he and Mary Njoki were living together, he would like to marry his daughter in the customary way, and not to worry about Mary Njoki as he would pay the dowry one day. As was the custom the deceased's father also came to discuss and told Solomon that they could know one another as his daughter was at his home, and to wait for him as he would come to see him. Solomon reminded the father about their discussion when he met him at a meeting at Kiganjo. The father died in 1974. Solomon said he visited the deceased's home with his people only during his father's funeral. When the deceased met with the accident he was living with Njoki in Nairobi. Solomon attended the deceased's funeral together with his wife and children.

Solomon pronounced that if his daughter and the deceased were staying together as they were, whether dowry was paid or not, they were regarded as husband and wife.

The third witness was Mr. Timan Ndere Njugi an advocate of the High Court of Kenya practicing at Nairobi. He said the deceased was a partner in his law firm up to the time of his death. He had known the deceased as a classmate in the Kenya School of Law since 1963. He also knew Mary Njoki with whom the deceased started associating in 1963. At that time she was at school. He knew that when she was at Makerere the deceased used to send her books and money. She used to work in Nairobi during vacation and live with the deceased as his wife. When she completed her college she actually went to stay with the deceased in Pumwani until 1972 when the three of them moved to Langata where he and deceased together bought a property there which had a guest house. The deceased and Mary Njoki lived in the guest house until they moved to Lavington where they bought another property together. The deceased and Mary Njoki stayed there until the deceased passed away.

There was no secret about the deceased and Mary staying together. Both families knew about their association. He, the deceased and Mary used to visit their respective homes now and then. The deceased's brothers and parents used to come and visit them both at Langata and Lavington. They all treated Mary as the deceased's wife, and they lived together as husband and wife during all that time. The deceased had told him to take care of Mary Njoki if anything happened to him.

Mr. Njugi continued that the deceased's funeral was arranged by him, John and Mary Njoki. The three of them featured very prominently in the ceremonies at the deceased's home. Mary Njoki's family were also present at the funeral. Mr. Njugi produced six photographs. Mary Njoki appears in four of them. The deceased's family members also appear in the photographs. Mary used to benefit from the deceased more than any other member of the family. She started living with him in Pumwani from March, 1972. They stayed together continuously until the deceased died. Mary was not just a girl friend of the deceased. She associated with him as his wife. They never had any children.

Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight of bearing of circumstances admitted or proved, or has plainly gone wrong the appellate court will not hesitate to decide. *Watt v Thomas*, [1947] AC 484.

Sir Kenneth O'Connor, P said in *Peters v Sunday Post* (1958) EA 424 at p 429 that he took as a guide the opinions expressed in *Watt v Thomas*. It was held in Peters that if there is documentary and other evidence which either tends strongly to confirm the appellant's evidence or, alternatively, to show that the respondent's principal witnesses were unworthy of credit, the full significance of which the trial judge had apparently not appreciated, this was a case where the appellate court ought not to allow the conclusions reached by the trial judge to stand.

The concept of presumption of marriage is not new in Kenya. It was recognized and accepted by the former Court of Appeal in *Hortensiah Wanjiku Yawe v Public Trustee* in Civil Appeal No 13 of 1976, and by this court in *Mbithi Mulu and Another v Mitwa Mutunga* in Civil Application No NAI 17 of 1983.

In *Yawe* Mustafa JA delivering the leading judgment of the court said that there is nothing in Kikuyu customary law opposed to the concept of presumption of marriage. Wambuzi P said (*ibid*) the presumption is nothing more than an assumption that the parties must be married irrespective of the nature of the marriage actually contracted. I would add also irrespective of marriage if one is not actually contracted.

It is a concept born from an appreciation of the needs of the realities of life when a man and woman cohabit for a long period without solemnizing their union by going through a recognized form of marriage, then a presumption of marriage arises. If the woman is left stranded either by being cast away by the "husband", or because he dies, occurrences which do happen, the law, subject to the requisite proof, bestows the status of "wife" upon the woman to enable her to qualify for maintenance or a share in the estate of her deceased "husband".

It is a concept which is beneficial to the union of marriage, to the status of the parties and to the issue of their union. *Yawe* (*supra*).

One reason for the learned judge's decision was his evaluation of the credit worthiness of the evidence of the plaintiffs when measured against the evidence of Mary Njoki and her witnesses.

The learned judge said he was conscious of the fact that the plaintiffs could equally tell lies to keep Mary Njoki out of a share lawfully due to her; that the plaintiffs, especially the two mothers, had impressed him as simple and truthful witnesses; that the deceased had told Wambui that he would only marry after the children had been properly brought up; that it was also admitted by Mr. Njugi that the deceased was always conscious of his responsibility towards his family. The learned judge said he accepted the plaintiffs' evidence that the deceased had many girl friends, including perhaps Mary Njoki, but he head

(21) 4 9

no intention of marrying any of them.

With respect, the two mothers had no worthwhile evidence to tell. The deceased never told them that he was married to Mary Njoki. That was correct. He was not. What was in issue was not an actual marriage but a presumption of marriage arising from long cohabitation and repute between the deceased and Mary Njoki. Mr. Njugi was one of the two independent witnesses at the trial. The other was Wanjiku Njenga.

When the learned judge reached the evidence of Mr. Njugi he said:

"I must confess the evidence of Mr. Njugi, an advocate of this court and a part of Peter, not only in his law firm but also in ownership of property, has caused me good deal of anxiety. I have the highest regard for Mr. Njugi as an advocate whom I have known for a considerable length of time, but in this particular case, I am satisfied after reflection, that Mr. Njugi has been less than truthful."

In view of the foregoing appraisal of Mr. Njugi, there was no calling, indeed it was totally inconsistent and unjustified, for the learned judge to say that Mr. Njugi appeared to be "bending backwards trying to get Mary Njoki some share in Peter's estate," that it seemed hardly likely that the deceased would send money and books to Mary Njoki when he himself was in Law School on a small pittance and a small allowance which he received while chambering. Well, why not! First there was no evidence before the judge about the deceased's financial resources, and people in love perform amorous acts of all kinds, some of which appear incredible to others. Love operates from a myriad of levels. Mr. Njugi, also Wanjiku Njenga, had nothing to gain personally if Mary got a share in the deceased's estate.

The learned judge was also not justified in rejecting Mr. Njugi's evidence that the deceased asked him to look after Mary Njoki if anything happened to him; or, telling him only after the accident to take care of Mary Njoki and the other members of the family if anything should happen to him and later falling into a coma from which he never recovered.

Again, why not! What Mr. Njugi related is the normal kind of stuff of which human conversation is made up when one is living with a woman, and meets with an accident. Fortunately most human beings are not amoral. The deceased did not fall into a coma voluntarily.

The learned judge continued that Mr. Njugi produced a set of photographs showing that Mary Njoki attended the deceased's funeral but so did a lot of other people, and it was not positive evidence in support of their alleged relationship of husband and wife. The lot of other people who attended the funeral had nothing to do with the matter. It was evidence which corroborated Mary Njoki's evidence, in particular it established her connection with the deceased. It was the kind of documentary evidence accepted by the former Court of Appeal in *Peters v Sunday Post Limited* (*supra*).

Mr. Njugi was the advocate for the estate of the deceased's father who pre-deceased him six months earlier. The learned judge said'Mr. Njugi did not lodge a claim on behalf of Mary Njoki who would inherit as the deceased's wife because Mr. Njugi held that she was single.

The learned judge said he underlined the word single. Mr. Njugi offered a reasonable explanation. He said Mary Njoki did need maintenance like the family of 14 children and two wives of the deceased father. In any event it was an irrelevant factor as far as the issue of the presumption of marriage was concerned.

The learned judge said that the circumstances militated against.

22
50

"presumption of marriage on a balance of probabilities, even if a presumption of marriage arose from cohabitation between Peter and Mary, and that, in any event there was no real co-habitation between them."

In my view the learned judge erred in holding that the circumstances militated against a presumption of marriage for the force of the evidence dictated otherwise, in particular the evidence of Mr. Njugi. That must be so as the judge accepted that "even if a presumption of marriage arose from cohabitation." Having so found he was bound to give effect to it because it arose on the basis of long cohabitation and repute. It could not be nullified by saying that there was no "real – cohabitation." The difference between "cohabitation" and "real cohabitation" is nought. A perfect example of verbal semantics leading to contradictory thinking.

In my view the evidence of Mr. Njugi and Wanjiku Njenga was unfairly rejected. As also the evidence of Mary Njoki's father for trivial reasons like discrepancies about dates which carried no significance. The father does not give the impression of concocting the statement of the deceased's father that the two of them could know each other as Mary Njoki was at the deceased father's home. It is just the kind of thing the father of a son who has taken home a girl would say to the father of the girl.

The learned judge said:

"The instant case, I think, is clearly distinguishable from Hortensia because, firstly, I have found it as a fact that there was no real cohabitation between Peter and Mary Njoki otherwise it would have come to the knowledge of at least John and Gabriel and, secondly, at no time did Peter evidence any intention of marrying Mary Njoki; and, thirdly, upon Mary Njoki's own evince they never underwent any form of marriage."

The reasons which the learned judge gave for saying that *Yawe* was distinguishable were wrong. He had himself said there had been cohabitation, though not real cohabitation.

It was in the interest of John and Gabriel not to admit the association between Mary Njoki and the deceased. The second and third reasons given by the judge were not required to be proved for a presumption of marriage to arise. For a presumption of marriage to arise it was not necessary for the deceased to evince any form of marriage with the deceased. To repeat the words of Wambuzi P in *Yawe* (*supra*), the presumption has nothing to do with the law of marriage as such, whether this be ecclesiastical, statutory or customary. With respect the fallacy burdening the learned judge's reasoning was that manifestation of an intention to marry, or an actual marriage ceremony were indispensable requisites for a presumption of marriage to arise. If an expressed intention to marry, or if there had been an actual marriage ceremony, these proceedings would have been taken entirely differently, even in the case of these two incidents themselves.

The learned judge also said that Mary Njoki invited the court to assume that she and the deceased were married because of their long cohabitation, and because the deceased had promised to marry her in the customary manner. With respect, the learned judge misdirected himself. Mary Njoki was not asking the court that a presumption arose because the deceased had promised to marry her in the customary manner. Such a promise was not required to make the presumption, nor was the performance of any customary ceremonies, or any meeting between the clans for any kind of ceremony required to take place. That is why the deceased's family members were not involved in any marriage negotiations.

Another reason for not making the presumption of marriage by the learned judge was that Mary Njoki and the deceased, both Roman Catholics, were spinster and bachelor respectively. The judge said if the

S1 23

deceased had really intended to marry her there was really no impediment preventing him from doing so. He could have married her at any time since 1968 when he started his legal practice. This was another irrelevant argument introduced into the judgment.

Another reason was that Mary Njoki did not like living in sin. What she said was that she realized they were living in sin but he (the deceased) wanted to formalize in the customary way, and she agreed. It is not an unknown way of life. It happens all over the world. This couple were not the only man and woman living together as husband and wife without being actually married. We are an advanced people. We do not want to become pedantic and futile by ignoring the realities of life. Another irrelevant approach. Mary Njoki was not on trial for her morals.

Another reason for not making the presumption of marriage was that Mary Njoki claimed to have lived with and had sexual intercourse with the deceased for six years but she admitted never having a child by the deceased, that there was no evidence that there was any physical impairment on the part of either of them to having children. The learned judge's conclusion was a *non-sequitur*. Evidence to that effect was not required to be adduced, nor did the absence of such evidence establish fertility to procreate. If they were both fertile they may have decided not have a child for any number of reasons. Although a child or children would be an important factor in giving rise to a presumption of marriage, it is not a must in order to give rise to it.

As far as the evidence of Mary Njoki herself was concerned she spoke in great detail about her early association and life with the deceased, about their three places of residence in Pumwani, Langata and Lavington where they lived together, about the two houses which the deceased bought in partnership, one of them from the National Housing Corporation, about the amount of accommodation therein, about the respondent's step-sister Nyambura who stayed with them at their home in Lavington, about the deceased's visits with her to her parents' home and he knew all her family, about her knowledge of all the deceased's family well because the deceased used to take her home every Saturday to meet them, about their visits at Christmas time, about the various members of the deceased's family, the grown ups and the children, about the time when she assisted at the church wedding of the first respondent John at St Teresa's Church where they got married, the name of John's wife and the two children born to them, about the photographs she took at the wedding, about the deceased's stepbrother also named Peter who stayed with her for a long time after the deceased's death, about the deceased's funeral which she and her family members attended.

The learned judge said that none of the details regarding the alleged contacts between Mary Njoki and the deceased's family were ever put to the respondents under cross-examination. The learned judge failed to appreciate that Mary Njoki's detailed evidence raised an indefectible probability that her evidence was true. It was corroborated by the evidence of the brother John the deceased visited him with Mary Njoki in Eastleigh, and John used to see him with her. John admitted knowing that Mary Njoki did not have a child. In the words of Wambuzi, P in *Yawe* (*supra*) Mary Njoki had shown long cohabitation and repute so as to give rise to a presumption in her favour that she was married to the deceased.

For these reasons I would set aside the decree of the High Court and substitute therefore a declaration that there was a presumption in favour of Mary Njoki that she was the deceased's wife and entitled to share in his estate. I would affirm her share of the estate at thirty per centum as fixed by the Public Trustee. It is a reasonable portion. I would also award Mary Njoki the costs of the suit in the High Court and this appeal.

As Kneller and Nyarangi JJA are of the contrary opinion the appeal is dismissed with costs.

S2 24

Kneller JA. John Kinyanjui Mutheru and Gabriel Kaira Mutheru, the brothers of the Nairobi advocate, Peter Gachukia, and Mumbi Mutheru and Wambui Mutheru, the stepmothers of Peter, claimed they were entitled to inherit a portion of the estate of Peter who died on January 2, 1974 as a result of a car accident. He died intestate.

These all spring from Gatundu division in Kiambu District and the District officer, a Mr. Waithaka, told the Kiambu District Commissioner on December 6, 1976 the deceased's estate should be divided equally between the brothers.

They in turn, told the Public Trustee the stepmothers should have 12% and 8% of the estate respectively before the balance was divided equally between the brothers. The deceased had been the only support the stepmothers and their children had while he was alive.

Miss Mary Njoki had made her claim by February 1977 as the deceased's widow which the brothers and step-mothers resisted and the Public Trustee asked the District Commissioner to investigate this and tell him the result, and, if she were his widow, what if anything, the deceased's brothers should inherit under the Kikuyu customary laws of intestate succession.

The District Officer, the same one, I think, told the District Commissioner that the Chief of Kiganjo location had told him that the lady worked for the National Christian Council of Kenya and was never married to the deceased so she could not receive anything from his estate under their customary law but the stepmothers should have their agreed percentages and the rest should be divided between the brothers for they were the only close relatives of the deceased.

The Public Trustee passed this on to the Land Registrar in Kiambu to deal with the question of who should inherit the deceased's parcel of land Kiganjo Kiamworia T106 under the relevant provisions of the Registered Land Act. This was in early March 1977.

By early May the same year, the Public Trustee had decided, despite the information from the Kiambu District Commissioner and relatives of the deceased, she had been married to the deceased and that he would divide the estate thus:-

Mary Njoki widow	- 30%
John Mutheru, brother	- 25%
Gabriel Mutheru, brother	- 25%
Mumbi, Stepmother	- 12%
Wambui, Stepmother	- 8%
	100%

and he gave the brothers five days from May 6, 1977 to apply to the High Court under Order XXXVI to determine who the heirs were if they were unhappy with this but to leave him out of it, for he was not prepared to be dragged into it. He cited the decision of the former Court of Appeal for East Africa in *Hortensia Wanjiku Yawe v The Public Trustees*, Civil Appeal 13 of August 6, 1976 (Wambuzi, P Mustafa V-P and Musoke, JA) as authority for what he proposed to do.

53 25

The brother and stepmothers were dissatisfied so they filed a summons in chambers in the High Court on July 4, 1977 as "surviving beneficiaries" of the deceased naming Mary and the Public Trustee as "the defendant" and they asked for orders that:

1) That Public Trustee, the intended administrator should apply for letter of administration to the estate "to the exclusion of Mary Njoki who isnamed as the deceased (sic) widow."

2) Mary Njoki be declared no beneficiary of the deceased's estate.

3) The cost of the application be provided for.

The brothers united to swear an affidavit and a supplementary one in support of that summons and from it more relevant facts emerged. The estate was likely to be worth Kshs 541,295.45. Mary was never married to the deceased under customary law or statute. They annexed the correspondence of the Public Trustee, District Commissioner and District Officer about this. There was no affidavit in reply.

The summons came before Mr. Justice Simpson (as he then was) with an advocate for the brothers and stepmothers, one for Miss Njoki and one for the Public Trustee. Mr. Muite for Mary submitted the application was misconceived and should be dismissed with costs because the issues were such that the litigation should be by suit. Mr. Kithyoma for the Public Trustee agreed and added that the Public Trustee should not have been made a party since leave of the court was not required for the Public Trustee to apply for letter alone or with anyone else. He also explained that there was a caveat lodged by the brothers and stepmothers that he should not be appointed. Mr. Kinuthia, for the relatives, stressed the absence of any replying affidavit. Finally, Mr. Muite explained this was because no directions had been obtained in this matter.

Mr. Justice Simpson in his ruling dismissed this preliminary objection and reserved its costs. The issue was simple and clear cut. Was Mary married t the deceased in accordance with Kikuyu custom" This was within the ambit of Order XXXVI rule 1.

Now after July 1, 1981, the administration of the deceased's estate had to proceed in accordance with the Law of Succession Act (cap 160); section 2 (*ibid*). The law applicable to distribution on intestacy of agricultural land and livestock from that case was the law of the deceased's community or tribe. His other property had to be divided according to the provisions of section 35 to 42 (*ibid*). So was it important to know whether Mary was his "widow" but neither "widow" nor "spouse" nor "wife" is defined in the Act, the Interpretation and General Provisions Act (cap 2), the Marriage Act (Cap 150), the African Christian Marriage and Divorce Act (cap 151), the Matrimonial Causes Act (cap 152), the Mohammedan Marriage and Divorce Registration Act (cap 155), the Mohammedan Marriage Divorce and Succession Act (cap 156), and the Hindu Marriage and Divorce Act (cap 157) etc.

The summons came before Mr. Justice Sachdeva on November 19 and 22, 1982 and he adjourned the summons into open court it seems, and recorded evidence from John, Gabriel, Mumbi and Wambui, the brothers and stepmothers, and then Mary, her friend Wanjiku Njenga, her father Solomon Kahimi, and the deceased's law partner, Timan Njugi. He delivered judgment the next day. He gave it in favour of the relatives.

They swore during the trial they knew of no relationship between the deceased and Mary. John had been to Peter's home at Lavington and found him with different girls and once Mary and another girl accompanied Peter and John's house in Eastleigh.

EV 2 8

Transfer without valuable consideration.

27. (1) A proprietor who has acquired land, a lease or a charge by transfer without valuable consideration shall hold it subject to—

(a) any unregistered rights or interests subject to which the transferor held it;

(b) the law relating to Bankruptcy; and

(c) the winding-up provisions of the Companies Act, Cap. 486.

(2) Notwithstanding subsection (1), the transfer when registered, shall have the same effect as a transfer for valuable consideration.

Overriding interests.

28. Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register—

(a) spousal rights over matrimonial property;

(b) trusts including customary trusts ;

(c) rights of way, rights of water and profits subsisting at the time of first registration under this Act;

(d) natural rights of light, air, water and support;

(e) rights of compulsory acquisition, resumption, entry, search and user conferred by any other written law;

(f) leases or agreements for leases for a term not exceeding two years, periodic tenancies and indeterminate tenancies;

(g) charges for unpaid rates and other funds which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land;

(h) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;

(i) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law; and

(j) any other rights provided under any written law.

41. Provisions regarding authenticated plans

(1) A plan shall be deemed to be authenticated and identified for the purposes of sections 39 and 40 if—

(a) it is authenticated, by the signature of the Director or of a Government surveyor authorized in writing by the Director in that behalf and by the signature of the authority by whom the notice is given, to be the land or area to which the notice refers; and

(b) it is identified by a reference number.

(2) Every such authenticated and identified plan shall be deposited in the Survey Office.

42. Aerial surveys

(1) Any person who intends to carry out any aerial photography for use in mapping or similar purpose shall, before carrying out the same, give to the Director in writing not less than one month's notice of his intention so to do.

(2) Any person who has carried out any aerial photography for use in mapping or similar purpose shall, if the Director so requires in writing—

(a) produce to the Director for his inspection all of the photographs thereby produced or such of them as the Director may specify; and

(b) supply to the Director, at the Director's cost, such copies as the Director may require of such photographs:

Provided that the supply of photographs to the Director under this section shall not in any way affect the copyright therein of the person supplying them or other than the owner of such copyright.

(3) Any person who fails to comply with the provisions of subsection (1) or subsection (2) shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

43. Proof of plans

(1) All plans authenticated under this Act, purporting to be signed by the Director, or by a Government surveyor authorized by the Director in that behalf, or to be sealed with the seal of the Survey of Kenya, shall be presumed, until the contrary is proved, to have been signed by the Director, said, or or by a Government surveyor authorised as aforesaid, to have been sealed with the seal of the Survey of Kenya, as the case may be.

(2) The provisions of subsection (1) shall extend to plans approved before the commencement of this Act under section 37 of the Survey Ordinance, 1951 (No. 22 of 1951) (now repealed).

44. Inspection of plans

Any person may, at such times as may be notified by the Director, inspect any boundary plan, referred to in any notice in the *Gazette*, which is in the possession of the Survey Department.

EV30

(b) any lender on the security of a charge for the time being in possession of the dominant land, or so far as the nature of the easement or analogous right any part of it permit.

(2) Any person referred to in subsection (1) (a) or (b) who is by this section entitled to the benefit of an easement or analogous right may take out, in their own name, any proceedings necessary for the enforcement of the easement or the analogous rights.

PART XI—MISCELLANEOUS

Jurisdiction of court.

101. The Environment and Land Court established by the Environment and Land Court Act, 2011 No. 19 of 2011 has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.

Fees.

102. (1) The Cabinet Secretary may prescribe the rates of fees payable for any matters in respect of which, by this Act, prescribed fees are required to be paid by any person and shall keep such fees under continuous review.

(2) Fees prescribed under this section shall be at a per centum rate of the value of the land that is, the subject of the application or other matter in respect of which fees are required to be paid.

(3) The Registrar shall refuse to make an entry on the register or register a document in respect of any grant of land or disposition arising in connection with land in respect of which a fee has not been paid in whole or in part, unless the Registrar is satisfied on the basis of written evidence that the fee has been waived in whole or in part or that it has been agreed between the payer and payee that fee may be paid in installments.

(4) Unpaid fees or expenses incurred by the Government in connection with any attempt to recover those unpaid fees shall constitute a civil debt recoverable summarily.

Offences.

103. (1) A person who—

(a) knowingly makes a false statement, orally or in writing, in connection with a disposition or other transaction affecting land or any other matter arising under this Act, or

EV30

(b) knowingly gives a false information or makes a false statement, either orally or in writing, in connection with a call for information made under this Act or in connection with a investigation into the commission of any offence under this Act;

(c) fraudulently procures—

(i) the registration or issue of any certificate of ownership, or any other document or instrument relating to the land;

(ii) the making of a entry or the endorsement of a matter on a document or instrument referred to in subparagraph (i); or

(iii) the cancellation or amendment of the documents, instruments, entries or endorsements referred to in this paragraph.

(d) fraudulently alters, adds to, erases, defaces, mutilates or destroys any document or instrument relating to land or any entry on or endorsement of any such document or instrument; suppresses or conceals form the Registrar, or any authorized officer exercising powers under this Act, or assist or joins in so doing, any material document, factor matter,

commits an offence and is liable on conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) A person who unlawfully occupies public land commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings, and in the case of a continuing offence to an additional fine not exceeding one hundred shillings for every day during which the offence continues.

PART XII—SAVINGS AND TRANSITION

Saving registers under repealed laws.

104. (1) A register maintained under any of the repealed Acts shall, on the commencement of this Act, be deemed to be the land register for the corresponding registration unit established under this Act.

(2) Upon receiving an adjudication register from the Director of Land Adjudication, the Registrar shall forward it to the Deputy Registrar or Registrar in charge of the registration unit concerned, who shall prepare a register for each person shown in the adjudication record as an owner of land, and every person shown in the adjudication record as being entitled to an interest that does not amount to ownership of land

(5)

THE SENATE

REPUBLIC OF KENYA

PETITION

MBOGOS FAMILY OF MBARI YA MBOGO ANCESTRAL Land

LR 7153/1, 7153/2 now LR No 12825

EXPERT REPORT

ON

LEGALITY/ILLEGALITY OF GRANT

I.R NO. 35930 L.R NO. 12825

DATE: *25th APRIL 2023*

CONTACT PERSONS: ***Families Representative***

3. *Francis W. Njuguna* - *0723 210 856*
4. *Mary Wangui N.* - *0711618860*

For Elders Mbogo's Family of Mbari ya Mbogo Family… (*Herein referred as Petitioners)*

MBOGO'S FAMILY WELFARE GROUP
25 APR 2023
Sign.....
CERTIFICATE No. 376403

RECEIVED BY
...GU NJOROGE & KWACH
29.8.2016
5.00 pm
...TURE ...

WANJA G. WAMBUGU
ADVOCATE
P. O. Box 9076 - 00300 NAIROBI
29 AUG 2016
TIME: ..... SIGN: .....
RECEIVED

REPORT BY PHILIP NJUGUNA WA RUTH INVESTIGATOR OF THE LEGALITY/ILLEGALITY OF GRANT NO. I.R 35930 L.R NO. 12825 COMPRISING THE PURPORTED CONSOLIDATION OF L.R NO.7153/1 AND L.R NO.7153/2 ON BEHALF OF KASARINI ANCESTRAL FAMILIES SELF HELP GROUP AND OTHERS PREPARED FOR REVIEW OF GRANTS AT THE NATIONAL LAND COMMISSION

29TH AUG 2016

NGATIA & ASSOCIATES
ADVOCATES
RECEIVED
29 AUG 2016
Name: CHARLES
Time: 3.41 pm
Signature: ...

RECEIVED

REPORT ON LAND FRAUD LR.12825

By

Consultant / Expert

PHILLIP KAMAU

2016-2018

To date the respondent have refused to adhere to the CID summon, our lawyer and our consultant **Mr. Philip Njuguna Waruth** has been invited and questioned by National Intelligent Service with an extremely serious offence of inciting the members of public to invade peoples land. We have appeared **numerous hearing** between **2015-2017** before the **National Land Commission** under section 14 of the National Land Commission act 2012 but the hearings were constantly interfered with and could not take-off because of this sabotage. The group constantly rushed to court and even when they did not get orders to stop the hearings the review committee insisted the matter cannot be heard because the matter was in court when the court heard clearly denied them injunction.

The review process ended on 2nd may 2017 without hearing the matter.

The matter was take-over by **Historical Injustice Committee** and after several time by respondent attempting to sabotage the hearings the Historical Injustice Committee was undermant on their plea but proceeded with the hearings, now that the matter has been heard and concluded on **20th /04/2018** awaiting **final determination**.

NOTE. THAT UNDER SECTION 15 OF NATIONAL LAND COMMISSION ACT 2015 IT IS THEIR FUNCTION TO DETERMINE;

1. Did the lad belonged to Mbogo's family?
2. Were they violently evicted?
3. Who evicted them and what kind of ownership did thy have to lay claim on the land .
4. Where are the evicted people who are they?
5. What mode of compensation shall they receive if the land is build, what kind of compensation shall they receive if they lost their properties and killed and maimed ,how shall they be compensated?

We believe that this is the report that will give the way forward and the settlement of this matter from the current sabotage.

THE MOST UNIQUE AND SERIOUS CRIMINAL OFFENCES TABLED BY OUR INVESTIGATOR ARE HIGHLIGHTED HERE-;

a) The liquidation of Kasarini Estate limited and appointment of receivers through **Gazette notice of 9th Feb 1960, Gazette notice dated 14th March 1961** and **Gazette notice dated 17th august 1965**. Effectively Kasarini Estate Limited died in 1960 it did not therefore **sale of land in 1974** and in **1981** as alleged by the group also calling themselves as **Kasarini Cooperative Farmers Limited.**

b) The Formation of **Kasarini farmers Cooperating Society limited Certificate No 1167** was specifically aimed and formed in **1964** by the white settler and Mbogo's Family for the purpose to acquire **Properties, Machines** and the **Coffee Plantation** from **Kasarini Estate Limited** since the **land belonged to Mbogo's Family.**

c) In **1974** another kasarini Farmers Corporative Society was formed **Cert. no.2240** removing all the names of **Mbogo's family Members** and replacing them with those who acquired the land illegally using the **Same Co-Operative Society**.

d) **Attempt to acquire the land in 1974 using the dead kasarini estate limited, attempt to** acquire the land through buying of shares from no existence Kasarini Estate Limited.

e) Criminal manipulation of survey maps **1914 survey maps** shows **LR. No 7153/2 Measuring 93.9 Acres,1957 survey map show LR .7153/R 911 acre,7153/1**

bearing 20 acres . Note a sub division of 7153/2 and only read to creation of 7153/1.numbers don't go backwards also note **7153/R** is not registable.

f) A series of consolidation and servicing of **7153/2** creates a new number 12825.this number in 1981 is now allocated directly
by the president of the republic of Kenya

g) Another more serious offence is a lawyer by the name Mr. Gichukia who had a fatal accident on **24th December 1974** and signed a sale Agreement on **31st December 1974** and died on **2nd January 1975**.

h) The entries in the title shows Kasarini Estate limited the forged fashion borrowed a bank loan on **13th November 1974** the tittle was transferred on **30th December 1074** before the land was bought or the same day it was bought it borrowed of 4.5 million. This criminal offences has been presented to the National Land Commission with evidence supporting the claim which we enclose here with accruing in total over 50 criminal offences were tabled to the national land commission .

THE NEW CURRENT STRATEGY TO DENIE THE MBOGO'S FAMILY AND SUBBOTAGING THE WORK OF HISTORICAL INJUSTICE COMMITTEE BY THIRD PARTIES

Currently and knowing very well that the kasarini cooperative society limited does not own the land heightened activities are happening as follows:-

1. A group led by two people with one lady calling her self-daughter of George Muhoho and others together with a group led by one Bernard Wanjohi who leads another group calling its self the Mbari ya Mbogo family. Have approached and mislead the National Land Commission Chairman to believe that they are the communal representative and beneficiaries to this land
2. The Mbogo family is well known in Arthi house ten petitioners and representatives over 80 years have had discussion with the chairman in his office. They have also appeared before the review committee with their sons and grandchildren, with their 41years grandson Mr. Francis Wainaina Njuguna whom Swazuri was cheated is 24 years therefore with no capacity to lead Mbogo's family team
3. Through this misrepresentation and cheating professor Mohammed Swazuri convened a meeting which was to be held **today the 30th July, 2018** at Kasarini farm ground. The Mbogo's family learned of this meeting after being mocked that the so called beneficiaries in social gathering and bars.
4. Under article 63 of the constitution this land is in no doubt a communal land with the first claim by the Mbogo's family with reports by the cater commission date 1929.
5. Under article 67 of the constitution there cannot be any Dialogue or Arbitration Without.
    a. HISTORICAL INJUSTICE REPORT WHO SHALL BE THE PARTIES
    b. THE MBOGO'S FAMILY AS COMPLAINANT.
    c. THE COUNTY GOVERNMENT OF KIAMBU AS A COSTITUTIONAL STAKE HOLDERS.
    d. ALL OTHER PARTIES IDENTIFIED BY THE HISTORICAL INJUSCE COMMITTEE. HOWEVER THAT

NOTWITHSTANDING ITS UNLAWFULNESS TO COME
CLAIMING AUTHORITY TO DETERMINE STAKE HOLDERS
USING NAMES OF HIGH AND MIGHTY PEOPLE TO SAKE
FAVOURS OF BENEFICIARIES RIGHTS OF IS CRCIMINAL.

6. This meeting also invited the County Commissioner Kiambu, area member of parliament Jude Jomo, and the area MCA and failed to invite the Substantive Constitutional Governor of KIAMBU Hon. Ferdinand Waititu (Baba Yao) To mean the meeting must have been intended to deny the Mbogo's family their land and occupational rights. It also must have intended to undermine the work of **Historical Injustice Committee.**
7. The 5 families currently owning and occupying the 93.9 acres illegally are still selling the land cheaply after realizing they have lost the land to the Mbogos family.
8. **The farm is now flooded with temporary houses and structures, and most serious** offence is selling of the land with non-existence of the following **Parcels LR.NO 35830/14 To LR No.35930 /1** which has been created and sold to **Centum Management, Sabis , Investbridge Limited,** at a cost of **1.2billion** With **600 Million** already paid as down payment. The Directorate of Survey confirms that **Kenya cannot reach this LR.NO. In 10 years.**

PRAYERS

1. That the Directorate of Criminal Investigation to immediately commence investigation on this over 50 criminals offences.
2. That the National Land Commission strictly hears and follows article 67 of the constitution and section 15 of the National Land Commission.
3. That the national land commission respects the decision by Historical Injustice committee arrived at hearings and production of evidence by all parties that this is the only report that shall indicate the owners of the land the nature of the violence during eviction and the need of compensation
4. That the National Land Commission immediately stop commissioning strangers to the disputes using the names of high families and a high political connections
5. That the national land commission and the ministry of land to instruct the County Commissioner Kiambu to remove all structures build and constructed after the commencement of this land case and put public notice warning to any buyer of land in kasarini estate.

Yours faithful

Francis Wainaina Njuguna

Secretary General Mbogo's Family/ Mbari ya Mbogo

HON. Ferdinand Waititu.

2. cc. Chairman National Land Commission
Professor Muhammed Swazuri

3. cc. Kipteng'etich Tororei
National Land Commission
Historical Injustice Committee

4. cc. Wilson Wanyanga ,
County Commissioner Kiambu.

5. Cc Member of Parliament Kiambu,
Jude Jomo.

Members of The Historical Injustice Committee.

1. Emma Muthoni Njogu,
2. Clement Isaiah lenachuru,
3. Dr.Rose Musyoka

INSTRUCTIONS

I was instructed by the complainants to investigate the legality/illegality of Grant Number I.R 35930 L.R. No. 12825 comprising the purported consolidations of land parcels number L.R. No. 7153/1 and L.R. No. 7513/2

HISTORICAL BACKGROUND

Mbari ya Mbogo and Kariuki Gichinga claim the land comprising Kasarini Estate was their ancestral land having bought it from the Dorobo community for 2000 goats. This information is corroborated by the descendants of the above two families since they were born on the farm and they lived on the land for many years.

During the colonial era, the white settlers established a coffee farm on L.R No. 7153/2 which was 931.9 acres and named it Kasarini estate.

After independence, a struggle between the ancestral families/workers on the farm and the colonial settlers ensued regarding the reversion of the parcel of land. The ancestral owners registered complaints.

To resolve the dispute, the ancestral owners and workers in the estate were advised to register a co-operative society, so that the land would be transferred to them. Consequently, the Kasarini Farmers Co-operative Society was registered on 10th July 1964 under certificate number 1167 of 1964.

The Co-operative continued the management of the farm until the year 1979 when the families were evicted. The eviction was accompanied by the takeover of the land by another co-operative society named Kasarini Farmers Co-operative Society registered on 10th July 1974 vide Registration Number 2240 that had only 10 related members.

This expert report explores the legality/illegality of the Grant Number I.R No. 35930 L.R. No. 12825 held by the Respondents initially as Kasarini Farmers Cooperative Society Limited and then distributed to the Respondents individually and further to third parties. The process of acquisition of the land known as Kasarini Estate comprising the purported consolidation of land parcels number L.R. No. 7153/1 and L.R. No. 7513/2.

INVESTIGATION OF THE LEGALITY OF GRANT NO. I.R 35930 L.R. No. 12825 AND THE PURPORTED CONSOLIDATION OF LAND REFERENCE 7153/1 AND 7153/2

Issues addressed

1. The purported sale and purchase of Kasarini Estate L.R. No. 7153/2.
2. The two Kasarini Farmers Cooperative Societies Limited
3. Survey maps for L.R. No. 7153/1, L.R. No. 7513/2 and L.R No. 12825.
4. The Purported consolidation and subdivision of L.R. No. 7153/1 and LR. No. 7153/2.
5. Investigation of Title document.
6. Investigation of Postal addresses
7. Notable content of some of the documents relied on.

1. **THE PURPORTED SALE AND PURCHASE OF KASARINI ESTATE LR 7153/2.**

On the purported sale and purchase of Kasarini Estate L.R No. 7153/2 by the Respondents, in my investigation I analyzed the following documents from the Respondents reply and court filings.

1. A letter from Kasarini Estates Ltd addressed to Kabogo Kang'ethe and others on sale of shares dated 19th March, 1974
2. A letter from Kasarini Estates Ltd addressed to Kabogo Kang'ethe and others on an option for purchase of shares dated 1st April, 1974.
3. A Letter from Njugi & Gichukia Advocates on behalf of Kabogo Kangethe & Others addressed to Kasarini Estates Limited on proposed sale of 50000 shares dated dated 12th April, 1974
4. Letter from Njugi &. Gichukia Advocates addressed to Robson, Harry & Co. Advocates dated 3rd May, 1974 requesting the Agreement of sale to be sent for execution.
5. A letter from the government representative offering to buy 225 acres from Acres from L.R. No.7153/2
6. A letter indicating loss of land file for LR 7153/2
7. A Letter from Njugi & Gichukia Advocates on behalf of Kasarini Farmers Co-operative Society Ltd addressed to the Commissioner of lands seeking to have the application for consent processed.
8. An Application for Consent of land Control Board dated 10th September 1974.

In my investigations I also obtained the following documents that contradicted the alleged sale and purchase of L.R No. 7153/2:

9. Kenya Gazette dated 9th February, 1960- Notice of winding up Kasarini Estates Limited (The purported seller of the land).

10. Kenya Gazette dated 14th March, 1961-Notice of final meeting of Kasarini Estates Limited shareholders.

11. Kenya Gazette dated 17th August, 1965- Notice of final meeting of Kasarini Estates (1959) Limited shareholders. (The company the liquidator was to transfer the land to as per the 1961 winding up notice).

12. Section 340 of the Company Law Cap 486 laws of Kenya (Repealed)

CONCLUSIONS FROM THE DOCUMENTS ON SALE

a) The documents on sale clearly show that there is was no agreement of sale that was executed even though the Purchaser's Advocate then indicated it was mandatory to have an agreement of sale so as to facilitate payment.

b) The Gazette Notices conclusive prove the alleged seller company had been wound up nearly 13 years before the alleged sale.

c) No one had the authority to act as a director of Kasarini Estates Ltd as the company had been wound up and only a liquidator could act for the company.

S

d) There was no sale of Land Parcel L.R. 7153/2 to the Respondents herein and the allegations of purchase are false.

e) The L.R No. 7513/2 could have reverted to the Government under the doctrine of bona vacantia enshrined in section 340 of the Company Law Cap 486 Laws of Kenya (Repealed) upon the dissolution of the company.

2. SURVEY MAPS

In my investigation I analyzed the following survey documents.

1. Survey Map dated 6th April, 1914
2. Survey Map dated 10th January, 1957.
3. Survey Map for L.R No. 12825

CONCLUSIONS FROM THE SURVEY MAPS

a) The survey maps show that in 1914 L.R No.7153/2 was 932 acres.

b) The survey map of 1957 show that L.R No. 7153/2 was excised to create L.R No.7153/1 and L.R No.7153/R.

c) The above maps shows the land L.R No.7153/2 on subdivision the remainder became government land and was unallocated. The land became public land and was unallocated.

d) The Respondents in their reply state, *It is not clear to the Respondents what L.R No. 7153/R refers to. Land parcels are indentified by numerals*

and not letters. The letter "R" may be used to refer to unsurveyed remainder of a piece of land. It is in black and white in the 1957 Survey map that on excising L.R No. 7153/2 the remainder is indicated as 7153/R. Where did they then get L.R No. 7153/2 to purchase and consolidate in 1974?

e) L.R No. 7153/2 ceased to exist on subdivision 1957 as it is the norm when a parcel of land is subdivided the original number ceases to exist.

f) It is therefore fraudulent to allege it was consolidated and then subdivided in 1981.The survey maps completely contradict the story by the Respondents.

4. THE PURPO.RTED CONSOLIDATION AND SUBDIVISION OF L.R NO. 7153/1 AND L.P NO. 7153/2 TO CREATE L.R NO 12825

On the purported consolidation and subdivision of L.R No.7153/1 and L.R No.7153/2 I analyzed the following documents;

1. Letter from commissioner of lands addressed to the secretary Kasarini Farmers Co-operative Society Limited approving the proposed consolidation and sub-division of L R. No. 7153/1 and L.R No.7153/2 dated 19th March, 1979.
2. A letter from Kiambu Town clerk addressed to land registrar giving consent to transfer L.R No.7153/1 dated 6th September, 1979.
3. Proposed sub-division scheme of L.R. No. 7153/1 and L.R No.7153/2

7

CONCLUSIONS ON THE DOCUMENTS

a) It is clear the approval for consolidation and subdivision of L.R 7153/1 & 7153/2 under Kasarini Farmers Cooperative Society Ltd was before the Respondents had transferred the land to Kasarini Farmers Cooperative Society Limited.

b) Kasarini Farmers Cooperative Society Limited was consolidating land that was not registered under its name.

c) This is borne out by the belated consent to transfer L.R No. 7153/1 in the letter of consent dated 6th September, 1979 and yet the consolidation and subdivision had been approved in the letter dated 19th March 1979.

d) The Respondents were using the survey process to fraudulently acquire land parcel L.R No.7153/2.There is no official certificate of search for L.R No. 7153/2 and I believe the land under that number had ceased to exist.

4. **THE TWO KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED**

I analyzed documents registering two Kasarini Farmers Co-operative Society as follows:

1. Certificate of Registration Number 1167 of 1964 for Kasarini Farmers Cooperative Society Limited.
2. An official search from the Ministry of Co-operatives Development and Marketing for Kasarini Farmers Co-operative Society limited c/s No 1167 of 1964 dated 12th January, 2012

3. An official search from the ministry of Co-operatives Development and Marketing for Kasarini Farmers Co-operative Society limited c/s No 2240 dated 12th January, 2012

4. Kasarini Farmers Co-operative Society limited Bylaws dated 20th July, 1964

5. Kasarini Farmers Co-operative Society limited Bylaws dated 10th July,1974

6. Kenya Gazette dated 27th May, 1983

7. A letter dated 1st July, 1982 for payment of stamp duty.

CONCLUSIONS FROM THEABOVE DOCUMENTS

a) The creation of Kasarini Farmers Co-operative Society in 1974 was meant to steal assets of the genuine Kasarini Farmers Co-operative Society – 1964.

b) The obvious stealing of the identity Complainants Kasarini Farmers Co-operative Society c/s No 1167 of 1964 by the Respondents was in order to steal the farming assets of Kasarini Farmers Co-operative Society 1964.

c) The identify theft by the Respondents must have been used to steal the land and any benefits at KPCU.

5. INVESTIGATION TITLE DOCUMENT

On the title I analyzed the following documents:

1. Copy of title Grant number I.R No.35930.

2. Deed plan no 111458

CONCLUSIONS ON THE TITLE

a) On 18th December 1981 they claim to have been allocated the land by the President of the Republic of Kenya.

b) The L.R No. 12825 now resurrected as Government Land, no longer owned by Kasarini, no longer subject to land control board, no longer bought through share and no longer bought from Kasarini Estate. The government is now giving it as one parcel L.R No.12825

c) A deed plan is given on 12th September 1981 the land is allocated on 3rd December 1981.

d) Please note that on 3rd February 1982 the land was subdivided into 26 parcels.

e) There is not a single indication of:-

Application to be allocated land

Letter of allocation

Payment of charges for the allotment.

Stamp duty

Yet they have a title just like having a child from nowhere.

- The title has the address P.O. Box 75155 Nairobi while the address of the Respondents' Kasarini Farmers Cooperative Society Ltd is P.O. Box 74414 Nairobi
- The title does not have the postal address of the Respondents registered Kasarini Farmers Co-operative Society and also states the same is a limited

liability company. This is not the description of the Respondents Co-operative and the certificate is a false document.

6. POSTAL ADDRESSES

I analyzed various addresses purported to be used in the sale and purchase transaction as follows:

1. Kenya Gazette dated 3rd September, 1976
2. Kenya Gazette dated 10th. November, 1978
3. Telephone directory for March 1974
4. Audited accounts for Kasarini Estates Limited for the year Ended 31st May, 1973

CONCLUSIONS ON THE POSTAL ADDRESSES

a) The postal address P.O BOX 49443 Nairobi was not a genuine address for Kasarini Estates Limited and therefore the correspondence alleged to constitute the sale are not valid.

b) The address was of an accountant by the name Vijar Kumar Bishamber Nath Vohora who may have known the winding up of Kasarini Estates Limited and was falsely representing to be selling land or a mere conspiracy by the Respondents to steal the Complainants land.

7. NOTABLE CONTENTS OF THE DOCUMENTS RELIED ON

Kenya Gazette dated 9th February, 1960

Gazette Notice No. 651 indicates that Kasarini Estates Limited held a meeting at Berners Hotel, Berners Street London on 22nd January, 1960

IT WAS RESOLVED THAT:-

a) The Company be wound up voluntarily

b) P. M Johnson, Chartered Accountant at Nairobi;
G. R Smith Chartered Accountant at Grimsby be appointed as joint liquidators for winding up.

c) For purposes of reorganization and farming assets continue under ownership of new company named Kasarini Estates (1959) Limited.

Kenya Gazette dated 14th March, 1961

Gazette Notice No. 1243 gives notice of final meeting of Kasarini Estates Limited shareholders to be held on 11th April 1961 at Nairobi

PURPOSE OF MEETING

a) Table liquidators accounts

b) Showing how winding up was conducted

c) Show how company's property was disposed

d) Resolving on how books and papers of company and liquidators are to be disposed off.

Kenya Gazette dated 17th August, 1965

Gazette Notice No. 3084 gives notice of a trial meeting to be held at Nairobi

PURPOSE

Kenya Gazette dated 27th May, 1983

Gazette Notice No. 2042 gives notice to creditors of CS 2240 Kasarini Farmers Co-operative Society to meet on 13th June, 1983 at the departments of Co-operatives.

PURPOSE

The creditors were to state their claim to the liquidator for admission.

The winding up of the Co-operative was to begin in 1983 and yet Respondents had illegally transferred all the land in 1982.

Kenya Gazette dated 3rd September, 1976

Gazette Notice No. 2690 indicates that the address P.O Box 49443 Nairobi was for Cafintra Limited.

Kenya Gazette dated 10th November, 1978

Indicates a list of registered Accountants and their address. The address P.O Box 49443 Nairobi was for Vijar Kumar Bishamber Nath Vohora.This was the person purporting to be alternate director and giving his address as the address of Kasarini Estates Limited in the sale.

Kasarini Farmers Co-operative Society Limited by-laws dated 10th July, 1974

The application for registration of a Co-operative Society was presented.

Features

a) 10 members

Chairman - Z. K. Gakunju

Secretary - S. M. Kibathi

Treasurer - Mbugua Mwangi

13

b) It was registered under Registration No. 2240

c) Address - 74414 Nairobi

Kasarini Farmers Co-operative Society Limited by-laws dated 20th July, 1964

Features

a) Registration Number 1167 of 1964

b) Address P.O Box 4661 Nairobi

c) Officials

Chairman – Kahenya Wambeti

Secretary - Murega Kimani

Treasurer - Njoroge Karanja

Kasarini Estates Limited Audited Reports for the Year ended 31st May, 1973

- The report was conducted by M/S Gill & Johnson in which P. M. Johnson is an associate.
- On 31st December, 1973 the firm affirmed the correctness of the audit.

NOTE

P. M. Johnson was appointed the liquidator of Kasarini Estates Limited and tabled a liquidators report on 11th April, 1961 in Nairobi vide Gazette Notice No. 1243 of 14th March, 1961.

Letter from the collector of Stamp duties dated 1st July, 1982

This letter requests the proprietors of L.R. 12825/5 – 26 to pay additional stamp duty as evaluated through their advocates. This shows that the Respondents transferred the land belonging to the cooperative before it was lawfully wound up as the notice by the liquidator for admission of claims was in 1983.

14

Letter from Njugi & Gichukia Advocates addressed to Robson, Harry & Co. Advocates dated 3rd May, 1974

- Kasarini Estates Limited was involved in land transaction with Kabogo Kangethe & Others and not with Kasarini Farmers Cooperative Society Ltd.
- On behalf of the Purchasers, the firm of Njugi & Gichukia was requesting for the Agreement of sale for execution so that they could negotiate the transfer of funds.

Letter from Njugi & Gichukia Advocates on behalf of Kabogo Kangethe & Others addressed to Kasarini Estates Limited dated 12th April, 1974

The advocate responds to the offer letter dated 19th March 1974. He requests for a draft agreement of sale so as to pay 10% of the purchase price.

This clearly shows an agreement of sale was mandatory.

Letter from Government official offering to buy 225 Acres from L.R. 7153/2

- The letter indicates that Kasarini Co-operative Society were interested in buying the above parcel L.R No.7153/2, however the government intended to buy 225 Acres of the land by mutual agreement or by compulsory acquisition for residential development.
- The government was objecting to the purchase.

Letter indicating loss of file L.R 7153/2 dated September, 1974

This letter indicates that:-

a) That the government be allowed to purchase 225 Acres

b) That the original file was missing. Even the Government could not trace the land file and had to open a temporary file.

15

An official search on Kasarini Farmers Co-operative Society Limited C/S No. 1167 dated 12th January, 2012

Registration – 1964

Status – in Liquidation

Year of Liquidation – 12th February, 1974

List of Officials

Chairman – Kahenya Wambeti

Secretary - Murega Kimani

Treasurer - Njoroge Karanja

An official search on Kasarini Farmers Co-operative Society Limited C/S No. 2240 dated 12th January, 2012

Registration – 10th July, 1974

Status – in Liquidation

Year of Liquidation – 9th April, 1983

List of Officials

Chairman – Z.K Gakunju

Secretary - S.M Kabathi

Treasurer - Mbugua M Mwangi

Application for Consent of Land Control Board

LC.R – 5743

Registered owner – Kasarini Estates Limited

Adress – P.O Box 49443, Nairobi

Proposed Purchaser – Kasarini Farmers Co-operative Society Limited -C/S 2240

Property- L.R No. - 7153/2

Dated – 10th September, 1974

FINDINGS AND FINAL CONCLUSION

a) Grant No. I.R 35930 L.R No. 12825 is illegal and the National Land Commission should recommend its revocation.

b) Grant No. I.R 35930 L.R No. 12825 and the resultant subdivisions are the products of flagrant fraudulent process and criminality and should be recommended for investigation and prosecution to the Director of Public Prosecution and the Directorate of Criminal Investigation.

c) The land comprised in Kasarini Estate should be returned to the legitimate Kasarini Farmers Cooperative Society Ltd C/S 1167 and thus the Complainants and parties claiming under them.

REFERENCES.

In my investigations I consulted lawyers, surveyors, officers at the land office and officers at the survey office.

17

Statement of truth

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matter to which they refer.

Signed by

.....

Philip Njuguna Wa Ruth also known as P. M. G Kamau .

Dated 29th Day of August 2016

APPENDICES

1) A letter from Kasarini Estates Ltd addressed to Kabogo Kang'ethe and others on sale of shares dated 19th March, 1974.

2) A letter from Kasarini Estates Ltd addressed to Kabogo Kang'ethe and others on an option for purchase of shares dated 1st April, 1974.

3) A letter from Njugi & Gichukia Advocates on behalf of Kabogo Kang'ethe and others addressed to Kasarini Estates Ltd on proposed sale of 50000 shares dated 12th April, 1974.

4) A letter from Njugi & Gichukia Advocates Addressed to Robson, Harris & Company Advocates dated 3rd May 1974 requesting the agreement of sale to be sent for execution

5) A letter from the government representative offering to buy 225 acres from Kasarini Farmers Co-operative Society.

6) A letter indicating loss of land file for L.R No.7153/2

7) Application for Consent of land Control Board dated 10th September 1974.

8) A Letter from Njugi & Gichukia Advocates on behalf of Kasarini Farmers Co-operative Society Ltd addressed to the Commissioner of Lands forwarding the application for consent to the land Control Board.

9) Kenya Gazette dated 9th February, 1960

10) Kenya Gazette dated 14th March, 1961

11) Kenya Gazette dated 17th August, 1965

12) Section 340 of the Company Law Cap 486 laws of Kenya (Repealed)

13) A Letter from Commissioner of lands addressed to the secretary Kasarini farmers co-operative Society Limited on proposed consolidation and sub-division of L.R. No. 7153/1 and 7153/2 dated 19th March, 1979

14) Proposed sub-division scheme for L.R No. 7153/1 and 7153/2

15) A letter from Kiambu Town Clerk addressed to land registrar giving consent to transfer L.R No. 7153/1 dated 6th September, 1979.

16) Survey Map dated 6th April, 1914.

17) Survey Map dated 10th January, 1957.

18) Survey Map for Subdivisons of L.R No. 12825.

19) An official search from the Ministry of Co-operatives Development and Marketing for Kasarini Farmers Co-operative Society limited c/s No 1167 dated 12th January, 2012

20) Certificate of Registration Number 1167 of 1964 for Kasarini Farmers Co-operative Society Limited.

21) Kasarini Farmers Co-operative Society limited By laws dated 20th July, 1964

22) An official search from the Ministry of Co-operatives Development and Marketing for Kasarini Farmers Co-operative Society Limited c/s No 2240 dated 12th January, 2012

23) Kasarini Farmers Co-operative Society limited Bylaws dated 10th July,1974 .

24) Kenya Gazette dated 27th May, 1983

25) A letter from the Collector of Stamp duties dated 1st July, 1982 for Payment of Stamp Duty.

26) Copy of title Grant number I. No. 35930.

27) Deed Plan No. 111458

28) Audited accounts for Kasarini Estates Limited for the year Ended 31st May, 1973

29) Kenya Gazette dated 3rd September, 1976

30) Kenya Gazette dated 10th November, 1978

31) Telephone directory for March 1974

32) A letter to the Vice Chairperson National land commission requesting the commission to issue Summons to the Chief Land Registrar to avail land files for Grant No. I.R 35930 L.R No. 12825, L.R No. 7153/1 and L.R No. 7153/1, Registrar of Societies to avail files relating to Kasarini Farmers Co-operative Society Limited Registration no. 1167 and 2240 and Registrar of Companies to avail files relating to Kasarini Estates Limited and Kasarini Estates (1959) Limited.

This is the exhibit marked "MNMS" referred to in the annexed Affidavit of MARGARET NYOKABI MBUGUA Sworn / Declared before me this 16th day of SEPTEMBER 2013 at Nairobi.

Commissioner for Oaths

(39)

KASARINI ESTATES LTD.

INCORPORATED IN THE UNITED KINGDOM

P. O. BOX 71
KIAMBU
KENYA

TELEPHONE
OFFICE 24042
HOUSE 50433
ESTATE 93334

P. O. BOX 49443
NAIROBI
KENYA

Kabogo Kangethe and others,
P. O. Box 74414,
N A I R O B I.

19th March, 1974

Dear Sirs,

SALE OF 50,000 SHARES OF SHS.20/- EACH HELD IN KASARINI ESTATES LIMITED

Following our meeting of this afternoon in the presence of Dr. Ramasco-Vittor, the Shareholders of the Company have intimated their willingness to give you in consideration of the sum of Shs.20/- paid by you (the receipt of which is hereby acknowledged) an option to purchase the total shareholding of Kasarini Estates Limited, a Public Limited Company, incorporated in the United Kingdom on the following terms and conditions :

1. The purchase consideration for the total shareholding will be equivalent Swiss Francs of K£315,000 payable in full in Switzerland.

2. Over and above, the above sum, the payment to the vendors in Swiss Francs, the Net Assets which remain in the Company as at 30th April, 1974. The Current Assets shall include in full the 1973/74 Coffee Crop.

3. Vacant possession to be given on 1st June, 1974.

4. All expenses from 1st May will be for Buyers Account.

5. This option is valid for 14 days and expires at 4 P M on Tuesday 2nd April, 1974.

6. The Company is a foreign Company incorporated in the United Kingdom and in possession of a Certificate of Approved Enterprise.

7. A copy of the Audited Balance Sheet and Accounts of the Company to 31st May, 1973 and Sale particulars of the Company (to be updated shortly) are enclosed for your perusal.

Yours faithfully,
KASARINI ESTATES LIMITED

ALTERNATE DIRECTOR

VEV/dc

c.c. M/s. Interpromos (Africa) Limited,
P. O. Box 42790,
N A I R O B I.

Encl.

DIRECTORS: [illegible]

REPUBLIC OF KENYA

IN THE MATTER OF THE NATIONAL LAND COMMISSION

AND

IN THE MATTER OF HISTORICAL INJUSTICES CLAIM ON LAND PARCELS NO. 7153/1 & 7153/2

PRELIMINARY SUBMISSIONS AND BASIC SUPPORTING DOCUMENTS ON BEHALF OF KASARINI ANCESTRAL FAMILIES SELF HELP GROUP CLAIM

A. PRELIMINARY SUBMISSIONS ON THE BASIC LAND TRANSACTIONAL DOCUMENTS FOR THE SALE OF L.R 7153/2 MEASURING 912 ACRES

B. BASIC DOCUMENTS FOR SALE AND TRANSACTION OF L.R 7153/2

1. Agreement for Sale of L.R 7153/2 -page 1-5
2. Title for Land Parcel L.R 7153/2 (Indenture dated 30th December 1974) -page 6-10
3. Application for Land Board Consent dated 10/9/1974 -page 11
4. Land searches for Land Parcels 7153/1 & 7153/2 –page 12-13
5. Key Correspondence on the sale involving advocate P. Gichukia and naming P. Ndungu Advocate -page 14-15
6. Case relating to the death on 2nd January 1975 of Advocate for Vendors, P.Gichukia due to road accident on 24th December 1974 -page 16-32
7. Certificate of Registration of the bona fide Kasarini Farmers Co-op Society Limited– pg33
8. A prior conveyance of Land Parcel 7153/2 –page 34-36
9. A sample of a Conveyance from Njugi & Gichukia in 1970 clearly showing how they indicated the drawing of an transfer instrument – page 38-39
10. A statement in an Affidavit by key Respondent Margaret Nyokabi on legal team involved in transaction –page 40

Submissions by MOSES GATITU WANG'OO (LL.B, LL.M (University of Nairobi).

NJUGUNA KAHIU & GICHUKIA ADVOCATES
RECEIVED
19 JAN 2018
P.O. Box 22648-00400 NAIROBI

RECEIVED
19 JAN 2018

WANJA G. WAMBUGU
ADVOCATE
P.O. Box 2075 - 00300 NAIROBI
19 JAN 2018
TIME: 11:50am SIGN:
RECEIVED

NATIONAL LAND COMMISSION
LEGAL REGISTRY
19 JAN 2018
RECEIVED

RECEIVED
19 JAN 2018
1:29pm

A. PRELIMINARY SUBMISSIONS ON THE BASIC LAND TRANSACTION DOCUMENTS FOR THE SALE OF L.R 7153/2 MEASURING 912 ACRES

The claim by the Respondents is that the land transaction for the sale of L.R 7153/2 was undertaken by the crème de la crème of land officials and Advocates of the time i.e HHM Advocates led by P. Ndungu, Njugi & Gichukia, Kagwe & Co. and Robson & Harris Advocates.

We are amazed when we then look at the basic land transaction documents for the sale that have been obtained from the numerous Affidavits filed in court and other tribunals by the Respondents.

First the Agreement for Sale dated 31st December 1974 for the land does not state which law firm drew the documents even after involving an elite legal team.

Second, the Indenture of Conveyance dated 30th December 1974 does not also state the law firm which drew the land instrument. This is strange in light of the numerous correspondences in the sale by advocates. The document has pages that do not look alike at all and yet it is on a type writer.

More shocking is that the Indenture of Conveyance is dated 30th December, 1974 and executed on that date, this is before the Agreement for Sale is executed. The Agreement for Sale is then executed the following day and dated 31st December 1974.

To compound the shock is the Application for the Land Board Consent which is dated nearly 3 months earlier on 10/9/1974 before the Agreement for Sale is even executed. The amounts in the agreement for sale do not tally with those in the application for land board consent.

It is not conceivable that you sign an Agreement for Sale on 31st December 1974, execute a Conveyance on 30th December 1974 and attend a Land Board for Consent to transfer so as

to register the transfer on 31st December 1974. We also wonder how the elite law firms seem to have been working overtime on New Year's Eve in 1974 when traditionally most law firms and courts are on Christmas vacation.

Simply the key documents of the sale of L.R. 7153/2 are unbelievable forgeries. They have no logic or sense. For example, the Agreement for Sale provides for payment of Advocates and yet there is no participation of Advocates in execution of the document. No mention of any advocate firm in the Agreement and yet elite law firms were involved.

The searches provided by the Respondents for L.R 7153/2 indicate in entry no. 5 that a mortgage dated 31/12/1974 was registered about 2 weeks earlier on 13/12/1974. This is ridiculous.

The mortgage instrument also seems to have been registered on 13/12/1974 before the Conveyance to the mortgagor was registered on 31/12/1974. A clear impossibility.

It is clear that the transfer and mortgage required consent from the Land Board as the land was Agricultural. The transaction could simply not have been carried out between 30th and 31st December 1974.

We have further found out that the Advocate for the Purchasers P. Gichukia was in-fact involved in a serious road accident on December 1974 and went into a coma and died on 2nd January 1975. This is the period of the frenzied transaction, the key Advocate for the Purchasers was hospitalized.

We hope the Advocate for the Respondent, who participated in the transaction, P. Ndungu, can shed more light otherwise the land documents filed in numerous court cases by the Respondents are shocking.

We hope the tribunal can summon Advocate P. Ndungu to explain how the sale was conducted in a record two days between 30th & 31st December 1974.

Critically, the Agreement for Sale has no acknowledgement of receipt of any money and the Conveyance signed the day before states the money for sale is already received.

On a preliminary finding, the recitals in the Indentures of Conveyances for L.R 7153/2 do not add up and the documents fundamentally fail to state the Advocates who prepared them.

The registration of these Indentures of Conveyance of L.R 7153/2 was illegal, corrupt and unlawful.

The search for L.R 7153/2 availed by the Respondents clearly shows the land is an amalgamation of parcels that were remainders contrary to the whole narrative of the Respondents. We shall address the issue with the survey documents.

We pray for reports from the survey departments before we can make final submissions.

It is instructive from the correspondence annexed herewith that Kasarini Estate Ltd refused to sell the land L R7153/2 and only agreed to sell it's shareholding in the company. This must be because it was not registered on the land L.R 7153/2. The issues of the purported 'original Kasarini Estates Ltd' and Kasarini Estate Ltd, the purported seller in the sale herein, are fundamental and a monumental fraud. Kasarini Estate Ltd purportedly had a final meeting of shareholders for winding up in 1961 but resurrected 13 years later in 1974 to sell the land.We hope to address them as the investigations proceed and when the land file is availed.

Also the alleged Purchaser, Kasarini Farmers Co-Op Society Certificate No.2240 and the bona fide Kasarini Farmers Co-Op Society Certificate No.1167 must be conclusively

investigated. Another monumental fraud of stealing the identity of a Co-operative Society so as to steal the land asset.

In conclusion on the basic land transaction documents, the Respondent's elite lawyers seem to have completed the following processes in a record two days between 30th & 31st December 1974 notwithstanding it was a Christmas vacation;

1. Execution of Sale Agreement on 31st December 1974.
2. Execution of the Conveyance the day before 30th December 1974
3. Execution of mortgage on 31st December 1974 and backdating registration to 13th December 1974
4. Delivering Conveyance to land office for registration on 31st December 1974
5. Processing of Land Board Consent to transfer and Charge the land.
6. Paying the whole purchase price notwithstanding issues of foreign exchange and it was a loan from a bank.

The only conclusion is that L.R 7153/2 was illegally, corruptly and unlawfully acquired and should be given back to the lawful owners or as suitably provided under the tribunal mandate for redress of historical injustices.

We urge the tribunal, on a preliminary order and as provided in section 15 (5) (a) & (b) and section 15 (6) of the National Land Commission Act, to demand the land files for L.R 7153/2 ,L.R 7153/1 and survey records so that the obvious truth can be revealed.

DATED AT KIAMBU THIS.....17th.....DAY OF .....January.....2018

GATITU WANG'OO &CO
ADVOCATES FOR KASARINI ANCESTRAL FAMILIES SELF HELP GROUP

(11)

DATED · 31st December 1974

KASARINI ESTATES LIMITED

and

KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED

A G R E E M E N T

AN AGREEMENT made the 31st day of DECEMBER 1974 BETWEEN KASARINI ESTATES LIMITED a limited liability company incorporated in England and having its registered office at Grimsby England aforesaid (hereinafter called "the Vendor" which expression shall where the context so admits include its successors in title and assigns) of the one part and KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED a body corporate registered under the Co-Operative Society Act Cap.490 of the Laws of Kenya of Post Office Box Number 74414 Nairobi in the Republic of Kenya (hereinafter called "the Purchaser" which expression shall where the context so admits include its successors and assigns) of the other part

W H E R E A S the Vendor is seised for an estate in fee simple subject as hereinafter provided but otherwise free from encumbrances of all that piece or parcel of land more particularly described in the First Schedule hereto and known as Land Reference Number 7153/2 together with the buildings and improvements being thereon or on some part thereof including the 1974/1975 coffee crop whether picked or still on the trees (all of which land buildings and improvements are together hereinafter called "Kasarini Estate") and has agreed to sell the same to the Purchaser together with the movable assets specified in the Second Schedule hereto (hereinafter referred to as "the Movables")

for the consideration and subject to the terms and conditions hereinafter set forth

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

1. THE Vendor shall sell and the Purchaser shall purchase Kasarini Estate and the Movables for the sum of Kenya Shillings Four million seven hundred and forty-seven thousand two hundred and ninety-nine and Cents sixty (K.Shs.4,747,299.60) allocated as to Kenya Shillings Four million five hundred thousand (K.Shs.4,500,000.00) for Kasarini Estate and Kenya Shillings Two hundred and forty-seven thousand two hundred and ninety-nine Cents sixty (247,299.60) for the Movables (being the book value thereof as at the date of transfer hereinafter stipulated)

2. THE date of transfer shall be the 31st day of December 1974 upon which vacant possession of Kasarini Estate shall be given and the Movables shall pass by delivery

3. AS from the date of transfer the Purchaser shall be responsible for the payment of all outgoings and shall be entitled to the receipt of all rents and profits

4. THE whole of the consideration shall be due and payable to the Vendor on the date of transfer hereinbefore stipulated

5. THE parties shall each bear the cost of their own Advocates but the Purchaser shall be responsible for all Stamp Duties registration fees and the like

6. THE Purchaser having been give inspection of the

muniments of title of the said land described in the First Schedule hereto shall be deemed to have notice of all matters affecting the same whether or not such matters are referred to in the First Schedule hereto

THE FIRST SCHEDULE

Description Of Land

All that piece or parcel of land comprising 368.67 hectares or thereabouts situate North of Nairobi City in the Kiambu District in the said Republic of Kenya being Land Reference Number 7153/2 which said piece or parcel of land is delineated and described on the Plan annexed to a Conveyance dated the 17th day of May 1960 (registered in the Government Lands Registry at Nairobi in Volume N.44 Folio 164/1 File 13705 and more particularly on Land Survey Plan No. 74226 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red together with all buildings and improvements erected and being thereon subject to the easements rights and privileges granted by and to the performance and observance of the covenant on the part of the original Kasarini Estates Limited contained in an Indenture of Conveyance dated the 10th day of July 1959 and made between the original Kasarini Estates Limited of the one part and Sydney Alec Chambers (therein

described) of the other part registered as aforesaid in Volume N.44 Folio 2/1 and subject also to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder

THE SECOND SCHEDULE

Particulars of Movables

	K.Shs.
Machinery, Plant, Implements and Motor Vehicles	136,292.80
Furniture, Fittings and Equipment	23,272.80
Trade Investment	74,110.00
Deposits	13,624.00
	247,299.60

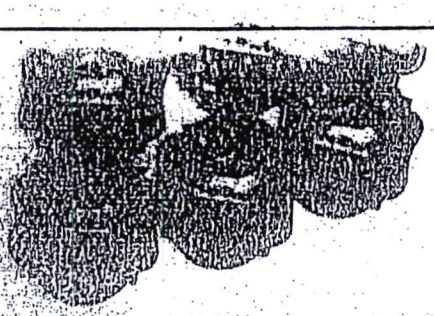
AS WITNESS the hands of the duly authorized agents of the parties the day and year first before written

SIGNED by the duly authorized representative of the Vendor in the presence of:-

JOSEPH N. KARUGIA
P.O. Box 49443
NAIROBI

SIGNED by the duly authorized representative of the Purchaser in the presence of:-

D.T. NYEAH
P.O. Box [illegible]



THIS INDENTURE is made the 30th day of December One thousand Nine hundred and Seventy-four BETWEEN KAKARINI ESTATES LIMITED a limited liability Company incorporated in England and having its registered Office at Grimsby in England (hereinafter called "the Vendor" which expression shall where the context so admits include its successors and assigns) of the one part and KAKARINI FARMERS CO-OPERATIVE SOCIETY LIMITED a body corporate registered under the Co-Operative Societies Act (Chapter 490) of the Laws of Kenya and of Post Office Box Number 75414 Nairobi in the Republic of Kenya (hereinafter called "the Purchaser" which expression shall where the context so admits include its successors and assigns) of the other part:

WHEREAS:

(A) By a Conveyance (hereinafter called "the Conveyance") dated the Seventeenth day of May One thousand Nine hundred and Sixty (registered in the Government Lands Registry at Nairobi in Volume N.44 Folio 164/1 File 13705 and made between Kakarini Estates Limited (therein described and hereinafter called "the original Kakarini Estates Limited") of the first part Peter Harvyn Johnson and George Rhondes Smith (therein described) of the second part and Kakarini Estates (1959) Limited (therein described) of the third part for the consideration therein mentioned ALL THAT piece or parcel of land comprising Three Hundred and Sixty Eight Decimal Six Seven Hectares (368.67 Hec.) (912 Acres) or thereabouts situate

This is the Exhibit marked "MNM 1" referred to in the annexed Affidavit / Declaration of [illegible] Sworn / Declared before me this [illegible] day of Sept. 20 12 at Nairobi

Commissioner for Oaths / Notary Public

North of Nairobi City in the Kiambu District of the said Republic of Kenya being Land Reference Number 7153/2 which said piece or parcel of land is delineated and described on the plan annexed to the Conveyance and more particularly on Land Survey Plan Number 74226 deposited in the Survey Records Office at Nairobi, aforesaid and thereon bordered red was conveyed unto the said Kasarini Estates (1959) Limited for an estate in fee simple TOGETHER WITH all the building and improvements erected and being thereon SUBJECT to the easements rights and privileges granted by and to the performance and observance of the covenant on the part of the original Kasarini Estates Limited contained in an Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine and made between the original Kasarini Estates Limited of the one part and Sydney Alec Chambers (therein described) of the other part (registered as aforesaid in Volume N.44 Folio 2/1 . AND SUBJECT ALSO to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder AND SUBJECT ALSO TO AND WITH THE BENEFIT OF the covenant on the part of the said Sydney Alec Chambers contained in the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine

By virtue of divers mesne assignments acts in the law and events and ultimately by an Indenture dated the Nineteenth day of August One thousand Nine hundred and Sixty-three and made between the said Kasarini Estates (1959) Limited of the first part the said Peter Mervyn Johnson of the second part and

the Vendor of the third part (registered in the Government Lands Registry at Nairobi in Volume N.44 Folio 164/3 File 13705) the said piece or parcel of land hereinbefore more particularly described and known as Land Reference Number 7153/2 together with all the buildings and improvements erected and being thereon was conveyed unto the Vendor for the consideration therein mentioned subject as aforesaid but otherwise free from all encumbrances

(C) The Vendor has agreed with the Purchaser for the sale to it the Purchaser of the said piece or parcel of land for the price or sum of Kenya Shillings Four Million Five Hundred Thousand (K.Shs.4,500,000/=)

NOW THIS INDENTURE WITNESSETH as follows:

1. THAT in pursuance of the said Agreement and in consideration of the sum of Kenya Shillings Four Million Five Hundred thousand (K.Shs.4,500,000/-) paid to the Vendor by the Purchaser on or before the execution hereof (the receipt of which sum the Vendor hereby acknowledges) the Vendor as Beneficial Owner HEREBY GRANTS AND CONVEYS UNTO the Purchaser ALL THAT piece or parcel of land hereinbefore more particularly described and known as Land Reference Number 7153/2 TOGETHER WITH all the buildings and improvements erected and being thereon TO HOLD the same unto the Purchaser for an estate in fee simple SUBJECT to the said easements rights and privileges granted by the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine and to the performance and observance of the covenant on the part of the

original Kasarini Estates Limited therein contained and SUBJECT ALSO to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder and SUBJECT FURTHER TO AND WITH THE BENEFIT OF the covenant on the part of the said Sydney Alec Chambers contained in the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine

2. THE Purchaser HEREBY COVENANTS with the Vendor that it the Purchaser will henceforth perform and observe the covenants on the part of the original Kasarini Estates Limited contained in the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine AND will indemnify and keep indemnified the Vendor and its estate and effects from and against all actions and demands on account of the same.

IN WITNESS WHEREOF the Vendor and the Purchaser have caused their respective Common Seals to be hereunto affixed the day and year first before written.

THE COMMON SEAL of the Vendor was hereunto affixed in the presence of:

DIRECTOR

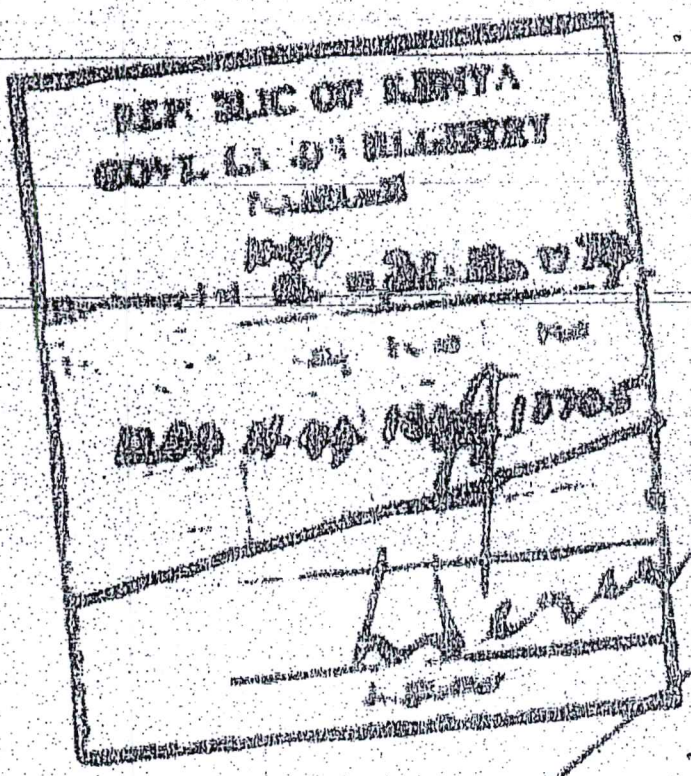
DIRECTOR

THE COMMON SEAL of the Purchaser was hereunto affixed in the presence of:

CHAIRMAN

SECRETARY

10



(86) 57

6. (a) Purchase price, if a sale or option ... Sh. 4.5 MILLION

Rent ... Sh. ...

Estimated value of the land (if a gift) ... Sh. ...

Amount of loan (if a mortgage or charge) ... Sh. 4,050,000

Rate of interest (if a mortgage or charge) ... 9 %

Any other information affecting the amount of the consideration, particularly regarding the description and area of crops with estimated yields and value thereof included in the purchase price ... Refer to attached Documents

(b) Full description and approximate value of improvements on land included in the consideration 4 MILLION SHILLINGS

(c) Any other consideration passing between the parties ... NIL

7. If a transfer or lease of the land—
Proposed development programme of purchaser, including funds available therefor with approximate date ... IMPROVEMENT OF COFFEE YIELDS - PURPOSES TO SPEND ABOUT ONE MILLION SHILLINGS

Does the purchaser/leasee intend to reside on the land? ... NOL

8. (a) Other agricultural land registered in the name of or held under contract for sale by the proposed purchaser, transferee, lessee or allottee, or any member(s) of his immediate family, or any company in which he has an interest (state the nature of any interest in such company)—

L.R. or Parcel Nos. ... Area ...

Owner ... /

Nature of interest ...

Whether contiguous to land being purchased ...

(b) Particulars of agricultural land held and disposed of by purchaser or lessee in the last three years—

L.R. or Parcel Nos. ... District ... Area ...

L.R. or Parcel Nos. ... District ... / ... Area ...

9. Farming experience of transferee ... THE TRANSFEREE INTENDS TO RETAIN THE SERVICES OF THE PRESENT MANAGER WHO HAS MORE THAN 20 YRS EXPERIENCE

We hereby declare that the above information is true to the best of our knowledge and belief.

KJUGI & GICHURIA
Advocates
Signature of purchaser, lessee, mortgagee, charger or authorized agent or agents, etc.
Date 10/9/74

KASARINI ESTATES LTD.
Signature of owner, lessor, mortgagor, charger or authorized agent or agents, etc.
Date

(12)

38

File No. 13535

[illegible]

[illegible] of the will of Sydney Alec Chambers [illegible] 9/7/73 [illegible] granted to the [illegible] Bank Limited of Rs. [illegible] 30299, [illegible] [illegible] dated 29/7/74

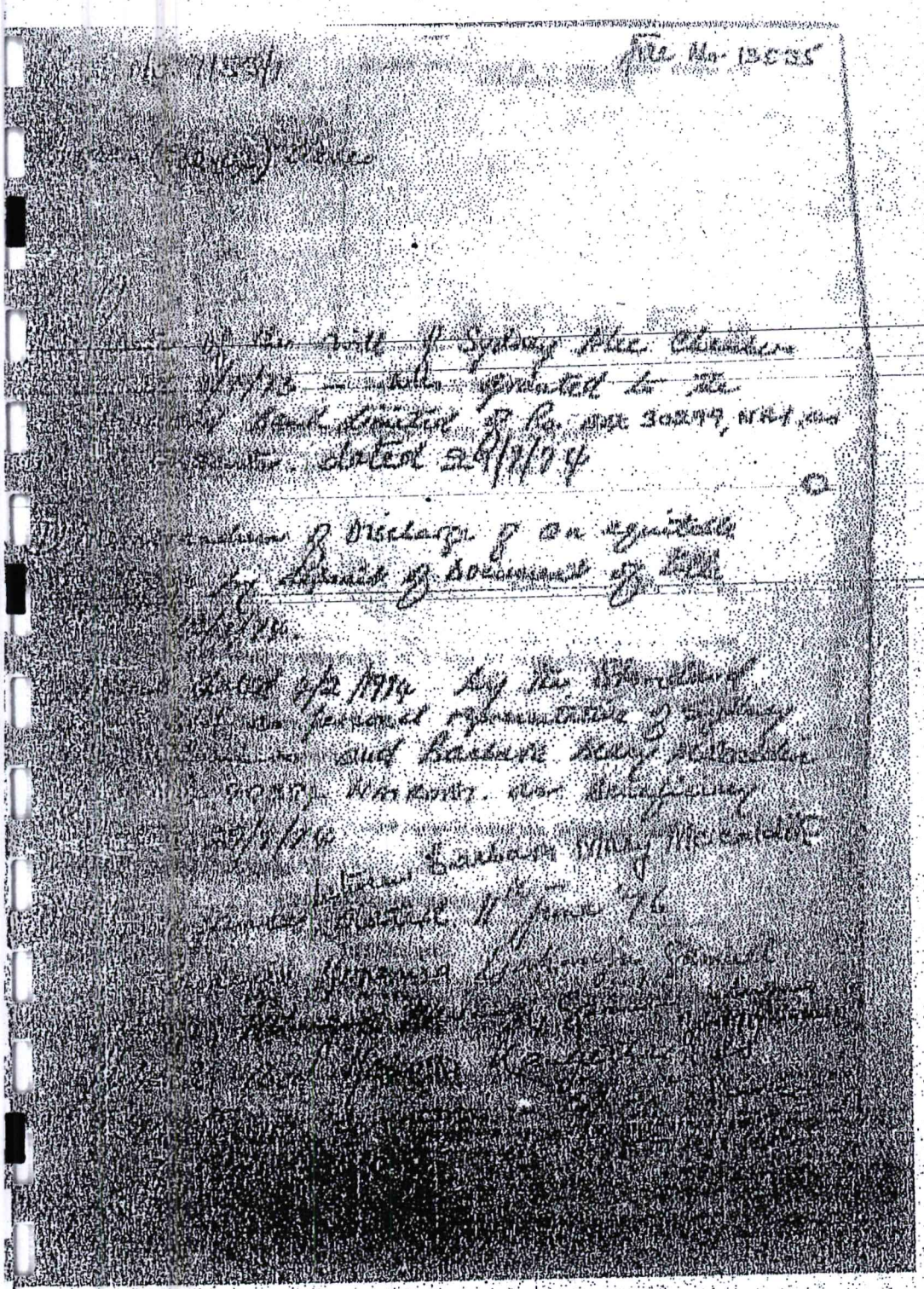
[illegible] Memorandum of Discharge of an equitable [illegible] by deposit of document of [illegible] [illegible]

[illegible] dated 4/2/1974 by the Standard [illegible] personal representative of Sydney [illegible] and [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 29/7/74

[illegible] Barbara Mary Macaldie

[illegible] [illegible] 11th June '76

[illegible]



This is the Exhibit marked "MNM 2" referred to in the annexed Affidavit / Declaration of Marjorie Mitakala [illegible]

Sworn Declared before me this [illegible] day of Sept 2016 at Nairobi

Commissioner for Oaths & Notary Public

(10)

39

File No. 13705

No. 7153/2 Orig. Nos 82/1/2/R, 82/2/R
(and 7043/R) Kiambu District.

Area - 912 acres (368.67 Hec.)
Freehold

Conveyance dated 17th May 1960
Kasarani Estates Ltd - Vendor
Peter Mervyn Johnson & George Rhodes Smith
(Liquidators) Chartered Accountant
To Kasarani Estates (1959) Ltd (Purchaser)
together with and subject to Easements &
subject also to the Wayleave Agreements
for Shs 14,382.11/- to fee simple.

(2) Special Resolution dated 14/6/63
Appointing Peter Mervyn Johnson as Liquidator
of Kasarani Estates (1959) Ltd dated 17/9/63
[illegible]

(3) Conveyance dated 19/8/63
To Kasarani Estates Ltd
for Shs 2304170/- dated 17/9/63
[illegible] Kasarani Estates Ltd

(4) Conveyance dated 20/12/74
To Kasarani Farmers Co. op. Society
for Shs 4,500,000/- dated 31/12/74
[illegible]

(5) Mortgage dated 30/12/74
To the Co-operative Bank of Kenya Ltd
dated 13/12/74 for 3,375,000/-

Advocates [illegible] [illegible]

(14) 40

NJUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

Telephone: 24304

Tusker House,
Second Floor,
Ronald Ngala Street,
(Formerly Duke Street)
P.O. Box 46693,
NAIROBI, Kenya.

OUR REF: PG/K/393

YOUR REF:

29th July, 1974

Messrs. Hamilton Harrison & Mathews,
Advocates,
Esso House
Nairobi

Dear Sirs,

RE: The Co-Operative Bank
of Kenya Ltd. and Kasarini
Farmers Co-Operative Society Ltd.
Purchase of Kasarini Estate

We refer to the Co-Operative Bank's letter to our clients, Kasarini Farmers Co-operative Ltd. dated 24th July 1974 and copied to yourselves among others in which the Co-Operative Bank confirmed approval of our client's application for a loan of Shs. 4,050,000/= to enable our clients to purchase Kasarini Estate. The writer did subsequently meet your Mr. Ndungu and confirmed that the Agreement of sale between Kasarini Estates Ltd. and Zakariah Kimemia Gakunju and four others who are incidentally members of Kasarini Co-Operative Society, specifically provides that Messrs. Gakunju and others will purchase the total shareholding of Kasarini Estate Ltd and not the land. The Exchange Control permission to remit the total purchase price to Switzerland was granted on the basis of the Agreement of sale.

Kasarini Estates Ltd have indicated that they will not agree to transfer the land to the Co-operative Society and that they will insist on the transfer of the total shares in terms of the Agreement of sale. Your client's Bank main concern, we reckon, is to obtain a mortgage of the Estate and also to ensure that the loan goes to Kasarini Farmers Co-Operative Society Ltd. On the basis of the above, the writer did put forward the following suggestions to your Mr. Ndungu:- That Kasarini Estates Limited will transfer all the shares in the Company to Messrs. Gakunju & Four others to hold upon trust for Kasarini Estates Ltd. Then Kasarini Estates Ltd. will give notice to Messrs. Gakunju & Others to hold the shares for the benefit of Kasarini Co-Operative Society Ltd. The co-operative Society will then mortgage the Estate to your client Bank.

By dealing with the transaction as suggested our clients will save an enormous amount of Stamp Duty. Your client Bank will get the mortgage of the Estate and in our view there will be no infringement of the Co-operative Bank rules. Further there will be no breach of the agreement of sale and the Exchange Control permission.

.....2/con.

(14) 4/11

NJUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

Telephone: 24304

Tusker House,
Second Floor,
Ronald Ngala Street,
(Formerly Duke Street)
P.O. Box 46693,
NAIROBI, Kenya.

OUR REF: PG/K/393.

YOUR REF:

29th July, 1974

Messrs. Hamilton Harrison & Mathews,
Advocates
Esso House
Nairobi

Dear Sirs,

RE: The Co-Operative Bank
of Kenya Ltd. and Kasarini
Farmers Co-Operative Society Ltd.
Purchase of Kasarini Estate

We refer to the Co-Operative Bank's letter to our clients, Kasarini Farmers Co-operative Ltd. dated 24th July 1974 and copied to yourselves among others in which the Co-Operative Bank confirmed approval of our client's application for a loan of Shs. 4,050,000/= to enable our clients to purchase Kasarini Estate. The writer did subsequently meet your Mr. Ndungu and confirmed that the Agreement of sale between Kasarini Estates Ltd. and Zakariah Kimemia Gakunju and four others who are incidentally members of Kasarini Co-Operative Society, specifically provides that Messrs. Gakunju and others will purchase the total shareholding of Kasarini Estate Ltd and not the land. The Exchange Control permission to remit the total purchase price to Switzerland was granted on the basis of the Agreement of sale.

Kasarini Estates Ltd have indicated that they will not agree to transfer the land to the Co-operative Society and that they will insist on the transfer of the total shares in terms of the Agreement of sale. Your client's Bank main concern, we reckon, is to obtain a mortgage of the Estate and also to ensure that the loan goes to Kasarini Farmers Co-Operative Society Ltd. On the basis of the above, the writer did put forward the following suggestions to your Mr. Ndungu: - That Kasarini Estates Limited will transfer all the shares in the Company to Messrs. Gakunju & Four others to hold upon trust for Kasarini Estates Ltd. Then Kasarini Estates Ltd. will give notice to Messrs. Gakunju & Others to hold the shares for the benefit of Kasarini Co-Operative Society Ltd. The co-operative Society will then mortgage the Estate to your client Bank.

By dealing with the transaction as suggested our clients will save an enormous amount of Stamp Duty. Your client Bank will get the mortgage of the Estate and in our view there will be no infringement of the Co-operative Bank rules. Further there will be no breach of the agreement of sale and the Exchange Control permission.

.....2/con.

(14)

47

NJUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

Telephone: 24304

Tusker House,
Second Floor,
Ronald Ngala Street,
(Formerly Duke Street)
P.O. Box 46693,
NAIROBI, Kenya.

OUR REF: NG/K/393

YOUR REF:

29th July, 1974

Messrs. Hamilton Harrison & Mathews,
Advocates.
Esso House
Nairobi

Dear Sirs,

RE: The Co-Operative Bank
of Kenya Ltd. and Kasarini
Farmers Co-Operative Society Ltd.
Purchase of Kasarini Estate

We refer to the Co-Operative Bank's letter to our clients, Kasarini Farmers Co-operative Ltd. dated 24th July 1974 and copied to yourselves among others in which the Co-Operative Bank confirmed approval of our client's application for a loan of Shs. 4,050,000/= to enable our clients to purchase Kasarini Estate. The writer did subsequently meet your Mr. Ndungu and confirmed that the Agreement of sale between Kasarini Estates Ltd. and Zakariah Kimemia Gakunju and four others who are incidentally members of Kasarini Co-Operative Society, specifically provides that Messrs. Gakunju and others will purchase the total shareholding of Kasarini Estate Ltd and not the land. The Exchange Control permission to remit the total purchase price to Switzerland was granted on the basis of the Agreement of sale.

Kasarini Estates Ltd have indicated that they will not agree to transfer the land to the Co-operative Society and that they will insist on the transfer of the total shares in terms of the Agreement of sale. Your client's Bank main concern, we reckon, is to obtain a mortgage of the Estate and also to ensure that the loan goes to Kasarini Farmers Co-Operative Society Ltd. On the basis of the above, the writer did put forward the following suggestions to your Mr. Ndungu: That Kasarini Estates Limited will transfer all the shares in the Company to Messrs. Gakunju & Four others to hold upon trust for Kasarini Estates Ltd. Then Kasarini Estates Ltd. will give notice to Messrs. Gakunju & Others to hold the shares for the benefit of Kasarini Co-Operative Society Ltd. The co-operative Society will then mortgage the Estate to your client Bank.

By dealing with the transaction as suggested our clients will save an enormous amount of Stamp Duty. Your client Bank will get the mortgage of the Estate and in our view there will be no infringement of the Co-operative Bank rules. Further there will be no breach of the agreement of sale and the Exchange Control permission.

.....2/con.

(5) 43

The writer understood from your Mr. Ndungu that our above suggestions will have to be put before Mr. Slade for opinion and we should be grateful if on receipt of this letter you could please attend to this aspect of the matter at your earliest convenience.

We confirm that the other members of the Co-operative Society are the wives of the Signatories to the Agreement of sale.

Yours faithfully,
NJUGI & GICHUKIA ADVOCATES

P. GICHUKIA

c.c. Messrs. Gakunju & Others
Nairobi.

Messrs. Robson Harris & Co.,
Advocates
Lullington House,
Nairobi.

KENYA LAW
Wiser Legal Information for Public Knowledge

IN THE COURT OF APPEAL AT NAIROBI

(Coram: Madan , Kneller & Nyarangi JJA)

CIVIL APPEAL NO 71 OF 1984

Between

MARY NJOKI.....APPELLANT

AND

JOHN KINYANJUI MUTHERU.....1ST RESPONDENT

GABRIEL KAIRA MUTHERU.....2ND RESPONDENT

MUMBI MUTHERU.....3RD RESPONDENT

WAMBUI MUTHERU.....4TH RESPONDENT

(Appeal from the High Court at Nairobi, Sachdeva J)

JUDGMEMT

February 25, 1985, Madan JA delivered the following Judgment.

The first named four respondents (plaintiffs) filed a summons naming the appellant, Mary Njoki, and the fifth respondent the Public Trustee as defendants for orders to permit the intended administrator the Public Trusteee to apply for grant of letters of administration alone to the estate of Peter Gachukia deceased who died intestate on January 2, 1974 to the exclusion of Mary Njoki named as the deceased's widow "and she be declared no beneficiary of the deceased's estate.

The deceased was an advocate by profession. He died in a motor car accident. The plaintiffs, John Kinyanjui Mutheru and Gabriel Kaira Mutheru deponed in two affidavits in support of the summons that they were both brothers of the deceased who left them surviving him together with his two stepmothers the third and fourth respondents Mumbi and Wambui Mutheru; that the Public Trustee erroneously included Mary Njoki (as beneficiary) as the deceased's widow she not being legally married to him either under customary law or under any statute, and she could not claim under his estate; that they were the only two persons entitled to inherit from the deceased's estate.

It was not in dispute that Mary Njoki was not married to the deceased in any recognized manner. She herself told the court that no marriage ceremony of any kind was performed between them. The issue

before the court between Mary Njoki and the plaintiffs was whether Mary Njoki was entitled to a share in the deceased's estate as his widow by virtue of their long cohabitation, association and sexual intercourse between her and the deceased as they lived together as husband and wife for six years from 1969 to 1975. She was saying to the court that a presumption of marriage arose from long cohabitation and reput that she was the deceased's wife, sometimes referred to "common law wife".

The Public Trustee took no part in the proceedings. The learned judge held that Mary Njoki was not wife of the deceased, and she was not entitled to inherit any part of his estate. Mary Njoki has appealed. Condensed the eight grounds of appeal urge that the learned trial judge erred in law and in fact in rejecting the evidence given on behalf of Mary Njoki which was corroborated, in particular the evidence of the independent witness Timan Ngugi; in believing that she was not married to the deceased or that the common law presumption of marriage did not apply in the circumstances of the case; in not holding that there was a marriage by repute due to the intention on the part of the deceased and Mary Njoki to marry, and long cohabitation. The *viva voce* evidence in the court below was to the following effect: John Kinyanjui Mutheru, Gabriel Kaira Mutheru agreeing with him, told the court that he came to know Mary Njoki through the Public Trustee after the death of his brother when she said she was married to the deceased; he was surprised to hear her claim.

The deceased lived in Lavington prior to his death. He and the deceased used to visit each other. Kinyanjui used to see him with many girl friends, including Mary Njoki. None of them lived with him. The deceased did not introduce him to her. If they were married he, his mothers and the family members would have known about it, they would also have been involved in any marriage negotiations but they never were. He was not aware that the deceased was living with a woman as his wife, nor was he living with Mary Njoki. He saw her once when they visited him at Eastleigh together with another girl. He was introduced to the two ladies by name.

He did not see Mary Njoki again. He did not see the deceased with her at Kiganjo. The deceased brought her to his home in 1974 after the death of their father. Mary Njoki did not have a child.

Gabriel was different. He said he did not know if Mary Njoki was married to the deceased though to his knowledge the deceased never married, that Mary Njoki was not staying with the deceased when he died.

Mumbi said the deceased considered her his mother as she brought him up when he was six years old. He would tell her everything. He told her he had not married, and Mary Njoki was never married to him.

Wambui agreed with the evidence given by John, Gabriel and Mumbi. She herself did not know where the deceased lived in Nairobi.

Mary Njoki testified. She said she knew the deceased before his death. She was staying with him as his wife. She came to know him in 1959 at Kiganjo. They were friends until 1969 when they started living together continuously until he died, first in New Pumwani from 1969 to April, 1972 in a one bed-sitting room house, The deceased then bought a house in Langata with his partner Mr. Timan Njugi. They all moved into that house, and stayed there until July, 1974. In August, 1974 she and the deceased moved into another house in Lavington which the deceased and Mr. Njugi also bought together. Mr. Njugi remained behind in the Langata house. They stayed in Lavington until the deceased died. Mary Njoki said she came to know the plaintiffs when she was living with the deceased since 1969. She and the deceased used to visit them at their home at Kiganjo. She came to know John in 1970. He had come to visit the deceased in New Pumwani. They used to visit him where he was staying. The deceased introduced her as his wife. She made the arrangements for John's wedding to Margaret Njoki at St

Teresa;'s Church.

She attended the wedding with the deceased. She took photographs. John and his wife had two children one named Kimani. Margaret worked as a cateress at the Mater Hospital in South "B" Nairobi. John was working with Daly and Figgis, Advocates. He never visited their home at Langata.

He came to Lavington once with his wife. They used to meet John often at his home in Kiganjo where she informed him of the deceased's accident on December 24, 1974. She met him at the hospital after Christmas, met him there very often – she, John and Mr. Njugi. They sent John home to call a step-brother also named Peter Gichukia to come and stay with her.

The step-brother stayed with her for a long time. John and his wife also used to visit her at Lavington and at Mr. Njugi's office after the deceased's death. John used to collect money from Mr. Njugi to pay school fees for the children.

Mary Njoki said she knew Gabriel since 1970. She used to meet him at home in Kiganjo where he was at school. He knew him all the time while she was living with the deceased.

Mary Njoki said she knew Mumbi and Wambui since 1969, having met them at the same time. She went with the deceased to visit them at Kiganjo.

The deceased introduced her to them. The deceased told her he considered Mumbi as his mother because she brought him up. They always visited them at Christmas. Sometimes they used to go together with Mr. Njugi and his wife.

The deceased used to go with her to visit her father's home at his farm every time he went to his home to meet her parents, brothers and sisters.

Her sister Margaret Waihihi and Nyambura, a step-sister of the plaintiffs stayed with them at their home in Lavington.

Mary Njoki said she had photographs to show that she attended the deceased's funeral who was buried at his farm at Kiganjo. Her parents, brothers and sisters also attended the funeral.

Mary Njoki said she did not undergo a marriage ceremony with the deceased although he told her he wished to formalize their marriage in the customary way. They did not solemnize any customary, religious or civil marriage. They wanted to do it but the deceased's father died. The deceased had told his father who told her father about it in March , 1974.

She based her claim upon long association and cohabitation with the deceased having lived with him continuously for six years from January, 1969 to January, 1975. He was living with her, not alone when he died.

Mary Njoki said she and the deceased used to write letters to each other when they were at school some of which she had. The deceased went to Uganda for secondary education. He was there for four years. They met only during the holidays but they used to write to each other.

The deceased left the Kenya School of Law in 1968. She was in Makerere until 1969 where she obtained a B Commerce degree. They had serious relationship in 1963. They used to have sexual intercourse. They were both Roman Catholics.

Mary Njoki said she wanted to formalize their marriage. They discussed it. He used to say he was getting ready. He wanted to formalize customarily in 1974. But the two families never met for any kind of ceremony owing to her brother's death. There was no *njurlo*, nor *ruracio*. There was no settlement of dowry, and the clans never met for any kind of dowry. She used her maiden name throughout.

Three witnesses gave evidence on behalf of Mary Njoki. They were Wanjiku Njenga, Solomon Kahohi and Timan Ndere Njugi. Wanjiku Njenga said she had known Mary Njoki since 1967, and they were together at Makerere from 1969 to March, 1972 when they finished college and continued to be good friends. Mary Njoki lived with the deceased from 1972 in Pumwani Flat No B 22 Door 5 until August, 1972 when they moved over to Langata where they lived in a one-roomed guest house. She visited them many times.

They also visited her at Mangu many times where she was a teacher. In 1974 they moved to a house in Kingara Road in Lavington very close to where she lived. They also visited her. They lived together from 1972 until the deceased died.

Mary Njoki's father Solomon Kahohi said he came to know the deceased "very well" in 1969. The deceased used to come to his home with Njoki, Njugi and his wife. In 1969 Njoki introduced the deceased to him as her "husband because they were staying together at Pumwani in 1969. He used to visit them there.

The deceased told Solomon that he and Mary Njoki were living together, he would like to marry his daughter in the customary way, and not to worry about Mary Njoki as he would pay the dowry one day. As was the custom the deceased's father also came to discuss and told Solomon that they could know one another as his daughter was at his home, and to wait for him as he would come to see him. Solomon reminded the father about their discussion when he met him at a meeting at Kiganjo. The father died in 1974. Solomon said he visited the deceased's home with his people only during his father's funeral. When the deceased met with the accident he was living with Njoki in Nairobi. Solomon attended the deceased's funeral together with his wife and children.

Solomon pronounced that if his daughter and the deceased were staying together as they were, whether dowry was paid or not, they were regarded as husband and wife.

The third witness was Mr. Timan Ndere Njugi an advocate of the High Court of Kenya practicing at Nairobi. He said the deceased was a partner in his law firm up to the time of his death. He had known the deceased as a classmate in the Kenya School of Law since 1963. He also knew Mary Njoki with whom the deceased started associating in 1963. At that time she was at school. He knew that when she was at Makerere the deceased used to send her books and money. She used to work in Nairobi during vacation and live with the deceased as his wife. When she completed her college she actually went to stay with the deceased in Pumwani until 1972 when the three of them moved to Langata where he and deceased together bought a property there which had a guest house. The deceased and Mary Njoki lived in the guest house until they moved to Lavington where they bought another property together. The deceased and Mary Njoki stayed there until the deceased passed away.

There was no secret about the deceased and Mary staying together. Both families knew about their association. He, the deceased and Mary used to visit their respective homes now and then. The deceased's brothers and parents used to come and visit them both at Langata and Lavington. They all treated Mary as the deceased's wife, and they lived together as husband and wife during all that time. The deceased had told him to take care of Mary Njoki if anything happened to him.

Mr. Njugi continued that the deceased's funeral was arranged by him, John and Mary Njoki. The three of them featured very prominently in the ceremonies at the deceased's home. Mary Njoki's family were also present at the funeral. Mr. Njugi produced six photographs. Mary Njoki appears in four of them. The deceased's family members also appear in the photographs. Mary used to benefit from the deceased more than any other member of the family. She started living with him in Pumwani from March, 1972. They stayed together continuously until the deceased died. Mary was not just a girl friend of the deceased. She associated with him as his wife. They never had any children.

Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight of bearing of circumstances admitted or proved, or has plainly gone wrong the appellate court will not hesitate to decide. *Watt v Thomas*, [1947] AC 484.

Sir Kenneth O'Connor, P said in *Peters v Sunday Post* (1958) EA 424 at p 429 that he took as a guide the opinions expressed in *Watt v Thomas*. It was held in Peters that if there is documentary and other evidence which either tends strongly to confirm the appellant's evidence or, alternatively, to show that the respondent's principal witnesses were unworthy of credit, the full significance of which the trial judge had apparently not appreciated, this was a case where the appellate court ought not to allow the conclusions reached by the trial judge to stand.

The concept of presumption of marriage is not new in Kenya. It was recognized and accepted by the former Court of Appeal in *Hortensiah Wanjiku Yawe v Public Trustee* in Civil Appeal No 13 of 1976, and by this court in *Mbithi Mulu and Another v Mitwa Mutunga* in Civil Application No NAI 17 of 1983.

In *Yawe* Mustafa JA delivering the leading judgment of the court said that there is nothing in Kikuyu customary law opposed to the concept of presumption of marriage. Wambuzi P said (*ibid*) the presumption is nothing more than an assumption that the parties must be married irrespective of the nature of the marriage actually contracted. I would add also irrespective of marriage if one is not actually contracted.

It is a concept born from an appreciation of the needs of the realities of life when a man and woman cohabit for a long period without solemnizing their union by going through a recognized form of marriage, then a presumption of marriage arises. If the woman is left stranded either by being cast away by the "husband", or because he dies, occurrences which do happen, the law, subject to the requisite proof, bestows the status of "wife" upon the woman to enable her to qualify for maintenance or a share in the estate of her deceased "husband".

It is a concept which is beneficial to the union of marriage, to the status of the parties and to the issue of their union. *Yawe* (*supra*).

One reason for the learned judge's decision was his evaluation of the credit worthiness of the evidence of the plaintiffs when measured against the evidence of Mary Njoki and her witnesses.

The learned judge said he was conscious of the fact that the plaintiffs could equally tell lies to keep Mary Njoki out of a share lawfully due to her; that the plaintiffs, especially the two mothers, had impressed him as simple and truthful witnesses; that the deceased had told Wambui that he would only marry after the children had been properly brought up; that it was also admitted by Mr. Njugi that the deceased was always conscious of his responsibility towards his family. The learned judge said he accepted the plaintiffs' evidence that the deceased had many girl friends, including perhaps Mary Njoki, but he head

(21) 4 9

no intention of marrying any of them.

With respect, the two mothers had no worthwhile evidence to tell. The deceased never told them that he was married to Mary Njoki. That was correct. He was not. What was in issue was not an actual marriage but a presumption of marriage arising from long cohabitation and repute between the deceased and Mary Njoki. Mr. Njugi was one of the two independent witnesses at the trial. The other was Wanjiku Njenga.

When the learned judge reached the evidence of Mr. Njugi he said:

"I must confess the evidence of Mr. Njugi, an advocate of this court and a part of Peter, not only in his law firm but also in ownership of property, has caused me good deal of anxiety. I have the highest regard for Mr. Njugi as an advocate whom I have known for a considerable length of time, but in this particular case, I am satisfied after reflection, that Mr. Njugi has been less than truthful."

In view of the foregoing appraisal of Mr. Njugi, there was no calling, indeed it was totally inconsistent and unjustified, for the learned judge to say that Mr. Njugi appeared to be "bending backwards trying to get Mary Njoki some share in Peter's estate," that it seemed hardly likely that the deceased would send money and books to Mary Njoki when he himself was in Law School on a small pittance and a small allowance which he received while chambering. Well, why not! First there was no evidence before the judge about the deceased's financial resources, and people in love perform amorous acts of all kinds, some of which appear incredible to others. Love operates from a myriad of levels. Mr. Njugi, also Wanjiku Njenga, had nothing to gain personally if Mary got a share in the deceased's estate.

The learned judge was also not justified in rejecting Mr. Njugi's evidence that the deceased asked him to look after Mary Njoki if anything happened to him, or, telling him only after the accident to take care of Mary Njoki and the other members of the family if anything should happen to him and later falling into a coma from which he never recovered.

Again, why not! What Mr. Njugi related is the normal kind of stuff of which human conversation is made up when one is living with a woman, and meets with an accident. Fortunately most human beings are not amoral. The deceased did not fall into a coma voluntarily.

The learned judge continued that Mr. Njugi produced a set of photographs showing that Mary Njoki attended the deceased's funeral but so did a lot of other people, and it was not positive evidence in support of their alleged relationship of husband and wife. The lot of other people who attended the funeral had nothing to do with the matter. It was evidence which corroborated Mary Njoki's evidence, in particular it established her connection with the deceased. It was the kind of documentary evidence accepted by the former Court of Appeal in *Peters v Sunday Post Limited* (*supra*).

Mr. Njugi was the advocate for the estate of the deceased's father who pre-deceased him six months earlier. The learned judge said Mr. Njugi did not lodge a claim on behalf of Mary Njoki who would inherit as the deceased's wife because Mr. Njugi held that she was single.

The learned judge said he underlined the word single. Mr. Njugi offered a reasonable explanation. He said Mary Njoki did need maintenance like the family of 14 children and two wives of the deceased father. In any event it was an irrelevant factor as far as the issue of the presumption of marriage was concerned.

The learned judge said that the circumstances militated against.

(22) 50

"presumption of marriage on a balance of probabilities, even if a presumption of marriage arose from cohabitation between Peter and Mary, and that, in any event there was no real co-habitation between them."

In my view the learned judge erred in holding that the circumstances militated against a presumption of marriage for the force of the evidence dictated otherwise, in particular the evidence of Mr. Njugi. That must be so as the judge accepted that "even if a presumption of marriage arose from cohabitation." Having so found he was bound to give effect to it because it arose on the basis of long cohabitation and repute. It could not be nullified by saying that there was no "real – cohabitation." The difference between "cohabitation" and "real cohabitation" is nought. A perfect example of verbal semantics leading to contradictory thinking.

In my view the evidence of Mr. Njugi and Wanjiku Njenga was unfairly rejected. As also the evidence of Mary Njoki's father for trivial reasons like discrepancies about dates which carried no significance. The father does not give the impression of concocting the statement of the deceased's father that the two of them could know each other as Mary Njoki was at the deceased father's home. It is just the kind of thing the father of a son who has taken home a girl would say to the father of the girl.

The learned judge said:

"The instant case, I think, is clearly distinguishable from Hortensia because, firstly, I have found it as a fact that there was no real cohabitation between Peter and Mary Njoki otherwise it would have come to the knowledge of at least John and Gabriel and, secondly, at no time did Peter evidence any intention of marrying Mary Njoki; and, thirdly, upon Mary Njoki's own evince they never underwent any form of marriage."

The reasons which the learned judge gave for saying that *Yawe* was distinguishable were wrong. He had himself said there had been cohabitation, though not real cohabitation.

It was in the interest of John and Gabriel not to admit the association between Mary Njoki and the deceased. The second and third reasons given by the judge were not required to be proved for a presumption of marriage to arise. For a presumption of marriage to arise it was not necessary for the deceased to evince any form of marriage with the deceased. To repeat the words of Wambuzi P in *Yawe* (*supra*), the presumption has nothing to do with the law of marriage as such, whether this be ecclesiastical, statutory or customary. With respect the fallacy burdening the learned judge's reasoning was that manifestation of an intention to marry, or an actual marriage ceremony were indispensable requisites for a presumption of marriage to arise. If an expressed intention to marry, or if there had been an actual marriage ceremony, these proceedings would have been taken entirely differently, even in the case of these two incidents themselves.

The learned judge also said that Mary Njoki invited the court to assume that she and the deceased were married because of their long cohabitation, and because the deceased had promised to marry her in the customary manner. With respect, the learned judge misdirected himself. Mary Njoki was not asking the court that a presumption arose because the deceased had promised to marry her in the customary manner. Such a promise was not required to make the presumption, nor was the performance of any customary ceremonies, or any meeting between the clans for any kind of ceremony required to take place. That is why the deceased's family members were not involved in any marriage negotiations.

Another reason for not making the presumption of marriage by the learned judge was that Mary Njoki and the deceased, both Roman Catholics, were spinster and bachelor respectively. The judge said if the

deceased had really intended to marry her there was really no impediment preventing him from doing so. He could have married her at any time since 1968 when he started his legal practice. This was another irrelevant argument introduced into the judgment.

Another reason was that Mary Njoki did not like living in sin. What she said was that she realized they were living in sin but he (the deceased) wanted to formalize in the customary way, and she agreed. It is not an unknown way of life. It happens all over the world. This couple were not the only man and woman living together as husband and wife without being actually married. We are an advanced people. We do not want to become pedantic and futile by ignoring the realities of life. Another irrelevant approach. Mary Njoki was not on trial for her morals.

Another reason for not making the presumption of marriage was that Mary Njoki claimed to have lived with and had sexual intercourse with the deceased for six years but she admitted never having a child by the deceased, that there was no evidence that there was any physical impairment on the part of either of them to having children. The learned judge's conclusion was a *non-sequitur*. Evidence to that effect was not required to be adduced, nor did the absence of such evidence establish fertility to procreate. If they were both fertile they may have decided not have a child for any number of reasons. Although a child or children would be an important factor in giving rise to a presumption of marriage, it is not a must in order to give rise to it.

As far as the evidence of Mary Njoki herself was concerned she spoke in great detail about her early association and life with the deceased, about their three places of residence in Pumwani, Langata and Lavington where they lived together, about the two houses which the deceased bought in partnership, one of them from the National Housing Corporation, about the amount of accommodation therein, about the respondent's step-sister Nyambura who stayed with them at their home in Lavington, about the deceased's visits with her to her parents' home and he knew all her family, about her knowledge of all the deceased's family well because the deceased used to take her home every Saturday to meet them, about their visits at Christmas time, about the various members of the deceased's family, the grown ups and the children, about the time when she assisted at the church wedding of the first respondent John at St Teresa's Church where they got married, the name of John's wife and the two children born to them, about the photographs she took at the wedding, about the deceased's stepbrother also named Peter who stayed with her for a long time after the deceased's death, about the deceased's funeral which she and her family members attended.

The learned judge said that none of the details regarding the alleged contacts between Mary Njoki and the deceased's family were ever put to the respondents under cross-examination. The learned judge failed to appreciate that Mary Njoki's detailed evidence raised an indefectible probability that her evidence was true. It was corroborated by the evidence of the brother John the deceased visited him with Mary Njoki in Eastleigh, and John used to see him with her. John admitted knowing that Mary Njoki did not have a child. In the words of Wambuzi, P in *Yawe* (*supra*) Mary Njoki had shown long cohabitation and repute so as to give rise to a presumption in her favour that she was married to the deceased.

For these reasons I would set aside the decree of the High Court and substitute therefore a declaration that there was a presumption in favour of Mary Njoki that she was the deceased's wife and entitled to share in his estate. I would affirm her share of the estate at thirty per centum as fixed by the Public Trustee. It is a reasonable portion. I would also award Mary Njoki the costs of the suit in the High Court and this appeal.

As Kneller and Nyarangi JJA are of the contrary opinion the appeal is dismissed with costs.

Kneller JA. John Kinyanjui Mutheru and Gabriel Kaira Mutheru, the brothers of the Nairobi advocate, Peter Gachukia, and Mumbi Mutheru and Wambui Mutheru, the stepmothers of Peter, claimed they were entitled to inherit a portion of the estate of Peter who died on January 2, 1974 as a result of a car accident. He died intestate.

These all spring from Gatundu division in Kiambu District and the District officer, a Mr. Waithaka, told the Kiambu District Commissioner on December 6, 1976 the deceased's estate should be divided equally between the brothers.

They in turn, told the Public Trustee the stepmothers should have 12% and 8% of the estate respectively before the balance was divided equally between the brothers. The deceased had been the only support the stepmothers and their children had while he was alive.

Miss Mary Njoki had made her claim by February 1977 as the deceased's widow which the brothers and step-mothers resisted and the Public Trustee asked the District Commissioner to investigate this and tell him the result, and, if she were his widow, what if anything, the deceased's brothers should inherit under the Kikuyu customary laws of intestate succession.

The District Officer, the same one, I think, told the District Commissioner that the Chief of Kiganjo location had told him that the lady worked for the National Christian Council of Kenya and was never married to the deceased so she could not receive anything from his estate under their customary law but the stepmothers should have their agreed percentages and the rest should be divided between the brothers for they were the only close relatives of the deceased.

The Public Trustee passed this on to the Land Registrar in Kiambu to deal with the question of who should inherit the deceased's parcel of land Kiganjo Kiamwoiia T106 under the relevant provisions of the Registered Land Act. This was in early March 1977.

By early May the same year, the Public Trustee had decided, despite the information from the Kiambu District Commissioner and relatives of the deceased, she had been married to the deceased and that he would divide the estate thus:-

Mary Njoki widow	- 30%
John Mutheru, brother	- 25%
Gabriel Mutheru, brother	- 25%
Mumbi, Stepmother	- 12%
Wambui, Stepmother	- 8%
	100%

and he gave the brothers five days from May 6, 1977 to apply to the High Court under Order XXXVI to determine who the heirs were if they were unhappy with this but to leave him out of it, for he was not prepared to be dragged into it. He cited the decision of the former Court of Appeal for East Africa in *Hortensia Wanjiku Yawe v The Public Trustees*, Civil Appeal 13 of August 6, 1976 (Wambuzi, P Mustafa V-P and Musoke, JA) as authority for what he proposed to do.

The brother and stepmothers were dissatisfied so they filed a summons in chambers in the High Court on July 4, 1977 as "surviving beneficiaries" of the deceased naming Mary and the Public Trustee as "the defendant" and they asked for orders that:

1) That Public Trustee, the intended administrator should apply for letter of administration to the estate "to the exclusion of Mary Njoki who isnamed as the deceased (sic) widow."

2) Mary Njoki be declared no beneficiary of the deceased's estate.

3) The cost of the application be provided for.

The brothers united to swear an affidavit and a supplementary one in support of that summons and from it more relevant facts emerged. The estate was likely to be worth Kshs 541,295.45. Mary was never married to the deceased under customary law or statute. They annexed the correspondence of the Public Trustee, District Commissioner and District Officer about this. There was no affidavit in reply.

The summons came before Mr. Justice Simpson (as he then was) with an advocate for the brothers and stepmothers, one for Miss Njoki and one for the Public Trustee. Mr. Muite for Mary submitted the application was misconceived and should be dismissed with costs because the issues were such that the litigation should be by suit. Mr. Kithyoma for the Public Trustee agreed and added that the Public Trustee should not have been made a party since leave of the court was not required for the Public Trustee to apply for letter alone or with anyone else. He also explained that there was a caveat lodged by the brothers and stepmothers that he should not be appointed. Mr. Kinuthia, for the relatives, stressed the absence of any replying affidavit. Finally, Mr. Muite explained this was because no directions had been obtained in this matter.

Mr. Justice Simpson in his ruling dismissed this preliminary objection and reserved its costs. The issue was simple and clear cut. Was Mary married t the deceased in accordance with Kikuyu custom" This was within the ambit of Order XXXVI rule 1.

Now after July 1, 1981, the administration of the deceased's estate had to proceed in accordance with the Law of Succession Act (cap 160); section 2 (*ibid*). The law applicable to distribution on intestacy of agricultural land and livestock from that case was the law of the deceased's community or tribe. His other property had to be divided according to the provisions of section 35 to 42 (*ibid*). So was it important to know whether Mary was his "widow" but neither "widow" nor "spouse" nor "wife" is defined in the Act, the Interpretation and General Provisions Act (cap 2), the Marriage Act (Cap 150), the African Christian Marriage and Divorce Act (cap 151), the Matrimonial Causes Act (cap 152), the Mohammedan Marriage and Divorce Registration Act (cap 155), the Mohammedan Marriage Divorce and Succession Act (cap 156), and the Hindu Marriage and Divorce Act (cap 157) etc.

The summons came before Mr. Justice Sachdeva on November 19 and 22, 1982 and he adjourned the summons into open court it seems, and recorded evidence from John, Gabriel, Mumbi and Wambui, the brothers and stepmothers, and then Mary, her friend Wanjiku Njenga, her father Solomon Kahimi, and the deceased's law partner, Timan Njugi. He delivered judgment the next day. He gave it in favour of the relatives.

They swore during the trial they knew of no relationship between the deceased and Mary. John had been to Peter's home at Lavington and found him with different girls and once Mary and another girl accompanied Peter and John's house in Eastleigh.

Gabriel was a school boy whom Peter supported and he visited Peter's place often but never met Mary with him. Peter told him he would not marry until all his step-brothers and step-sisters were adults. Mumbi heard him say the same and she spoke as one who brought him up from the age of 6, his own mother having died before Mumbi married his father. Every Saturday he returned to Kiganjo and he usually brought a girl friend but not Mary. Wambui lives there too and she met these girls but she had not set eyes on Mary until she saw her in court. None of these relatives had met Mary's relatives who all live in the same location.

Mary, her father, her friend Wanjiku and the deceased's partner and friend Mr. Njugi had a very different account of Peter's and Mary's relationship. They met at Kiganjo in 1959 when she was a primary school pupil and they kept in touch during their secondary and university education. Then from 1963 their friendship was replaced by their living together on and off until 1969 when they moved to a guest house. They lived there for five years as man and wife. She was well known to the relatives of the deceased whom she often visited with him.

But there had been no marriage ceremony of any sort and they had no children. The deceased had preferred to wait and marry according to their customary law though they were both Roman Catholics by baptism and could have married in *facie ecclesiae* and saved us all from this litigation.

Peter's father, according to Peter had approached Mary's father about this in March 1974 but he died before any progress had been made. His father said this had happened before March 1972. Mary and Wanjiku disagreed over the date they graduated from Makerere; said it was 1969 and Wanjiku maintained it was in 1972 and Mary's father agreed with Wanjiku it was 1972.

Timan Njugi, the deceased's partner and friend since their days together at the Law School and university when Peter was at the law school and a pupil spoke of Peter's help with Mary's fees at her school and university. Peter had told him to look after Mary and Mary's family should anything happen to him and he had done so letting Mary occupy the guest house rent free for 5 years and organizing a second hand car for her. He had photographs of Mary at Peter's funeral.

The learned judge pointed out that there was no impediment to Peter marrying Mary at any time between, say, 1969 and, 1974 in a church, registry office or according to their custom at Kiganjo.

No friend, not even Timan Njugi, had been sent to Mary's father to negotiate a marriage. There had been no children during their alleged cohabitation which made him doubt there had been any 'real' cohabitation. Her attendance at his funeral was not necessarily an indication that they had been married. Mr. Njugi did not include her as a claimant to any share in the estate of Peter's father who died in June 1974 because there were 2 widows and 14 children who survived the father and, in Mr. Njugi's words, Mary was single. There was no reference by her or to her in any correspondence as "Mr.s Gichukia." On the other hand, when she worked at the Treasury from 1969 to 1975 she did not claim house allowance which she could have done.

The learned judge set out all this material. He realized the relatives would do better out of Peter's estate if Mary were excluded from any share in it and she would profit greatly to their loss if she were declared to be his widow and all this might taint the evidence of the relatives and Mary.

The step-mothers he found to be simple and truthful witnesses, especially Mumbi, the one who nurtured him from the age of six. All the evidence including that of Mr. Njugi, underlined the fact that peter was determined to discharge his responsibilities to his younger brothers and sister before he married anyone.

He did not believe Mary, her father, Wanjiku or Timan Njugi on what they said and their demeanour which he thought was partisan. So he found that there was no 'real' cohabitation between Peter and Mary or else his brothers would have known of it, Peter never intended to marry her and there had been no attempt to by them to marry one another. So he held Mary was not Peter's wife and she was not entitled to any share in his estate.

Mary's evidence in the High Court included this statement this:-

"In view of my long association and cohabitation with the deceased, I ask the court to assume that I was married to the deceased and that I should be declared to be the deceased widow and entitled to share in his estate."

Long association and cohabitation, these were, I presume, what her advocate at the trial, Mr. Njugi, and her the Public Trustee thought were the bases of the decision in *Hortensia Wanjiku Yawe v The Public Trustee* (*ibid*) which has been faithfully applied by Mr. Justice Muli on January 29, 1979 in Nairobi Civil Suit 1460 of 1970: *Duncan Gachiani Ngare v Joseck, Susan Kaniana and Rose Nyakio* which was consolidated with Nairobi Civil Suit 2602 of 1977: *In the matter of the Estate of John Gachiani and in the Matter of the Registered Land Act* (cap 300), by Platt, J, on February 8, 1983 in Nairobi Civil Suit 4093 of 1982, *Frances Jacinto Cheslre v Reuben Kiplangat Chesire* and Porter J, on October 3, 1983 in Nairobi Miscellaneous Civil Cause 364 of 1981, *Kisito Charles Macharia v Rosemary Moraa, and Anna Munini and Another v Margaret Nzambi*, Mombasa High Court Civil Suit 751 of 1977 by Kneller, J, on February 1, 1985 and maybe other causes which have not been brought to my notice.

A reading of all the judgments in *Yawe's* appeal leads me to believe that it was held that:-

i) The onus of proving customary law marriage is generally on the party who claims it;

ii) The standard of proof is the usual one for a civil action, namely, one the balance of probabilities;

iii) Evidence as to the formalities required for a customary law marriage must be proved to that standard; (of *Mwagiru v Mumbi* (1967) EA 639, 642 (K);

iv) Long cohabitation as man and wife gives rise to a presumption of marriage in favour of the party asserting it.

v) Only cogent evidence to the contrary can rebut the presumption (*Taplin, Watson v Tate*, (1937) 3 All ER 105) (Ch Div);

vi) If specific ceremonies and rituals are not fully accomplished this does not invalidate such a marriage (*Sastry Velalder Aronegary v Sembecutty Vaigalie* (1880-1) AC 364 (PC); *Sheppherd, George v Thyer*, (1904) 1 on 456. And see also *Re Taylor*, (1961) 1 All ER 557 (CA)

Whether or not the presumption arose and became more than that or whether it was rebutted was a question of fact for Mr. Justice Sachdeva.

The authorities did not, to my understanding of them, go so far as to say that cohabitation and repute constitute a marriage. They can be part of a mode of proving one in that they are substituted for some missing element or elements. One of the earliest put it this way. Cohabitation, with habit and repute, in the absence of countervailing proof to the contrary, establish a marriage on the ground that the cohabitation as husband and wife is proof that the parties have consented to contract that relationship.

"The missing element was the consent to matrimony given at the beginning of the cohabitation because the parties went through a form of marriage in a church when the husband could not do so lawfully and so could not consent to the second one, since the time for appealing from his decree for divorce was not yet over. *Captain de Thoren v AG* (1876), 1 App case 686 (HL).

And later ones, some of which were cited in *Yawe*, stipulate there must be evidence of an intention to marry and some claim that one or other form of marriage was in fact undertaken but would not be proved satisfactorily.

Thus the claim was that it was a (Kikuyu) customary one in *Yawe* (and all those High Court actions in which it was applied) a Tamil customary one in *Sastry Velaider Aronegary v. Sembecutty Valgailie* (1881), 6 App cas (PC), a church one in *Captain de Thoren (ibid)*, a French registry office one in *In re Shepherd, George v Thyer,* (1904) 1 Ch 456, 463, either church or registry office one in Australia in *Re Taplin, Watson v Tate,* (1937) 3 All ER 105 (Ch Div) and probably a church one in *Re Taylor* (1961) 1 All ER 55 (though this is not clear).

The cohabitation and repute were over thirty years in the French registry office case and ten or nine in the others, save for the Tamil one which was eight.

The number of children the couple had had during their cohabitation in each of these cses was at least four though it was nine in the French registry office one and only one for in the Tamil one.

Now here, if Mary and Peter were cohabiting, it was for five years and they had had no children in these years.

The learned judge distinguished Mary's claim for *Yawes* by pointing out that Peter and Mary did not attempt to carry out any ceremony or ritual required for any marriage or by their customary law as Hortensia Wanjiku claimed she and Yawe had, anyway, there had been no long cohabitation between Peter and Mary so the presumption in favour of a marriage rather than concubinage did not arise.

Now my readings of the recorded evidence and the advocates' submissions in the trial do not lead me to differ from the trial judge's analysis of them, his assessment of the credibility of the parties and witnesses, his findings of fact and his application of the law cited to him.

Then Mary briefed a different advocate, Mr. Kirundi for her appeal. He submitted the learned judge erred in law and in fact in his assessment for credibility and finding of fact but I have indicated that, in my view, he did not do so.

Mr. Kirundi submitted next that the learned judge should have found Mary had proved on the balance of probabilities she was Peter's 'common law wife'. This phrase 'common law wife' was not to be found in the affidavits or anyone's testimony in the High Court. This is a novel point and so not covered by local authority.

A common law wife is one who is married by union which though informal was recognized as valid by the common law according to Strouds' Judicial Dictionary and Words and Phrases, 4th edition, 1974 page 3014. The authority for this is said to be *Blanchett v Hanzel*, (1943) 3 WWR 175 which is not available here. I cannot find it cited in any other book.

It was not an issue that was canvassed in the High Court. Consequently, there was no evidence, law or submission about it before the judge. Mr. Kirundi argued that, nevertheless, the judge should have found

that there is what Mary had been to Peter, his common law wife. It was something that was known to the Wakikuyu. If Mr. Kirundi is saying a common law marriage is recognized by the customary law of the Wakikuyu it is neither notorious nor documented and by a majority of the former Court of Appeal for Eastern Africa (Newhold VP & Duffus JA Crabbe JA dissenting) in *Kimani v Gikanga & Another* (1965) EA 735 it was held that it must be established for the court's guidance by the party intending to rely on it.

This Mary Njoki failed to do.

But Mr. Kirundi was really saying, I believe, was that it was part of the law of Kenya since "it was within the substance of the common law in England on August 12, 1897; section 3 The Judicature Act (cap 8).

And as long ago as the twelfth century a promise of present marriage (*sponsalia per verba ae praesenti*) was, by the common law of England, a recognised marriage and a promise of future marriage (*sponsalia per verba ae futuro*) became an effective one when sexual intercourse took place. Jowitt's Dictionary of English Law, 2nd edition, 1977, page 1150, though later English canon law and statute law completely excluded the notion of a common law marriage.

Assuming, however, it was part of the common law of England not only in the twelfth century and 1943 but also on August 12, 1897 there is nothing in the evidence before the learned judge on which he could also find that the circumstances of Kenya and its inhabitants permitted it to be applied here today and if the circumstances rendered it necessary to qualify it today (assuming he had found Peter and Mary had been married by an informal union).

When the learned judge answered the issue in the summons a marriage in Kenya could be contracted:

(a) in civil form; or

(b) according to customary law ceremonies where the parties followed their customary law; or

(c) in Islamic form if the husband is a Muslim; or

(d) in Hindu form if the husband is a Hindu; or

(e) in a church in the form of any recognized religion; or

(f) in Christian form if the parties are Christians; or

(g) in civil form and one of the others.

Those are, I apprehend, enough for all the peoples of this country.

For these reasons, with profound respect to the view of Madan JA, I have to disagree and so I would dismiss this appeal with costs.

Nyarangi JA. The facts relating to this appeal are set out in the judgment of Madan JA and in the judgment of Kneller JA, so I shall only recapitulate those facts in support of my reasoning.

Mr. Kirundi for the appellant argued grounds 2,3,5,6, and 7 together and submitted that the judge had erred by putting wrong emphasis on customary law which was not the issue, and thereby starting the

case on a wrong footing. Mr. Kirundi conceded that there was no customary, statutory or ecclesiastical marriage between the appellant and Peter Gichukia, the deceased but that the appellant's unchallenged evidence of the long cohabitation, which evidence had graphic details which only a wife could provide, together with an offer by the deceased's "very old grandmother" to share her land with the appellant gives rise to presumption of marriage.

Mr. Kirundi criticized the judge for rejecting the evidence of Timan Ndere Njugi, DW 4, and the evidence of Wanjiku Njenga, a close friend of the appellant.

Mr. Njau, for the respondents, asked us to hold and accept that the judgment of the High Court contains valid and supportable reasons for the findings therein, that the evidence of Njugi DW 4; was properly rejected and that there was no mention of common law marriage in the High Court. On the crucial issue of cohabitation, Mr. Njau invited us to disbelieve that the appellant started living with the deceased in 1969, that on the evidence, the deceased wasn't committed and that a presumption of marriage should spring only from provable facts. The concept of presumption of marriage is with us, having been recognized and approved by this court's predecessor in *Hortensia Wanjiku Yawe v Public Trustee*; Civil Appeal No 13 of 1976.

This court did not although not expressly recognize and accept the concept of presumption of marriage in *Mbiti, Mulu and Another v Miwa Mutunga*, Civil Application No NAI 17 of 1983.

In *Yawe*, the deceased had declared to another that the appellant was his wife by general repute, there had been long cohabitation as man and wife, there was evidence of performance of marriage ceremonies and during the period of cohabitation the appellant bore the deceased man four children. In *Mbiti* (Civil Application No NAI 17 of 1983) the deceased woman had borne the respondent one child and there had been a marriage ceremony.

The presumption does not depend on the law of systems of marriage.

The presumption simply is an assumption based on very long cohabitation and repute that the parties are husband and wife.

In my judgment, before a presumption of marriage can arise, a party needs to establish long cohabitation and acts showing general repute. If the woman bears a child or better still children, so that the man could not be heard to say that he is not the father of the children, that would be a factor very much in favour of presumption of marriage. Also, if say, the two acquired valuable property together and consequently had jointly to repay a loan over a long period, that would be just what a husband and wife do and so it would be unreasonable to regard the particular man and woman differently. Performance of some ceremony of marriage would be strong evidence of the general repute that the parties are married. To sum it, there has to be evidence that the long cohabitation is not close friendship between a man and woman, that she is not a concubine but that the cohabitation has crystallized into a marriage and that it is safe to presume that there is a marriage. To my mind, these features are all too apparent in the *Yawe* and in *Mbiti* (*supra*). To my mind, presumption of marriage, being an assumption does not require proof, of an attempt to go through a form of marriage known to law.

It is common ground that there was no marriage between the appellant and the deceased. The fact that the appellant and the deceased together visited the deceased father's home or that she attended the funeral of the deceased's father is not material. The appellant was a friend of the deceased and she accompanied him to the funeral in that capacity. That is how friends treat one another. And on account of the cohabitation the appellant could not help meeting and knowing and even assisting the relatives of the

deceased including the respondents. The appellant's own evidence proved that there had been no meeting between her family members and those of the deceased, and that there had been no marriage ceremony of any kind or form and that there was no meeting of mind between the father and the deceased and the appellant's father. This evidence and that of the respondents clearly proves that the appellant could not be presumed to be married, that was the cogent evidence that an essential element required for a valid Kikuyu marriage had not been satisfied. The effect of all this is to rebut a presumption of marriage.

Mr. Kirundi introduced a new and novel aspect in his contention that the trial judge should have held that the appellant had proved as required of her that she was the deceased's "common law wife".

Mr. Kirundi said the Kikuyu recognize a 'common law wife' and referred the court to section 3 (c) of the Judicature Act (cap 8), thus implying that because the concept of the common law marriage was part of the common law in England by August 12, 1897, it now forms part of the law of Kenya.

However, as Kneller JA sates, there was no evidence that the Kikuyu know about and practice common law marriage and further that the conditions in Kenya and its various groups would accommodate a common law marriage.

All in all I would say that on the evidence before the trial judge, this suit is sharply distinguishable from *Yawe* and *Mbiti*.

I would on the evidence have reached the same conclusion as the judge did but, as I have endeavoured to demonstrate, by a different route.

I would dismiss the appeal with costs.

Dated and delivered at Nairobi this 25th day of February, 1985.

C.B MADAN

.....

JUDGE OF APPEAL

A.A KNELLER

.....

JUDGE OF APPEAL

J.O NYARANGI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

60

DEPUTY REGISTRAR

creative commons. While the design, structure and metadata of the Case Search database are licensed by Kenya Law under a Creative Commons Attribution-ShareAlike 4.0 International, the texts of the judicial opinions contained in it are in the public domain and are free from any copyright restrictions.
Read our Privacy Policy | Disclaimer

Form 3

COLONY AND PROTECTORATE OF KENYA

THE CO-OPERATIVE SOCIETIES RULES, 1946

CERTIFICATE OF REGISTRATION

(Section 8 of ~~Ordinance~~ Act 38/1945)

CERTIFICATE OF REGISTRATION No. 1157

In the matter of the application bearing number 1167 and year 1964 in the District of NAIROBI

I hereby certify that the Society under the name of KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED and its by-laws have this day been duly registered by me in the Register of Societies in pursuance of the provisions of the Co-operative Societies Act 1945, and the Co-operative Societies Rules, 1946.

Given under my hand at Nairobi this the TWENTIETH day of JULY 1964

I. A. N. KEBUE

Ag. COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

G.P.K. 2635—2,000—10/56

61

NOW THIS INDENTURE WITNESSETH as follows:

1. In pursuance of the said agreement and in consideration of the premises and of the sum of Shillings Two Million Three Hundred and Four Thousand One Hundred and Seventy (Sh. 2,304,170/=) on or before the execution of these presents paid by the Purchaser to the Liquidator as such Liquidator as aforesaid (the receipt whereof the Liquidator doth hereby acknowledge) the Vendor as beneficial owner hereby by the Liquidator for BOTH HEREBY GRANT AND CONVEY unto the Purchaser ALL THAT parcel of land containing Nine Hundred and Twelve acres or thereabouts situate North of Nairobi Municipality in the Kiambu District of Kenya and known as Land Reference Number 7153/2 which said piece of parcel of land is the premises comprised in an Indenture of Conveyance dated the Seventeenth day of May One Thousand Nine Hundred and Sixty and made between Kaserini Estates Limited (therein described and hereinafter called "the original Kaserini Estates Limited") of the first part the said Peter Mervyn Johnson and George Rhodaea Smith (both therein described) of the second part and the Vendor of the third part (registered in the Crown Lands Registry at Nairobi aforesaid in Volume R.44 Folio 167/1 File 13705) and is delineated and described on the plan annexed to the said Indenture of Conveyance and more particularly on Land Survey Plan Number 74226 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red TOGETHER WITH all buildings and other hereditaments now erected and being thereon TO HOLD the same unto the Purchaser for an estate in fee simple SUBJECT TO the easements rights and privileges granted by and to the performance and observance of the covenants on the part of the original Kaserini Estates Limited contained in an Indenture of Conveyance dated the Tenth day of July One Thousand Nine Hundred and Fifty-nine and made between the original Kaserini Estates Limited of the one part and Sydney Alec Chambers (therein described) of the other part (registered as aforesaid in Volume [illegible] Folio 2/1) AND SUBJECT ALSO to the provisions of the Crown Lands Ordinance (Cap 280) the Rules for the time being in force thereunder AND SUBJECT ALSO TO AND WITH THE BENEFIT of the covenants on the part of the said Sydney Alec Chambers contained in the said Indenture of Conveyance dated the Tenth day of July One Thousand Nine Hundred and Fifty-nine.

2. The Purchaser HEREBY COVENANTS with the Vendor and the Liquidator that it the Purchaser will henceforth perform and observe the covenants on the part of the original Kaserini Estates Limited contained in the said Indenture of Conveyance dated the Tenth day of July One Thousand Nine Hundred and Fifty-nine AND also indemnify and keep indemnified the Vendor and the Liquidator and his and his respective [illegible]

from and against all actions claims and demands on account of the same.

IN WITNESS whereof the Vendor (by the direction of the Liquidator) and the Purchaser have caused their respective Common Seals to be hereunto affixed and the Liquidator has hereunto set his hand and affixed his seal the day and year first hereinbefore written.

SEALED with the Common Seal of the Vendor in the presence of:-

Liquidator

SIGNED SEALED AND DELIVERED by the Liquidator in the presence of:-

SEALED with the Common Seal of the Purchaser in the presence of:-

Director

Secretary

COLONY OF KENYA
CROWN LANDS REGISTRY
NAIROBI

37

Telegrams: "INTESTATE", Nairobi
Telephone: Nairobi 227461
Please address all communications to:
THE REGISTRAR-GENERAL.

DEPARTMENT OF
THE REGISTRAR GENERAL
P.O. Box 30031 - 00 100
NAIROBI.

65

Our Ref : CR/RMU/
Your Ref : GW/NLC/K/2/16

4th January, 2017

GATITU WANG'OO & CO ADVOCATES
P.O.BOX 2032-00900
KIAMBU

Dear Sir

REF: KASARINI ESTATES (1959) LIMITED

We refer to the above matter and your letter dated 3rd August, 2016.

The company does not appear in our database of registered Companies.

If you have the certificate of registration, kindly submit a copy to the Registrar of Companies for cross checking and confirming.

TABITHA THUO
RMO
FOR: REGISTRAR OF COMPANIES.

NJUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

Telephone 24304

Tusker House,
Second Floor,
Ronald Ngala Street,
(Formerly Duke Street)
P.O. Box 44693,
NAIROBI, Kenya.

OUR REF: PG/K/193

YOUR REF:

12th April, 1974

Messrs. Kasarini Estates Limited,
P.O. Box 49443,
Nairobi

Dear Sirs,

RE: Proposed Sale of 50,000 Shares of Shs. 20/= each held in Kasarini Estates Ltd. to Kabogo Kangethe and others

We act for Messrs. Kabogo Kangethe and others. Your letter of 19th March, 1974 addressed to our above named clients have been placed in our hands with instructions to write to you as follows:

Our clients will purchase the total shareholding at a price of K. £300,000. The total purchase price shall be paid in full in switzerland subject however to the Central Bank of Kenya granting the necessary consent.

Condition 2 of the terms and conditions contained in your letter of offer is acceptable to our clients.

As regards conditions 3 and 4, our clients suggest that vacant possession be given on 31st July, 1974 which in effect will be the completion date and that our client be responsible for all the expenses on the farm as from 1st July, 1974.

Our clients will pay 10% of the purchase price on signing the agreement of sale.

If the above conditions are acceptable to yourselves, please instruct your advocates to prepare draft Agreement of sale for approval by ourselves.

Yours faithfully,
NJUGI & GICHUKIA ADVOCATES

P. GICHUKIA

c.c. Kabogo Kangethe & Others
P.O. Box 74414
Nairobi.

WHEN REPLYING PLEASE QUOTE OUR REFERENCE

71

MNMcS

(18)

NJUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

Telephone: 24304

Tusker House,
Second Floor,
Ronald Ngala Street,
(Formerly Duke Street)
P.O. Box 46893,
NAIROBI, Kenya.

OUR REF: PG/K/393

YOUR REF: K/153/1

3rd May, 1974

M/s. Robson, Harris & Co.,
Advocates,
Lullington House,
NAIROBI.

Dear Sirs,

Kasarini Estates Ltd. to Kabogo Kangethe & Others

We acknowledge receipt of your letter of 30th April, 1974 the contents of which are noted.

You will no doubt appreciate that the question of transfer of funds from Kenya to Overseas is indeed a difficult one. Our clients therefore need ample time to negotiate the transfer of the funds with the Central Bank of Kenya. They will certainly be required to produce the Agreement of Sale. In this connection, we would suggest that you arrange to let us have the Agreement of Sale for execution by our clients as urgently as possible if the transaction is going to be completed on the 31st of May 1974.

Yours faithfully,
NJUGI & GICHUKIA ADVOCATES,

P. GICHUKIA

c.c. Kabogo Kangethe & Others,
P.O. Box 74414,
Nairobi.

This is the exhibit marked MNM7 referred to in the annexed

Affidavit of MARGARET NYOKABI MBUGUA Sworn

File No. [illegible]

before me this 16th day of SEPTEMBER 2013

[illegible]/Lands

at Nairobi.

Commissioner for Oath

L.R. 7153/2 - KASARINI ESTATE - 912 ACRES

Please refer to my minute at (6) and subsequent discussion which we held in your office together with Mr. Pandya. On Monday 30th September 1974 three representatives of Kasarani Co-operative Society came to see me. They were M/s. Zakaria Gakunju (Chairman), Samuel Githegi (Vice Chairman) and Mbugua Mwangi (Treasurer). I informed them that the Government was interested in obtaining 225 acres from L.R. 7153/2 which their Co-operative Society was intending to buy. It was the wish of the Government that before they buy this land they should enter into a written agreement with the Government to the effect that after they have purchased this land they will sell to the Government 225 acres at the market price at the time the Government purchases the land possibly late next year. I further informed them that the quoted purchase price of 5.4 million shillings is considered by Government Valuers as excessive. In the opinion of Government Valuers the land and improvements should not be sold for a price exceeding 4.5 million shillings. While the 3 representatives of the Co-operative have no objection to the Government taking over 225 acres they requested me to put the Government wishes in writing to the Co-operative so that this matter can be discussed with the other 7 members of the Co-operative Society. These 3 representatives felt that they did not have full mandate to commit the other group but they thought that it is likely that there will be no difficulties in convincing the other 7 that it is appropriate to agree to sell 225 acres to the Government.

On Tuesday the 1st October, accompanied by Mr. Mbugua Mwangi who is the Treasurer of this Co-operative I visited Kasarani Estate. Bulk of the land is covered with coffee and there are 3 dams which are used for irrigating coffee. Whichever part of the farm the Government takes from them for residential development it will be necessary to up-root considerable number of coffee trees. I consider that before making decision on the best portion to take for Government residential development it may be a good idea to seek the recommendations of officials of Physical Planning Department. As far as possible areas occupied by permanent buildings and coffee mill and factory should be avoided. Subject to your views I recommend that for now a letter should be addressed to the Co-operative informing them that the Government intends to acquire either by mutual agreement or compulsory acquisition an area of 225 acres from this Estate for public purposes. In addition the Co-operative should be advised that the proposed purchase price is excessive and that this Department will not recommend the purchase of that land at that price to Kiambu Land Control Board. The Co-operative should therefore negotiate the purchase price with the Estate owners with a view of reducing its purchase price.

Please let me have your instructions.

D.C.L.

September, 1974.

(85) (7) 74

Form 1

REPUBLIC OF KENYA

THE LAND CONTROL REGULATIONS, 1968

APPLICATION FOR CONSENT OF LAND CONTROL BOARD

To be submitted in TRIPLICATE in respect of each transaction and sent to or left at the appropriate office of the Commissioner of Lands

To, THE KIAMBU

LAND CONTROL BOARD.

L.C.R. No. 5743

I HEREBY apply to the KIAMBU Land Control Board for its consent to the transaction described below, and give the following information:—

1. (a) Present registered holder of interest (full name in BLOCK LETTERS): KASARINI ESTATES LIMITED

(b) Nationality BRITISH

(c) Address P. O. BOX 49443 NAIROBI

2. (a) Proposed purchaser, transferee, mortgagee, chargee, allottee, etc. (full name in BLOCK LETTERS) KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED

(b) If a limited liability company, names of directors, authorized and issued share capital and principal shareholders: if a co-operative society, names of chairman, secretary and treasurer and total number of members—

CHAIRMAN - ZAKARIAH KIMEMIAH GAKUNJU

SECRETARY-SAMUEL MBUGUA KIBATHI

TREASURER- MBUGUA MWANGI

Total Number of Members - Ten

(c) Nationality KENYAN Certificate No. 2240

(d) Address P. O. BOX 74414 NAIROBI

3. Nature of transaction (e.g. sale, gift, lease, mortgage, charge, etc.: if sale or allotment of shares name of company, number and particulars of shares to be transferred)

SALE

4. Term (i.e. the length of time for which the land affected is to be transferred or leased: if sale or allotment of shares, authorized share capital of the company and numbers of shares issued at date of application)

5. Description of Land—

L.R. or Parcel No. 7153/2

Area 911 acres approximately

Locality KIAMBU

(86) (8)

75

6. (a) Purchase price, if a sale or option ... Sh. 4.5 MILLION

Rent ... Sh. ...

Estimated value of the land (if a gift) ... Sh. ...

Amount of loan (if a mortgage or charge) ... Sh. 4,050,000

Rate of interest (if a mortgage or charge) ... 9 %

Any other information affecting the amount of the consideration, particularly regarding the description and area of crops with estimated yields and value thereof included in the purchase price ... Refer to attached Documents

(b) Full description and approximate value of improvements on land included in the consideration 4 MILLION SHILLINGS

(c) Any other consideration passing between the parties ... NIL

7. If a transfer or lease of the land—

Proposed development programme of purchaser, including funds available therefor with approximate date ... IMPROVEMENT OF COFFEE YIELDS - PROPOSES TO SPEND ABOUT ONE MILLION SHILLINGS

Does the purchaser/lessee intend to reside on the land? ... NOL

8. (a) Other agricultural land registered in the name of or held under contract for sale by the proposed purchaser, transferee, lessee or allottee, or any member(s) of his immediate family, or any company in which he has an interest (state the nature of any interest in such company)—

L.R. or Parcel Nos. ... Area ...

Owner ...

Nature of interest ...

Whether contiguous to land being purchased ...

(b) Particulars of agricultural land held and disposed of by purchaser or lessee in the last three years—

L.R. or Parcel Nos. ... District ... Area ...

L.R. or Parcel Nos. ... District ... Area ...

9. Farming experience of transferee ... THE TRANSFEREE INTENDS TO RETAIN THE SERVICES OF THE PRESENT MANAGER WHO HAS MORE THAN 20 YRS EXPERIENCE

We hereby declare that the above information is true to the best of our knowledge and belief.

RIUGI & GICHURIA
Advocates
Signature of purchaser, lessee, [illegible] authorized agent or agents, etc.

KASARINI ESTATES LTD.
Signature of owner, lessor, [illegible] charger or authorized agent or agents, etc.

GAZETTE NOTICE No. 3083

IN THE MATTER OF THE COMPANIES ACT
(*Cap.* 486)

AND

IN THE MATTER OF TEROTO ESTATES LIMITED
(*Members' Voluntary Winding Up*)

NOTICE

NOTICE is hereby given that the final meeting of the above-named Company will be held in Silopark House, Queensway, Nairobi, on Friday, 17th September 1965 at 10 a.m. in accordance with the provisions of and for the purposes laid down in Section 283 (1) of the Companies Act (Cap. 486).

Dated this 9th day of August 1965.

P. M. JOHNSON,
Liquidator,
P.O. Box 92, Nairobi.

GAZETTE NOTICE No. 3084

IN THE MATTER OF THE COMPANIES ACT
(*Cap.* 486)

AND

IN THE MATTER OF KASARINI ESTATES (1959) LTD.
(*Members' Voluntary Winding Up*)

NOTICE

NOTICE is hereby given that the final meeting of the above-named Company will be held in Silopark House, Queensway, Nairobi, on Saturday, 25th September 1965, at 10 a.m. in accordance with the provisions of and for the purposes laid down in section 283 (1) of the Companies Act (Cap. 486).

Dated this 13th day of August 1965.

GAZETTE NOTICE No. 3085

THE COMPANIES ACT
(*Cap.* 486)

PURSUANT to section 339, subsection (3) of the above Act, it is hereby notified that at the expiration of three months from the date hereof, the names of the undermentioned companies will, unless cause be shown to the contrary, be struck off the Register of Companies and the companies will be dissolved:—

Slagment East Africa Limited.
Suzanne Limited.

Dated this 12th day of August 1965.

O. M. SAMEJA,
Assistant Registrar of Companies.

GAZETTE NOTICE No. 3086

THE SOCIETIES ACT
(*Cap.* 108)

PURSUANT to section 9 (1) of the Societies Act (Cap. 108), having reason to believe that the Societies listed in the Schedule hereto have ceased to exist, I hereby call upon the said societies to furnish me with proof of their existence within three months of the date hereof.

SCHEDULE

Kenya Federation of Labour.
Kenya Chamber of Commerce and Industry.
Kenya Chamber of Commerce and Industry, Trans Nzoia Branch, Kitale.
Kenya Chamber of Commerce and Industry, Central Nyanza Branch.
Kenya Chamber of Commerce and Industry, Kericho Branch.
Kenya Chamber of Commerce and Industry, Kirinyaga Branch.
Kenya Chamber of Commerce and Industry, Nairobi Branch.
Kenya Chamber of Commerce and Industry, Bunyore Branch.
Kenya Chamber of Commerce and Industry, Mombasa Branch.
Kenya Chamber of Commerce and Industry, Naivasha Branch.
Kenya Chamber of Commerce and Industry, Nyandarwa Branch.
Nanyuki Surat District Association.

Dated this 12th day of August 1965.

O. J. BURNS,
Acting Registrar of Societies.

GAZETTE NOTICE No. 3087

THE SOCIETIES RULES
(*Cap.* 108, *Sub. Leg.*)

PURSUANT to rule 17 of the Societies Rules notice is hereby given that—

(*a*) the societies listed in the First Schedule hereto have been registered, and

(*b*) the societies listed in the Second Schedule hereto have been refused registration,

under the provisions of the Societies Act (Cap. 108).

FIRST SCHEDULE

Name of Society	*Date Registration Effected*
Konya National Tenants' Association, Nairobi Branch	6-8-65
Kolunje Union	9-8-65
Kisumu Chamber of Commerce and Industry	9-8-65

SECOND SCHEDULE

Name of Society	*Date of Refusal*
East African National Society, Donyo Sabuk Branch Dispensary	11-8-65
East African National Society, Karia Branch Dispensary	11-8-65
East African National Society, Mathari Valley Branch Dispensary	11-8-65

Dated this 12th day of August 1965.

O. J. BURNS,
Acting Registrar of Societies.

GAZETTE NOTICE No. 3088

THE SOCIETIES RULES
(*Cap.* 108, *Sub. Leg.*)

PURSUANT to rule 17 of the Societies Rules notice is hereby given that the exemption from registration of the societies listed in the Schedule hereto have been rescinded under the provisions of the Societies Act (Cap. 108).

SCHEDULE

Name of Society	*Date of Rescission*
East African National Society (Dispensary)	11-8-65
East African National Society (Dispensary), Karatina Branch	11-8-65

Dated this 12th day of August 1965.

O. J. BURNS,
Acting Registrar of Societies.

GAZETTE NOTICE No. 3089

SIRIKWA COUNTY COUNCIL

UASIN GISHU SOUTH AREA COUNCIL

NOTICE OF ELECTION

NOTICE is hereby given that an election is to be held of a councillor to serve on the Uasin Gishu South Area Council for the following ward:—

Electoral Division	*Registration Unit No.*	*Retiring Councillor*
Plateau	1017	Vacant

Nomination papers may be delivered by the candidates to the Deputy Returning Officer at the District Commissioner's Office, Eldoret, between the hours of eight o'clock in the morning and noon on 20th August 1965.

Forms of nomination may be obtained at the District Commissioner's Office, Eldoret, on any week day between the hours of nine in the morning and noon. The Deputy Returning Officer will prepare the nomination paper for signature at the request of the voter.

Dated this 5th day of August 1965.

R. A. RIYAMY,
Deputy Returning Officer.

NOTE

1. The attention of candidates and persons nominating is drawn to the rules for filling in nomination papers and other provisions relating to nomination contained in the Local Government (Elections) Rules, 1963. Persons nominated must be entitled to be enrolled as voters for the County Division.

2. Every person guilty of a corrupt or illegal practice will, on conviction, be liable to the penalties imposed by the Election Offences Act.

upon a certified copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off, and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last-known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered postal address or, if no postal address has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

340. Property of dissolved company to be *bona vacantia*

Where a company is dissolved, all property and rights whatsoever vested in or held in trust for the company immediately before its dissolution (including leasehold property but not including property held by the company in trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under section 338 or section 339, be deemed to be *bona vacantia*, and shall accordingly belong to the Government.

[Act No. 9 of 1967, Sch.]

341. Power of Government to disclaim title to property vesting under section 340

(1) Where any property vests in the Government under section 340, the Government's title thereto under that section may be disclaimed by a notice signed by the Attorney-General.

(2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Government under section 340, and subsections (2) and (6) of section 315 shall apply in relation to the property as if it had been disclaimed under subsection (1) of section 315 immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Government either expressly or by taking possession or other act evincing that intention.

(4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date on which the vesting of the property as aforesaid came to the notice of the Attorney-General, or, if an application in writing is made to the Attorney-General by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the court which would have


86
SCALE 1:5000
Registration
Transactions
Authorisation
Date
Records
Date
Folio No

201

87

This is the exhibit marked "MNM 13" referred to in the annexed affidavit of MARGARET NYUKABI MBUGUA Sworn before me this 10th day of SEPTEMBER 2013 at Nairobi.

MINISTRY OF LANDS AND SETTLEMENT

Grams: "LANDS"
Phone: 27471-ext.
Replying please quote
No. 65100/36
and date

DEPARTMENT OF LANDS
P.O. Box 30089, NAIROBI

19th March, 1979

The Secretary,
Kasarani Farmers Co-Operative Society Ltd,
P.O. Box 75155,
NAIROBI

PROPOSED CONSOLIDATED AND SUB-DIVISION OF L.R. NO. 7153/1 and 7153/2

I refer to your letters dated 30th January, 1979 and dated 14th March, 1979 and enclose herewith one copy of the subdivisional plan duly approved, subject to the following conditions:-

1. Surrender to the Government free of charge the sites earmarked for Nursery School, Church and Primary School.

2. Surrender to the Government free of charge all road reserves.

3. Construction of the said road reserves to a standard acceptable to the Local Authority.

JSKM/am

(J. S. K. Mutitu)
for: COMMISSIONER OF LANDS:

The Town Clerk,
Kiambu Town Council,
P.O. Box 176,
Kiambu - with a plan.

The Director of Surveys,
Nairobi (with a plan)

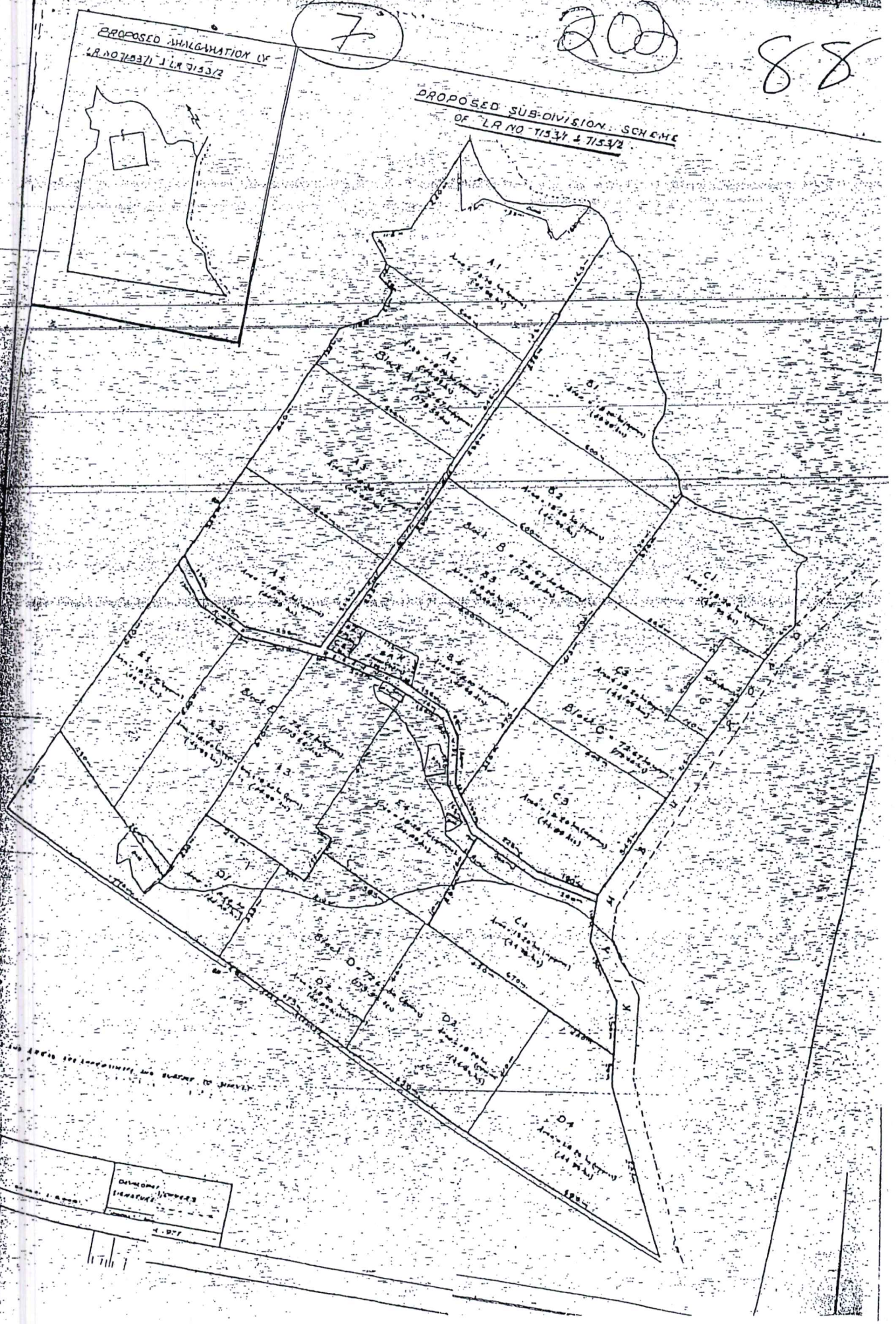
The Director of Physocal Planning
Nairobi with a plan)

The Land Registrar,
P.O. Box 291,
Kiambu

7

200

88


PROPOSED AMALGAMATION OF
LR NO 7153/1 & LR 7153/2
PROPOSED SUB-DIVISION SCHEME
OF LR NO 7153/1 & 7153/2
A1
A2
A3
A4
B1
B2
B3
B4
C1
C2
C3
C4
D1
D2
D3
D4
Block A
Block B
Block C
Block D
DEVELOPER
SIGNATURE

(7) (98) 89

This is the exhibit marked "MNM 12" referred to in the Affidavit of MARGARET NYOKABI MBUGUA Sworn / Declared

before me this 16th day of SEPTEMBER 2013

at Nairobi

Town Council of Kiambu

Commissioner for Oaths

Telephone, KIAMBU 2293

TOWN HALL,
P. O. BOX 176,
KIAMBU,
KENYA.

When replying please quote
Ref. No. KTC/LND/13/2/4/Vol.II/30
and date

(B)

6th September, 1979

The Land Registrar,
Kiambu Lands Office,
P.O. Box 291,
KIAMBU

Re: CONSENT TO TRANSFER OF LAND NO. L.R. NO. 7153/1 (20.02 acres)

Present Registration:- (1) Zacharia Kimemia Gakunju
(2) Samuel Githegi
(3) Mbugua Mwangi
(4) Samuel Mbugua Kibathi
(5) Kabega Kangethe

PURSUANT to the Provisions of the Land Planning Act Cap. 303, the Town Council of Kiambu do hereby give consent to the above named people to transfer the above land to Kazarini Farmers Co-operative Society Limited.

Enclosed herewith please find rates clearance certificate in respect of the above land.

NJUGUNA M. KUNG'U

(NJUGUNA M. KUNG'U)
TOWN CLERK

c.c.
Kagwe & Co.
P.O. Box 47445,
NAIROBI

Kazarini Farmers Co-operative Society LTD
P.O. Box 71,
KIAMBU

NMK/mwa

encl.

E (52) 90

REPUBLIC OF KENYA

MINISTRY OF CO-OPERATIVE DEVELOPMENT AND MARKETING
OFFICE OF THE COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

...graphic Address "CO-OPS"
...IROBI
...ephone: 020 – 2731531
...replying please quote

...GS/

...CHARIA GAKARIA&ASSOCIATES
...ANKARDASS HOUSE
...FLOOR
...WING MOI AVENUE
...Box 70662-00400
...irobi

...SEARCH ON KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED C/S NO 1167.

...e refer to the above and your letter to us dated 2TH day of JANUARY 2012 which ...e reply and advice as below

...ate And Year Of Registration

...e society was duly registered in accordance with the provisions of the co-...erative societies Act in the year 1964

...atus Of The Society

...ur records for the said society indicate that the society is dormant following the ...ncellation therefore in liquidation

...urrent Officials

...wing to the dormancy there are no current officials on behalf of the society

...st Officials

...e last officials on record for the society were as follows

1. Kahenya wambeti-chairman
2. Murega Kimani-secretary

E

Mana Maraki
...

October 2012

(53)

91

Njoroge karanja-Treasurer

Date And Year Of Liquidation

The society was liquidated on the 12th day of february 1974

I hope the information given to you will be of help

Yours faithfully

REIMAN WANDATI
GAL OFFICER
R COMMISSIONER FOR CO-OPERATIVES

34

Form 92

COLONY AND PROTECTORATE OF KENYA

THE CO-OPERATIVE SOCIETIES RULES, 1946

CERTIFICATE OF REGISTRATION

(Section 8 of ~~XXXXXXXX~~ Act 38/1945)

CERTIFICATE OF REGISTRATION NO. 1167

In the matter of the application bearing number 1167 and year 1964

the District of NAIROBI

I hereby certify that the Society under the name of KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED"

its by-laws have this day been duly registered by me in the Register of Societies, in pliance of the provisions of the Co-operative Societies Act 1945, and the operative Societies Rules, 1946.

Given under my hand at Nairobi, this the TWENTIETH day of JULY 1964

J. A. N. KIBUE

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Ag. COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

2633—2,000—10/56

THIS IS THE EXHIBIT MARKED B
ANNEXED TO THE AFFIDAVIT/DECLARATION
OF Mark Mwai
SWORN BEFORE ME ON THIS 10th DAY OF
October 2013 AT NAIROBI.

COMMISSIONER FOR OATHS

(35) (26) 93

By-Laws

Of

Kasarani Farmers Co-operative Society Limited
(registered under the Co-operative Societies Ordinance,
Chapter 287, Laws of Kenya.)

NAME

The name of the registered co-operative society shall
Kasarani Farmers Co-op. Society LTD

REGISTERED ADDRESS

The registered address of the society shall be Kasarani Farmers
Co-op. Society LTD. P.O. Box 4661 NRB

INTERPRETATION

In these By-Laws unless the context otherwise requires
following words shall carry the following meaning:-
"Commissioner or his representative" shall mean
the Commissioner for Co-operative Development
and persons appointed to assist such Commissioner
under the provisions of the Co-operative
Societies Ordinance.
"Manager" shall mean the paid employee
appointed under By-Law 42.
"Ordinance" shall mean the Co-operative
Societies Ordinance and all subsidiary
legislation made thereunder.
"Secretary" shall mean the officer of the
Society appointed under By-Law 28.
"Treasurer" shall mean the officer of the
society appointed under By-law 28.

THIS IS THE EXHIBIT MARKED
[illegible]

Part IV OBJECTS

4. The objects for which the Society is established
organise and promote the economic interests of
in accordance with Co-operative principles an
to:-
(1) To acquire land, buildings, equipm
for the purpose of managing and dev
collective farm for the benefit
Society; and Kahenya
Mahega Ki
Njoroge Karanja

(36) (27)

194

To Co-operatively market the produce of the farm the most profitable way; and

To promote good farming practices in accordance the advice of the government departments; and

To insure members against accidents, death, ness or other inflictions and to insure the perties of the farm against fire and other risk.

To achieve the objects set out in By-law 4 Society may perform and carry on such functions co-operative society as are permitted under the sions of the Co-operative Societies Ordinance and in particular:-

Raise funds by accepting deposits and by contracting for loans from members and non-members by issuing debentures or mortgaging the property of the Society or by any other means up to a maximum amount to be determined by the Commissioner, provided that the Society may not sell any land or equipment to which it has title for the purpose of raising funds during such period as any loan raised for the purpose of purchasing land or equipment remains as a liability of the Society.

(2) Negotiate with any person or corporation for the acquisition of land or equipment in pursuance of the objects of the Society.

(3) employ such technical and administrative staff and labour as shall be requisite for maximizing the economic use of the land provided that any lender of sums in excess of 25 per cent of the gross value of any land with respect to the Society may make it a condition of borrowing that the Society shall employ subject to such conditions as may be agreed such technical and administrative staff as the lender may consider necessary to secure the revenue productivity of the asset.

Kahekya Wambeti
Mupega Kimani
Njoroge Kasanja

(37) (28)

95

(4) Provide remunerative employment to all members of the Society and to relatives of the member duly authorised to live on the land of the Society whose age is not less than fourteen or more than sixty-five years.

Part V MEMBERSHIP

Members shall consist of:-

(a) Original members who signed the application for registration; and

(b) New members subsequently admitted in accordance with these By-laws.

Person shall be eligible for membership who possesses of the following qualifications:-

(1) Is of good character.

(2) Is not less than eighteen years of age, except in the case of a nominated minor heir of a deceased member.

(3) Is physically fit and able to actively carry out the farming duties required of a member.

7. Application for membership shall be made in writing to the Secretary of the Society and shall include a declaration by the applicant stating the personal name, age, sex and relationship of each relative who the applicant will expect to live on the land of the Society and in his homestead.

8. All applications shall be put before the Management Committee which may admit the applicant or reject any application without assigning any reason therefore, provided that their decision shall be ratified by the General Meeting, and provided that no applicant shall be admitted unless and until he has paid such entrance fees and such minimum contribution of share capital as shall be prescribed in these By-laws.

9. On admission to membership of the Society the Secretary of the Society shall cause each member, including those who signed the application for registration, to sign the Register of Members which act shall constitute an acceptance by the member of the binding nature of the Ordinance, Rules, and By-Laws or the Society.

Kahenya Wambeti 4/.....

Mirega Kimani

Njoroge Karanja

except the right to vote which right he may not have until he attains the age of eighteen years.

(3) If the nominee does not wish to become a member he may be paid the value of the shares or asset less any sum due from the deceased member to the Society.

15. (1) A member may be suspended from membership by the Committee pending a final decision on expulsion by the General Meeting, against whose decision an appeal may be made to the Commissioner under section 55 of the Ordinance for one or more of the following reasons:-

(a) any action adjudged to be prejudicial to the Society and the spirit of co-operation including malicious ilinatured slanderous remarks about any member of the Committee or an employee of the Society.

(b) repeated failure to comply with the rules of the Society created under these By-Laws.

(c) imprisonment for more than three months for a criminal offence.

(2) Any person ceasing to be a member may be repaid, after deduction of any debts owed by him to the Society, the following:-

(a) the value of his shares unless the Society holds loans or deposits from non-members.

(b) any bonus, dividend or interest due to him at the date on which membership ceased.

(c) any deposit or sum held by the Society on his behalf, provided that when a member is expelled, (a) and (b) shall not be paid but forfeited to the Society and credited to the Statutory Reserve Fund of the Society.

6/.....

Kahenya Wambeti
Mutega Kimani
Njoroge Karonga

FUNDS

Part VI

16. The Funds of the Society shall consist of:-

(1) Entrance Fee of Shs. 25/- each.

(2) An undetermined number of shares of the value of Shs. 50 each.

(3) Deposits from members.

(4) Loans from members or non-members, subject to By-Law 5(1)

(5) A Statutory Reserve Fund and any other Funds established with the approval of the Commissioner.

(6) Surplus Funds resulting from the operations of the Society.

17. The rate of interest on any depost or loan from members shall not exceed six per cent per annum except with written permission of the Commissioner.

18. The funds of the Society may be applied to the promotion of the stated objects of the Society set out in By-Law 4 and the purposes set out in By-Law 34(8).

SHARES

19. Every member shall hold at least one full share in the Society and no member shall hold more than one-fifth of the total shares. Non-members shall not hold shares.

20. Shares shall be paid for in full on application.

21. With the approval of the committee a member may at any time, provided that he has been a member for not less than three years, transfer his shares to another member but not to any other person.

22. All transfers of shares must be registered with the Secretary of the Society and no transfer is valid unless so registerd. A fee of Shilling Twenty (Sh. 20/-) shall be paid by the transferee to the Statutory Reserve Fund of the Society for every such transfer.

Part VII

MANAGEMENT COMMITTEE

23. The affairs of the Society shall be managed by a Management Committee which shall consist of five members over the age of twenty-one years elected at the Annual General Meeting and shall include the

98

Chairman, Honorary Secretary and an Honorary Treasurer. Provided that the Management Committee may appoint from amongst its members a Farm Committee which should be responsible to the Management Committee for day to day conduct of the affairs of the Society.

24. The Chairman of the Farm Committee shall be the Chairman of the Management Committee.

25. The Management Committee shall permit access to its sessions of the representative of any vendor of capital funds to the Society, for the purpose of listening to and advising with respect to any aspect of the business of the Society.

26. Members of the Committee shall be elected for three years and shall be eligible for reelection provided that not less than one third of the Committee shall retire annually; and provided that during the first two years from the date of the first General Meeting electing the Management Committee, the retiring members shall be determined by lot.

27. The Chairman of the Management Committee shall be chosen by the members of the Committee at the first meeting next following the election of new members next following the election of new members under the provision of By-Law 47(3).

28. The Honorary Secretary of the Society and Honorary Treasurer of the Society shall be eligible for election under the provisions of By-Law 47(3) provided that they shall be:-

(1) literate;

(2) without criminal conviction;

29. The duties of the Honorary Secretary shall be:-

(1) to ensure that the Society's correspondence is correctly attended to, and

(2) to ensure the recording of minutes of Committee and General Meetings, and

(3) to keep the Society seal securely under lock and key which shall be used only by and in the presence of all the officers authorised to sign on behalf of the Society under By-Law 39.

Kahenya Wambeti 8/.....

Mirega Kimani
Njeroge Karanja

42

33

99

30. The duties of the Honorary Treasurer shall be :-

(1) to check all payments and to counter sign all Vouchers.

(2) to keep a general surveillance of the money management of the Society.

31. Unless decided otherwise by the General Meeting, all documents, contracts and cheques shall be signed on behalf of the Society by the holders of the following offices:-

the Chairman with
the Honorary Secretary and
the Honorary Treasurer.

32. A member of the Committee shall cease to hold office if he:-

(1) ceases to be a member of the Society;
(2) applies for insolvency or is declared insolvent,
(3) becomes certified of unsound mind;
(4) is convicted of any criminal offence involving dishonesty or is imprisoned for three months;
(5) is removed from office at a General Meeting;
(6) absent himself from more than three consecutive meetings without reasonable excuse, or prior permission of the Committee.

33. Meetings of the Committee shall be held regularly once a month and at any other time when necessary. The minimum of three members shall be a quorum provided that either the Chairman or the Hororary Treasurer or the Honorary Secretary shall be one of the quorum.

34. The Committee shall exercise all the powers of the Society except those reserved for the General Meeting, subject to any regulations duly laid down by the Society in General Meeting or in the By-laws and, in particular, shall have the following powers and duties:-

(1) to regulate, control, plan and administer the management of the land, property of the Society, and in particular
(2) to issue new shares and approve transfer of shares.

Kahenya Wambeti
Waneya Kamana

of

(43)

(34)

100

(3) to prepare for the Annual General Meeting a crop production programme in a form duly approved by the Commissioner, which programme shall include an estimate of crop sale values.

(4) to prepare for the Annual General Meeting an estimate of expenditure for the financial year next following the Annual General Meeting, and in particular

(5) to determine the duties and remuneration of members for work done and to cause an account to be kept of the same provided that such determination shall be submitted for approval to the General Meeting, and

(6) to assess and authorise the employment of additional employees as shall be requisite for the achievement of the objects of the Society.

(7) to recommend for adoption of the Annual General Meeting the commission rate to be charged against the produce of the Society sufficient to cover all liabilities and obligations both outstanding and anticipated for the financial year next following the Annual General Meeting.

(8) to submit to the General Meeting for presentation and approval by the Commissioner with the consent of the General Meeting, in accordance with Section 38 of the Ordinance proposals for the disposal of any surplus at the end of the financial year, subject to Rule 27 A of the Co-operative Societies Rules, and in particular such proposal may include provision for:-

(a) payment of a dividend on share capital at a rate not exceeding ten per cent per annum.

(b) payment of a patronage bonus to members proportionate to their labour contribution to the Society, and to their remuneration

(c) any other purpose determined by resolution and approved by the

44

35

102

34. (9) to maintain or to cause to be maintained a true and accurate account of all monies received and expended and a record wherein members' labour contributions are clearly recorded.

(10) to keep or cause to be kept a true account of the assets and liabilities of the Society

(11) to prepare and lay before the Annual General Meeting accounts and balance sheets duly audited, provided that these shall be prepared within a period of not more than three months after the close of the financial year.

(12) to prepare or cause to be prepared quarterly balance sheets and accounts for the guidance of the Committee.

(13) to examine or cause to be examined the accounts, to sanction contingent expenditure and to supervise or cause to be suprvised the maintenance of all books of account.

(14) to review each quarter:-

(i) Obligation to creditors of the Society.

(ii) Obligation by debtors of the Society.

(iii) The position of all outstanding loans against or to the Society.

(15) To take such action as shall be necessary to meet all obligations to creditors within a period not exceeding three months of the incurring of a debt.

(16) To proceed against any debtor whose obligation shall have been in existence for a period in excess of three months.

(17) To supervise the maintenance of the Register of Members in accordance with the provisions of the Ordinance.

(18) To consider the inspection reports of officers of the Department of Co-operative Development and to take action on such reports.

(19) To enter into contracts and to execute documents in furtherance of the objects of the Society.

Kahenya wambeti

Mureya Kimani

45

36

103

34. (20) Subject to the requirements of these By-laws and of the Ordinance to make such provisions for borrowing as shall be necessary in furtherance of the objects of the Society.

(21) To summon meetings.

(22) To co-opt. members to fill vacancies on the Committee.

(23) To appoint, suspend, or dismiss any paid servant of the Society and to regulate and supervise their work.

(24) To impose fines in accordance with any rules created under By-law 45(2).

35. All business discussed or decided at a General Meeting shall be recorded without erasures in a Minute Book which within one week of the Meeting shall be signed by the Chairman of the Meeting and at least one other Committee member who was present at the meeting to indicate that in their opinion the record is a true and complete record of all important matters which were discussed or decided at the meeting.

At the next meeting after approving any alterations or variations which shall be immediately written below the above signatures and not as alterations to the original record, the meeting shall by resolution authorise its Chairman to sign and date the final record.

36. No payment in any form shall be made by the Treasurer unless it has been first authorised, admitted and confirmed by the Committee.

37. No expenditure shall be authorised by the Committee unless and until formally approved in the Annual General Meeting provided that a Special General Meeting may be convened with the consent of the Commissioner to make a supplementary estimate.

Part VIII SECRETARY/TREASURER

38. The Committee may appoint a paid Secretary/Treasurer.

39. The appointment of the Secretary/Treasurer shall be on specific terms embodied in a formal agreement signed and sealed by the Office Bearers named in By-law 31 and acknowledge by the appointee.

Kabiena Wambeti

Mureya Kimani

Njoroge Karanja

12/....

The duties of the Secretary/Treasurer shall be:-

(1) To maintain correctly and up to date all books of account, correspondence and records of the Society.

(2) To prepare all receipts, vouchers and documents required by the Ordinance or By-laws or called for by the Committee.

(3) To sign letters and witness the execution of documents on behalf of the Society and conduct its correspondence.

(4) To summon, and to attend, if required to do so by the Chairman, General Meetings and Meetings of the Committee on the instruction of the Chairman and in accordance with these By-laws.

(5) To prepare the annual statements and an annual report of the Affairs of the Society and submit them to the Committee.

(6) To prepare quarterly a statement of income and expenditure, of Creditors and Debtors, and submit them to the Committee.

(7) To pay all cash into the bank in order that at no time a sum exceeding shillings five hundred is in the possession of the Treasurer.

(8) To carry out such other duties as may be required by the Committee.

In the absence of a paid Secretary/Treasurer the duties stated in By-law 40 shall be the duties of the Honorary Secretary of the Society.

Part II

MANAGER

The Committee may appoint a manager on a formal contract for a specific term on such conditions as in their discretion they may wish, subject to By-law 5(3).

Part X

GENERAL MEETING

The supreme authority of the Society shall vest in the General Meeting of members which shall be held once annually or on such other occasions as may be deemed necessary in accordance with these By-laws.

Kahenya Wambeti
Mukeya Njange
Kimani Karanja

13/...

38

47

30

105

44. The Annual General Meeting shall be held every year within one calendar month of the receipt of the final accounts from the Commissioner by the Secretary. A Special General Meeting shall be held when convened by the Committee, the Commissioner or his representative in the area, or within fourteen days of receipt by the Secretary of a written demand from not less than half the total membership.

45. Notice of Annual or Special General Meeting shall be given not less than fourteen days prior to the day on which the meeting is proposed and such notice shall include a statement of the items of business to be transacted, the time and the place of the meeting.

46. Except when convened by the Commissioner or by his representative in the area, the presence of not less than one half of the members, shall constitute a quorum. In the absence of a quorum the Chairman shall adjourn the meeting and shall fix a date within one month for the adjournment meeting and notice shall be given as required in By-law 45. If at such a meeting a quorum is again not present the Chairman shall declare the meeting open and proceed with the business with those present.

47. The following business shall be transacted in a General Meeting:-

(1) Amendment of the By-laws or enactment of new By-laws in accordance with the provisions of the Ordinance.

(2) Make or amend rules in furtherance of the objects of the Society for:

(a) Restricting the residence of strangers on the land of the Society.

(b) Restricting the unauthorised use of the land or other property of the Society.

(c) Restricting the unauthorised sale of livestock and produce of the land of the Society which may include the sale of produce and livestock from any land to which a member is granted an approved user.

Kahenya Nambeti
Mukega Kimani

(d) The levy of fines.

(3) Election, suspension and removal of members of the Management Committee.

(4) Confirmation or otherwise of the action of the Committee in accepting, refusing or suspending or expelling members.

(5) Consideration of the report of the Committee.

(6) Consideration of the annual statement of account and balance sheet and of the auditor's report and of any inspection report of the Commissioner or his representative.

(7) The disposal of the annual surplus in accordance with the Ordinance and these By-Laws.

(8) The fixing subject to the approval of the Commissioner of the maximum liability to be incurred during the following year in loans or deposits from non-members.

(9) Such other business as may be relevant or necessary including rules for tenancies, conditions of loans, and all matters relevant thereto, subject to the approval of the Commissioner.

GENERAL

48. The financial year of the Society shall be from ~~1st July~~ to ~~30th June~~ 30th September

49. Auditors shall be appointed and their duties regulated in accordance with provisions of section 19 of the Ordinance.

50. A copy of the balance sheet and trade account, duly signed by the auditor and his report attached thereto shall be open to inspection of the members at the office of the Society at least fourteen days before the date fixed for the Annual General Meeting.

51. Notwithstanding the registration of the Society, no purchase of land shall be undertaken unless and until such purchase is approved by the Commissioner.

52. Consent to the acquisition of land by the Society shall be in the discretion of the Commissioner, provided that

(1) the Society shall first have accumulated sufficient share capital of at least one-

quarter of the purchase price of the land before engaging in loan transaction.

(2) The Society shall first make an assessment of the revenue productivity of the land sought to be acquired and such revenue productivity shall be related to the loan liability incurred in acquiring the aforesaid land. Such assessment to be made in writing and laid before a Special General Meeting of the Society.

(3) That such assessment shall be considered by a Special General Meeting and approved in a resolution by them as the economic basis on which the Society shall be permitted to engage in transaction.

53. The Seal of the Society may be a rubber stamp bearing the words "Seal of the ~~.....~~ Co-operative Society Ltd., and shall be different from the name stamp of the Society. The Seal shall be kept securely under lock and key by the Secretary and shall be used only by and in the presence of all the officers authorised to sign on behalf of the Society under By-law 31.

54. Any dispute arising out of these By-laws or concerning the business of the Society which cannot be settled by the Committee or General Meeting, shall be referred to the Commissioner as provided in section 55 of the Ordinance.

49.

108

Certified that the foregoing by-laws of the KA[illegible] FARMERS CO-OPERATIVE SOCIETY LTD. have been approved by me and duly registered. Given under my hand at Nairobi this the 20th day of July 1964.

(J.A.N.Kibue)
Ag. COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

REGISTRAR OF CO-OPERATIVE SOCIETIES

(54) (12)

10.9

REPUBLIC OF KENYA
MINISTRY OF CO-OPERATIVE DEVELOPMENT AND MARKETING
OFFICE OF THE COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

Address "CO-OPS"

020 – 2731521

ing please quote

SOCIAL SECURITY BUILDING
BISHOP ROAD
P.O. Box 40811 – GPO – 00100
NAIROBI

Date 12TH JANUARY 2012

RIA GAKARIA&ASSOCIATES
ARDASS HOUSE
OR
ING MOI AVENUE
X 70662-00400

SEARCH ON KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED C/S NO 2240

refer to the above and your letter to us dated 12TH day of JANUARY 2012 which reply and advice as below

ate And Year Of Registration

he society was duly registered in accordance with the provisions of the co-perative societies Act on the 10th day of July 1974

tatus Of The Society

our records for the said society indicate that the society is dormant following the ancellation therefore in liquidation

Current Officials

Owing to the dormancy there are no current officials on behalf of the society

Last Officials

The last officials on record for the society were as follows

1. Z K. Gakunju-Chairman
2. S M Kabathi-Secretary

(55)

43

116

Mbugua M. Mwangi-Treasurer
S/ Githego –Member
Kangethe-Member

And Year Of Liquidation

Society was liquidated on the 9th day of April 1983

Members of the society

Mbugua Mwangi
Grace Muthoni
Kabogo Kangethe
Mary Waruni
Samuel Githegi
Christine Mithiri
Kimemia Gakunju
Margaret Nyokabi
Ruth Njeri
Mbugua Kibathi

Hope the information given to you will be of help.

Yours faithfully

SULEIMAN WANDATI
LEGAL OFFICER
FOR COMMISSIONER FOR CO-OPERATIVES

44

111

THE CO-OPERATIVE SOCIETIES ACT

(CAP - 490, SECTION 7)

APPLICATION FOR REGISTRATION OF A CO-OPERATIVE SOCIETY

The Commissioner for
Co-operative Development,
P.O. Box 40811,
NAIROBI.

1. Name of proposed society KASARINI
2. Area of operation NAIROBI
3. Type of society ~~FARMS AND CREDIT SOCIETY~~ FARM PURCHASE
4. Whether limited or unlimited liability is desired LIMITED
5. Language in which the books and accounts will be kept.. ENGLISH..
6. Name of person appointed to perform the duties of secretary of the society SAMUEL MBUGUA KIBATHI
7. Registered office and postal address of the society.... BOX 74414 NAIROBI

We, the undersigned, hereby apply for the registration of the above society under the Act, and enclose four copies of the proposed By-laws in English.

NAME	OCCUPATION	AGE	PLACE OF RESIDENCE	SIGNATURE
MBUGUA MWANGI	TRADER	41	NAIROBI	
[illegible] MUTHONI	FARMER	35	NAIROBI	G. Muthoni
[illegible] RANGETHE	FARMER	53	NAIROBI	Katoge Kangeth
[illegible] WARURU	FARMER	38	NAIROBI	Mary Waruru
[illegible] GITHEKI	BUSINESSMAN	43	NAIROBI	
[illegible] THE MITIIRI	HOUSEWIFE	33	NAIROBI	
[illegible] GAKUNJU	TRADER	42	NAIROBI	
MARGARET MAYOKABI	TEACHER	30	NAIROBI	Mayokabi
[illegible] NJERI	HOUSEWIFE	45	NAIROBI	R. Njeri
MBUGUA KIBATHI	BUSINESSMAN	41	NAIROBI	

57

45

Farm Purchase
Cooperative Soc

BY-LAWS
OF

KASARINI FARMERS

CO-OPERATIVE SOCIETY LIMITED

(Registered under the Co-operative Societies Act,
Chapter 490, Laws of Kenya)

NAME

The name of the Society shall be:-

KASARINI FARMERS

CO-OPERATIVE SOCIETY LIMITED

REGISTERED ADDRESS

The registered address of the Society shall be

INTERPRETATION

In these By-laws unless the context otherwise requires:-

"Commissioner or his representative" shall mean the Commissioner for Cooperative Development and persons appointed to assist such Commissioner under the provisions of the Co-operative Societies Act;

"Manager" shall mean the paid employee appointed under By-law 43; "Act" shall mean the Cooperative Societies Act and all subsidiary legislation made thereunder;

"Secretary" shall mean the officer of the Society appointed under By-law 29;

"Treasurer" shall mean the officer of the Society appointed under By-law 29.

IV OBJECTS

The objects for which the Society is established are to organise and promote the economic interests of its members in accordance with co-operative principles and in particular to:-

acquire land, buildings, equipment and stock for the purpose of managing and developing as a collective farm for the benefit of the members of the Society;

co-operatively market the produce of the farm in the most profitable way;

promote good farming practice in accordance with the advice of the government departments;

insure members against accidents, death, illness or other inflictions and to insure the properties of the farm against fire and other risks;

To achieve the objects set out in By-Law 4 the Society may form and carry on such functions of a co-operative society as are permitted under the provisions of the Co-operative Societies Act and

(58) (19)

113

for loans from members and non-members by issuing debentures or mortgaging the property of the Society or by any other means up to a maximum amount to be determined by the Commissioner, provided that the Society may not sell any land or equipment to which it has title for the purpose of raising funds during such period as any loan raised for the purpose of purchasing land or equipment remains as a liability of the Society;

(2) negotiate with any person or corporation for the acquisition of land or equipment in pursuance of the objects of the Society;

(3) employ such technical and administrative staff and labour as shall be necessary for maximising the economic use of the land provided that any lender of sums in excess of twenty-five per cent of the gross value of any land with respect to the Society may make it a condition of borrowing that the Society shall employ subject to such conditions as may be agreed such technical and administrative staff as the lender may consider necessary to secure the revenue productivity of the asset;

(4) provide remunerative employment to all members of the Society and to relatives of the members duly authorised to live on the Society whose age is not less than fourteen or more than sixty-five years.

MEMBERSHIP

Members shall consist of:-

(a) original members who signed the application for registration; and

(b) new members subsequently admitted in accordance with these By-Laws.

A person shall be eligible for membership who possesses all of the following qualifications:-

(1) is of good character;

(2) is not less than eighteen years of age except in the case of a nominated minor heir of a deceased member;

(3) is physically fit and able to actively carry out the farming duties required of a member.

Application for membership shall be made in writting to the Secretary of the Society and shall include a declaration by the Applicant stating the personal name, age, sex and relationship of each relative who the applicant will expect to live on the land of the Society and in his homestead.

All applications shall be put before the Management Committee which may admit the applicant or reject any application without

be admitted unless and until he has paid such entrance fees and such minimum contribution of share capital as shall be prescribed in these By-laws.

10. On admission to membership of the Society the Secretary of the Society shall cause each member, including those who signed the application for registration, to sign the Register of Members which act shall constitute an acceptance by the member of the binding nature of the Act, Rules, and By-Laws of the Society.

11. On admission to membership of the Society the Secretary of the Society shall cause each member, including those who signed the application for registration, to nominate in writing the name of one person to whom on the death of the member his shares and interest shall be transferred. The name of such nominee shall be written in the Register of Members and shall be duly witnessed by the nominating member and the Secretary of the Society.

12. The liability of a member shall be limited to the nominal value of the shares held by him unless the General Meeting, with the Commissioner's permission accepts additional liability in respect of a specific sum on specific terms.

13. A member may withdraw from the Society only at the end of each financial year, and then only if he shall previously have given six month's notice in writing to the Secretary of the Society of his intention to withdraw from the Society.

14. Membership of the Society shall cease with effect from the date of a member:-

(1) dying;

(2) ceasing to hold the qualifications for membership specified in By-Law 7;

(3) being expelled from the Society;

(4) voluntarily withdrawing from the Society in accordance with the provisions of By-Law 13;

(5) ceasing to hold a share in the Society in accordance with the provisions of By-Law 20;

(6) becoming of unsound mind.

15. (1) On the death of a member or if a member is certified to be of unsound mind, his nominee, if eligible for membership under By-Law 7 may apply and be admitted as a full member without paying further entrance fee, and shall acquire all assets and rights and assume all debts and responsibilities of the member by whom he was nominated.

(2) If ineligible only on grounds of age, such nominee shall be granted all the rights and liabilities of the deceased member except [illegible]

48

(3) If the nominee does not wish to become a member he may be paid the value of the shares or asset less any sum due from the deceased member to the Society.

115

(1) A member may be suspended from membership by the Management Committee pending a final decision on expulsion by the General Meeting, against whose decision an appeal may be made to the Commissioner under section 80 of the Act for one or more of the following reasons:-

(a) any action adjudged to be prejudicial to the Society and the spirit of Cooperation including malicious illnatured slanderous remarks about any member of the Committee or an employee of the Society;

(b) repeated failure to comply with the regulations of the Society made under these By-laws;

(c) imprisonment for more than three months for a criminal offence.

(2) Any person ceasing to be a member may be repaid, after deduction of any debts owed by him to the Society the following:-

(a) the value of his shares unless the Society holds loans or deposits from non-members;

(b) any bonus, dividend or interest due to him at the date on which his membership ceased;

(c) any deposit or sum held by the Society on his behalf, provided that where a member is expelled, (a) and (b) shall not be paid but forfeited to the Society and credited to the Statutory Reserve Fund of the Society.

Part VI. FUNDS

7. The Funds of the Society shall consist of:-

(1) entrance fee of Shs 10/- ..... each;

(2) an undetermined number of shares of the value of Shs 1000/- ..... each;

(3) deposits from members;

(4) loans from members or non-members subject to By-law 5(1);

(5) a Statutory Reserve Fund and any other funds established with the approval of the Commissioner;

(6) Surplus funds resulting from the operations of the Society.

8. The rate of interest on any deposit or loan from members shall not exceed six per cent per annum except with the written permission of the Commissioner.

9.

(61)

49

SHARES

20. Every member shall hold at least one full share in the Society and no member shall hold more than one-fifth of the total shares. Non-members shall not hold shares.

21. Shares shall be paid for in full on application.

22. With the approval of the Management Committee a member may at any time, provided that he has been a member for not less than three years, transfer his shares to another member but not to any other person.

23. All transfers of shares must be registered with the Secretary of the Society and no transfer is valid unless so registered. A fee of Shillings Twenty (Shs. 20/=) shall be paid by the transferee to the Statutory Reserve Fund of the Society for every such transfer.

Part VII MANAGEMENT COMMITTEE

24. The affairs of the Society shall be managed by a Management Committee which shall consist of at least five and not more than nine members over the age of twenty-one years elected at the Annual General Meeting and shall include the Chairman, Honorary Secretary and an Honorary Treasurer. Provided that the Management Committee may appoint from amongst its members a Farm Committee which should be responsible to the Management Committee for the day to day conduct of the affairs of the Society.

25. The Chairman of the Committee shall be the Chairman of the Management Committee.

26. The Management Committee shall permit access to its sessions of the representative of any vendor of capital funds to the Society, for the purpose of listening to and advising with respect to any aspect of the business of the Society.

27. Members of the Management Committee shall be elected for three years and shall be eligible for re-election provided that not less than one third of the Committee shall retire annually; and provided that during the first two years from the date of the first General Meeting electing the Committee, the retiring members shall be determined by lot.

28. The Chairman of the Management Committee shall be chosen by the members of the Committee at its first meeting next following the election of new members under the provision of By-Law 48(3).

29. The Honorary Secretary of the Society and Honorary Treasurer of the Society shall be eligible for election [illegible] provisions of [illegible]

50

177

The duties of the Honorary Secretary shall be to:-

(1) ensure that the Society's correspondence is correctly attended to;

(2) ensure the recording of minutes of Committee and General Meetings;

(3) keep Society's seal securely under lock and key. The seal shall be used only by and in the presence of all the officers authorised to sign on behalf of the Society under By-law 40.

The duties of the Honorary Treasurer shall be to:-

(1) Check all payments and to countersign all vouchers;

(2) keep a general surveillance of the money management of the Society.

Unless decided otherwise by the General Meeting, all documents, contracts and cheques shall be signed on behalf of the Society by the holders of the following officers:-

The Chairman with
the Honorary Secretary and
the Honorary Treasurer.

A member of the Management Committee shall cease to hold office if he:-

(1) ceases to be a member of the Society;

(2) applies for insolvency or is declared insolvent;

(3) becomes certified of unsound mind;

(4) is convicted of any criminal offence involving dishonesty or is imprisoned for three months;

(5) is removed from office at a General Meeting;

(6) absents himself from more than three consecutive meetings without reasonable excuse, or prior permission of the Management Committee.

Meetings of the Management Committee shall be held regularly once a month and at any other time when necessary. One half of the members shall form a quorum provided that either the Chairman or the Honorary Treasurer or the Honorary Secretary shall be one of the quorum.

The Management Committee shall exercise all the powers of the Society except those reserved for the General Meeting Subject to any regulations duly laid down by the Society in General Meeting or in the By-Laws and, in particular, shall have the following powers and duties:-

(1) to regulate, control, plan and administer the Management of the land and property of the Society;

(2) to issue new shares and approve transfers of shares;

(3) to prepare for the Annual General Meeting a crop production programme

(4) to prepare for the Annual General Meeting an estimate of expenditure for the financial year next following the Annual General Meeting;

(5) to determine the duties and remuneration of members for work done and to cause an account to be kept of the same provided that such determination shall be submitted for approval to the General Meeting;

(6) to assess and authorise the employment of additional employees as shall be requisite for the achievement of the objects of the Society;

(7) to recommend for adoption by the Annual General Meeting the commission rate to be charged against the produce of the Society sufficient to cover all liabilities and obligations both outstanding and anticipated for the financial year next following the Annual General Meeting;

(8) to submit to the General Meeting for presentation and approval by the Commissioner with the consent of the General Meeting in accordance with Section 45 and 46 of the Act proposals for the disposal of any surplus at the end of the financial year, subject to Rule 49 A of the Cooperative Societies Rules 1969, and in particular such proposal may include provision for:-

(a) payment of a dividend on share capital at a rate not exceeding ten per cent per annum;

(b) payment of a patronage bonus to members proportionate to their labour contribution to the Society and to their remuneration; and

(c) any other purpose determined by resolution and approved by the Commissioner.

(9) to maintain or to cause to be maintained a true and accurate account of all monies received and expended and a record wherein members labour contributions are clearly recorded;

(10) to keep or cause to be kept a true account of the assets and liabilities of the Society;

(11) to prepare and lay before the Annual General Meeting accounts and balance sheets duly audited, provided that these shall be prepared within a period of not more than three months after the close of the financial year;

(12) to prepare or cause to be prepared quarterly balance sheets and accounts for the guidance of the Committee;

(13) to examine or cause to be examined the accounts, to sanction contigent expenditure and to supervise or cause to be supervised the maintenance of all books of account;

(14) to review each quarter:-

(iii) the position of all outstanding loans against or to the Society;

(15) to take such action as shall be necessary to meet all obligations to creditors within a period not exceeding three months of the incurring of a debt;

(16) to proceed against any debtor whose obligation shall have been in existence for a period in excess of three months;

(17) to supervise the maintenance of the Register of Members in accordance with the provisions of the Act;

(18) to consider the inspection reports of officers of the Department of Cooperative Development and to take action on such reports;

(19) to enter into contracts and to execute documents in furtherance of the objects of the Society;

(20) subject to the requirements of these By-Laws and of the Act to make such borrowings for borrowing as shall be necessary in furtherance of the objects of the Society;

(21) to summon meetings;

(22) to co-opt members to fill vacancies on the Committee;

(23) to appoint, suspend, or dismiss any paid servant of Society and to regulate and supervise their work;

(24) to impose fines in accordance with any rules made under By-Law 48(2).

36. All business discussed or decided at a General Meeting shall be recorded without erasures in a Minute Book which within one week of the Meeting shall be signed by the Chairman of the Meeting and at least one other Committee member who was present at the meeting to indicate that in their opinion the record is a true and complete record of all important matters which were discussed or decided at the meeting.

At the next meeting after approving any alterations or varitions which shall be immediately written below the above signatures and not as alterations to the original record, the meeting shall by resolution authorise its Chairman to sign and date the final record.

37. No payment in any form shall be made by the Treasurer unless it had been first authorised, admitted and confirmed by the Committee.

38. No expenditure shall be authorised by the Committee unless and until formally approved in the Annual General Meeting provided that a Special General Meeting may be convened

Commissioner or his representative in the area, or within fourteen days of receipt by the Secretary of a written demand from not less than half the total membership.

46. Notice of Annual or Special General Meeting shall be given not less than fourteen days prior to the day on which the meeting is proposed and such notice shall include a statement of the items of business to be transacted, and the time and the place of the meeting.

47. Except when convened by the Commissioner or by his representative in the area, the presence of not less than one-half of the members, shall constitute a quorum. In the absence of a quorum the Chairman shall adjourn the meeting and shall fix a date within one month for the adjournment meeting and notice shall be given as required in By-law 45. If at such a meeting a quorum is again not present the Chairman shall declare the meeting open and proceed with the business with those present.

48. The following business shall be transacted in a General Meeting:-

(1) Amendment of the By-laws or enactment of new By-laws in accordance with the provisions of the Act;

(2) Make or amend rules in furtherance of the objects of the Society for:-

(a) restricting the residence of strangers on the land of the Society;

(b) restricting the unauthorised use of the land or other property of the Society;

(c) restricting the unauthorised sale of livestock and produce of the land of the Society which may include the sale of produce and livestock from any land to which a member is granted an approved user.

(d) the levy of fines.

(3) election, suspension and removal of members of the Management Committee;

(4) confirmation or otherwise of the action of the Management Committee in accepting, refusing or suspending or expelling members;

(5) consideration of the report of the Committee;

(6) consideration of the annual statement of account and balance sheet and of the auditor's report and of any inspection report of the Commissioner or his representati-

(7) The disposal of the annual surplus in accordance with the Act and these By-Laws;-

(8) The fixing subject to the approval of the Commi...

55

(9) Such other business as may be relevant or necessary including rules for tenancies, conditions of loans and all matters relevant thereto, subject to the approval of the Commissioner.

121

GENERAL

49. The financial year of the Society shall be from ...1ST JULY..... to ...30TH JUNE.....

50. Auditors shall be appointed and their duties regulated in accordance with provisions of section 23 or the Act.

51. A copy of the balance Sheet and trade account, duly signed by the auditor and his report attached thereto shall be open to inspection of the members at the office of the Society at least fourteen days before the date fixed for the Annual General Meeting.

52. Notwithstanding the registration of the Society, no purchase of land shall be undertaken unless and until such purchase is approved by the Commissioner.

53. Consent to the acquisition of land by the Society shall be in the discretion of the Commissioner provided that :-

(1) the Society shall first have accumulated sufficient share capital of at least one quarter of the purchase price of the land before engaging in the loan transaction.

(2) The Society shall first make an assessment of the revenue productivity of the land sought to be acquired and such revenue productivity shall be related to the loan liability incurred in acquiring the aforesaid land. Such assessment to be made in writing and laid before a Special General Meeting of the Society.

(3) That such assessment shall be considered by a Special General Meeting and approved by a resolution of the meeting as the economic basis on which the Society shall be permitted to engage in the transaction.

54. The Seal of the Society may be a rubber stamp bearing the words "Seal of the ...KASARIM FAMERS..... Co-operative Society Ltd., and shall be different from the name stamp of the Society. The Seal shall be kept securely under lock and key by the Secretary and shall be used only by and in the presence of all the officers authorised to sign on behalf of the Society under By-law 32.

55. Any dispute arising out of these By-laws or concerning the business of the Society which cannot be settled by the Committee or General Meeting, shall be referred to the Commissioner as provided in section 80 of the Act.

56

12

ACCEPTED for and on behalf of the Society by :-

CHAIRMAN ..... J. K. GAKUNGU .....

SECRETARY ..... S. M. KIBATH .....

TREASURER ..... MBUGUA MWANGI .....

CERTIFIED that the foregoing by-laws of the KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED (Registered No. 2240 .....) have been approved by me and duly registered.

GIVEN under my hand at Nairobi this the 10th day of July 19 74

DEPUTY COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT.

THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. LXXXV—No. 27 NAIROBI, 27th May, 1983 Price Sh. 6

CONTENTS

GAZETTE NOTICES	PAGE
The Children and Young Persons Act—Appointments	726
The National Construction Corporation Act—Appointment	726
The Pest Control Products Act—Appointments	726
The Tea Act—Appointment	726
The Cotton Lint and Seed Marketing Act—Appointment, etc.	726, 728
The Land Control Act—Appointments	727
The Oaths and Statutory Declarations Act—A Commission	728
The Law of Succession Act—Appointment	728
The Police Act—Employment of Police for Private Purposes	728
The Registration of Titles Act—Issue of Provisional Certificates	728
Vacancies Offered by A.C.P., FAO and I.A.E.A.	729
The Advocates (Admission) Regulations—Admissions	730
The Cattle Cleansing Act—Prescription of a Tick-destroying Agent	730
Loss of L.P.O., etc.	730
Central Bank of Kenya—Statement	730
The Registered Land Act—Issue of New Land Certificates	732
The Pharmacy and Poisons Act—Registered Drugs	733–739
Industrial Court Awards	739–742
Trade Marks	742–746
Probate and Administration	746–751
The Bankruptcy Act—First Meeting of Creditors	752
The Companies Act—Dissolutions, etc.	752–753
The Societies Rules—Registrations, etc.	753

GAZETTE NOTICES—(Contd.)	PAGE
The Trade Unions Act—Refusal of Registrations	753
The African Christian Marriage and Divorce Act—Ministers Licenced to Celebrate Marriages	753–754
The Co-operative Societies Act—Admission of Claims, etc.	754–755
Loss of Policy	755
Messrs. Intra Africa Assurance Co. Ltd.—Loss of Motor Vehicle Insurance Certificate	755
Local Government Notices	755
Tenders	755–756
Change of Names	756
Customs and Excise—Sale by Auction	757–765

SUPPLEMENT No. 25

Acts, 1983

	PAGE
No. 3 of 1983—The Nurses Act, 1983	33

SUPPLEMENT No. 26

Legislative Supplement

LEGAL NOTICE NO.	PAGE
80—The Children and Young Persons (Appointed Local Authority) Order, 1983	375

SPECIAL NOTICE

As Wednesday, 1st June, 1983, will be a public holiday, the latest time for submission of copy for the Kenya Gazette issue of 3rd June, 1983, will be noon on Monday, 30th May, 1983.

S. W. S. MUCHIEWA,
Government Printer.

SCHEDULE

Denomination.—Patmos Fellowship of Africa (International).
Name of Minister.—Rev. Benson Warui Mwaura.
Denomination.—National Independent Church of Africa.
Name of Ministers:
Rev. Ephantus Ireri Kathagana,
Rev. Nahashon Marangu Kaunda.

Dated at Nairobi the 6th May, 1983.

J. K. MUCHAE,
Acting Deputy Registrar-General.

GAZETTE NOTICE NO. 2041

THE CO-OPERATIVE SOCIETIES ACT

(*Cap.* 490, *section* 70 (1) (*a*))

CS 2598 NDUA CONSUMER CO-OPERATIVE SOCIETY LTD.

(*In Liquidation*)

ADMISSION OF CLAIMS

THE general public is informed that the above-named co-operative society is in liquidation and I, being the duly appointed liquidator, appoint 25th May, 1983, as the day on which or before which all the creditors of the said co-operative society shall state to me their claims for admission.

Such claims shall be addressed to me at District Co-operative Office, P.O. Box 40, Machakos.

E. M. KIHWAGA,
Liquidator.

GAZETTE NOTICE NO. 2042

THE CO-OPERATIVE SOCIETIES ACT

(*Cap.* 490, *section* 70 (1))

CS/2240 KASARINI FARMERS CO-OPERATIVE SOCIETY LTD.

(*In Liquidation*)

ADMISSION OF CLAIMS

I, being duly appointed liquidator of the above-named society, appoint Monday, 13th June, 1983, as the day on which or before which the creditors of the above-named co-operative society, shall state to me their claims for admission.

Such claims shall be addressed to me at the Department of Co-operative Development, P.O. Box 30202, Nairobi, Telephone 23455.

J. R. K. NJOROGE,
Liquidator.

GAZETTE NOTICE NO. 2043

THE CO-OPERATICE SOCIETIES ACT

(*Cap.* 490)

EXTENSION OF PERIOD OF APPOINTED COMMITTEE

IN EXERCISE of the powers vested on me by section 64 of the Co-operative Societies Act, I extend the appointment of the herebelow-mentioned persons as members of the management committee of Othaya Farmers Co-operative Society Limited for a further period of one year commencing on 11th December, 1982, (now past) to 11th December, 1983.

Chairman.—D. O., Othaya (A. N. Mogere).
Vice-Chairman.—Peter Mwaniki.
Treasurer.—Stanley Murimi.
Hon. Secretary.—David King'ori.

Committee Members:
Herman King'ori,
Haxron Mwai,
Harrison Wahome.

And I further order that allowances of the committee members who are not civil servants shall continue to be paid out of the funds of the society.

Given under my hand at Nairobi on the 20th May, 1983.

A. K. BIRGEN,
Commissioner for Co-operative Development.

GAZETTE NOTICE NO. 2044

THE CO-OPERATICE SOCIETIES ACT

(*Cap.* 490)

EXTENSION OF PERIOD OF APPOINTED COMMITTEE

IN EXERCISE of the powers vested on me by section 64 of the Co-operative Societies Act, I extend the appointment of the herebelow-mentioned persons as members of the management committee of Tetu Coffee Growers Co-operative Society Limited for a further period of one year commencing on 10th June, 1983, to 10th June, 1984.

Chairman.—D. O., Tetu (N. E. Mukhwana).
Vice-Chairman.—Joseph Ndigirigi.
Hon. Secretary.—Walter Maital.
Treasurer.—Irura Kihoothia.

Committee Members:
Wangombe Thairu,
Rukwaro Mbage.

And I further order that allowances of the committee members who are not civil servants shall continue to be paid out of the funds of the society.

Given under my hand at Nairobi on the 20th May, 1983.

A. K. BIRGEN,
Commissioner for Co-operative Development.

GAZETTE NOTICE NO. 2045

THE CO-OPERATICE SOCIETIES ACT

(*Cap.* 490)

EXTENSION OF PERIOD OF APPOINTED COMMITTEE

IN EXERCISE of the powers vested on me by section 64 of the Co-operative Societies Act, I extend the appointment of the herebelow-mentioned persons as members of the management committee of Mathira Farmers Co-operative Society Limited for a further period of one year commencing on 30th March, 1983, (now past) to 30th March, 1984.

Chairman.—D. O. (J. K. Mwaura).
Vice-Chairman.—Isaac Hunja.
Treasurer.—Hutcheson F. Wanjau.

Committee Members:
Joseph Karaigwa.
Simon Kamunge Karanji.

And I further order that allowances of the committee members who are not civil servants shall continue to be paid out of the funds of the society.

Given under my hand at Nairobi on the 20th May, 1983.

A. K. BIRGEN,
Commissioner for Co-operative Development.

GAZETTE NOTICE NO. 2046

THE CO-OPERATICE SOCIETIES ACT

(*Cap.* 490)

EXTENSION OF PERIOD OF APPOINTED COMMITTEE

IN EXERCISE of the powers vested on me by section 64 of the Co-operative Societies Act, I extend the appointment of the herebelow-mentioned persons as members of the management committee of Mathira Dairy Co-operative Society Limited for a further period of one year commencing on 31st March, 1983, (now past) to 31st March, 1984.

Chairman.—D. O. (J. K. Mwaura).
Vice-Chairman.—Zakaria Githinji.
Treasurer.—Willington Kabugi.

Committee Members:
Naftali Wanjohi,
Erastus Wambugu,
Naftali Mathenge.

And I further order that allowances of the committee members who are not civil servants shall continue to be paid out of the funds of the society.

Given under my hand at Nairobi on the 20th May, 1983.

A. K. BIRGEN,
Commissioner for Co-operative Development.

59

7

113

125

TITLEMENT & PHYSICAL PLANNING

Telegrams: "Lands"
Telephone: 27471-ext.
When replying please quote
Ref. No. 65100
and date

DEPARTMENT OF LANDS
P.O. Box 30089, NAIROBI

1st July, 1982

M/s. Kaque & Co.,
Advocates,
P.O. Box 47445,
NAIROBI.

RE: TRANSFER OF L.R. NUMBERS 12825/5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 & 26

Reference your letters of undertaking regarding the above transfers.

The above properties have now been valued for stamp duty purposes. Please remit to this office the additional stamp duty indicated below together with the transfer documents for upstamping within the next 21 days from the date hereof to avoid penalty charges.

L.R.	SALE PRICE Shs	VALUATION Shs	ADDITIONAL STAMP DUTY Shs
12825/5	48,000.00	48,000.00	—
12825/6	244,000.00	650,000.00	8,120/-
12825/7	241,000.00	570,000.00	6,580/-
12825/8	231,000.00	500,000.00	5,380/-
12825/9	54,000.00	350,000.00	5,920/-
12825/10	240,000.00	883,500.00	12,880/-
12825/11	238,000.00	808,000.00	11,400/-
12825/12	230,000.00	855,000.00	12,500/-
12825/13	243,000.00	875,000.00	12,640/-
12825/14	238,000.00	810,000.00	11,440/-
12825/15	243,000.00	720,000.00	9,540/-
12825/16	232,000.00	830,000.00	11,960/-
12825/17	250,000.00	902,000.00	13,060/-
12825/18	228,000.00	1,215,000.00	19,740/-
12825/19	237,000.00	1,282,000.00	20,920/-
12825/20	238,000.00	788,000.00	11,060/-
12825/21	238,000.00	808,000.00	11,400/-
12825/22	238,000.00	831,250.00	11,880/-
12825/23	223,000.00	617,500.00	7,900/-
12825/24	240,000.00	740,000.00	10,400/-
12825/25	238,000.00	855,000.00	12,340/-
12825/26	249,000.00	855,000.00	12,120/-

(NELLIE A. OKELLO) (MRS)
COLLECTOR OF STAMP DUTIES

REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT
(CHAPTER 281)

GRANT NUMBER IS 35930

F R E E H O L D

KNOW ALL MEN BY THESE PRESENTS that in pursuance of a surrender registered in the Government Land Registry at Nairobi in Volumes N.44 Folio 2/11 and N.44 Folio 164/7 THE PRESIDENT OF THE REPUBLIC OF KENYA on behalf of the Government of Kenya hereby GRANTS Unto KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED a limited liability company incorporated in the Republic of Kenya and having its registered office at NAIROBI (Post Office Box Number 75155) hereinafter called (the Grantee) ALL THAT piece of land situate S.E. of Kiambu Town in the KIAMBU DISTRICT of the Republic of Kenya containing by measurement three seven seven decimal two (377.2) hectares or thereabouts that is to say Land Reference Number 12825 which said piece of land with dimensions abuttals and boundaries thereof is delineated and edged red on the Plan Number 111458 deposited in the Survey Records Office at Nairobi TO HOLD the same in fee simple SUBJECT and together with (a) Easements and/or Wayleave agreements registered in Volume N. 12 Folio 75/15 & 17, 79/16, 18, 20 & 21 and 114/6 & 8 (b) the Government Lands Act (Chapter 280) and (c) the following special conditions (namely):- contained in a conveyance registered in Volume N.44 Folio 164/1

S P E C I A L C O N D I T I O N S

- NIL -

IN WITNESS WHEREOF I, [illegible] the Commissioner of Lands have by Order of the President hereunto set my hand this 3rd day of November One thousand nine hundred and eighty-one in the presence of:-

35930/1

Registered 18th December 81
Time 10.35 a.m.

[illegible]

Registrar of Titles

THIS IS THE EXHIBIT MARKED H
ANNEXED TO THE AFFIDAVIT/DECLARATION
OF Maria Maraki
SWORN BEFORE ME ON THIS 10th DAY OF
DECLARED
[illegible] NAIROBI
COMMISSIONER FOR OATHS.

DEPARTMENT OF LANDS SCANNED

18.12.1981

[illegible]

Surrender to the Government of the Republic of Kenya in respect of [illegible] Land Reference Number 12825/3

18.12.1981

127

(5)

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AS AFFECTING THE TITLE
Certificate of Incorporation of The Government
of the Republic of Kenya issued by the Registrar
General Registered Volume 1223 Folio 14

Presentation No. 736 Date of Registration 18-1-1982 Registrar

(6)

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AS AFFECTING THE TITLE
Transfer to Samuel Mbugua Kibathi
and Margaret Njoroge Mbugua as joint tenants
18.31 Ha. LR. No. 12825/10
Vide I.R. 36333

Presentation No. 530 Date of Registration 16-2-82

(7)

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AS AFFECTING THE TITLE
Transfer to Samuel Kibathi Mbugua and
Grace Nyokabi Githaiga as joint tenants
18.15 Ha. LR. No. 12825/19
Vide I.R. 36334

Presentation No. 532 Date of Registration 16-2-82

(8)

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AS AFFECTING THE TITLE
Transfer to Samuel Mbugua Kibathi and
Margaret Njoroge Mbugua as joint tenants
4.08 Ha. LR. No. 12825/9
Vide I.R. 36335

Presentation No. 534 Date of Registration 16-2-82

(9)

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AS AFFECTING THE TITLE
Transfer to Samuel Kibathi Mbugua and
Grace Nyokabi Githaiga as joint tenants
17.70 Ha. LR. No. 12825/10
Vide I.R. 36336

Presentation No. 536 Date of Registration 16-2-82

(10)

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AS AFFECTING THE TITLE
Transfer to Samuel Mbugua Kibathi and
Margaret Njoroge Mbugua as joint tenants
190 Ha. LR. No. 12825/17
Vide I.R. 36337

Presentation No. 538 Date of Registration 16-2-82

(11)

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AS AFFECTING THE TITLE
Transfer to Nyeri Kabugo
18.08 Ha. LR. No. 12825/19
Vide I.R. 36338

Presentation No. 540 Date of Registration 16-2-82

(12)

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AS AFFECTING THE TITLE
Transfer to Grace Mbugua Kibathi and
Catherine Muthoni Mbugua as joint tenants
[illegible]
Vide I.R. 36339

13

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

Transfer to Samuel Githeri Mbugua and Grace Muthoni Githeri as joint tenants
18.39 Ha LR. No. 12825/7
Vide CERTIFICATE OF TITLE TR 36340

Presentation No. 544 Date of Registration 16-2-82

14

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

Transfer to Zachariah Kimemia Gakunju and Mary Wavuri Gakunju as joint tenants
18.95 Ha LR. No. 12825/26
Vide CERTIFICATE OF TITLE TR 36341

Presentation No. 546 Date of Registration 16-2-82

15

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

Transfer to Samuel Githeri Mbugua and Grace Muthoni Githeri as joint tenants
18.15 Ha LR. No. 12825/11
Vide CERTIFICATE OF TITLE TR 36342

Presentation No. 548 Date of Registration 16-2-82

16

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

Transfer to Moses Mbugua Mwangi and Christine Mithuri Mbugua as joint tenants
18.53 Ha LR. No. 12825/6
Vide CERTIFICATE OF TITLE TR 36343

Presentation No. 550 Date of Registration 16-2-82

17

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

Transfer to Zachariah Kimemia Gakunju and Mary Wavuri Gakunju as joint tenants
16.99 Ha LR. No. 12825/23
Vide CERTIFICATE OF TITLE TR 36344

Presentation No. 562 Date of Registration 16-2-82

18

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

Transfer to Ruth Njeri Kabogo
18.15 Ha LR. No. 12825/22
Vide CERTIFICATE OF TITLE TR 36345

Presentation No. 554 Date of Registration 16-2-82

19

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

Transfer to Zachariah Kimemia Gakunju and Mary Wavuri Gakunju as joint tenants
18.28 Ha LR. No. 12825/24
Vide CERTIFICATE OF TITLE TR 36346

Presentation No. 556 Date of Registration 16-2-82

20

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

Transfer to Moses Mbugua Mwangi and Christine Mithuri Mbugua as joint tenants
18.15 Ha LR. No. 12825/15
Vide CERTIFICATE OF TITLE TR 36347

Presentation No. 558 Date of Registration 16-2-82

63

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

(21) Transfer to Moses Mbugua Mwangi and Christine Mithuri Mbugua as joint tenants
18.15 Ha LR No. 12825/13
Vide CERTIFICATE OF TITLE IR 36348

Presentation No. 560 Date of Registration 16-2-82

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

(22) Transfer to Zachariah Kimemia Gakuyu and Mary Wanini Gakuyu as joint tenants
18.16 Ha LR No. 12825/25
Vide CERTIFICATE OF TITLE IR 36349

Presentation No. 562 Date of Registration 16-2-82

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

(23) Transfer to Ruth Njeri Kabogo
18.16 Ha LR No. 12825/21
Vide CERTIFICATE OF TITLE IR 36350

Presentation No. 564 Date of Registration 16-2-82

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

(24) Transfer to Moses Mbugua Mwangi and Christine Muthiri Mbugua as joint tenants
3.632 Ha LR No. 12825/5
Vide CERTIFICATE OF TITLE IR 36351

Presentation No. 566 Date of Registration 16-2-82

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

(25) Transfer to Samuel Mbugua Kibathi and Margaret Nyokabi Kibathi as joint tenants
17.63 Ha LR No. 12825/8
Vide

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

(26) Transfer to Ruth Njeri Kabogo
18.00 Ha LR No. 12825/20
Vide IR 36352

Presentation No. 568 Date of Registration 16-2-82

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

(26) Transfer to Samuel Mbugua Kibathi and Margaret Nyokabi Mbugua as joint tenants
~~12825/5~~ 17.63 Ha LR No. 12825/8
Vide IR 36353

Presentation No. 570 Date of Registration 16-2-82

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE

(27) Transfer to Samuel Mbugua Kibathi and Margaret Njokabi Mbugua as joint tenants
12.37 Ha LR No. 12825/18
Vide IR 36354

Presentation No. 572 Date of Registration 16-2-82

REPUBLIC OF KENYA

DISTRICT OF KIAMBU

Locality S.E. of Kiambu Town

Reference Map South A. 37 G. H. 6.7

Land Reference No. 12825

(Orig No. 130)

Sub-division No. _____ (Orig No. _____)

of Section No. _____

Area = 377.2 Ha. (Approx.)

	Bearings °			Distances Metres
A-B	230	30	0"	60.60
B-C	175	12	30	174.77
C-D	211	50	31	55.90
D-E	208	42	20	54.49
E-F	235	51	53	111.22
G-H	172	49	10	145.69
H-I	146	33	40	582.02
I-K	181	18	30	191.44
L-M	64	27	18	110.31
M-N	23	58	30	173.12
N-P	305	14	00	89.83
P-Q	24	22	20	36.81
Q-R	314	13	45	124.63
R-B	73	36	40	125.14



D. Thigo
Licensed Surveyor

D. G. Kagu
for Director of Surveys

Traced by _____

Compared by _____

Scale 1 in 2500

Nairobi 12th August 1982

DEED PLAN No. 41459

MNM 5

This is the exhibit marked "MNM 3" referred to in the annexed affidavit of MARGARET NYOKABI MBUGUA sworn / declared before me this 16th day of SEPTEMBER 2013 at Nairobi.

Commissioner for Oaths

131

KABARNET ESTATES LIMITED
(Incorporated in the United Kingdom)

ACCOUNTS TO

31ST MAY, 1973

mam (5) 134

13

KASARINI ESTATES LIMITED

(Incorporated in the United Kingdom)

REPORT OF THE DIRECTORS FOR THE YEAR ENDED 31ST MAY, 1973

DIRECTORS DURING THE YEAR:

DR. G. SPIESS - (CHAIRMAN)
P. ORTELLI
J. ROSSI
G. ANTONINI
M. FERRARI
B.M. VOHORA (Alternate)
V.K. VOHORA (Alternate)

ACTIVITIES:

The company is trading in Kenya as a coffee grower.

The coffee crop for the current season was 343 metric tons as compared to 229 tons in the previous season.

During the year the company entered into an agreement with a commercial company for the piece-meal development of the plantation into residential housing estate.

ACCOUNTS:

The accounts show:-

	K.Shs.
(a) Net profit after taxation for the year	538,263
(b) Balance of profit brought forward	815,439
(c) Balance of profit carried forward	1,353,702

The directors recommend that the balance of profit be carried forward without payment of a dividend.

Goods were exported by the company during the year.

A sum of K.Sh.249,174 was expended on capital equipment during the year.

In the opinion of the directors the market value of the freehold land is not substantially different from that shown in the accounts.

...../2

DIRECTORS' INTERESTS:

	1972	1973
Dr. G. Spiess		
(Alternate B.N. Vohora)	1 Share	1 Share
J. Rossi		
(Alternate V.K. Vohora)	1 Share	1 Share
F. Ortelli		
C. Ferrari	1 Share	1 Share
G. Antonini	1 Share	1 Share

The Directors have no beneficial interest in the shares they hold.

During the year ended 31st May, 1973 no contracts subsisted in which Directors had any interest.

In accordance with the Articles of Association Dr. G. Spiess, J. Rossi retire by rotation and offer themselves for re-election.

The Auditors, Messrs. Gill & Johnson, have signified their willingness to continue in office.

BY ORDER OF THE BOARD,

1973

MNM 5 (136) 68

134

GILL & JOHNSON

-3-

P.O. Box 40092 Nairobi, 'Kirungii' Ring Road Westlands.
Telephone 46911, Telegrams 'Accuracy'

P.J. GILL, F.C.A.
P.M. JOHNSON, F.C.A.
J.D. HIGHWOOD, F.C.A.
W. BARR, F.C.A.
W.J. MISKIN, C.A.
H.E. WARD, F.C.A.
C.A. ROBERTS, F.C.A.
D.T.E. LLOYD-JONES, F.C.A.
C.E. JEAL, F.C.A.
BRITISH

Your Ref.

Our Ref. GAR/LWR

31st December, 1973

REPORT OF THE AUDITORS TO THE MEMBERS OF

KASARINI ESTATES LIMITED

In our opinion, the accounts set out on pages 4 to 8 give a true and fair view of the state of the company's affairs at 31st May, 1973 and of its profit for the year ended on that date and comply with the Companies Acts 1948 and 1967.

Gill & Johnson

137

6

13

KASARINI ESTATES LIMITED

BALANCE SHEET AT 31ST MAY, 1973

	NOTES:	1973: K.Sh.	1973: K.Sh.	1972: K.Sh.
EMPLOYMENT OF FUNDS				
FIXED ASSETS	2		2,454,935	2,254,177
TRADE INVESTMENT	3		100	100
LOAN TO FORMER DIRECTOR			-	10,000
CURRENT ASSETS				
Stocks	1	78,583		19,645
Coffee proceeds receivable		1,458,590		655,114
Debtors, deposits and prepayments		22,677		1,872
Bank and cash balances	4	56,673		43,070
		1,616,523		719,701
CURRENT LIABILITIES				
Creditors and accruals		551,137		316,747
Corporation tax - Kenya		347,342		79,564
		898,479		396,311
NET CURRENT ASSETS			718,044	323,390
		K.Sh.	3,173,079	2,587,667
SOURCES OF FUNDS				
SHARE CAPITAL				
Authorised, issued and fully paid - 50,000 shares of £1 each		1,000,000		1,000,000
RETAINED PROFITS		1,353,702		815,439
			2,353,702	1,815,439
LOAN CAPITAL				
Shareholders - interest free		120,306		120,306
Fidimo S.A. - 9% per annum interest		355,988		330,000
			476,294	450,306
[illegible]ED LIABILITIES				
[illegible]ation				79,564
[illegible]itors		343,083		242,358
			343,083	321,922
DIRECTORS				
		K.Sh.	3,173,079	2,587,667

MAIN 5 (138)

(10)

136

KASARINI ESTATES LIMITED

PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED 31ST MAY, 1973

	NOTES	1973: K.Sh.	1973: K.Sh.	1972: K.Sh.
TURNOVER	5			
1971/1972 coffee crop final adjustment		1,522		
1972/1973 coffee crop		2,804,046	2,805,568	1,555,202
ADD				
Compensation for loss of crop due to abortive spray		-		
Merchandise bonus		644		56,553
Quno rentals		24,200		156
Short term bank interest		-		24,370
Sundry income		2,110		2,725
				7,900
			26,954	91,704
			2,832,522	1,646,906
DEDUCT				
Labour charges	6	624,263		499,261
General purchases	7	631,032		446,772
General expenses and administration	8	777,692		646,959
			2,032,987	1,592,992
PROFIT FOR YEAR BEFORE TAXATION			799,535	53,914
TAXATION	10			
Corporation tax based on profits of the year to				
The United Kingdom		-		
Kenya		262,000		
Prior year tax adjustments		(728)		(6,107)
			261,272	(6,107)
RETAINED PROFIT FOR THE YEAR			538,263	60,021
RETAINED PROFITS BROUGHT FORWARD			815,439	755,418
RETAINED PROFITS CARRIED FORWARD		K.Sh.	1,353,702	815,439

MNM 5 139

71

137

KASARINI ESTATES LIMITED

NOTES TO ACCOUNTS AT 31ST MAY, 1973.

ACCOUNTING POLICIES

(a) As the business of the company is conducted entirely in Kenya the directors have presented these accounts in the currency of that country.

(b) Stocks have been valued at cost less amounts written-off for obsolescence where considered necessary. The coffee crops are generally treated as being disposed of within the year and the balance sheet reflects only stores and supplies required for the running of the estate.

(c) Depreciation of fixed assets is calculated to write-off cost over the estimated period of the effective lives of such assets. No depreciation is provided for on freehold land and plantations.

FIXED ASSETS

	31st May, 1972	Additions during year	Disposals during year	31st May, 1973
Cost -	K.Sh.	K.Sh.	K.Sh.	K.Sh.
Freehold land and plantations	1,885,019	-	-	1,885,019
Buildings	254,428	117,750	-	372,178
Water supply and irrigation	327,800	77,688	-	405,488
Machinery, plant, implements, tractors and motor vehicles	453,396	51,886	-	505,282
Furniture and fittings	33,069	1,850	-	34,919
	2,953,712	249,174	-	3,202,886
Depreciation -				
Freehold land and plantations	-	-	-	-
Buildings	159,350	5,566	-	164,916
Water supply and irrigation	225,906	8,979	-	234,885
Machinery, plant, implements, tractors and motor vehicles	298,197	31,987	-	330,184
Furniture and fittings	16,082	1,884	-	17,966
	699,535	48,416	-	747,951
Net Book Value	2,254,177			2,454,935

	1973	1972
	K.Sh.	K.Sh.
Future capital expenditure -		
Contracted for but not provided in the accounts	-	-
Authorised by the directors but not contracted	-	-

MNM-5 (70) (72)

138

KASARINI ESTATES LIMITED

NOTES TO ACCOUNTS AT 31ST MAY, 1973.

ESTMENT

	1973 K.Sh.	1972 K.Sh.
nd being also directors' on -		
ers in Kenya Planters operative Union Limited	100	100

ISH BALANCES

balance maintained in an nt in the United Kingdom	17,625	18,347
sion rates - £1 sterling	17.89	18.66

ents the amounts received in respect of coffee delivered Kenya Planters Co-operative Union Limited together with ounts receivable in respect of coffee in stock at 31st nd interim and final payments receivable in respect of ole of the year's crop.

ARGES

	1973 K.Sh.	1972 K.Sh.
including picking, C.P.T. union dues	596,716	484,033
al Social Security Fund ributions	26,098	13,641
and hospital expenses	1,449	1,587
K.Sh.	624,263	499,261

URCHASES

stocks	19,645	24,135
coffee		28,700
sers	253,948	180,504
l and lubricants	36,808	23,239
ols	9,795	2,067
materials and weed killers	365,082	211,502
le stores	23,539	4,270
	709,615	466,417
ing stocks	70,583	19,645
K.Sh.	651,032	446,772

MNM 5

73

141

139

KASARINI ESTATES LIMITED

NOTES TO ACCOUNTS AT 31ST MAY, 1973

8. GENERAL EXPENSES AND ADMINISTRATION

	1973: K.Sh.	1972: K.Sh.
Accountancy, secretarial and taxation services	25,179	19,638
Auditors' remuneration	6,204	6,000
Bad Debts	-	2,000
Bank charges and interest	2,281	2,185
Curing charges	2,227	-
Depreciation of fixed assets	48,416	39,943
Directors' fees	250,000	250,000
Pension to former director	10,000	10,000
Electricity, lighting and power	58,275	73,282
Insurance	6,028	5,078
Interest on loan capital	29,700	-
Irrigation expenses	10,297	2,104
Legal fees	10,120	739
Management fees and commission	126,309	66,660
Motor vehicle running expenses	8,449	11,521
Office rent	4,200	4,200
Professional fees	-	11,420
Repairs and renewals general	26,895	8,856
Repairs and renewals implements	20,100	14,405
Repairs and Maintenance of dam	-	1,815
Salaries manager and staff	76,881	66,233
Stationery, telephone, telex and postage	7,168	6,332
Subscriptions and donations	1,477	2,945
Sundry expenses	11,234	10,923
Tractor and lorry running expenses	13,538	3,192
Transport	12,478	11,130
Travelling, hotel expenses and entertainment	8,736	13,698
Visiting agents fees	1,500	2,660
K.Sh.	777,692	646,959

DIRECTORS' REMUNERATION

All of the directors discharged their duties wholly outside the United Kingdom.

XATION

None of the income of the company is received in the United Kingdom and in consequence no provision has been made for corporation tax.

The provision for Kenyn corporation tax is at the rate of 40% (1972 40%) and has been made after taking into account the adjusted losses for taxation brought forward from 1972.

THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. LXXVIII—No. 36 NAIROBI, 3rd SEPTEMBER, 1976 Price Sh. 3

CONTENTS

GAZETTE NOTICES

	PAGE
The Wheat Industry Act—Appointments, etc.	970
The Horticultural Crops Development Authority Order, 1967—Appointments, etc.	970
The Trade Disputes Act—Order	970
The Agricultural Wages Advisory Board—Appointments, etc.	970
The Oaths and Statutory Declarations Act—A Commission	971
Judicial Service Commission—Appointments	971
The Advocates (Admission) Regulations—Notice	971
Vacancies	971
Loss of L.P.O.	971
The Land Acquisition Act, 1968—Notice of	
Intention	972–973
Inquiry	972–973
The Registered Land Act—Issue of New Certificates	973
The Trust Land Act—Plots at Voi Township	973–975
The Industrial Court—Awards	976–977
Trade Marks	977–979
Patents	979
Gazette Notices—(*Contd.*)	
Liquor Licensing	979–980
Probate and Administration	980–981
Bankruptcy Jurisdiction	981
The Companies Act—Winding Up, etc.	981–983
The Societies Rules, Registrations, etc.	983–984
The African Christian Marriage and Divorce Act—Minister Licensed to Celebrate Marriages	984
Loss of Policies	984–985
Local Government Notices	985–986
Tenders	986–989
Business Transfers	989
Change of Names	989–990

SUPPLEMENT No. 48

(*Legislative Supplement*)

LEGAL NOTICE No.	PAGE
196—The Local Government (County Council of Kakamega) Gratuity Rules, 1976	451–453

Kenya National Archives
Documentation Service
P.O. Box 49210
00100—Nairobi

Certified true copy of the original

19/8/2016

GAZETTE NOTICE No. 2690

THE COMPANIES ACT
(*Cap. 486*)

IT IS notified for general information that the following companies have been incorporated in Kenya during the period 1st July to 31st July, 1976:—

PRIVATE COMPANIES

Name of Company	*Nominal Capital Sh.*	*Address of Registered Office*
Meru South Wholesalers Limited	300,000	Plot No. Marima Market P.O. Box 5029, Chogoria, Meru.
Gakui Karimamwaro Kandara Investors Company Limited	200,000	Plot No. 209/2788/12, Cross Road, P.O. Box 41805, Nairobi.
Print O Print Limited	100,000	Plot No. L.R. 365/XXXI, Kilindini Road, P.O. Box 99525, Mombasa.
Hinja Enterprises Limited	100,000	Plot No. 1148/4/XXXV, Odera Street, P.O. Box 1839, Kisumu.
Saroda Enterprises Limited	200,000	Plot No. 11, Main Street, P.O. Box 347, Suna, Migori.
Tilatil Farm Company Limited	300,000	L.R. No. 7626, Moiben, P.O. Box 1161, Eldoret.
Bankco Tours Travel and Car Hire Limited	500,000	Plot No. L.R. 208/7186, Homa Bay Road, P.O. Box 45953, Nairobi.
South Nyanza Sugar Company Limited	100,000	Ministry of Agriculture, Kilimo House, Cathedral Road, P.O. Box 30028, Nairobi.
Alcon Holdings Limited	100,000	Silo Park House, Seventh Floor, P.O. Box 47160, Nairobi.
Unique Investments Limited	20,000	L.R. No. 209/4984, Mfangano Street, P.O. Box 42198, Nairobi.
Nduoia Saw Mills Limited	100,000	Kiambaa Waguthu, 369, Boma Road, P.O. Box 53, Limuru.
Provincial Properties Limited	100,000	L.R. 209/552, Tom Mboya Street, P.O. Box 47333, Nairobi.
Mount Kenya Agro-Industries (1976) Limited	100,000	Plot No. L.R. 1870/IV/154, Rathpu Road, P.O. Box 42808, Nairobi.
Fairy Garment Manufacturers Limited	100,000	5th Floor, Commerce House, Plot No. L.R. 209/4281, City Square, P.O. Box 72747, Nairobi.
Salama Shoe Traders Limited	100,000	L.R. 209/785/14/1, Ronald Ngala Street, P.O. Box 16000, Nairobi.
Plastic and Poly Paper Limited	1,000,000	MSA/Block 1/190, Mozambique Road, P.O. Box 81987, Mombasa.
Shebina (Kenya) Limited	100,000	Plot No. L.R. 209/2487, P.O. Box 73185, Nairobi.
Shebina Insurance Brokers Limited	1,000	Plot No. L.R. 209/2487, P.O. Box 73185, Nairobi.
Engineering Subsidiaries Limited	5,000	L.R. No. 209/585, Government Road, P.O. Box 30683, Nairobi.
Kilifi Safaris Limited	100,000	Treasury Square, Plot No. 48, Section XXV, P.O. Box 90312, Mombasa.
Master Detective and Auctioneers (Kenya) Limited	40,000	Plot No. L.R. 209/4348, Mokhtar Dada Street, P.O. Box 22350 Nairobi.
Equity Display Centre Limited	100,000	L.R. 209/7155, Standard Street, P.O. Box 49785, Nairobi.
Bhachu Industries Limited	30,000	L.R. 209/3933, Lunga Lunga Road, P.O. Box 10515, Nairobi.
Suleman Hussein Limited	20,000	L.R. 2/94, P.O. Box 182, Meru.
Winvex (Security) Limited	2,000	L.R. 209/683, Mfangano Street, Nairobi.
Abayuku Investments Company Limited	100,000	Plot 204/494/2, Girlama River Road, P.O. Box 72541, Nairobi.
Sunatco Limited	300,000	Plot No. 209/588, Royalty House, P.O. Box 46617, Nairobi.
Wecam Building Construction (Kenya) Limited	160,000	L.R. No. 437, Muindi Mbingu Road, P.O. Box 498, Thika.
Sodnalg Transporters Limited	500,000	Plot No. 49, Section 12, Jomo Kenyatta Avenue, Mombasa.
Lesso Holdings Limited	5,000	Plot No. 209/XXI, Kilindini Road, P.O. Box 83964, Mombasa.
Tes Tai Company Limited	50,000	Plot No. 1, Section VII, Kenya Commercial Bank Building, P.O. Box 45, Nakuru.
Holiday Service Africa Limited	10,000	Plot No. 209/2574, Harry Thuku Road, P.O. Box 43165, Nairobi.
The Quick Service Company Limited	50,000	L.R. 209/673, Tom Mboya Street, P.O. Box 74230, Nairobi.
Hides of Kenya Limited	1,000,000	L.R. No. 209/3894, Nanyuki Road, Industrial Area, Nairobi.
Nguba Subukia Estates Limited	500,000	L.R. No. 451/A/XLIX, Nakuru Arcade, Kenyatta Avenue, P.O. Box 700, Nakuru.
Thika New Home Company Limited	300,000	Plot No. 4953/33/14, Mama Ngina Road, Thika.
Cafintra Limited	500,000	Plot No. L.R. 209/4292, Solar House, P.O. Box 49443, Nairobi.
Gap (Kenya) Limited	20,000	L.R. No. 209/1212, Uniafric House, Koinange Street, P.O. Box 45876, Nairobi.
Unitron Electricals Limited	50,000	L.R. 209/136/251, Kirinyaga Road, P.O. Box 46543, Nairobi.
Rameas Investments Limited	100,000	c/o Messers Manohar Lall and Rai Shamas House, Lalema Road, P.O. Box 42027, Nairobi.
Buret Road Transporters Limited	200,000	Plot No. 101, Sotik, P.O. Box 48933, Nairobi.
Kimotho Enterprises Limited	500,000	L.R. No. 11681/3, Off Kiambu Road, Nairobi.
Keron Investments Limited	2,000	Plot No. 2419, Section VI, Nairobi Road.
Voi International Agencies Limited	50,000	Plot No. 1954/254, Voi Township, Bazaar Street, P.O. Box 135, Voi.
Mwerwa Enterprise Limited	20,000	Plot No. 19/20, Section XXVII, Mariakani Lane, P.O. Box 83775, Mombasa.
Export Purchasing Services (Kenya) Limited	20,000	3rd Floor, Warren House, Koinange Street, P.O. Box 30701, Nairobi.
Country Tours and Safaris Limited	100,000	L.R. 209/65, Ojijo Close, Parklands, P.O. Box 42198, Nairobi.
Impex Office Supplies Limited	20,000	L.R. No. 37/312, Lanet Road, Industrial Area, P.O. Box 14012, Nairobi.
Uchumi Services Limited	20,000	1st Floor, International Life House, Mama Ngina Street, P.O. Box 42398, Nairobi.
Leather Industries (Kenya) Limited	100,000	Esso House, Mama Ngina Street, P.O. Box 30333, Nairobi.
Hospital Engineering (Kenya) Limited	2,000	Stanbank House, Government Road, P.O. Box 44286, Nairobi.
Ndiara Enterprises Limited	140,000	L.R. No. 1713/4, Ruiru Township, P.O. Box 44886, Nairobi.
Starex Fastner Manufacturers Limited	500,000	L.R. No. 209/2527/4, Kantaria House, Muindi Mbingu Street, P.O. Box 44011, Nairobi.
Openstar Auctioneers Company Limited	20,000	Plot No. 209/3842, Mfangano Street, P.O. Box 16165, Nairobi.
Bunyala Fisheries Limited	100,000	L.R. No. 209/36/16, Muchai Road, P.O. Box 72809, Nairobi.
Wang'ombe Waithira Enterprises Limited	4,000	Plot No. 37/307, Battersea Road, P.O. Box 18042, Nairobi.
Eros Furnishers and Upholsterers Limited	250,000	L.R. No. 209/4027, Nanuki Road, P.O. Box 18192, Nairobi.
Mugamos Industries Limited	50,000	New Stanley House, Standard Street, P.O. Box 40075, Nairobi.
Bacchus Limited	600,000	Plot No. 198, Gathiga Township, P.O. Lower Kabete.
Kabete Njanc Kanini Limited	20,000	Block XXVI, Parcel 49-50-Treasury Square, P.O. Box 81609, Mombasa.
Kenya Babe and Mumcare Limited	300,000	Esso House, Mama Ngina Street, P.O. Box 30333, Nairobi.
Ilan Tissue Products (Kenya) Limited	10,000	
Lusiro Estate Limited	40,000	
Kamumu Investments (Kenya) Limited	2,000	Plot No. 75/427, Burd Buru Estate, P.O. Box 13078, Nairobi.
Bradshaws of Mount Kenya Limited	20,000	Plot 1108/7/IV, Nyeri, P.O. Box 60, Nyeri.
Kento-Wholesalers and Suppliers Limited	50,000	Plot No. 294, Ruaraka, P.O. Box 49390, Nairobi.
Likkah Limited	100,000	Stanbank House, Government Road, P.O. Box 44286, Nairobi.
Oceanic International Agencies Limited	100,000	L.R. No. 209/4384, Mokhtar Dada Street, P.O. Box 40930, Nairobi.
Muthiineira Farmers Company Limited	125,000	L.R. 6585/43/III, P.O. Box 408, Nyahururu.
Nairobi Home Bakers Limited	140,000	L.R. No. 209/2439/7, Mokhtar Dadah Street, P.O. Box 48854, Nairobi.
Nyanza Millers (1976) Limited	600,000	L.R. No. 1148/919, Obote Road, P.O. Box 1126, Nairobi.
Standard Equipment Limited	100,000	L.R. 209/2451 and 2452/2, Luthuli Avenue, P.O. Box 72876, Nairobi.
Afro-Italian Enterprises (Kenya) Limited	300,000	

Kenya National Archives
Certified true Document Service
copy of the original P.O. Box 49210
19/8/2016 00100—Nairobi

76

142

THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G P O)

Vol. LXXX—No. 45 NAIROBI, 10th November, 1978 Price Sh 3

CONTENTS

GAZETTE NOTICES	PAGE
The Interpretation and General Provisions Act—Temporary Transfer of Ministerial Powers	1262
The Cereals and Sugar Finance Corporation—Notification	1262
The Registration of Titles Act—Issue of Provisional Certificate	1262
Vacancies	1262–1265
High Court of Kenya—Nairobi Call Over for the Month of December, 1978	1265
Nyeri Civil Call Over for the Month of November, 1978	1265
Kenya Stocks	1265
The Agriculture (Crop Production) Rules—Declaration of Earliest and Latest Planting Dates, 1978	1265
The Accountants Act—Registered Accountants	1266–1267
Exchequer Return	1267–1268
Loss of L P O, etc	1268
The Animal Diseases Act—Scheduled Areas	1269
The Land Acquisition Act—	
Notice of Intention	1269
Notice of Inquiry	1269
Corrigendum	1269
The Registered Land Act—Issue of New Certificates	1272–1273
Liquor Licensing	1273
Customs and Excise Department—Auction Sales	1274–1276
Trade Marks	1277–1281
Patents	1281
Probate and Administration	1281–1282
The Companies Act—Winding Up, etc	1282–1284
The Societies Act—Registrations, etc	1284–1285
The African Christian Marriage and Divorce Act—Ministers Licensed to Celebrate Marriages, etc	1285
The Co-operative Societies Act—Admission of Claims, etc	1285
Local Government Notice	1286
Tenders	1286–1287
Dissolution of Partnership	1287
Change of Name	1287
The Industrial and Commercial Development Act—Appointments	1287

SUPPLEMENT No 70

Acts 1978

SUPPLEMENT No 71

Legislative Supplement

LEGAL NOTICE No	PAGE
233—The Constitution of Kenya—Prorogation of the National Assembly	761
234—The Public Security (Detained and Restricted Persons) Regulations, 1978	761
235—The Public Security (Detained and Restricted Persons) Rules, 1978	769

Kenya National Archives
Documentation Service
P.O. Box 49210
00100

Certified true copy of the original
22/8/2016

GAZETTE NOTICE No 3201

THE ACCOUNTANTS ACT

(*Cap* 531)

IT IS hereby notified for general information that the following persons have been registered as Accountants in accordance with the provisions of section 23 of the Act —

Reg No	*Name*	*Address*
417	Ndungu Gathiru	P O Box 21175, Nairobi
418	Amin Issa Mawji	P O Box 30579, Nairobi
419	Fulgensius Mungereza	P O Box 48557, Nairobi
420	Vipinchandra Ranchhoddas Sawjani	P O Box 41837, Nairobi
421	Krishna Nand Taneja	P O Box 49759, Nairobi
422	Kirit Kapurchand Shah	P O Box 94, Nyeri
423	Terence Victor Walton	P O Box 30076, Nairobi
424	George Itawa Gitobu	P O Box 28145, Nairobi
425	Amirali Alimohamed Noormohamed Jivraj	P O Box 46913, Nairobi
426	Surinder Singh Dhadiala	P O Box 44153, Nairobi
427	Petrus Jacobus Ruysenaars	P O Box 86932, Mombasa
428	George Munyui Kigathi	P O Box 43581, Nairobi
429	Ignatius Otieno Ogweno	P O Box 45357, Nairobi
430	Frederick Ngandi Musyimi	P O Box 46359, Nairobi
431	Satishchandra Baburaj Shah	P O Box 42135, Nairobi
432	Thomas Kiplagat Ego Boro	P O Box 240, Eldoret
433	Upendra Babubhai Patel	P O Box 20001, Nairobi
434	Sudhir Jayantilal Patel	P O Box 11115, Nairobi
435	Kamalkumar Devshi Shamat Shah	P O Box 20001, Nairobi
436	Patrick Kimani Kiarie	P O Box 53108, Nairobi
437	Sudhir Mulchand Homraj Maroo	P O Box 10964, Nairobi
438	Wilfred Njoka Muruthi	P O Box 49828, Nairobi
439	Mkali Liwali	P O Box 55688, Nairobi
440	Nikhilesh Govindji Kurji Radia	P O Box 48056, Nairobi
441	Simon Edward Glover	P O Box 40612, Nairobi
442	Henry Barrie Galloway Johnston	P O Box 50493, Nairobi
443	Roger James Hannan	P O Box 45992, Nairobi
444	Edward Bernard Mndolwa	P O Box 40092, Nairobi
445	Richard Bruce Stevens	P O Box 45992, Nairobi
446	David Terence Leach	P O Box 30160, Nairobi
447	Philip Robinson Pallett	P O Box 41968, Nairobi
448	David Kelso Hunter	P O Box 45992, Nairobi
449	Robin Nicholas Scott Shawyer	P O Box 40647, Nairobi
450	Alan Thomas Henry Edwards	P O Box 40647, Nairobi
451	Thomas William Ray	P O Box 48296, Nairobi
452	Inayat-Ali Mansurali Bhaiji	P O Box 22458, Nairobi
453	James Boyd McFie	P O Box 25095, Nairobi
454	John Edward Schluter	P O Box 43387, Nairobi
455	Tharuvai Subramanyam Ramaswami	P O Box 50378, Nairobi
456	Joseph John Kimani	P O Box 74522, Nairobi
457	Harish Rajchand Shah	P O Box 80836, Mombasa
458	Piatul Homraj Shah	P O Box 30094, Nairobi
459	Joseph Kariuki Wanyugi	P O Box 40612, Nairobi
460	Rajesh Baboolal Mehta	P O Box 80345, Mombasa
461	Rajan Baboolal Mehta	P O Box 10384, Nairobi
462	Mahendra Nemchand Shah	P O Box 40612, Nairobi
463	Verena Thorne-Goerge (Mrs)	P O Box 82584, Mombasa
464	Chandrakirti Liladhar Shah	P O Box 10318, Nairobi
465	Shadrack Ndunda Ngui	P O Box 21421, Nairobi
466	Mohammed Sadeck Malik	P O Box 41205, Nairobi
467	Stephen Raymond Kombe	P O Box 95231, Mombasa
468	David Harold Ainley	P O Box 591, Nakuru
469	Jamtilal Devchand Nanji Khagram	P O Box 1299, Nakuru
470	Firozali Akbarali Kassam Jaffar	P O Box 46739, Nairobi
471	Thomas Ernest Larner Kingsmill	P O Box 28628, Nairobi
472	Martin Walton Lister	P O Box 46578, Nairobi
473	Amea Otiu Achoja	P O Box 1768, Kisumu
474	Sultanali Abdulla Ibrahim	P O Box 27250, Nairobi
475	Ignatius Owalla-Awino	P O Box 1190, Kisumu
476	Mohamed-Iqbal Sultanali Mohamedali Sunderji	P O Box 82267, Mombasa
477	Richard Alan Daly	P O Box 46408, Nairobi
478	Fatchali Gulamhussein Ramji	P O Box 90553, Mombasa
479	Jagdish Chandra Jayantilal Bhatt	P O Box 45467, Nairobi
480	Vijay Kumar Bishamber Nath Vohora	P O Box 49440, Nairobi
481	Donald Stephenson Maina	P O Box 28845, Nairobi
482	Kantilal Manibhai Jeshangbhai Patel	P O Box 40903, Nairobi
484	Ramesh Chandra Jagjivanbhai Chauhan	P O Box 44133, Nairobi
485	Prabhudas Ranchhoddas Rajkotia	P O Box 47, Kisumu
486	Harendra Haridas Sarfpat	P O Box 47, Kisumu
487	Hugh Andrew Philip Dobson	P O Box 30080, Nairobi
488	Arvind Chhabildas Malia	P O Box 81205, Mombasa
489	Mahesh Kantilal Sanghrajka Shah	P O Box 84869 Mombasa
490	Micah Haydn Mitoko	P O Box 30709, Nairobi
491	Shaukatali Ebrahim Lightwalla	P O Box 26213, Nairobi
492	Francis Leo Remedios	P O Box 46378, Nairobi
493	Siro Omwonga	P O Box 30182, Nairobi
494	Pravinchandra Meghji Sojpal Dhanani	P O Box 46206, Nairobi
495	Christopher Smart O-Bokk	P O Box 40612, Nairobi
496	Frederick Mwangi Peter Gakomongi	P O Box 51974, Nairobi
497	Ashok Dharamshi Gudka	P O Box 41522, Nairobi
498	Mohamed Poonja	P O Box 74456, Nairobi
499	Samuel Keburo Oigo	P O Box 21234, Nairobi
500	Simon John Thuigood	P O Box 47089, Nairobi
501	Allan Symon Njugi Maina	P O Box 73802, Nairobi
502	Ian Hugh McGinty	P O Box 30029, Nairobi
503	Daniel Mwangi Njuguna	P O Box 30213, Nairobi
504	John Kamau Kananda	P O Box 41286, Nairobi

Kenya National Archives
Document on Service
P.O. Box 49210
00100 — Nairobi
certified true copy of
the original
02/04/2016

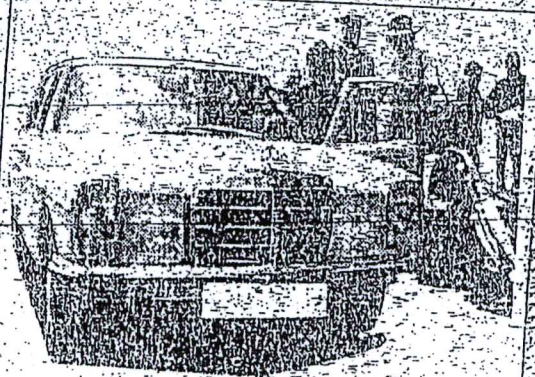
POSTS & TELECOMMUNICATIONS CORPORATION

TELEPHONE DIRECTORY

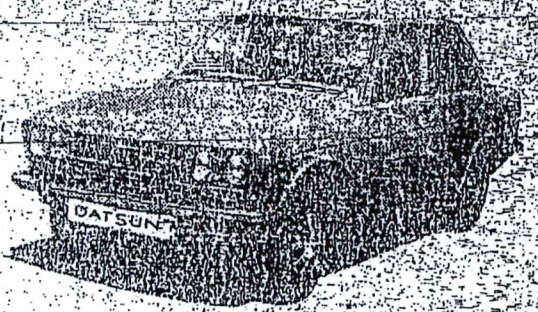
NAIROBI

INCLUDING RADIOCALL SUBSCRIBERS, REGISTERED ABBREVIATED TELEGRAPHIC ADDRESSES AND CLASSIFIED TRADES SECTION

MARCH - NINETEEN SEVENTY-FOUR



CHAUFFEUR-DRIVEN CARS



SELF-DRIVE CARS

Shell

CAR HIRE SERVICES LTD

At Vic Preston's Shell Service Station, specialists in Car Hire. Rent it here - leave it there. Self-drive and chauffeur-driven cars available at reasonable rates. All our cars are covered by the A.A. Membership Service operation throughout East Africa.

Come round and see us at Vic Preston's Shell Service Station in University Way, Nairobi.

CAR HIRE SERVICES LTD

Call Nairobi 22813/22814/28799/25164

Nairobi 61466
mtmiere 233
Nairobi 32815
araka 2517

Smith 2049
Kiambu 2150
Nairobi 27128

Smith 2097
Nyeri 2389
Tigoni 537
Embu 79

Kiambu 2247

Nairobi 20989
Karen 2218
Nairobi 68456
Nairobi 21896
Nairobi 69724
Nairobi 34063

140 & 34304

uaraka 2741
Sagana 4
Nairobi 69186
mbasa 25638
Nairobi 40743
Nairobi 40500

Nairobi 67840
undori 216
Molo 31

mbasa 25936
2152 & 2827

Nairobi 21768
angata 398
Tigoni 522
Nairobi 48237
Nairobi 68494
Nairobi 61262
Nairobi 43486
angata 406
Nairobi 66628

mbasa 20606

Nairobi 23768
Nairobi 24711
Nairobi 68523
Nairobi 26128

Nairobi 45711
Nairobi 27851
Nairobi 45570
Nairobi 66617

Nairobi 24121
mbasa 24753
mbasa 25491
Nairobi 65577
Nairobi 68528
Nairobi 65524
Nairobi 29515

Nairobi 46991
Nairobi 46903

Nairobi 29114
Nairobi 20879
mbasa 24787
mbasa 23369
Nairobi 21849
Embu 2050
Nairobi 26928
Nairobi 25192

Nairobi 29804
Muiru 38Y2
Migai 22Y3
Kijani 42

Nairobi 556406
Kisii 41
Nakia 30
Embu 2588

Nairobi 23463
Nairobi 24956

Nairobi 556754
Nairobi 45137
Nairobi 25429
Nairobi 28305
Nairobi 23343
Nairobi 558813
Nairobi 20836

Nairobi 25740
Nairobi 26118

Nairobi 359333

147 & 20293

mbasa 25353

Karsandas Gordhandas, Mweq Tebere Rd., Box 80359 ..... Mombasa 20838
Archbishop Makarios Rd., Hse. ..... Mombasa 26642
Karsandas Tulsidas & Sons, Karakoram Rd., ... Nairobi 40397
Box 17, Machakos ..... Machakos 17
Karsandas, Tulsidas & Sons ..... Nairobi 26845
Kartar Plumbing Works, Gaberone Rd., Box 44394
Dir.'s Hse. (Kartar Singh Heranwalla), Gandhi/Jinnah Ave. ..... Nairobi 559473
Kartar, S. Grewal, Ghalib Rd., Box 49164 ..... Nairobi 555535
Kartar Singh, Uhuru Rd., Box 5 ..... Nyeri 2035
Box 5, Nyeri ..... Chogoria 20
Kartar Singh, Jackson St., Box 43793 ..... Nairobi 40689
Kartar Singh, Atma Ram, Ennis Drv., Box 14162 ..... Nairobi 60584
Kartar Singh Bros., Newark Rd., Box 45918 ..... Nairobi 23062
Hse., 10th St., Eastleigh ..... Nairobi 41192
Kartar Singh Contractors, King St., Box 46641 ..... Nairobi 41125
Kartar Singh, Mama Ngina St., Box 15047 ..... Nairobi 22479
Kartar Singh Sahib, Ainsworth St., Box 45439 ..... Nairobi 40163
Kartasi Industries Ltd., Gilgil Rd., Box 43118 ..... Nairobi 558793
Karua, Tom A., Mpaka/Waiyaki Way, Box 20342 ..... Nairobi 45951
Karue, Christopher Ngnrua, Box 30148, Nbi. ..... Kikuyu 2178
Karue, F. M., Argwings-Kodhek Rd., Box 30165 ..... Nairobi 69825
Karugu, B. K., Ridgeway Rd., Box 86, Kiambu ..... Nairobi 63339
Karugu Iratho, Kimathi Way, Box 220 ..... Nyeri 2093
Karugu, Koinange, Bohra Rd., Box 72127, Nbi. ..... Riara Ridge 208
Karuga Wandai & Co., Kenyatta St., Box 243 ..... Murang'a 110
Karugu, C. Muriuki, Box 20392 ..... Nairobi 41038
Karugu, G., Box 42 ..... Nakuru 3341
Karugu, J. B., Loresho Ridge, Box 40112 ..... Nairobi 68452
Karugu James, Box 84873, Msa. ..... Bamburi 209
Karugu, Samuel, Jamhuri Est., Box 20321 ..... Nairobi 66327
Malindi Branch ..... Malindi 166
Karuiru, J. L., Glendower Rd., Box 40160 ..... Nairobi 66141
Karuku Auctioneer & Court Broker, Umardin St., Box 574 ..... Nakuru 2249
Karumba, K., Nanyuki Rd., Box 438, Nakuru ..... Nyahururu 68Y1
Karumba, Nderi Benjamin, Box 73277 ..... Nairobi 69808
Karume Investments Co. Ltd., Box 267 ..... Molo 31Y6
Karume, James, N., Box 134 ..... Molo 31Y2
Karume, N. J., Upper Kiambu Rd., Box 134, Kiambu ..... Clanda 243
Karuna Business Agencies Ltd., Limuru 'A' Route, Box 322, Limuru ..... Tigoni 254
Karuna Farm, Box 924, Eldoret ..... Moiben 5Y4
Karundiu, S. R., Valley Field Est., Box 30260 ..... Nairobi 66953
Karunditu, Stephen R., Nyeri/Kiganjo Rds., Box 287 ..... Nyeri 2041
Karunga Tyres & Spares, Kanisani Rd., Box 72059, Nbi. ..... Kiambu 2037
Karungu, Daniel K., Molo/Elburgon Main Rd., Box 23 ..... Elburgon 49
Karungu, H. M., Box 72522, Nbi. ..... Ruaraka 2362
Karungu Trading Store, Box 441 ..... Kisumu 2479
Karura Enterprise, Jomo Kenyatta Ave., Box 84073 ..... Mombasa 26476
Karura Farm ..... Nairobi 63256
Karura Forest School, Kiambu Rd., Box 16388 ..... Nairobi 65313
Karura Quick Transport & Co., Factory Rd., Box 14202 ..... Nairobi 558823
Karuri Health Centre ..... Kentmere 219
Karuri High School, Nairobi/Limuru Rd., P.O. Banana Hill, via Limuru ..... Kentmere 326
Karuri Home Repairs & Building Contractors, Newark Rd., Box 11017 ..... Nairobi 27763
Karuri Metal Works, Ukwala Rd., Box 40790 ..... Nairobi 23037
Karuri Stores Ltd., River Rd., Box 41743 ..... Nairobi 21943
Karuri, Mrs. W. J., Ngei Est., Box 30375 ..... Nairobi 69810
Karuru, Benjamin Ribiru, Mweiga Rd., Box 207 ..... Nyeri 2207
Karve, Dr. Madhav S., M.D., M.R.C.P., Oriental Bldg., Mwagogo St., Box 80075 ..... Mombasa 23020
Dr. S. D. Karve, Res., Dedan Kimathi Way ..... Mombasa 21505
Karwigi, Mrs. Mary, State House Rd., Box 30252 ..... Nairobi 33083
Karwigi & Sons, Jainsula Rd., Box 30252 ..... Nairobi 72900
Kasaku Coffee Estate, Kenyatta Rd., Box 12 ..... Ruiru 12
Manager's House ..... Nairobi 21321
Kasim, J. Dadar, Mzizima Rd., Box 90170 ..... Mombasa 23690
Kasamaly, Mitha K., Quarry Rd., Box 44901 ..... Nairobi 28807
Kasanga, Musa, Mukinduri Rd., Box 40097, Nbi. Langata 633
Kasanga Star Productions, Rajab Manzil, Tom Mboya St., Box 28171 ..... Nairobi 22508
Kasango, T. M., Harambee Est., Box 30083, Nbi. Ruaraka 2586
Kasarani Estates Ltd., Box 71, Kiambu ..... Nairobi 63324
Rented Houses—
R. de Boer ..... Nairobi 63262
E. Shimmin ..... Nairobi 61237
Kasemally, Dr. Hassan, 4th Parklands Ave., Box 10367 ..... Nairobi 46263
Kasera, S. Arnold, Jamhuri Est., Box 40595 ..... Nairobi 69266
Kashal Lal Pun, 5th Parklands Ave., Box 44569 ..... Nairobi 45510
Kashangaki, J. K., Somerset Rd., Box 43483 ..... Nairobi 43343
Kashero, M., Norfolk Rd., Box 30121 ..... Nairobi 43174
Kashibhai Motibhai Patel, Box 936 ..... Nakuru 2924
Kashmir Craft, Biashara St., Box 43606 ..... Nairobi 23034
Kashmir Gardens, Oginga Odinga Rd., Box 621 ..... Kisumu 2979
Kashmir House, P.O. Kajiado ..... Kajiado 8
Kashmira, Singh, Karakoram Rd., Box 44712 ..... Nairobi 40023
Kashmiri Lal, Ngara Rd., Box 10997 ..... Nairobi 25548
Kasigane N. M., O'Washika St., Box 530 ..... Eldoret 2284
Kasikeu General Store, Sultan Hamud, Box 15 ..... Sultan Hamud 6
Kasim, H. Mohamed, Magongo Rd., Box 81760 ..... Mombasa 73520
Kasinga, W. M., Karjokor Market, Box 72818 ..... Nairobi 31252
Kaski Estate (Channel Islands) Ltd., Box 292 ..... Kiambu 2185
Kaslak Ltd. Farm, P.O. Ukunda ..... Diani Beach 16 & 32
Kasmani (Dr.) A. A., Haile Selassie Ave., Box 30024 ..... Nairobi 24761
Kasmani, A. A., Jomo Kenyatta Ave., Box 85362 ..... Mombasa 24577
Res., Kaloleni Rd. ..... Mombasa 26870
Kasmani Badrudin M., Rassini Rd., Box 98593 ..... Mombasa 20884
Kasmani, A. R., F.B.O.A., Allama Iqbal Rd., Box 11150 ..... Nairobi 558431
Kasmani, Dr. Abdulaziz Ahmed, Res., Salim Mwamgunga Rd., Box 82351 ..... Mombasa 21069
Kasmani, K. A., Nkrumah Rd., Box 81316 ..... Mombasa 23666
Kasmani, K. A., Mwamba Ave., Box 81316 ..... Mombasa 20391
Kasmani, M. Hussein, Box 49177 ..... Nairobi 27259
Kasmani Mohamedhuseln E., Jomo Kenyatta Ave., Box 98593 ..... Mombasa 26456
Kasmani Najmudin M., Mkuyu Rd., Box 98593 ..... Mombasa 21097
Kasmani, Nurudeen A., Impala Rd., Nyali, Box 90160 ..... Mombasa 71501
Kasmani Watch Spares & Tools, River Rd., Box 10278 ..... Nairobi 24145
Kasmani Y. Adam, Mji Wa Kale Ave., Box 80308 ..... Mombasa 24656
Kasoke, W. G., Sandford Hse., State House Ave., Box 30187 ..... Nairobi 20039
Kassani, A. Barok, off Forest Rd., Box 47687 ..... Nairobi 21309
Kassam, A. Hassanali, Jomo Kenyatta Ave., Box 80699 ..... Mombasa 24582
Kassam, A. J., L.D.S., R.C.S. (Eng.), City Hse., Nyerere Ave., Box 80137 ..... Mombasa 26952
Kassam, A. S., Ring Rd., Westlands, Box 49040 ..... Nairobi 46388
Kassam, A. S. G., Box 49040 ..... Nairobi 24028
Kassam, A. S. G., Norman Rd., Box 49040 ..... Nairobi 24889
Kassam Abdulgani & Bros., Kenyatta Rd., Box 22 ..... Garissa 13
Kassam, Abdulgani & Bros., Park Rd., Box 11980 ..... Nairobi 31684
Kassam, Akbar P., Limuru Rd., Box 48648 ..... Nairobi 46301
Kassam, Asgarali A., 1st Parklands Ave., Box 41641 ..... Nairobi 45925
Kassam, B. Mitha, Zanzibar Rd., Box 44901 ..... Nairobi 555119
Kassam, H. E., Suswa Rd., Box 45253 ..... Nairobi 46730
Kassam, Hassan, Woodlands Rd., Box 41208 ..... Nairobi 23945
Kassam Ismail Rose Ave., Box 40319 ..... Nairobi 24052
Kassam, J. Tajdin ..... Mombasa 23896
Kassam, Juma, Box 48 ..... Kakamega 26
Kassam, K. A., Busia Rd., Box 1700 ..... Kisumu 3058
Kassam Kanji & Son Ltd., Box 40319 ..... Nairobi 20961
Kassam Kanji & Son (Msa.) Ltd., Self Selection Household Store, Kilindini Rd., Box 84752 ..... Mombasa 24300
Dir.'s Hse., Chui Rd. ..... Mombasa 71287
Kassam, Khamisa, Box 444 ..... Kisumu 2155
Kassam, Khimji V., Digo Rd., Box 80243 ..... Mombasa 23844
Kassam, Mansur H., Westlands Rd., Box 45791 ..... Nairobi 46922
Kassam, Mohamed, Ngara Rd., Box 41208 ..... Nairobi 26044
Kassam, Murad P., Masari Rd., Box 30319 ..... Nairobi 45338
Kassam Nanji, 3rd Parklands Ave., Box 41958 ..... Nairobi 45459
Kassam Noordin J., Masari Rd., Box 47323 ..... Nairobi 45061
Kassam, Nizar S., Ngara Rd., Box 10212 ..... Nairobi 24560
Kassam, Mrs. Parin S., Jomo Kenyatta Ave., Box 84399 ..... Mombasa 20736
Kassam, Premji, Kimathi Way, Box 55 ..... Nyeri 2040
Kassam, Rahemtulla, Aga Khan Flats, Ngara Rd., Box 11936 ..... Nairobi 23519
Kassam, Ramji, Kikuyu Rd., Box 41741 ..... Nairobi 46151
Kassam, Miss S., 3rd Parklands Ave., Box 40858 ..... Nairobi 46141
Kassam, S., P.O. Bungoma ..... Bungoma 5
Kassam, S., Regal Mans., Tom Mboya St., Box 41208 ..... Nairobi 22435
Hse., Welbeck Rd. ..... Nairobi 45707
Kassam, S. J., Tom Mboya St., Box 47995 ..... Nairobi 23196
Kassam, S. K., Timor Rd., Box 11038 ..... Nairobi 46647
Kassam, S. M., 3rd Parklands Ave., Box 44901 ..... Nairobi 45247
Kassam (Sales) Ltd., Ogada St., Box 321 ..... Kisumu 2594
Dir.'s Houses—
Abdulsultan R., Mohamed, Indusi Rd. ..... Kisumu 3029
Fateh Virani, Okore Rd. ..... Kisumu 2444
Kassam, Mrs. Shanbegum Noorali, Gulshan Lane, Ojijo Rd., Box 49866 ..... Nairobi 46513
Kassam, Shamshudin H., Kifungo Ave., Box 80758 ..... Mombasa 21520
Kassam Suleman Damji Ltd., Kilindini Rd., Box 90304 ..... Mombasa 25722
Rajabally, K. S. ..... Mombasa 25722
Kassam, Mrs. Zarina M., Grogan Rd., Box 10046 ..... Nairobi 25162
Kassamali, Limuru/Wambugu Rd., Box 46845 ..... Nairobi 45503
Kassamali, Akbaralj, 3rd Parklands Ave., off Mpaka Rd., Box 40678 ..... Nairobi 46771
Kassamali, Begum, Luthuli Ave., Box 48339 ..... Nairobi 31339
Kassamali, D. Manji, Owuor Otieno Rd. ..... Kisumu 2808
Kassamali, Devji E., Langton Cres., Box 72549 ..... Nairobi 25364
Kassamali, Fazal N., Tom Mboya Ave., Box 80363 ..... Mombasa 25334
Kassamali Gulamhusein, Box 80245 ..... Mombasa 26789
Kassamali Gulamhusein Co. (Kenya) Ltd., Nehru Rd., Box 80245 ..... Mombasa 23278
Mohamedali Gulamhusein, Nyeri St. ..... Mombasa 24937
Kassamali, Haidar M., Jamhuri Est., Box 47290 ..... Nairobi 67799
Kassamali K. Premji, Msanifu Kombo St., Box 80979 ..... Mombasa 24691
Kassamali Kanjee J. C., Welbeck Rd., Box 49718 ..... Nairobi 46550
Kassamali Ltd., Langoni Rd., Box 80702 ..... Mombasa 23126
Kassamali Magan V., Manyimbo Rd., Box 98419 ..... Mombasa 26744
Kassamali Mulla M., General Mathenge Rd., Box 83826 ..... Mombasa 20167
Kassamali Mulla Nazarali & Sons, Bomani, Box 241 ..... Malindi 72
Kassamali, Shiraz J., Mpaka Rd., Box 30629 ..... Nairobi 46137
Kassamali Shivji, Nzoia Rd., Box 280 ..... Kisumu 2064
Kassamali, Dr. Sultan, M.B.Ch.B., 3rd Parklands Ave., Box 42376 ..... Nairobi 45675
Kassarani Nurseries, Thika Rd., Box 46664, Nbi. Templer 326
Kassim Bin Omar, Box 74 ..... Malindi 5Y5
Kassim, Hussein, P.O. Msambweni ..... Msambweni 14
Kassim M. Lakha, Box 82987 ..... Mombasa 21551
Kassimali N. Panju, Nkrumah Rd., Box 80059 ..... Mombasa 24951

Deceased Estates
P.O. Box 30050
Nairobi
05/08/16

GATITU WANG'OO & CO. ADVOCATES

ADVOCATES AND COMMISSIONER FOR OATHS

Moses Gatitu Wang'oo
LL.B (Hons) UoN LL.M (UoN) Dip. Law (KSL)

MAPA HSE, 1ST FLR
P.O BOX 2032-00900
KIAMBU
Tel. 0202076688
0722 626582
gatituadvocate@gmail.com
mgatitu@yahoo.co.uk

MAKHANDIA & MAKHANDIA
ADVOCATES
P.O. Box 27630 - 00506,
NAIROBI

03 AUG 2016

03 AUG 2016

OUR REF: GW/NLC/K/2/16

YOUR REF: TBA

3RD August, 2016

THE VICE CHAIRPERSON
NATIONAL LAND COMMISSION
ARDHI HOUSE
P.O BOX 44417
NAIROBI

03 AUG 2016

Dear Sir,

RE: REVIEW OF GRANTS L.R No. 7153/1, L.R. No. 7153/2 AND L.R No. 12825 BETWEEN KASARINI ANCESTRAL FAMILIES SELF HELP GROUP & OTHERS –V- SAMUEL GITHEGI MBUGUA & OTHERS.

We refer to the directions which were given in the abovementioned matter on 29th July 2016 that the parties do present to the Commission their respective cases on 8th September 2016.

We, the advocates of the Complainants are very pleased to at last have our day in court. We would be grateful if the Commission would, kindly and urgently, issue witness summons for the attendance to its proceedings on 8th September 2016 to the following officers:-

1. Chief Land Registrar to produce the land files for L.R No. 7153/1, L.R No. 7153/2 and L.R No. 12825 and especially the land file for L.R No. 7153/2 which would determine this matter in an instance.
2. Company Registrar to produce any files for the following companies;
   a. Kasarini Estates Limited
   b. Kasarini Estates (1959) Limited.
3. An official from the Co-operative registry to produce the registration status for ;
   a. Kasarini Farmers Co-operative Society Limited Certificate no. CS1167/1964
   b. Kasarini Farmers Co-operative Society Limited Certificate no. CS 2240

03 AUG 2016

RECEIVED
03 AUG 2016
POLICY REGISTRY
STATE DEPARTMENT OF LANDS
PRINCIPAL SECRETARY

DEPUTY REGISTRAR GENERAL
3 AUG 2016

...ively. ...grant L.R. No. 12825 immediately and

We base our prayers for the witness summons on the following;

Firstly, we believe we have incontrovertible evidence that the Respondents never purchased the 911 acres of L.R No. 7153/2 as they stated in their Response dated 21st July 2016 in the form of the following evidence;

a. Kenya Gazettes No. 651 of 9th February 1960 and No. 1243 of 14th March 1961 for the winding up of the Kasarini Estates Ltd in 1961 and transferring their farming assets to Kasarini Estate (1959) Limited. This was 13 years before the Respondents purported to buy the 911 acres of L.R No. 7153/2 from Kasarini Estates Limited in 1974.

b. Kenya Gazette No. 3084 of 17th August 1965 for the winding up of the Kasarini Estates (1959) Ltd in 1965.This was also 9 years before the Respondents purported to enter into correspondences for sale.

c. The only instrument the Respondents hold for the purported purchase of the 911 acres is a copy of the Application for Consent of Land Control Board for a sale from Kasarini Estates Limited dated 10/9/74.(NB.The Consent for consent was to be done within six month of the sale.)

d. The above coupled with the doctrine of *Bona vacantia* under Section 340 of the Company Act Cap 486 Laws of Kenya (Repealed), that provided for all land to revert to the Government for the Companies that are wound up. The clearly makes the 911 acres of L.R. No. 7153/2 public land that was to be returned to the complainants as their ancestral land and as intended by the previous owners of the farm.

We enclose the self explanatory certified copies of the Kenya gazettes winding up the companies that owned the land and the Respondents' purported Application for Consent of Land Control Board.

Secondly,the mysterious and fraudulent winding up of Kasarini Farmers Co-operative Society Limited Certificate No. CS1167/1964 and the resurrection of the same Kasarini Farmers Co-operative Society Limited under the new membership of the Respondents in Certificate No. CS 2240

Thirdly, the missing land file for 911 acres L.R. No. 7153/2 which we are convinced was illegally consolidated with L.R. No. 7153/1 and an illegal new grant issued in L.R. No. 12825.The Complainants have vowed to move heaven and earth to get this land file or use all Government agencies to pursue this land file as it relates to their ancestral land of 911 acres.

7153/2 in their favor and no documentation showing they were registered on L.R. No. 7153/2 before they consolidated the same with L. R. No. 7153/1 and purported to create the new grant L R. No. 12825.

148

We urge for your above assistance even in the knowledge that it is the Respondents who have the documentations and should provide all the above evidence to show that they lawful obtained the grant L. R No.12825. We hope the Respondents will give evidence on oath of the purported sale or your Commission will use your powers to take their evidence on oath. This we submit will be perjury as you cannot buy land from a company that was wound up many years earlier.

We believe we have the smoking gun in this case in the above evidence and like in ancient duels we believe the Lord will strengthen the arm of the righteous, the truth will be revealed and justice done.

Kindly oblige and assist.

Yours Faithfully,
GATITU WANG'OO & CO.

GATITU WANG'OO

/Encl

CC:

1. **Clients**

2. **Ndungu Njoroge & Kwach**
   Advocates
   International House, 12th Floor
   Mama Ngina Street
   P.O. Box 41546-00100
   Nairobi

3. **W.G Wambugu & Co**
   Advocates
   Office Suits Building, 3rd Floor Suite 1
   5th Ngong Avenue, Ngong Road
   P.O. Box 15311-00100
   Nairobi

4. **Makhandia & Makhandia**
   Advocates
   Kencom House 1st Floor Room 157
   Moi Avenue
   P.O Box 27630-00506
   Nairobi

5. Ngatia & Associates
Advocates
Bishops Garden Towers
2nd Floor Bishops Road
P.O. Box 56688-00200
Nairobi.

6. Deputy Registrar
Land and Environment Court
Milimani Law Courts
Nairobi

7. Chairman
National Land Commission
Nairobi

8. Cabinet Secretary
Ministry of Lands
Ardhi House
Nairobi

9. Chief Land Registrar
Ministry of Lands
Ardhi House
Nairobi

10. Attorney General
Sheria House
Nairobi

11. Registrar of Companies
Sheria House
Nairobi

12. Registrar of Cooperatives
Nairobi

(6)

THE SENATE

REPUBLIC OF KENYA

PETITION

MBOGOS FAMILY OF MBARI YA MBOGO ANCESTRAL Land

LR 7153/1, 7153/2 now LR No 12825

PLAINTIFFS/APPLICANTS' BUNDLES OF EVIDENTIAL PROOF IN SUPPORT OF THE PETITION

DATE: *25th APRIL 2023*

CONTACT PERSONS: ***Families Representative***

1. *Francis W. Njuguna* - *0723 210 856*
2. *Mary Wangui N.* - *0711618860*

For Elders Mbogo's Family of Mbari ya Mbogo Family… (*Herein referred as Petitioners)*

MBOGOS FAMILY WELFARE GROUP
25 APR 2023
Sign:.....
CERTIFICATE No. 3764099

CONTENTS:

1. ILLEGALITIES AND IRREGULARITY ACQUISITION OF LAND LR No. 12825
2. ILLEGAL LAND ALLENATION NO 7153/1,7153/2,7153/R ALSO KNOWN AS 12825
3. MANUPULATION OF SURVEY RECORD
4. LAND ADMINISTRATION ACT
5. SURVEY ACT
6. DETERMINATION MADE ON 7TH FEBRUARY 2019 by N.L.C
7. KENYA GAZETTE NOTICE MADE ON 1ST MARCH 2019

ILLEGALITIES AND IRREGULARITY ACQUISITION OF LAND LR No. 12825

THAT this matter hitherto ***Kasarini Land Ancestors*** (Mbari Ya Mbogo) citing historical Injustices meted to Mbogo's family in ***extenso*** through evidential brief on the following matters;

This letter is based to brief you

1. Illegalities and Irregularities based on Foundation of **LR. 12825.**
2. Fake Map ***7153/1-2*** while the original ***1914 map*** number was ***7153/2***.it cannot give birth to ***7153/1***
3. Fraudulent formation of **Kasarini Farmers Cooperative Society ltd Certificate,No.2240** Registration date **10th July 1974**
4. Violation of the **Survey Act. the Land Administration Act and the Land Registration Act.**
5. Issuance of a Title by Government of kenya as a Grant to the fake **Kasarini Farmers Cooperative Society ltd Certificate,No.2240 dated 10th July 1974**
6. Fake indenture
7. Very strange transaction in the title ''conveyance dated 30/12/1974 to Kasarini Farmers Cooperative Society for 4,500,000/= Dated 31/12/1974''how would agreement be done 30/12/1974 and transact the same day?
8. The lawyer Mr.Gachukia who transacted on 3/12/1974 accident 24/12/1974 and then died 2/1/1975 see 18 inside.
9. Using fake LR No's to sell land No's that do not even exist at survey of Kenya. Citing Case of SABIS ***School 20 acres*** owned by ***centum ltd LR. 35830/14 – 35930/1***among others
10. Correspondence from various Government Agencies attached
11. List of Evidence ; ***References and Evidential Brief***

In spite of the open and blunt illegalities surrounding the purported creation of LR 12825 and Mbari ya Mbogo having demonstrated of the dubious claim of they who assert title thereto, National Land Commission has failed to execute their Constitutional mandate by not taking any lawful action to bring this to heal. Hence this letter to you

Note that /

i. Our memorandum of representation was requesting National Land Commission on the **Review of Grant of the title L.R. 12825** but this

never happened following numerous court orders blocking the commission from hearing this matter on review until such time when the constitutional review of grant time lapsed some time in **2016**.the matter was then subjected to Historical Land Injustice hearings and our case was set to be heard first in **4th December2017**.yet other court orders blocking the same surfaced

ii. Final hearings between Mbari ya Mbogo Vs Margaret Nyokabi and nine (9) deceased others was held on **20th April 2018** before Historical Land Injustice Committee, National Land Commission.

iii. The determination was then held till **7th day of February 2019** of which is to our humble view it took that long to derail justice.

iv. Commissioner's tenure of office lapsed on **Tuesday 19th February2019**when they vacated office i.e. precisely **12days** after signing and delivering the determination.

v. **Mbari ya Mbogo** were not served with the determination copy **but told** to wait for the release of Kenya gazette notice.

vi. The Kenya gazette notice was released on **1st March 2019** after which we obtained our copy of determination on **Wednesday 6thMarch 2019**.from NLC Secretariat. the commissioners had already exited office.

In the arising circumstance, the NLC is mandated pursuant to Article 65 of the constitution and section 14 of the national land commission Act 2012 to execute our request but abdicated and declined to discharge their constitutional mandate fully, hence the family further sought redress of the matter on ***4th April 2019*** to you. but no course of justice implied up to date

ILLEGAL LAND ALLENATION NO 7153/1,7153/2,7153/R ALSO KNOWN AS 12825

THAT I Francis Wainaina Njuguna of ID No. 13841359, Secretary Mbari Ya Mbogo's Family Self-Help group of P.O Box 745-00232 Ruiru Kiambu seeks to have the registration of LR 12825 **be** cancelled as a matter of urgency.

THAT the petition is based on violation of the Survey Act, the Land Administration Act and the Land Registration Act

THAT the foundation of LR 12825 is based on illegalities and irregularities
THAT the following parties

1. *Samuel Mbugua Kibathi (deceased)*
2. *Margaret Nyokabi Mbugua*
3. *Samuel Githegi Mbugua (deceased)*
4. *Grace Muthoni Githegi (deceased)*
5. *Moses Mbugua Mwangi (deceased)*

6. *Christine Mithiri Mbugua (deceased)*
7. *Kabogo Kangethe (deceased)*
8. *Mary Waruri (deceased)*
9. *Kimemia Gakunju (deceased)*
10. *Ruth Njeri Gakunju (deceased)*

Who fraudulently formed Kasarini Farmers 'Cooperative Society limited Certificate number 2240 registration date 10th July 1974.

THAT the certificate has since then been disowned by the Commissioner of Cooperative Development in his response to enquiry by the National Land Commission disowning the society where the commissioner wrote ''according to our records, the society registered under CS 1167 is Kasarini Farmer's Cooperative Limited and not Kasarini Cooperative Society Limited as pointed out in your letter it is also noteworthy that. as per our record this society was registered in 1964.we do not have any knowledge of the society winding up or having a sub sequent fresh registration. On the matter pertaining to the current status of the society we would kindly direct you to the office of the Director for Cooperatives, Nairobi County on the CS 1964 the society registered is NJOKI KURIMA Cooperative Society limited and not Kasarini Farmers Cooperative Society Limited. in case of further clarification do not hesitate to contact us''

THAT a title issued on 18th December 1981 was issued to the fake Company Disowned by the Ministry of Cooperatives. The title reads ''the President Of Kenya on behalf of the Government of Kenya hereby GRANTS unto Kasarini Farmers' Cooperative Limited, a Limited Liability Company Incorporated in the Republic of Kenya registered office in Nairobi (Post office Box 75155.)

THAT It is clear the Kasarini Farmers' Cooperative Society Limited of 1974 was forged to be used to illegal acquire the Kasarini Estate limited land measuring 933.9 acres.

THAT Kasarini Estate Limited owned this land as a demonstration farm from 1932 co existing with original owner as Mbogo Wainaina Ancestral Family

THAT It is clear the owner of the 1964 Society is Mbogo Wainaina.

THAT It appears the Kasarini Estate Limited was never issued with a Title or Lease Hold.

THAT Kasarini Estate Company ltd was formed in Britain showing its liquidation process started on 9th February 1961 under ***Gazette Notice Dated 19th March 1961*** and ***Gazette Notice 17th August 1975*** effectively Kasarini Estate was ***Dead by 1965***.even with this knowledge the ***Kasarini Farmers' Cooperative Society Of 1974*** with their fake forged Certificate applied to the ***Land Control Board Application Number 5743*** purporting to buy from ***Kasarini Estate Limited 911 acres LR 7153/2 (12825)*** seeking transfer of ***LR No 7153/2, (12825) for 911 acres for Ksh 4,050,000/=***

THAT Kasarini Farmers' Cooperative Society Limited of 1974 is purporting to buy land from Kasarini Estate Limited which was under ***Liquidation 14 Years*** before

THAT by a letter ***Dated 10th September 1974*** the ***Commissioner of Land*** was dragged in and asked to enter into these illegalities apparently this process failed.

THAT When this process on land control board failed, Kasarini Estate Limited received a letter on 12th April 1974 from Njugi and Gichukia advocate. in which P GICHUKIA advocate for Kasarini Farmers Cooperative Society wrote a letter a headed RE: proposed sale of 50,000 shares of sh 20 each held in Kasarini Estate Limited to Kabogo Kangethe and others who were members of the forged Kasarini Farmers' Cooperative Society Limited of 1974.in their second Para ''our client will purchase the total shareholding at a price of Kenya shillings 300,000. The total purchase price shall be paid in full in Swaziland subject however to the central bank Kenya granting the necessary consent' 'this letter is dated 12th April 1974 and without anyone to sell the company so they tried through land control board maneuver but failed.

THAT the land control board could not succeed in absence of a title, a search certificate and the physical person or a legal person in the name of Kasarini Estate Ltd

MANUPULATION OF SURVEY RECORD

THAT the original numbers for ***LR 12825***,appear to have been ***7153/2*** then ***7153/1*** then ***7153/R*** a process that is technically and professionally not possible for the following fact:-

a) In a ***1914 map*** the original number was***7153/2***for***933.9 acres*** while the purported LR ***12825*** is ***911 acres*** (*what happened to the* ***22 acres***)?

b) In ***1957***,the land was sub divided into two one potion ***21 acres*** given the ***LR*** no.***7153/1***,while the other potion was given ***LR no.7153/R***

c) A subdivision of a private land then would have given ***7153/2/3/4*** but it would never go backward. You cannot subdivide an ***LR*** number ending with ***2*** to create ***1*** it can only create ***7153/2/1.***

d) This sub division gave rise to a *LR no.**7153/R*** which is not registrable (R means remainder only used for government land. Even at this early stage there is admission of government land). Please note there is no authority authorizing this 1957 sub division. The most serious offence was creation of 12825 with existence of two maps, at the same time LR 7153/2, was subdivided in 26 potions the same day the plot was consolidated into one (1) potion now given the LR No. 12825 and in November 1981 the president of the republic of Kenya issued title number 12825 as a grant to the said individuals, now consolidated in February 1982 then the land was sub divided into 26 parcels namely 12825/1-26.

e) In a representation and affidavit sworn by Margaret Nyokabi a member of Kasarini Cooperative Society shows an agreement dated 30th December 1974,between the dead Kasarini Estate Limited which died in 1961 and Kasarini Farmers Cooperative Society Limited forged in 1974 entered into agreement for purchase of Kasarini Estate Limited transferring Kasarini Estate farm 7153/2, and all properties therein

f) The agreement was signed by the Gichukia and co advocate on 31st December 1974 whereby the following transaction are heavily questionable
   - -Execution of sale agreement on 31st December 1974
   - -Execution of the conveyance the day before 30th December 1974
   - -Execution of mortgage on 31st December 1974 and backdating registration to 13th December 1974
   - -Delivering conveyance to land office for registration on 31st December 1974
   - -Processing of land board consent to transfer and charge the land.
   - -Paying the whole purchase price not withstanding issues of foreign exchange and it was loan from the bank.

g) The lawyer purporting to have execute this document had a fatal accident on 24th December 1974 and he died on 2nd January 1975 only one week after the accident there is no doubt that this process were illegal and irregular

h) The indenture for conveyance was dated 30th December 1974 a day before the agreement (which should come first). How can you have conveyance on 31stDecember before the agreement? The Land Control Board on10th /9/1974 and the agreement for sale after control board.

i) It is not conceivable that you sign agreement for sale on 31st December 1974, execute a conveyance on 30th December 1974 and attend a land board for consent to transfer so as to register a transfer on 31st December 1974.we also wonder how the elite law firm seem to have been working overtime on new year in 1974 when traditionally most law firms are on charismas vacation. Simply the key documents of the sale of LR 7153/2 are unbelievable forgeries. There is no logic or sense. For example, the agreement for sale provides for payment for advocate and yet there is no participation of advocates in execution of the document. no mention of any advocate firm in the agreement and yet elite law firm were involved.

j) The searches provided by the Respondents for LR 7153/2 indicate in entry no 5 that a mortgage dated 31/12/1974 was registered about 2 weeks earlier on 13/12/1974.this is ridiculous.

k) The mortgage instrument also seems to have registered on 13/12/1974 before the conveyance to the mortgagor was registered on 31/12/1974. A clear impossibility.

l) It is clear that the transfer and mortgage required consent from land board as the land was agricultural. The transaction could simply not have been carried out between 13th and 31stDecember 1974

m) We have further found out that the advocate for the purchaser P.GICHUKIA was on fact involved in serious road accident on December 1974 and went into a coma and died on 2nd January 1975.this is the period of the frenzied transaction, the key advocate for the purchase was hospitalized

n) Critically, the agreement for sale has no acknowledgement of receipt of any money the conveyance signed the day before states the money for sale is already received

o) On a preliminary finding, the recitals in the indenture of conveyances LR 7153/2 do not add up and the documents fundamentally fail to state the advocates who prepared them.

p) The registration of this indenture of conveyance of LR 5153/2 was illegal, corrupt and unlawful.

q) The proprietors of the former Kasarini Farmers' Cooperative Society Limited continued sub dividing the land without the approval of the Local Land Control Board, the County Government Director Planning, but stillselling and developing the land day and night with impunity.

r) Most interesting is that they have sold the land using fake manufactured LR numbers from LR numbers **LR No 35830/14-LR NO.35930/1**,numbers that does not exist at the survey of Kenya,

LAND ADMINISTRATION ACT

i. In our opinion there is a bleach of land administration act 1557 2012.the occupation of the land by members of Kasarini Farmers' Cooperative Society Limited of 1974

ii. There has been total bleach of section 16 to 23 provisions that guide survey.

iii. Valuable consideration which is subject of a riding of interest of others.

iv. There have been a bleach of section 30 to35 which provides section 33 on production of tittles 12825 namely on registration and certificate of tittles, the strong room have no evidence whatsoever of title LR no 7153/2 with further entry of subdivision and transfer simply the land has no entry at all

v. The tittles for Kasarini cannot comply with section 31

vi. The Kasarini Farmers' Cooperative Society Limited has never made an attempt to declare loss of LR 7153 tittle.LR 7153/1 which combined the parcels.

vii. Our attempt to carry out searches under section 34 of land registration act has been fruitless simply because files do not exist. Equally our attempt to get any evidence of any payment from banking hall have been fruitless yet everyday there is sale of land

viii. In our view all members of Kasarini Farmers' Cooperative Society limited of 1974 and their inheritance and administrators are in bleach of land administration act section 103 and are reliable to criminal proceedings

SURVEY ACT

1. All survey plan and maps have not complied with section 24 of survey plan.

2. At the directorate of survey there is non-compliance with section 30 of the survey plans and record for LR numbers and reference 7153/2,7153/1/,7153/R,12825.withoutthisrecord therefore, there is every day alteration which are illegal under section 30 sub section 2.

3. Not a single plan under section 32,that have been authenticated by director of survey, for this reasons all subdivisions are illegal under section 32.

4. Not a single plan by Kasarini Farmers' Cooperative Society Limited of 1974 have be executed and signed by the director survey

5. We have not been able to exercise our mandate under section 44 Since not a single plan for Kasarini Famers Cooperative Society Limited of 1974 have been gazette.

6. In right of illegalities and irregularities we seek from the court

    a) *That this matter be heard under **Certificate of Urgency***

    b) *That a **Permanent Injunction** be accorded to us to stop any development, any construction, any sub division, any sale until this matter is heard and determined.*

    c) *That the **Chief Land Registrar** be ordered to take immediate custody of all documents and files related to **LR 7153/R 7153/1 and 12825.***

    d) *That the **Director of Survey** be ordered to submit all survey plan survey scheme and deed plans for **LR 7135/R,7153/1, 12825.***

Remarkably, on ***February 3rd 1981*** the land was again subdivided into 26 subdivisions without adherence to the applicable laws, as you know the Planning ***Act, Cap 286*** stipulates the process as having prerequisite including but not limited to the following.

a. *An application to the Land Control Board and Director Planning to approve the subdivisions;*
b. *That all departments pertaining to land grant a non-objection to the sub-divisions;*
c. *That the process of approval then tabled to what was hitherto, and now the planning authority.*
d. *That the approval was then be Gazetted to give the Ministry of lands an opportunity to give a non-objection and for him/her to give such a deadline as to when the subdivision would then be approved.*

None of these demands were met.

Having thus convoluted the records in the process of both ***Sub-Divisions*** and ***Consolidation***, in ***November 1981*** a purported certificate of title was issued to ***Kasarini Cooperative Society Limited*** , the ***Kibathi's & Gakunjus function*** now title no ***L.R 12825*** measuring ***911 acres***.

Notwithstanding, the original Survey Plan was for ***933.9 acres*** but the title mysteriously read ***911 acres.***

In ***February 1982*** the said land was subdivided into ***26 Parcels*** to all the ***5families*** cited above in our reference, which left ***21 acres*** out of their title.

The title is a Grant by the Government of Kenya granted to the Kasarini Estate Limited the ***Kibathi's & Gakunjus function*** of ***1974***. If it is admitted thus that this was a Grant.
Then it is an express admission that these individuals ***NEVER*** bought the land from ***Kasarini Estate Limited*** and that the land never belonged to them but was Community Land. The said Community being ***Mbari ya Mbogo***.

As you are aware, the process of acquiring government land is as follows

a. *Application for allocation of land*
b. *Letter of allotment issued*
c. *Payment of charges in the letter of allotment*
d. *Payment of stamp duty*
e. *Process of registration of title or lease document*
f. *Issuance of title document.*

None of this process was ever done.

Surprisingly, on the very same day (February 3rd 1981) the land was once more consolidated. How such a legal process could happen in a day beats logic, since the process of subdivisions and consolidation must adhere to the process as seen above.

IN CONCLUSION,
it is on record that we made submissions of our memorandum of representation from the ***year 2015*** where our public hearing commenced on ***year 2016*** as was advertised and stated by the ***National Land Commission*** chaired by the immediate former Chairman ***Professor Muhammad Swazuri*** who during the initial hearing demanded for the ***Details And Documents*** of ***Property Ownership*** from respondent as advised in the summons but to no avail. all proceeds henceforth were subjected to numerous and erroneous court orders by respondents, blocking the hearings process thus defeating justice in due course. Till the ***20th April 2018*** when the final hearing were heard between ***Mbari ya Mbogo*** *Complainants* VS ***Kibathi's & Gakunju's Families*** and ***Three Others(deceased)*** as respondents.

Take note, it was on a sad note that during this final hearings held on ***20th April 2018*** before the Historical Injustices Land Committee led by then ***Dr. Samuel Tororei***, Mbogo's aged wazee's

born in Kasarini Land, our legal team and consultants gave over one (1) hour comprehensive witness testimonies, **BUT** the respondent and their legal team led by ***SC. Paul Ndungu*** refused n declined to give witnesses on their defense nor asked nor answered any question directed to them but decided to remain silent. ***(Record on NLC Hansard)***

But Ultimately, having thus exposed and convoluted details of the illegal acquisition of the said land to the respondent before the Historical Land Injustices Committee, it came to our great shock following the Belated and Controversial Determination in regard to the matter whose case hearing begun on the 17TH June 2016 – 20th April 2018 by the National Land Commission supported by a subsequent Kenya Gazette Notice on the same

From your records, it is apparent that ***LR.12825*** was created in***1979***, and that it was created through a merger of ***LR 7153/1*** and ***LR 7153/2*** yet there is no single indication of who lawfully applied for the merger/consolidation.

Noteworthy ***Kasarini Estate Limited,*** the purported owner thereof, ceased to exist in the year **1961** and was liquidated in **1965**.

It would follow that the purported consolidation of ***LR, 7153/1*** and ***2*** was not possible since ***LR.7153/2*** ceased to exist in ***1956*** and in the results, the only possible consolidation would have been between ***L.R. 7153/1*** and ***L.R 7153/r*** because those were the parcel existing after 1956 subdivision.

Logically ***L.R 7153/2*** could not cease to exist in 1956 and suddenly resurface in the year ***1979*** after a purported 'merger'

It was easy to see the desired end was that this merger/consolidation was intended to (and did) create the present ***L.R 12825*** so as to burry and conceal the original identity of the parcel and create a new LR number to be used for the elusive acquisition of the 933.9 acres.

We however are under impression that in spite of the open and blunt illegalities surrounding the purported creation of ***LR 12825***, and having demonstrated of the dubious claims of they who assert title thereto, the commission failed to take any meaningful legal action to bring the illegalities perpetrated by the cited individuals in our reference of this letter.

We nevertheless ***on 4th April 2019*** wrote back to the Government Agencies to raise our concerns and displeasure who made references but no course of justice implied up to date (*also see copy attached herewith*)

DELAYED JUSTICE ON
LR NO 12825, MEASURING 933.9 ACRES

Following our complaint through memorandum to the national land commission in 2016 filed under Historical Land Injustice claim No. NLC/HLI/053/2017 whereby the following anomalies were realized during and through the entire proceeding

- *Justice delayed and denied in Review of Grant LR 12825 by National Land Commission*
- *Numerous and erroneous court orders to postpone commission session and hearings*
- *Abuse of judicial process and improper conduct in our proceeding and decision*
- *Delayed Investigation File with outcome by Inspector General of police*
- *Delayed response and advice to our memorandum dated 23/02/2021 by the current National Land Commission after submitting our claim appeal for redress*

Further to our Complaint to the Director Public Prosecution dated 30th July 2018 and further to a letter from Director Public Prosecution to the Director Criminal Investigation ref no. ODPP/CAM/13/1/67 **dated 28th November 2018** in which the Director Public Prosecution directed investigation be done,

After the National land commission reached a controversial and biased decision, We further forwarded serious criminal and abuse of judicial process committed during our case proceedings and decision in corroboration of the national land commission and the late Kibathi's family and four others [Respondents] to;

-The Cabinet Secretary Ministry of Lands and Physical Planning,

-The CEO Ethics and Anti-Corruption Commission who reverted by advising the family to report the malpractice against the NLC to the Commission on Administrative of Justice

As cited below

1. The National Land Commission reached a determination on **7th February 2019**.in this determination the National Land Commission recorded representation by Gakunju group in which they supported the group please note that the group did not make any representation during the final hearing held on **20th April 2018**, but the National land Commission went its way to create representation for Kibathi's and Gakunju's team.

2. Indeed during those hearings they refused to make any representation nor ask any single question to the Historical Land injustice committee nor to the claimant witness Mbari ya Mbogo

3. The Mbari ya Mbogo made over 1 hour of the representation giving their evidence and producing documentary prove of over numerous criminal offences including perjury out of which only one is captured in the determination by the national land commission on the criminal offences which we forwarded to you on 30th July 2018.

4. Most important the existence of two determination, the determination gazette on Kenya gazette notice dated 1st march 2019 is totally different from determination sighed and dated 7th February march 2019.

DETERMINATION MADE ON 7TH FEBRUARY 2019 by N.L.C

Recommendation

1. We therefore are of the considered view that the claimants ought to proceed with suits they have filed in court or withdraw the suits if they elect to come before us for redress
2. Each party shall bear its own costs
3. The commission wishes to thank all parties for their able presentations and the cordial manner in which they conducted themselves

KENYA GAZETTE NOTICE MADE ON 1ST MARCH 2019

Kenya Gazette notice

1. Article 880 of the gazette notice dated 1st march 2019 item 18
   a) The claim dismissed as there are pending suit in court on the subject matter
   b) The commission however notes the following anomalies which it recommend to be investigated by the incoming commissioners or the courts
   c) How the claimant bought the land in question.
   d) If the respondent bought the land before the claimants could raise money to buy the land
   e) A clarification on the existence of the cooperative especially in view of the correspondence from the commissioner of cooperatives
   f) The legality of existence of the two entities with regard to buying and ownership of the properties

Remarks:

Mbari ya Mbogo was subjected by Justice Okongo on ELC no 557 of 2009 in which they were never a party yet NLC used the ruling by Okongo to dismiss Mbari ya Mbogo Claim.

The orders obtained and filed in court purported proceedings was just to to hoodwink the commission from pursuing the illegalities surrounding the creation f parcel LR 12825 measuring 911 acres, notwithstanding the original survey plan was for 933.9 acres but the purported grant title mysteriously read 911 acres, which left 21 acres out of their title. Hence lied, committed perjury and misrepresented to the honorable court that they were the proprietors of the said property when they are not nor produced certificate of title in poof of the alleged proprietorship therefore explaining the 'disappearance' of the 21 acres. This is just but a single illegality among numerous others cited in the broader context of our letter in reference to you, dated 30th July 2018. (*Find all evidence details contained therein*)

From your records, it is apparent that L.R. 12825 was created in 1979, and that it was created through a merger of L.R. 7153/1 and L.R.7153/2 yet there is no single indication of who lawfully applied for the merger/consolidation.

Noteworthy, Kasarini Estate Limited, the purported owner thereof, ceased to exist in the year 1961 and was liquidated in 1965.

It would follow that the purported consolidation of L.R. 7153/1 and 2 was not be possible since L.R. 7153/2 ceased to exist in 1956 and in the result, the only possible consolidation would have been between L.R. 7153/1 and L.R. 7153/r because those were the parcels existing after 1956 subdivision.

Logically, L.R. 1753/2 could not cease to exist in 1956 and suddenly resurface in the 1979 after a purported 'merger'.

It is easy to see the desired end was that the merger/consolidation was intended to (and did) create the present L.R.12825 so as to burry and conceal the original identity of the parcel and create a new number to be used for the elusive acquisition of the 933.9 acres.

Remarkably, on February 3rd 1981, the land was again subdivided into 26 subdivisions without the adherence to the applicable law, as you know , the planning Act, Cap 286 stipulates the process as having prerequisite procedures e.g. application, process , approvals by land control board and planning etc. None of these demands were met.

Surprising, on the same day (February 3rd 1981) the land was once more consolidated. How such a legal process could happen in a day beats logic, since the process of subdivision and consolidation must adhere to the same process as seen above.

Having thus consolidated the records in the process of both sub division and consolidation, in November 1981 a purported certificate of title was issued to them under their Kasarini Farmers Cooperative Society Limited now title no. LR 12825 measuring 911 acres, notwithstanding, the original Survey Plan was for 933.9 acres but the title mysteriously read 911 acres.

In February 1982 the said land was subdivided into 26 parcels to all the 5 families cited above in our reference, which left the 21 acres out of their title.

The title is a Grant by the Government of Kenya granted to Kasarini Farmers Cooperative Society limited the Gakunju Function of 1974. If it is admitted thus, that this was a Grant,

Then it is an express admission that these individuals ***NEVER*** bought the land from Kasarini Estate Limited and that the land never belonged to them but was a community land. The said community being we, ***Mbari ya Mbogo***, who owned and lived in that land since 18th and 19th century till the time of eviction.

In spite of the open and blunt illegalities surrounding the purported creation of LR 12825 and Mbari ya Mbogo having demonstrated of the dubious claim of they who assert title thereto, national land commission has failed to execute their constitutional mandate by not take any lawful action to bring this to heel.

a. **Note that /**

I. Our memorandum of representation was requesting National Land Commission on the **Review of Grant of the title L.R. 12825** but this never happened following numerous court orders blocking the commission from hearing this matter on review until such time when the constitutional review of grant time lapsed sometime times in 2016.the matter was then subjected to Historical Land Injustice hearings and our case was set to be heard first in 4th December 2017.yet other court orders blocking the same surfaced

II. Final hearings between Mbari ya Mbogo vs Margaret Nyokabi and nine (9) deceased others was held on 20th April 2018 before Historical Land Injustice Committee, National Land Commission.

III. The determination was then held till 7th day of February 2019 of which is to our humble view it took that long to derail justice.

IV. Commissioner's tenure of office lapsed on Tuesday 19th February 2019 when they vacated office i.e. precisely 12days after signing and delivering the determination.

V. Mbari ya Mbogo were not served with the determination copy but told to wait for the release of Kenya gazette notice.

VI. The Kenya gazette notice was released on 1st March 2019 after which we obtained our copy of determination on Wednesday 6th march 2019.from NLC Secretariat. The commissioners had already exited office.

b. Mbari ya Mbogo has never filed a case in court and never was a party in court case but was dragged as interested party alongside National Land Commission by the defendants. We only filed our memorandum of representation Claims submissions with NLC from the year 2015-2016

c. Ref to the Kenya Law judicial review on the matter ELC No.577 of 2009 was filed by one Machetha Kariuki and others claiming to be laborers of Kasarini Estate Ltd Vs Samuel Githegi and others

d. In the matter petition No.373 of 2016 by Assumption Sisters &Ndunde Investment Ltd as Petitioners Vs. National Land Commission as respondent trying to block NLC from proceedings with our hearing or investigating their land titles and ownership thus dragging Mbari ya Mbogo in court as 1st interested party among others thereby no details of Mbogo's filing a case in court as complainant.

In this determination the National Land Commission acknowledges that the certificate held by the Gakunju and his team which was purportedly used to purchase the land from kasarini estate limited did not exist. The commissioner responded to the national land commission as follows:-

''According to our records the society registered under ***C/SNo.1167*** is kasarini farmers cooperative ltd and no Kasarini cooperative society limited as pointed out in your letter. as per our records this society was registered in **1964.**we do not have any knowledge of the society winding up or having subsequent fresh registration. On the matter pertaining the current status of the society. We would kindly direct you to the office of the director for cooperatives, Nairobi County. On the CS 1964 the society registered is Njoki kulima co-operative society ltd not kasarini famers cooperative society ltd case of further clarification, do not hesitate to contact us.''

The kasarini estate limited was liquidated in 1961 and it purported sold the 933 acres to Kasarini Famers Cooperative Society in **1974**.evidence before the commission is that kasarini farmers cooperative society ***C/S no. 2240*** does not exist, but was registered to acquire the land illegally thereafter dissolved , how then would the national land commission failed in their determination to issue ***injunction on sale*** and ***subdivision*** and development of the land It is clear evidence that they were biased, unfair to the poor and must have been compromised.

S/No.	Case No. and County	Parties	Recommendation
	Kiambu County.	VS County Commissioner Kiambu (Githunguri Githunguri/463)	The land is the residence of County Commissioner and is a gazetted cultural site under the National Museums of Kenya through gazette notice 244 of 14th January, 2011. The Commission recommends that National Museums of Kenya and claimants negotiate with a view to accommodate the Mau Mau shrine on the said land.
16.	NLC/HLI/509/2018 Kiambu County	Samuel Mureithi	The claim is allowed. The County Government of Kiambu to compensate the claimant at current market price for land and loss of user (Chania/Kamwangi/T197) allocated to ACK church contrary to the exchange agreement with the County.
17.	NLC/HLI/101/2017 Kiambu County	Pebewa Society	The claim is dismissed. The Commission observed that the matter is a land allocation matter. The claimant had no relevant documentation to support the claim as Historical Land Injustice. The lanf claimed belongs to a private entity.
18.	NLC/HLI/053/2017 Kiambu County	In the matter of Kasarini Estate Kasarini Co-operative Society, Kasarini Ancestral Families, Mbari ya Mbogo and Gichinga	The claim is dismissed. There are pending suits in court on the subject matter. The Commission however notes the following anomalies which it recommends to be investigated by the incoming commissioners or the Courts: How the claimants bought the land in question. If the respondents bought the land before the claimants could raise money to buy the land A clarification on the existence of the Cooperative especially in view of the correspondence from the Commissioner of Co-operatives. The legality of existence of the two entities with regard to buying and ownership of the properties.
19	NLC/HLI/182/2018 Kiambu County	Kiang'ombe Squatters Settlement Scheme versus John Mburu Mwaura, Gladys Wangoi Mburu, Lydia Njeri Wangondu, Isaac Njoroge Mwaniki, Gabriel Njuguna Mdungu, Manager Alternative Energy Limited	The claim is dismissed. The Commission noted that the land under claim is different from the land allocated to the squatters.
20.	NLC/HLI/482/2018 Kiambu County	Muirikia Family	The claim is allowed. The commission recommends a resurvey to be undertaken by the Director of Survey together with claimants and the respondents to establish if there is any residue which should be titled as community land under the Community land Act for Mbari ya Muirikia

TABLE 3 MOMBASA, KILIFI, TAITA TAVETA AND KWALE COUNTIES

S/No.	Case No. and County	Parties	Recommendation
1.	NLC/HLI/488/2018 Kilifi County	Mwadzaya Wachanda Clan Welfare Trust (Claimant) –v- Dunda S/O Kasitu Of Mitangoni, Mwahaje Zembe (Respondent)	This claim is dismissed. The claimants are advised to proceed with the matter in Court Petition No. 26 of 2016, Malindi Ramadhan Ali Mwatsahu and others vs County Government of Kilifi, the National Land Commission and others.
2.	NLC/HLI/310/2018 Kwale County	Ali Bakari Mwadzinyeto Alias Ali Bakari Harry (Plot No. Kwale/Waa/79)	The claim is dismissed. The matter do not meet the Historical Land Injustice Criteria, the Commission refers the matter to traditional Dispute Resolution Mechanisms (Village elders)
3.	NLC/HLI/227/2018 Kilifi	Patrobas Mangi Chai (Claimant) and Dickson Choluvu Nguma (Respondent)	This claim is dismissed The parties to proceed with the matter in court on grounds of *sub-judice*.
4.	NLC/HLI/124/2017 Mombasa County	Residents Of Ziwani Majengo vs. The Estate Of Yahya Karama And Hassan Karama	The claim is allowed The claimants to apply to the court for the Deputy Registrar to facilitate the transfer of the subject parcels of land to them.
5.	NLC/HLI/061/2017 Mombasa County	Godfrey Mwambaga Allan Mjomba Girls Secondary	The claim is dismissed. The Commission refers the claim to the County Surveyor (Director of Survey) to resolve the matter.
6.	NLC/HLI/098/2017 Mombasa County	Jitoni Mwichande vs Mash Developers	The Commission noted that there is an active ADR process initiated by National Land Commission. The parties are advised to proceed with the ADR process.
7.	NLC/HLI/099/2017 Mombasa County	Bemokosi Tsango Family vs Family of The Late Bwana Juma Mwachangoma	The claim is dismissed. The claimants are advised to seek assistance from the Digo elders (traditional dispute resolution)
8.	NLC/HLI/464/2018 Kilifi County	Omar Safari Charo Vs Mohammed Hoyohoyo	The claim is dismissed. The Claimants could not link themselves to the subject land.

Form 3

COLONY AND PROTECTORATE OF KENYA

THE CO-OPERATIVE SOCIETIES RULES, 1946

CERTIFICATE OF REGISTRATION

(Section 8 of ~~Ordinance~~ Act 38/1945)

CERTIFICATE OF REGISTRATION No. 1157

In the matter of the application bearing number 1167 and year 1964 in the District of NAIROBI

I hereby certify that the Society under the name of KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED and its by-laws have this day been duly registered by me in the Register of Societies in pursuance of the provisions of the Co-operative Societies Act 1945, and the Co-operative Societies Rules, 1946.

Given under my hand at Nairobi this the TWENTIENTH day of JULY 1964

T. A. N. KEBUE

Ag. COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

G.P.K. 1635—2,000—10/56

NOV 1 1964

T. EC

EVO

33

61

EV 2



THE NATIONAL LAND COMMISSION

HISTORICAL LAND INJUSTICE COMMITTEE

In the matter of Article 67 (2) (e) of the Constitution of Kenya

In the matter of Section 15 of National Land Commission Act

In the matter of Historical Land Injustice Referenced No.

NLC/HLI/053/2017

Kasarini Farmers Co-operative Society Ltd.....1st Claimant

Kasarini Ancentral Families Self Help Group

Mbari ya Mbogo Wainaina and Kariuki Gichinga.....2nd Respondent

And

Estate of Samuel Mbugua Kisathi

Margaret Nyakabi Mbugua,

Samuel Githegi Mbugua

Grace Muthoni Githegi,

Estate of Moses Mbugua Mwangi

Mr.Warui Karoki for Njeri Munyao

Mr.Muli Masika for Wambui Njau

Miss Kioi for Maria Karoki

Mr.Makori and Mr.Omindo for Wambui Kambia

Mr.Senda for part 1st Claimants

Mr.Otenyo for Kencom Sacco

Mr.Mambiri for Njeri Mbindyo

Mr. McCourt for Samuel Mbugua Githegi

Background and the Claimants' Case

1. The National Land Commission received a complaint from M/S Mbogo Wainaina and Kariuki Gichinga for Mbari ya Mbogo ancestral land families and Kasarini Co-operative Society Ltd (also known as workers of Kasarini Estate Ltd) invoking our powers under Section 14 of the National Land Commission Act 2012 requesting review of the following titles; **L.R. NO. 7153/1, 7153/2, 12825 and I.R NO. 35930.**
2. Consequently, a number of interested Parties were invited to appear for a review of Grants and Disposition hearing initially slated for **17th June, 2016**, and were requested to submit their presentations attaching all relevant documents of acquisitions.

ELC Civil Suit No.557 of 2009 which was still pending. The interim orders that had been granted temporarily stopping the review were lifted.

6. The upshot of the foregoing is that the court allowed the Commission to conduct reviews over the Kasarini Land but the mandate of the Commission lapsed before the Commission could conduct the said review. Parties were last in Court on **25th September 2017** and we were hard pressed to explain why the Commission had not conducted any reviews over the suit property. The Commission pleaded for more time to allow it get directions on whether the mandate to review will be extended and also explore ways of resolving the dispute.

The claims

7. Kasarini Farmers Co-op Society Ltd (1964) filed a complaint as a historical land injustice claim on 25/04/17 with the commission. They claimed that they were members of a co-operative society known as **Kasarini Framers Co-operative Society Ltd** registered on **20/07/64**.

8. They note that most founder members of the society are over 80 years and the rest are deceased. The society was registered to help members acquire land and benefit from them economically. Prior to the registration of the society the members of the society had been in occupation of land in

unlawful and illegal as it was not sanctioned by members in any meeting.

12. A second historical injustice claim over the parcels dated 15/11/2017 has been filed by the family of **Mbari ya Mbogo Wainaina and Kariuki Gichinga** who number 16 families. They also claim to be members of **Kasarini Farmers Co-op Society Ltd** with the same certificate of Registration Number **CS1167/1964** registered in 1964.They state that the settlers organized the ancestral families into the Kasarini Farmers Cooperative Society.

13. They claim ownership over land parcels number **LR Nos.7153/1,7153/2 and 12825 and LR 35930.**They state that they purchased the land in 1930 from the Dorobo community who occupied the land before and exchanged it with them through barter trade (goats and sheep for land).The land measured approx.911 acres or 399.2 ha.They further state that the land is located along Kiambu-Nairobi Road.

14. There are more claimants making claim to the parcels as is evident from the multiplicity of suits. Most of them apart from the two above have not formally lodged their claims with the commission.

The Response

to the Commissioner of Lands for consolidation and subdivision of LR No.7153/1 and 7153/2.

21. That on 09/11/1979 the Commissioner of Lands wrote to the Society advising that for the consolidating and subdivision of LR No.7153/1 and 7153/2 to be approved, the registered owners of LR Nos 7153/1 should transfer the land to the Society which the Society did and the two properties were issued with LR No.12825 being Grant number I.R 35930.

22. The Society then proceeded to get LR No.12825 subdivided into subdivision numbers 12825/1-12825/26 and surrendered public utility plots to the government. The rest of the plots were shared among the members of the society and transferred to the members and each member was issued with his or her title deed.

23. They proceeded to state that they are protected under Articles 40 and 47 of the Constitution of Kenya and Section 23 (1) of the repealed Registration of Titles Act (Cap 281).

24. They also claimed that the matter is *sub judice* because of **Nairobi ELC No.557 of 2009** that is currently before court.

25. They further noted that the claimants herein claim to be members of Kasarini Farmers Cooperative Society yet the Society had been deregistered 35 years earlier in February 1974 and liquidated.

26. The Respondents claimed that the claim by Mbari ya Mbogo clan based purchase of the subject land from the Dorobo remains unsubstantiated. They noted that a similar claim having been presented and adjudicated to finality before the 1932

under CS 1167 is Kasarani Farmers Co-operative Ltd and not Kasarini Co-operative Society Limited as pointed out in your letter. As per our records this society was registered in 1964.We do not have any knowledge of the society winding up or having subsequent fresh registration. On the matter pertaining to the current status of the society, we would kindly direct you to the office of the Director for Co-operatives, Nairobi County. On the CS 1964 the society registered is Njoki Kulima Co-operative Society Ltd and not Kasarini Farmers Co-operative Society Ltd. In case of further clarification, do not hesitate to contact us."

Investigative Hearing

32. When the matter came up for hearing on 04/12/2017 the Respondents objected to the hearing proceeding on two grounds. Firstly, the matter was before court on account of **Nairobi ELC No.1358 of 2016** and **Nairobi High Court Judicial Review No.582 of 2016** hence *sub judice* and secondly they had just been served with the claims and they needed time to adequately prepare.

33. The matter also proceeded on 11/01/18 where despite protestations from the Respondents not to hear the matter the Commission indicated that since the court did not stop the Commission from hearing it would proceed to hear the matter. The matter was fixed for mention on 01/02/18.

34. On 01/02/18 the matter was adjourned to 26/03/18 but was then rescheduled for 06/04/18.It was again adjourned to 20/04/18 for hearing.

seized of a matter, the court must be given an opportunity to pronounce itself on such matter before any other or further proceedings relating to the same matter are considered.

I am in agreement with the decision of W. Korir J. in the case of Republic vs. National Land Commission & Another Exparte Muktar Saman Olow (2015) eKLR where he was faced with a situation similar to the one before me. The judge stated as follows:

> *"The attempt by the Respondent to review the grant in question while there are court cases geared towards addressing that issue is clearly an abuse of power bordering on contempt of court."*

Mumbi J. also dealt with a similar situation in the case of Josephine Akoth Onyango vs. National Land Commission & 3 Others (2015) eKLR in which the respondent had also purported to initiate investigations in respect of a property that was the subject of an ongoing court case in the High Court. The Judge agreed with the decision of W. Korir J. that I have referred to above and stated that:

> *"I am satisfied that the orders sought by the petitioner on this matter are merited on the face of it, the respondent is overreaching on entering into a matter that is already before the court which has jurisdiction to deal with it."*

The respondent and the 1st and 2ndinterested parties had also argued that apart from the power that was conferred upon the respondent under section 14 of the Act, the respondent also has power under section 15 of Act to investigate and adjudicate on historical land injustices."

complaints before the respondent and before this court are different. I am of the view that the 1st interested party has to make an election. If it wishes to pursue its claim before the respondent, it should withdraw its suit which is pending before this court.

The upshot of the foregoing is that I find merit in the ex parte applicants' Notice of Motion dated 14th June, 2016. The application is allowed in terms of prayer 1 thereof. Each party shall bear its costs of the application."

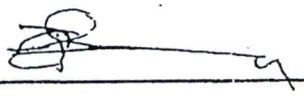
41. It is clear from the court's decision that the Commission cannot exercise concurrent jurisdiction with the court as the matter is ***sub judice*** by dint of the two cases that are now alive in court namely **Nairobi ELC NO.557 of 2009 and Nairobi High Court Petition No.373 of 2016(now Nairobi ELC Petition No.1358 of 2016).**

42. Secondly, as the Judge observed the claim does not meet the criteria of Section 15(3) as the claim is capable of being addressed through the court system.

43. Lastly, the judge advises the claimants herein that if they wish to proceed before the Historical Land Injustice Committee then they ought to withdraw the suit or suits pending before the courts.

44. For this reasons and in light of the court's judgment the claimants' claim therefore fails.

Signed:
Commissioner Dr. Clement Lenachuru



Member
Historical Land Injustice Committee, National Land Commission

EA

42

10.9

REPUBLIC OF KENYA
MINISTRY OF CO-OPERATIVE DEVELOPMENT AND MARKETING
OFFICE OF THE COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

ddress "CO-OPS"

020 – 2731531
ng please quote

SOCIAL SECURITY BUILDIN
BISHOP ROAD
P.O. Box 40811 - GPO - 00100
NAIROBI

Date 12TH JANUARY 2012

RIA GAKARIA&ASSOCIATES
ARDASS HOUSE
OOR
NG MOI AVENUE
70662-00400

EV3

SEARCH ON KASARANI FARMERS CO-OPERATIVE SOCIETY LIMITED C/S NO 2240

refer to the above and your letter to us dated 12TH day of JANUARY 2012 which eply and advice as below

ate And Year Of Registration

e society was duly registered in accordance with the provisions of the co erative societies Act on the 10TH day of July 1974

tatus Of The Society

r records for the said society indicate that the society is dormant following the ancellation therefore in liquidation

Current Officials

Owing to the dormancy there are no current officials on behalf of the society

ast Officials

The last officials on record for the society were as follows

1. Z K. Gakunju-Chairman
2. S M Kabathi-Secretary

EVS (55) (43)

gua M. Mwangi-Treasurer
Githego –Member
Kangethe-Member

110

nd Year Of Liquidation

ciety was liquidated on the 9th day of April 1983

ers of the society

Mbugua Mwangi
race Muthoni
bogo Kangethe
Mary Waruni
amuel Githegi
Christine Mithiri
Kimemia Gakunju
Margaret Nyokabi
Ruth Njeri
Mbugua Kibathi

pe the information given to you will be of help

s faithfully

LEIMAN WANDATI
AL OFFICER
R COMMISSIONER FOR CO-OPERATIVES

(56)

44

1/11

THE CO-OPERATIVE SOCIETIES ACT

(CAP - 490, SECTION 7)

APPLICATION FOR REGISTRATION OF A CO-OPERATIVE SOCIETY

The Commissioner for
Co-operative Development,
P.O. Box 40811,
NAIROBI.

1. Name of proposed society KASARINI

2. Area of operation NAIROBI

3. Type of society FARM PURCHASE ~~SAVINGS AND CREDIT SOCIETY~~

4. Whether limited or unlimited liability is desired LIMITED

5. Language in which the books and accounts will be kept ENGLISH

6. Name of person appointed to perform the duties of secretary of the society SAMUEL MBUGUA KIBATHI

7. Registered office and postal address of the society BOX 74414 NAIROBI

We, the undersigned, hereby apply for the registration of the above society under the Act, and enclose four copies of the proposed By-laws in English.

NAME	OCCUPATION	AGE	PLACE OF RESIDENCE	SIGNATURE
[illegible]UGUA MWANGI	TRADER	41	NAIROBI	[signature]
[illegible]CE MUTHONI	FARMER	35	NAIROBI	G. Muthoni
[illegible]OGO KANGETHE	FARMER	53	NAIROBI	Katogo Kangethe
[illegible] WARURU	FARMER	38	NAIROBI	Mary Wururu
[illegible]UEL GITHEGI	BUSINESSMAN	43	NAIROBI	[signature]
[illegible]RITUNE MITHIRI	HOUSEWIFE	33	NAIROBI	[signature]
[illegible]MEMLA GARUNJU	TRADER	42	NAIROBI	[signature]
[illegible]KGARET NYOKABI	TEACHER	3[illegible]	NAIROBI	Mnyokabi
[illegible]TH NJERI	HOUSEWIFE	45	NAIROBI	R. Njeri
[illegible]UGUA KIBATHI	BUSINESSMAN	41	NAIROBI	[signature]

1

60

60

9th DEC 1969

REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT
(CHAPTER 281)

GRANT NUMBER I.L. 35930

F R E S H O L D

KNOW ALL MEN BY THESE PRESENTS that in pursuance of a surrender registered in the Government Land Registry at Nairobi in Volumes N.44 Folio 2/11 and N.44 Folio 164/7 THE PRESIDENT OF THE REPUBLIC OF KENYA on behalf of the Government of Kenya hereby GRANTS Unto KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED a limited liability company incorporated in the Republic of Kenya and having its registered office at NAIROBI (Post Office Box Number 75155) hereinafter called (the Grantee) ALL THAT piece of land situate S.E. of Kiambu Town in the KIAMBU DISTRICT of the Republic of Kenya containing by measurement three seven seven decimal two (377.2) hectares or thereabouts that is to say Land Reference Number 12825 which said piece of land with dimensions abuttals and boundaries thereof is delineated and edged red on the Plan Number 111458 deposited in the Survey Records Office at Nairobi SUBJECT to the same in fee simple SUBJECT and together with (a) Easements and/ways as agreements registered in Volume N. 12 Folio 75/15 & 17, 79/16, 18, 20 & 21 and 114/6 & 8 (b) the Government Lands Act (Chapter 280) and (c) the following special conditions (namely):-
contained in a conveyance registered in Volume N.44 Folio 164/1

S P E C I A L C O N D I T I O N S

- NIL -

IN WITNESS WHEREOF I, JAMES RAYMOND [illegible] the Commissioner of Lands have by Order of the President hereunto set my hand this 3rd day of November One thousand nine hundred and eighty-one in the presence of:-

[signature]

[signature]

35930/1

Presented 18th December 81
Time 10.35 a.m.

[illegible] of Kenya [illegible] Number 2023/1

Registrar of Titles

THIS IS THE EXHIBIT MARKED H
ANNEXED TO THE AFFIDAVIT / DECLARATION
OF Maria Maraki
SWORN BEFORE ME ON THIS [illegible] OF
DECLARED
[illegible] NAIROBI
COMMISSIONER FOR OATHS

DEPARTMENT OF LANDS
SCANNED

This is the exhibit marked MNG 3
annexed to the affidavit of MARY NJERI GACHUMA
sworn on the day of 8TH JUNE 2018
at Nairobi in the Republic of Kenya
Before Me [signature]
commissioner for Oaths

9

EA

42

10.9

REPUBLIC OF KENYA
MINISTRY OF CO-OPERATIVE DEVELOPMENT AND MARKETING
OFFICE OF THE COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

Telegraphic Address "CO-OPS"
NAIROBI

Telephone 020 – 2731531
In replying please quote

SOCIAL SECURITY BUILDING
BISHOP ROAD,
P.O. Box 40811 – GPO – 00100
NAIROBI

Date 12TH JANUARY 2012

EV3

GACHARIA GAKARIA&ASSOCIATES
KARDASS HOUSE
FLOOR
KING MOI AVENUE
P.O.Box 70662-00400
NAIROBI

SEARCH ON KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED C/S NO 2240

We refer to the above and your letter to us dated 12TH day of JANUARY 2012 which we reply and advice as below

Date And Year Of Registration

The society was duly registered in accordance with the provisions of the co-operative societies Act on the 10th day of July 1974

Status Of The Society

Our records for the said society indicate that the society is dormant following the cancellation therefore in liquidation

Current Officials

Owing to the dormancy there are no current officials on behalf of the society

Last Officials

The last officials on record for the society were as follows

1. Z K. Gakunju-Chairman
2. S M Kabathi-Secretary

EV-3

(55)

(43)

116

Mbugua M. Mwangi-Treasurer
S.M.Githego –Member
Kangethe-Member

And Year Of Liquidation

Society was liquidated on the 9th day of April 1983

Members of the society

Mbugua Mwangi
Grace Muthoni
Kabogo Kangethe
Mary Waruni
Samuel Githegi
Christine Mithiri
Kimemia Gakunju
Margaret Nyokabi
Ruth Njeri
Mbugua Kibathi

Hope the information given to you will be of help

Yours faithfully

SULEIMAN WANDATI
LOCAL OFFICER
FOR COMMISSIONER FOR CO-OPERATIVES

16 (56) 44

THE CO-OPERATIVE SOCIETIES ACT

(CAP - 490, SECTION 7)

APPLICATION FOR REGISTRATION OF A CO-OPERATIVE SOCIETY

The Commissioner for
Co-operative Development,
P.O. Box 40811,
NAIROBI.

1. Name of proposed society KASARINI
2. Area of operation NAIROBI
3. Type of society ~~FARM PURCHASE SAVINGS AND CREDIT SOCIETY~~
4. Whether limited or unlimited liability is desired LIMITED
5. Language in which the books and accounts will be kept ENGLISH
6. Name of person appointed to perform the duties of secretary of the society SAMUEL MBUGUA KIBATHI
7. Registered office and postal address of the society BOX 74414 NAIROBI

We, the undersigned, hereby apply for the registration of the above society under the Act, and enclose four copies of the proposed By-laws in English.

NAME	OCCUPATION	AGE	PLACE OF RESIDENCE	SIGNATURE
MBUGUA MWANGI	TRADER	41	NAIROBI	[signature]
GRACE MUTHONI	FARMER	35	NAIROBI	G. Muthoni
KABOGO KANGETHE	FARMER	53	NAIROBI	Kabogo Kangethe
MARY WARURU	FARMER	38	NAIROBI	Mary Waruru
SAMUEL GITHEGI	BUSINESSMAN	43	NAIROBI	[signature]
RITUNE MITHIRI	HOUSEWIFE	33	NAIROBI	[signature]
ESTEMLA GAKUNJU	TRADER	42	NAIROBI	[signature]
MARGARET NYOKABI	TEACHER	32	NAIROBI	Mary Nyokabi
RUTH NJERI	HOUSEWIFE	45	NAIROBI	R. Njeri
MBUGUA KIBATHI	BUSINESSMAN	41	NAIROBI	[signature]

57

Farm Purchase
Cooperative Soc

45

BY-LAWS
OF

KASARINI FARMERS

CO-OPERATIVE SOCIETY LIMITED

(Registered under the Co-operative Societies Act,
Chapter 490, Laws of Kenya)

NAME

The name of the Society shall be:-

KASARINI FARMERS

CO-OPERATIVE SOCIETY LIMITED

REGISTERED ADDRESS

The registered address of the Society shall be

INTERPRETATION

In these By-laws unless the context otherwise requires:-

"Commissioner or his representative" shall mean the Commissioner for Cooperative Development and persons appointed to assist such Commissioner under the provisions of the Co-operative Societies Act;

"Manager" shall mean the paid employee appointed under By-law 43;

"Act" shall mean the Cooperative Societies Act and all subsidiary legislation made thereunder;

"Secretary" shall mean the officer of the Society appointed under By-law 42;

"Treasurer" shall mean the officer of the Society appointed under By-law

IV

OBJECTS

The objects for which the Society is established are to organise and promote the economic interests of its members in accordance with co-operative principles and in particular to:-

acquire land, buildings, equipment and stock for the purpose of managing and developing as a collective farm for the benefit of the members of the Society;

co-operatively market the produce of the farm in the most profitable way;

promote good farming practice in accordance with the advice of the government departments;

insure members against accidents, death, illness or other infirmities and to insure the properties of the farm against fire and other risks;

To achieve the objects set out in By-Law 4 the Society may form and carry on such functions of a co-operative society as are permitted under the provisions of the Co-operative Societies Act and

57

45

Farm Purchase
Cooperative Soc

BY-LAWS
OF
KASARINI FARMERS

CO-OPERATIVE SOCIETY LIMITED

(Registered under the Co-operative Societies Act,
Chapter 490, Laws of Kenya)

NAME

The name of the Society shall be:-
KASARINI FARMERS

CO-OPERATIVE SOCIETY LIMITED

REGISTERED ADDRESS

The registered address of the Society shall be

INTERPRETATION

these By-laws unless the context otherwise requires:-
"Commissioner or his representative" shall mean the Commissioner for Cooperative Development and persons appointed to assist such Commissioner under the provisions of the Co-operative Societies Act;
"Manager" shall mean the paid employee appointed under By-law 43; "Act" shall mean the Cooperative Societies Act and all subsidiary legislation made thereunder;
"Secretary" shall mean the officer of the Society appointed under By-law 25;
"Treasurer" shall mean the officer of the Society appointed under By-law

PART IV

OBJECTS

The objects for which the Society is established are to organise and promote the economic interests of its members in accordance with co-operative principles and in particular to:-
acquire land, buildings, equipment and stock for the purpose of managing and developing as a collective farm for the benefit of the members of the Society;
co-operatively market the produce of the farm in the most profitable way;
promote good farming practice in accordance with the advice of the government departments;
insure members against accidents, death, illness or other inflictions and to insure the properties of the farm against fire and other risks;
To achieve the objects set out in By-Law 4 the Society may form and carry on such functions of a co-operative society as are mitted under the provisions of the Co-operative Societies Act and

(56) (46)

for loans from members and non-members by issuing debentures or mortgaging the property of the Society or by any other means up to a maximum amount to be determined by the Commissioner, provided that the Society may not sell any land or equipment to which it has title for the purpose of raising funds during such period as any loan raised for the purpose of purchasing land or equipment remains as a liability of the Society;

113

(2) negotiate with any person or corporation for the acquisition of land or equipment in pursuance of the objects of the Society;

(3) employ such technical and administrative staff and labour as shall be necessary for maximising the economic use of the land provided that any lender of sums in excess of twenty-five per cent of the gross value of any land with respect to the Society may make it a condition of borrowing that the Society shall employ subject to such conditions as may be agreed such technical and administrative staff as the lender may consider necessary to secure the revenue productivity of the asset;

(4) provide remunerative employment to all members of the Society and to relatives of the members duly authorised to live on the Society whose age is not less than fourteen or more than sixty-five years.

MEMBERSHIP

Members shall consist of:

(a) original members who signed the application for registration, and

(b) new members subsequently admitted in accordance with these By-Laws.

A person shall be eligible for membership who possesses all of the following qualifications:

(1) is of good character;

(2) is not less than eighteen years of age except in the case of a nominated minor heir of a deceased member;

(3) is physically fit and able to actively carry out the farming duties required of a member.

Application for membership shall be made in writting to the Secretary of the Society and shall include a declaration by the applicant stating the personal name, age, sex and relationship of each relative who the applicant will expect to live on the land of the Society and in his homestead.

All applications shall be put before the Management Committee which may admit the applicant or reject any application without

59

admitted unless and until he has paid such entrance fees and such minimum contribution of share capital as shall be prescribed in these laws.

On admission to membership of the Society the Secretary of Society shall cause each member, including those who signed application for registration, to sign the Register of Members on act shall constitute an acceptance by the member of the ding nature of the Act, Rules, and By-Laws of the Society.

On admission to membership of the Society the Secretary the Society shall cause each member, including those who signed application for registration, to nominate in writing the name one person to whom on the death of the member his shares and rest shall be transferred. The name of such nominee shall itten in the Register of Members and shall be duly witnessed he nominating member and the Secretary of the Society.

The liability of a member shall be limited to the nominal ue of the shares held by him unless the General Meeting, with Commissioner's permission accepts additional liability in respect a specific sum on specific terms.

A member may withdraw from the Society only at the end of ch financial year, and then only if he shall previously have given month's notice in writing to the Secretary of the Society of intention to withdraw from the Society.

Membership of the Society shall cease with effect from the date of a member:-

(1) dying;

(2) ceasing to hold the qualifications for membership specified in By-Law 7;

(3) being expelled from the Society;

(4) voluntarily withdrawing from the Society in accordance with the provisions of By-law 13;

(5) ceasing to hold a share in the Society in accordance with the provisions of By-Law 20;

(6) becoming of unsound mind.

5. (1) On the death of a member or if a member is certified to be of unsound mind, his nominee, if eligible for membership under By-Law 7 may apply and be admitted as a full member without paying further entrance fee, and shall acquire all assets and rights and assume all debts and responsibilities of the member by whom he was nominated.

(2) If ineligible only on grounds of age, such nominee shall be granted all the rights and liabilities of the deceased member except [illegible]

(3) If the nominee does not wish to become a member he may be paid the value of the shares or asset less any sum due from the deceased member to the Society.

(1) A member may be suspended from membership by the Management Committee pending a final decision on expulsion by the General Meeting, against whose decision an appeal may be made to the Commissioner under section 80 of the Act for one or more of the following reasons:-

(a) any action adjudged to be prejudicial to the Society and the spirit of Cooperation including malicious illnatured slanderous remarks about any member of the Committee or an employee of the Society;

(b) repeated failure to comply with the regulations of the Society made under these By-laws;

(c) imprisonment for more than three months for a criminal offence.

(2) Any person ceasing to be a member may be repaid, after deduction of any debts owed by him to the Society the following:-

(a) the value of his shares unless the Society holds loans or deposits from non-members;

(b) any bonus, dividend or interest due to him at the date on which his membership ceased;

(c) any deposit or sum held by the Society on his behalf, provided that where a member is expelled, (a) and (b) shall not be paid but forfeited to the Society and credited to the Statutory Reserve Fund of the Society.

Part VI

FUNDS

The Funds of the Society shall consist of:-

(1) entrance fee of Shs. 10/- each;

(2) an undetermined number of shares of the value of Shs. 1000/- each;

(3) deposits from members;

(4) loans from members or non-members subject to By-law 5(1);

(5) a Statutory Reserve Fund and any other funds established with the approval of the Commissioner;

(6) Surplus funds resulting from the operations of the Society.

The rate of interest on any deposit or loan from members shall not exceed six per cent per annum except with the written permission of the Commissioner.

61

49

SHARES

20. Every member shall hold at least one full share in the Society and no member shall hold more than one-fifth of the total shares. Non-members shall not hold shares.

21. Shares shall be paid for in full on application.

22. With the approval of the Management Committee a member may at any time, provided that he has been a member for not less than three years, transfer his shares to another member but not to any other person.

23. All transfers of shares must be registered with the Secretary of the Society and no transfer is valid unless so registered. A fee of Shillings Twenty (Shs. 20/=) shall be paid by the transferee to the Statutory Reserve Fund of the Society for every such transfer.

Part VII

MANAGEMENT COMMITTEE

24. The affairs of the Society shall be managed by a Management Committee which shall consist of at least five and not more than nine members over the age of twenty-one years elected at the Annual General Meeting and shall include the Chairman, Honorary Secretary and an Honorary Treasurer. Provided that the Management Committee may appoint from amongst its members a Farm Committee which should be responsible to the Management Committee for the day to day conduct of the affairs of the Society.

25. The Chairman of the Management Committee shall be the Chairman of the Management Committee.

26. The Management Committee shall permit access to its sessions of the representative of any vendor of capital funds to the Society, for the purpose of listening to and advising with respect to any aspect of the business of the Society.

27. Members of the Management Committee shall be elected for three years and shall be eligible for re-election provided that not less than one third of the Committee shall retire annually; and provided that during the first two years from the date of the first General Meeting electing the Committee, the retiring members shall be determined by lot.

28. The Chairman of the Management Committee shall be chosen by the members of the Committee at its first meeting next following the election of new members under the provision of By-Law 48(3).

29. The Honorary Secretary of the Society and Honorary Treasurer of the Society shall be eligible for electing

provisions of

50

The duties of the Honorary Secretary shall be to:-

(1) ensure that the Society's correspondence is correctly attended to;

(2) ensure the recording of minutes of Committee and General Meetings;

(3) keep Society's seal securely under lock and key. The seal shall be used only by and in the presence of all the officers authorised to sign on behalf of the Society under By-law 40.

17

The duties of the Honorary Treasurer shall be to:-

(1) Check all payments and to countersign all vouchers;

(2) keep a general surveillance of the money management of the Society.

Unless decided otherwise by the General Meeting, all documents, contracts and cheques shall be signed on behalf of the Society by the holders of the following officers:-

The Chairman with
the Honorary Secretary and
the Honorary Treasurer.

A member of the Management Committee shall cease to hold office if he:-

(1) ceases to be a member of the Society;

(2) applies for insolvency or is declared insolvent;

(3) becomes certified of unsound mind;

(4) is convicted of any criminal offence involving dishonesty or is imprisoned for three months;

(5) is removed from office at a General Meeting;

(6) absents himself from more than three consecutive meetings without reasonable excuse, or prior permission of the Management Committee.

Meetings of the Management Committee shall be held regularly once a month and at any other time when necessary. One half of the members shall form a quorum provided that either the Chairman or the Honorary Treasurer or the Honorary Secretary shall be one of the quorum.

The Management Committee shall exercise all the powers of the Society except those reserved for the General Meeting Subject to any regulations duly laid down by the Society in General Meeting or in the By-Laws and, in particular, shall have the following powers and duties:-

(1) to regulate, control, plan and administer the Management of the land and property of the Society;

(2) to issue new shares and approve transfers of shares;

(3) to prepare for the Annual General Meeting a crop production programme

(4) to prepare for the Annual General Meeting an estimate of expenditure for the financial year next following the Annual General Meeting;

(5) to determine the duties and remuneration of members for work done and to cause an account to be kept of the same provided that such determination shall be submitted for approval to the General Meeting;

(6) to assess and authorise the employment of additional employees as shall be requisite for the achievement of the objects of the Society;

(7) to recommend for adoption by the Annual General Meeting the commission rate to be charged against the produce of the Society sufficient to cover all liabilities and obligations both outstanding and anticipated for the financial year next following the Annual General Meeting;

(8) to submit to the General Meeting for presentation and approval by the Commissioner with the consent of the General Meeting in accordance with Section 45 and 46 of the Act proposals for the disposal of any surplus at the end of the financial year, subject to Rule 49 A of the Cooperative Societies Rules 1969, and in particular such proposal may include provision for:-

(a) payment of a dividend on share capital at a rate not exceeding ten per cent per annum;

(b) payment of a patronage bonus to members proportionate to their labour contribution to the Society and to their remuneration; and

(c) any other purpose determined by resolution and approved by the Commissioner.

(9) to maintain or to cause to be maintained a true and accurate account of all monies received and expended and a record wherein members labour contributions are clearly recorded;

(10) to keep or cause to be kept a true account of the assets and liabilities of the Society;

(11) to prepare and lay before the Annual General Meeting accounts and balance sheets duly audited, provided that these shall be prepared within a period of not more than three months after the close of the financial year;

(12) to prepare or cause to be prepared quarterly balance sheets and accounts for the guidance of the Committee;

(13) to examine or cause to be examined the accounts, to sanction contigent expenditure and to supervise or cause to be supervised the maintenance of all books of account;

(14) to review each quarter:-

(iii) the position of all outstanding loans against or to the Society;

(15) to take such action as shall be necessary to meet all obligations to creditors within a period not exceeding three months of the incurring of a debt;

(16) to proceed against any debtor whose obligation shall have been in existence for a period in excess of three months;

(17) to supervise the maintenance of the Register of Members in accordance with the provisions of the Act;

(18) to consider the inspection reports of officers of the Department of Cooperative Development and to take action on such reports;

(19) to enter into contracts and to execute documents in furtherance of the objects of the Society;

(20) subject to the requirements of these By-Laws and of the Act to make such arrangements for borrowing as shall be necessary in furtherance of the objects of the Society;

(21) to summon meetings;

(22) to co-opt members to fill vacancies on the Committee;

(23) to appoint, suspend, or dismiss any paid servant of Society and to regulate and supervise their work;

(24) to impose fines in accordance with any rules made under By-Law 48(2).

36. All business discussed or decided at a General Meeting shall be recorded without erasures in a Minute Book which within one week of the Meeting shall be signed by the Chairman of the Meeting and at least one other Committee member who was present at the meeting to indicate that in their opinion the record is a true and complete record of all important matters which were discussed or decided at the meeting.

At the next meeting after approving any alterations or variations which shall be immediately written below the above signatures and not as alterations to the original record, the meeting shall by resolution authorise its Chairman to sign and date the final record.

37. No payment in any form shall be made by the Treasurer unless it had been first authorised and admitted and confirmed by the Committee.

38. No expenditure shall be authorised by the Committee unless and until formally approved in the Annual General Meeting provided that a Special General Meeting may be convened

Commissioner or his representative in the area, or within fourteen days of receipt by the Secretary of a written demand from not less than half the total membership.

46. Notice of Annual or Special General Meeting shall be given not less than fourteen days prior to the day on which the meeting is proposed and such notice shall include a statement of the items of business to be transacted, and the time and the place of the meeting.

47. Except when convened by the Commissioner or by his representative in the area, the presence of not less than one-half of the members, shall constitute a quorum. In the absence of a quorum the Chairman shall adjourn the meeting and shall fix a date within one month for the adjournment meeting and notice shall be given as required in By-law 45. If at such a meeting a quorum is again not present the Chairman shall declare the meeting open and proceed with the business with those present.

48. The following business shall be transacted in a General Meeting;

(1) Amendment of the By-laws or enactment of new By-laws in accordance with the provisions of the Act;

(2) Make or amend rules in furtherance of the objects of the Society for:

(a) restricting the residence of strangers on the land of the Society;

(b) restricting the unauthorised use of the land or other property of the Society;

(c) restricting the unauthorised sale of livestock and produce of the land of the Society which may include the sale of produce and livestock from any land to which a member is granted an approved user;

(d) the levy of fines;

(3) election, suspension and removal of members of the Management Committee;

(4) confirmation or otherwise of the action of the Management Committee in accepting, refusing or suspending or expelling members;

(5) consideration of the reports of the Committee;

(6) consideration of the annual statement of account and balance sheet and of the auditor's report and of any inspection report of the Commissioner or his representati

(7) The disposal of the annual surplus in accordance with the Act and these By-Laws;

(8) The fixing subject to the approval of the

(9) Such other business as may be relevant or necessary including rules for tenancies, conditions of loans and all matters relevant thereto, subject to the approval of the Commissioner.

GENERAL

49. The financial year of the Society shall be from 1ST JULY to 30TH JUNE

50. Auditors shall be appointed and their duties regulated in accordance with provisions of section 23 or the Act.

51. A copy of the balance Sheet and trade account, duly signed by the auditor and his report attached thereto shall be open to inspection of the members at the office of the Society at least fourteen days before the date fixed for the Annual General Meeting.

52. Notwithstanding the registration of the Society, no purchase of land shall be undertaken unless and until such purchase is approved by the Commissioner.

53. Consent to the acquisition of land by the Society shall be in the discretion of the Commissioner provided that :-

(1) the Society shall first have accumulated sufficient share capital of at least one quarter of the purchase price of the land before engaging in the loan transaction.

(2) The Society shall first make an assessment of the revenue productivity of the land sought to be acquired and such revenue productivity shall be related to the loan liability incurred in acquiring the aforesaid land. Such assessment to be made in writing and laid before a Special General Meeting of the Society.

(3) That such assessment shall be considered by a Special General Meeting and approved by a resolution of the meeting as the economic basis on which the Society shall be permitted to engage in the transaction.

54. The Seal of the Society may be a rubber stamp bearing the words "Seal of the KAJIADO FARMERS Co-operative Society Ltd.", and shall be different from the name stamp of the Society. The Seal shall be kept securely under lock and key by the Secretary and shall be used only by and in the presence of all the officers authorised to sign on behalf of the Society under By-law 32.

55. Any dispute arising out of these By-laws or concerning the business of the Society which cannot be settled by the Committee or General Meeting, shall be referred to the Commissioner as provided in section 80 of the Act.

12

ACCEPTED for and on behalf of the Society by :-

CHAIRMAN ... Z. K. SAKUNGU ...

SECRETARY ... S. M. KIBATI ...

TREASURER ... MBUSA MUVANGI ...

RTIFIED that the foregoing by-laws of the KAPIPIRI FARMERS
O-OPERATIVE SOCIETY LIMITED (Registered No. 2240)
e been approved by me and duly registered.

GIVEN under my hand at Nairobi this the 10th
of July 19 74.

DEPUT COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT.

EV 4 (I) 69

60

11 DEC 1981

792

REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT
(CHAPTER 281)

GRANT NUMBER FR. 35930

EV 4

F R E S H L E D

KNOW ALL MEN BY THESE PRESENTS that in pursuance of a surrender registered in the Government Land Registry at Nairobi in Volumes N.44 Folio 2/11 and N.44 Folio 164/7 THE PRESIDENT OF THE REPUBLIC OF KENYA on behalf of the Government of Kenya hereby GRANTS Unto KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED a limited liability company incorporated in the Republic of Kenya and having its registered office at NAIROBI (Post Office Box Number 75155) hereinafter called 'the Grantee' ALL THAT piece of land situate S.E. of Kiambu Town in the KIAMBU DISTRICT of the Republic of Kenya containing by measurement three seven seven decimal two (377.2) hectares or thereabouts that is to say Land Reference Number 12825 which said piece of land with dimensions abuttals and boundaries thereof is delineated and edged red on the Plan Number 111458 deposited in the Survey Records Office at Nairobi TO HOLD the same in fee simple SUBJECT and together with (a) Easements and/or Wayleave agreements registered in Volume N. 12 Folio 75/15 & 17, 79/16, 18, 20 & 21 and 114/6 & 8 (b) the Government Lands Act (Chapter 280) and (c) the following special conditions (namely):-
contained in a conveyance registered in Volume N.44 Folio 164/1

S P E C I A L C O N D I T I O N S

- NIL -

IN WITNESS WHEREOF I, [illegible] the Commissioner of Lands have by Order of the President hereunto set my hand this 3rd day of November One thousand nine hundred and [illegible] in the presence of:-

35930/1

Registered 18th December 81
10.30 am

[illegible]

Registrar of Titles

THIS IS THE EXHIBIT MARKED H
ANNEXED TO THE AFFIDAVIT/DECLARATION
OF Maria Mavaki
SWORN BEFORE ME ON THE [illegible] OF
DECLARED
[illegible] NAIROBI
COMMISSIONER FOR OATHS.

DEPARTMENT OF LANDS
SCANNED

18.12.1981

THE FOLLOWING [illegible] HAS BEEN REGISTERED
[illegible] to the Government of Republic of Kenya in respect of [illegible] Land Reference Number [illegible]

18.12.1981

GAZETTE NOTICE No. 649

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

BANKRUPTCY AND WINDING-UP CAUSE No. 3 OF 1960

IN THE MATTER OF THE COMPANIES ORDINANCE

(*Cap.* 288)

AND

IN THE MATTER OF KISUMU TIMBER AND HARDWARE LIMITED

(*In Voluntary Liquidation*)

NOTICE is hereby given that a petition for the winding up of the above-named Company by the Supreme Court of Kenya at Nairobi was, on the 22nd day of January, 1960, presented to the said Court by British East Africa Corporation Limited, a limited liability company, having its registered office situate at Colls House, Elliot Street, Nairobi, a creditor of the above-named Company.

And that the said petition is directed to be heard before the Court sitting at the Law Courts, Nairobi, at 10.30 o'clock in the forenoon on the 11th day of March, 1960, and any creditor or contributory of the said Company desirous of supporting or opposing the making of an order on the said petition may appear at the time of hearing in person or by his advocate for that purpose, and a copy of the petition will be furnished to any creditor or contributory of the said Company requiring the same, by the undersigned, on payment of the regulated charge for the same.

HAMILTON, HARRISON AND MATHEWS,
Advocates for the Petitioner,
Stanrae House, Queensway,
P.O. Box 30033, Nairobi.

Note.—Any person who intends to appear on the hearing of the said petition must serve on or send by post to the above-named Hamilton, Harrison and Mathews, advocates, for the petitioner, notice in writing of his intention so to do. The notice must state the name and address of the person, or if a firm, the name and address of the firm, and must be signed by the person or firm or his or their advocate (if any), and must be served, or if sent by post must be sent by post in sufficient time to reach the above-named not later than 4 o'clock in the afternoon of the 10th day of March, 1960.

GAZETTE NOTICE No. 650

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

MISCELLANEOUS CAUSE No. 7 OF 1960

IN THE MATTER OF EAST AFRICA VENTURES LIMITED

AND

IN THE MATTER OF THE COMPANIES ORDINANCE

(*Cap.* 288)

NOTICE is hereby given that a petition presented to Her Majesty's Supreme Court of Kenya at Nairobi on the 20th day of January, 1960, for confirming the reduction of the capital of the above-named Company from Sh. 4,000,000 to Sh. 2,180,000 by returning capital which is in excess of the wants of the Company is directed to be heard by the said Court on Friday, the 26th day of February, 1960. Any creditor or shareholder of the said Company desiring to oppose the making of an Order for confirmation of the said reduction of capital should appear at the time of hearing by himself of his Counsel for that purpose. A copy of the petition will be furnished to any person requiring the same by the undersigned on payment of the regulated charge for the same.

Dated the 29th day of January, 1960.

ARCHER AND WILCOCK,
Advocates for the Company.
Mutual Building, Harding Street,
P.O. Box 10201, Nairobi.

GAZETTE NOTICE No. 651

IN THE MATTER OF THE COMPANIES ORDINANCE

(*Cap.* 288)

AND

IN THE MATTER OF KASARINI ESTATES LIMITED

(MEMBERS' VOLUNTARY WINDING UP)

NOTICE is hereby given that at an extraordinary general meeting of the members of Kasarini Estates Limited held at Berners Hotel, Berners Street, London, W.1, on Friday, 22nd January, 1960, the following special resolution was duly passed:—

"That the Company be wound up voluntarily and that Mr. P. M. Johnson, Chartered Accountant, of Nairobi, and Mr. G. K. Smith, Chartered Accountant, of Grimsby, be appointed joint liquidators for the purpose of such winding up."

This notice is in respect of a members voluntary winding up for the purpose of re-organization and the farming assets of the Company will continue under the ownership of a new company named Kasarini Estates (1959) Limited.

Dated at Nairobi, this 29th day of January, 1960.

P. M. JOHNSON,
Joint Liquidator.
Livingstone House, Wabera Street,
P.O. Box 93, Nairobi.

GAZETTE NOTICE No. 652

THE COMPANIES ORDINANCE

(*Cap.* 288)

PURSUANT to section 284, subsection (5) of the above Ordinance, it is hereby notified that the undermentioned companies have this day been struck off the Register of Companies and the companies are dissolved:—

Mobo Furniture House Limited.
Blacklaws and Brown Limited.

Nairobi,
5th February, 1960.

D. J. COWARD,
Registrar of Companies.

GAZETTE NOTICE No. 653

THE COMPANIES ORDINANCE

(*Cap.* 288)

PURSUANT to section 284, subsection (3) of the above Ordinance, it is hereby notified that at the expiration of three months from the date hereof, the name of the undermentioned company will, unless cause be shown to the contrary, be struck off the Register of Companies and the company will be dissolved:—

Bharat Service Stores Limited.

Nairobi,
5th February, 1960.

D. J. COWARD,
Registrar of Companies.

GAZETTE NOTICE No. 654

THE MARRIAGE ORDINANCE

(*Cap.* 144)

NOTICE

NOTICE is hereby given that in exercise of the powers conferred by section 6 of the Marriage Ordinance, I have licensed the undermentioned places of worship to be places for the celebration of marriages.

Name.—The Kenya High School Chapel.
Place.—Nairobi.
District.—Nairobi Extra Provincial District, Nairobi.

Name.—St. Barnabas' Church.
Place.—Kapsabet.
District.—Nandi, Kapsabet.

Nairobi,
3rd February, 1960.

D. J. COWARD,
Registrar-General.

THE KENYA GAZETTE

Published under the Authority of His Excellency the Governor of the Colony and Protectorate of Kenya

(Registered as a Newspaper at the G P O)

Price Sh 1

NAIROBI, 14th March, 1961

Vol. LXIII—No 11

CONTENTS

GAZETTE NOTICES — PAGE

Appointments, etc — 294
The Commissions of Inquiry Ordinance—Commission — 294
The Kenya (Constitution) Orders in Council — 294
Declaration of Incapacity of Minister — 294
Appointment of Temporary Minister — 295
The Diplomatic Privileges (Extension) Ordinance—Notice — 295
Central Whitley Council—Appointments — 295
Danish Consular Representation — 295
The Asian Officers Family Pensions Ordinance—Appointments — 295, 296
The Education Ordinance—Appointments — 296
The Courts Ordinance—Appointment, etc — 296
The Aerodromes (Control of Obstructions) Ordinance—Declaration of Aerodromes — 296
The Water Ordinance—Appointment — 297
Corrigendum to G N 6008/60 — 297
Applications — 301
The African District Councils Ordinance—Appointments — 297
The Oil Production Regulations—Oil Exploration Licence No 5 — 297
The Prevention of Cruelty to and Neglect of Children Ordinance—Appointments — 297
East African Railways and Harbours—Amendment to Tariff Book No 3 — 297
The Legislative Council Election Rules—Election Results — 298, 299
H M Supreme Court of Kenya—Petition No 1 of 1961 — 299
The Cattle Cleansing Ordinance—Cattle Cleansing District — 299
The Agriculture Ordinance—Membership of Sub-committees — 299
The Police Ordinance—Closure and Appointment of Police Stations — 299
The Native Authority Ordinance—Appointment — 300
Royal National Parks of Kenya—Closed Season — 300
Supreme Court Easter Vacation — 300
Uganda Protectorate—Ministry of Health—Registrarships — 300
East Africa High Commission Stock — 300
The Air Services (Licensing) Regulations—Application for Licence — 301
East African Customs and Excise—Customs Tariff Interpretation — 302
Vacancies — 302
Language Examinations—Results — 303
H M Supreme Court—Criminal Sessions — 303
Transport Licensing — 303
Nairobi Cost of Living Indices — 303
The Registration of Titles Ordinance—Issue of Provisional Certificates — 303, 319
Tenders — 304
The Crown Lands Ordinance—
Plot for Petrol Service Station at Turbo — 305
Plots for Workshop, Garages and Godown at Kisumu — 307, 308
The Patents (Registration) Ordinance—Letters Patent — 309-313
Trade Marks — 314
Liquor Licensing — 314
Revocation of Power of Attorney — 314, 315
Probate and Administration — 316
Bankruptcies — 316
Deed of Arrangement — 316, 317
The Companies Ordinance — 317
The Societies Ordinance—Registrations, etc — 317-319
County City and District Council Notices — 320
The Trust Land Ordinance—
Plot at Machakos — 320-331
Setting apart of Land — 332
Loss of Policies — 332
Loss of Passbook — 332
Dissolution of Partnership — 332
Notice of Change of Name — 332

SUPPLEMENT No 14

Legislative Supplement

PAGE

LEGAL NOTICE No
152—The Stock and Produce Theft Ordinance—Proclamation — 265
153—The Agriculture Ordinance (Third Schedule) (Amendment) Order, 1961 — 265
154—The Hospital Treatment Relief (Asian and Arab) (Allowances) (Amendment) Rules, 1961 — 266
155—The Hospital Treatment Relief (Asian and Arab) Ordinance, 1959—Notice — 267
156—The Public Roads and Roads of Access Ordinance—Order Dedicating a Line of Public Travel — 267
157—The Nakuru County Council (European Education Poll Rate) Order, 1961 — 268
158—The Dairy Industry (Licensing of Retailers) Regulations, 1961 — 269
159—The Dairy Industry (Inspectors) Regulations, 1961 — 273
160—The Dairy Industry (Cess on Retailed Milk) Regulations, 1961 — 275

GAZETTE NOTICE No 1235

THE BANKRUPTCY ORDINANCE

(*Cap* 30)

NOTICE OF INTENDED DIVIDEND

Debtor's name—Sir Thomson McClintock, Baronet (deceased)
Address—Formerly c/o J Bickerton Williams, Esq., advocate, P O Box 12219, Nairobi
Description—Chartered Accountant
Court—H M Supreme Court of Kenya at Nairobi
No of matter—B C 20 of 1960
Last day for receiving proofs—30th March 1961
Name of trustee—Official Receiver
Address—Office of the Official Receiver, Crown Law Office, P O Box 30031, Nairobi

Nairobi,
10th March, 1961

D F COWARD
Official Receiver

GAZETTE NOTICE No 1236

THE BANKRUPTCY ORDINANCE

(*Cap* 30)

NOTICE OF DIVIDEND

Debtor's name—Bruce Draper Bolton
Address—P O Box 31, Rumuruti
Description—Farm Manager
Court—H M Supreme Court of Kenya at Nairobi
No of matter—B C 21 of 1959
Amount per £—Sh 6/90
First or final or otherwise—First
When payable—22nd March, 1961
Where payable—Office of the Official Receiver, Crown Law Office P O Box 30031, Nairobi

Nairobi,
10th March, 1961

D J COWARD
Official Receiver

GAZETTE NOTICE No 1237

THE BANKRUPTCY ORDINANCE

(*Cap* 30)

RECEIVING ORDER AND ADJUDICATION ORDER

Debtor's name—Narshi Prabhu, trading as Settler's Footwear
Address—P O Box 147, Nyeri
Description—Trader
Date of filing petition—8th March 1961
Court—H M Supreme Court of Kenya at Nairobi
No of matter—B C 18 of 1961
Date of order—8th March, 1961
Date of adjudication order—8th March, 1961
Whether debtor's or creditors' petition—Debtor's
Act or acts of bankruptcy—Presentation of bankruptcy petition

Nairobi,
10th March, 1961

D J COWARD
Official Receiver

GAZETTE NOTICE No 1238

THE BANKRUPTCY ORDINANCE

(*Cap* 30)

GENERAL MEETING OF CREDITORS

Debtor's name—Ambalal Shivabhai Patel, trading as Advance Traders
Address—Princess Marie Louise Road, Mombasa
Description—Ration merchant
Court—H M Supreme Court of Kenya at Mombasa
No of matter—B C 21 of 1960
Date of meeting—21st March, 1961
Hour—10 a m
Place—At my office, Old Customs House, Fort Jesus Road, Mombasa

Dated this 6th day of March 1961

PREETAM SINGH
Deputy Official Receiver
P O Box 366, Mombasa

GAZETTE NOTICE No 1239

THE BANKRUPTCY ORDINANCE

(*Cap* 30)

FIRST MEETING OF CREDITORS

Debtor's name—Ronald Ernest Shanks
Address—P O Box 251, Malindi
Description—Building Contractor
Court—H M Supreme Court of Kenya at Mombasa
No of matter—B C 2 of 1961
Date of first meeting of creditors—22nd March 1961
Time and place—2.15 p m at Old Customs House Fort Jesus Road, Mombasa

Dated this 6th day of March 1961

PREETAM SINGH
Deputy Official Receiver
P O Box 366, Mombasa

GAZETTE NOTICE No 1240

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

IN BANKRUPTCY CAUSE No 41 OF 1956

Re *Walter Furlong bankrupt*

THE bankrupt having applied to the Court for his discharge, the Court has fixed Thursday, the 23rd day of March 1961 at 10.30 o'clock in the forenoon, at Nairobi for hearing the application

Dated this 10th day of March 1961

D J DEVINE
Deputy Registrar
Supreme Court of Kenya

GAZETTE NOTICE No 1241

IN HER MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

IN BANKRUPTCY CAUSE No 83 OF 1958

Re *Wilfred Douglas Maxted Massey bankrupt*

THE bankrupt having applied to the Court for his discharge the Court has fixed Tuesday, the 21st day of March, 1961 at 10.30 o'clock in the forenoon, at Nairobi for hearing the application

Dated this 7th day of March 1961

D J DEVINE
Deputy Registrar
Supreme Court of Kenya

GAZETTE NOTICE No 1242

DEED OF ARRANGEMENT REGISTERED DURING MARCH 1961

No—4 of 1961
Names of debtors—(1) Shah Virpar Dahya, (2) Somchand Virpar Shah and (3) Hemchand Virpar Shah
Address of debtors—P O Box 2448, Mombasa
Names of trustees—(1) Vaghji Ramji Malde and (2) Harakchand Rajpal Shah
Addresses of trustees—(1) P O Box 147, Mombasa, and (2) P O Box 639, Mombasa

Nairobi,
10th March, 1961

D J COWARD
Registrar-General

GAZETTE NOTICE No 1243

IN THE MATTER OF THE COMPANIES ORDINANCE

(*Cap* 288)

AND

KASARINI ESTATES, LIMITED

(*Members' Voluntary Winding Up*)

FINAL MEETING OF SHAREHOLDERS

NOTICE is hereby given that the final meeting of the shareholders of Kasarini Estates Limited will be held at Livingstone House, Hardinge Street, Nairobi, on Tuesday, 11th April, 1961, at 11 a m, for the purpose of having the liquidator's accounts laid before the meeting, showing the manner in which the winding up has been conducted and the property of the Company disposed of and of hearing any explanation that may be given by the liquidator and also for the purpose of determining by extraordinary resolution how the books and papers of the Company and of the liquidator are to be disposed of

Nairobi,
7th March, 1961

P M JOHNSON,
Liquidator

THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. LXVII—No. 38 NAIROBI, 17th August 1965 Price: Sh. 1

CONTENTS

GAZETTE NOTICES

	PAGE
Appointments, etc.	978
The Constitution of Kenya—Designation, etc.	978
The Interpretation and General Provisions Act—Transfers of Powers	978
The Land Adjudication Act—Appointment	978
The Canning Crops Act—Appointment	978
The Cotton Lint and Seed Marketing Act—Appointments	979
The Broadcast Receiving (Licensing) Act, 1965—Appointments	979
The Agriculture Act—Management Orders, etc.	979
The Agriculture (Crop Production) Rules—Planting Dates	980
The Prisons Act—Cancellations	980
E.A. Currency Board—Circulation Return	980
E.A. Railways and Harbours—Amendments to Tariff Book	980
The Weights and Measures Act—Notice to Traders	980
Vacancies	981
Industrial Licensing	982
The East African Licensing of Air Services Regulations, 1965—Applications	982
The African Christian Marriage and Divorce Act—Licensed Ministers	982
The Industrial Court—Award	983
The Registration of Persons Act—Compulsory Registration, etc.	984
The Trade Unions Act—Registration	984
Lost Policy	984
Tender	986
E.A. Customs and Excise Department—Tariff Interpretation	987

Gazette Notices—(Contd.)

	PAGE
The Water Act—Applications	988
The Chief's Authority Act—Appointments	988
Transport Licensing	988
Liquor Licensing	993
Probate and Administration	994
Bankruptcy Jurisdiction	994
The Companies Act—Winding-up Notices, etc.	995
The Societies Act—Registrations, etc.	996
Local Government Notices	996
Changes of Name	998
Business Transfers	999

SUPPLEMENT No. 66

Bills, 1965

SUPPLEMENT No. 67

Legislative Supplement

LEGAL NOTICE NO.	PAGE
215—The Customs Tariff (Dumping and Subsidies) (Steel *Karais* and Aluminium Hollowware) Order, 1965	345
216—The Imports, Exports and Essential Supplies (Imports) (Amendment) (No. 7) Order, 1965	346
217—The Registered Land (Land Registration District) (Amendment) Order, 1965	347
218—The Kenya Local Government Officers' Superannuation Fund (Amendment) Rules, 1965	347
219—The Kenya Local Government Officers' Superannuation Fund (Amendment) (No. 2) Rules, 1965	348

GAZETTE NOTICE No. 3083

IN THE MATTER OF THE COMPANIES ACT
(*Cap.* 486)

AND

IN THE MATTER OF TEROTO ESTATES LIMITED
(*Members' Voluntary Winding Up*)

NOTICE

NOTICE is hereby given that the final meeting of the above-named Company will be held in Silopark House, Queensway, Nairobi, on Friday, 17th September 1965 at 10 a.m. in accordance with the provisions of and for the purposes laid down in Section 283 (1) of the Companies Act (Cap. 486).

Dated this 9th day of August 1965.

P. M. JOHNSON,
Liquidator,
P.O. Box 92, Nairobi.

GAZETTE NOTICE No. 3084

IN THE MATTER OF THE COMPANIES ACT (Cap. 486)

AND

IN THE MATTER OF KASARINI ESTATES (1959) LTD.
(*Members' Voluntary Winding Up*)

NOTICE

NOTICE is hereby given that the final meeting of the above-named Company will be held in Silopark House, Queensway, Nairobi, on Saturday, 25th September 1965, at 10 a.m. in accordance with the provisions of and for the purposes laid down in section 283 (1) of the Companies Act (Cap. 486).

Dated this 13th day of August 1965.

GAZETTE NOTICE No. 3085

THE COMPANIES ACT
(*Cap.* 486)

PURSUANT to section 339, subsection (3) of the above Act, it is hereby notified that at the expiration of three months from the date hereof, the names of the undermentioned companies will, unless cause be shown to the contrary, be struck off the Register of Companies and the companies will be dissolved:—

Slagment East Africa Limited.
Suzanne Limited.

Dated this 12th day of August 1965.

O. M. SAMEJA,
Assistant Registrar of Companies.

GAZETTE NOTICE No. 3086

THE SOCIETIES ACT
(*Cap.* 108)

PURSUANT to section 9 (1) of the Societies Act (Cap. 108), having reason to believe that the Societies listed in the Schedule hereto have ceased to exist, I hereby call upon the said societies to furnish me with proof of their existence within three months of the date hereof.

SCHEDULE

Kenya Federation of Labour.
Kenya Chamber of Commerce and Industry.
Kenya Chamber of Commerce and Industry, Trans Nzoia Branch, Kitale.
Kenya Chamber of Commerce and Industry, Central Nyanza Branch.
Kenya Chamber of Commerce and Industry, Kericho Branch.
Kenya Chamber of Commerce and Industry, Kitinyaga Branch.
Kenya Chamber of Commerce and Industry, Nairobi Branch.
Kenya Chamber of Commerce and Industry, Bunyore Branch.
Kenya Chamber of Commerce and Industry, Mombasa Branch.
Kenya Chamber of Commerce and Industry, Naivasha Branch.
Kenya Chamber of Commerce and Industry, Nyandarwa Branch.
Nanyuki Surat District Association.

Dated this 12th day of August 1965.

O. J. BURNS,
Acting Registrar of Societies.

GAZETTE NOTICE NO. 3087

THE SOCIETIES RULES
(*Cap.* 108, *Sub. Leg.*)

PURSUANT to rule 17 of the Societies Rules notice is hereby given that—

(*a*) the societies listed in the First Schedule hereto have been registered, and

(*b*) the societies listed in the Second Schedule hereto have been refused registration,

under the provisions of the Societies Act (Cap. 108).

FIRST SCHEDULE

Name of Society	*Date Registration Effected*
Kenya National Tenants' Association, Nairobi Branch	6-8-65
Kolunje Union	9-8-65
Kisumu Chamber of Commerce and Industry	9-8-65

SECOND SCHEDULE

Name of Society	*Date of Refusal*
East African National Society, Donyo Sabuk Branch Dispensary	11-8-65
East African National Society, Karia Branch Dispensary	11-8-65
East African National Society, Mathari Valley Branch Dispensary	11-8-65

Dated this 12th day of August 1965.

O. J. BURNS,
Acting Registrar of Societies.

GAZETTE NOTICE No. 3088

THE SOCIETIES RULES
(*Cap.* 108, *Sub. Leg.*)

PURSUANT to rule 17 of the Societies Rules notice is hereby given that the exemption from registration of the societies listed in the schedule hereto have been rescinded under the provisions of the Societies Act (Cap. 108).

SCHEDULE

Name of Society	*Date of Rescission*
East African National Society (Dispensary)	11-8-65
East African National Society (Dispensary), Karatina Branch	11-8-65

Dated this 12th day of August 1965.

O. J. BURNS,
Acting Registrar of Societies.

GAZETTE NOTICE No. 3089

SIRIKWA COUNTY COUNCIL

UASIN GISHU SOUTH AREA COUNCIL

NOTICE OF ELECTION

NOTICE is hereby given that an election is to be held of a councillor to serve on the Uasin Gishu South Area Council for the following ward:—

Electoral Division	*Registration Unit No.*	*Retiring Councillor*
Plateau	1017	Vacant

Nomination papers may be delivered by the candidates to the Deputy Returning Officer at the District Commissioner's Office, Eldoret, between the hours of eight o'clock in the morning and noon on 20th August 1965.

Forms of nomination may be obtained at the District Commissioner's Office, Eldoret, on any week day between the hours of nine in the morning and noon. The Deputy Returning Officer will prepare the nomination papers for signature at the request of the voter.

Dated this 5th day of August 1965.

R. A. RIYAMY,
Deputy Returning Officer.

NOTE

1. The attention of candidates and persons nominating is drawn to the rules for filling up nomination papers and other provisions relating to nomination contained in the Local Government (Elections) Rules, 1963. Persons nominated must be entitled to be enrolled as voters for the County Division.

2. Every person guilty of a corrupt or illegal practice will, on conviction, be liable to the penalties imposed by the Election Offences Act.

upon a certified copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off, and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last-known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered postal address or, if no postal address has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

340. Property of dissolved company to be *bona vacantia*

Where a company is dissolved, all property and rights whatsoever vested in or held in trust for the company immediately before its dissolution (including leasehold property but not including property held by the company in trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under section 338 or section 339, be deemed to be *bona vacantia*, and shall accordingly belong to the Government.

[Act No. 9 of 1964, Sch.]

341. Power of Government to disclaim title to property vesting under section 340

(1) Where any property vests in the Government under section 340, the Government's title thereto under that section may be disclaimed by a notice signed by the Attorney-General.

(2) Where a notice of disclaimer under this section is executed as respects any property, that property shall be deemed not to have vested in the Government under section 340, and subsections (2) and (6) of section 315 shall apply in relation to the property as if it had been disclaimed under subsection (1) of section 315 immediately before the dissolution of the company.

(3) The right to execute a notice of disclaimer under this section may be waived by or on behalf of the Government either expressly or by taking possession or other act evincing that intention.

(4) A notice of disclaimer under this section shall be of no effect unless it is executed within twelve months of the date on which the vesting of the property as aforesaid came to the notice of the Attorney-General, or, if an application in writing is made to the Attorney-General by any person interested in the property requiring him to decide whether he will or will not disclaim, within a period of three months after the receipt of the application or such further period as may be allowed by the court which would have

EV7 (7)

REPUBLIC OF KENYA

Form 1

THE LAND CONTROL REGULATIONS, 1968

APPLICATION FOR CONSENT OF LAND CONTROL BOARD

To be submitted in TRIPLICATE in respect of each transaction and sent to or left at the appropriate office of the Commissioner of Land's

To THE KIAMBU

LAND CONTROL BOARD,

L.C.R. No. 5743

I HEREBY apply to the KIAMBU Land Control Board for its consent to the transaction described below, and give the following information:—

1. (a) Present registered holder of interest (full name in BLOCK LETTERS): KASARINI ESTATES LIMITED

(b) Nationality BRITISH

(c) Address P.O. BOX 49443 NAIROBI

2. (a) Proposed purchaser, transferee, mortgagee, chargee, allottee, etc. (full name in BLOCK LETTERS) KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED

(b) If a limited liability company, names of directors, authorized and issued share capital and principal shareholders; if a co-operative society, names of chairman, secretary and treasurer and total number of members—

CHAIRMAN - ZAKARIAH KINEMIAH GAKUNJU

SECRETARY-SAMUEL MBUGUA KIBATHI

TREASURER- MBUGUA MWANGI

Total Number of Members - Ten

(c) Nationality KENYAN

Certificate No. 2240

(d) Address P.O. BOX 74414 NAIROBI

3. Nature of transaction (e.g. sale, gift, lease, mortgage, charge, etc.; if sale or allotment of shares name of company, number and particulars of shares to be transferred)

SALE

4. Term (i.e. the length of time for which the land affected is to be transferred or leased; if sale or allotment of shares, authorized share capital of the company and numbers of shares issued at date of application)

5. Description of Land—

L.R. or Parcel No. 7153/2

Area 911 acres approximately

Locality KIAMBU

(86) (8) 75

6. (a) Purchase price, if a sale or option ... Sh. 4.5 MILLION

Rent ... Sh. ...

Estimated value of the land (if a gift) ... Sh. ...

Amount of loan (if a mortgage or charge) ... Sh. 4,250,000

Rate of interest (if a mortgage or charge) ... 9 %

Any other information affecting the amount of the consideration, particularly regarding the description and area of crops with estimated yields and value thereof included in the purchase price ... Refer to attached Documents

(b) Full description and approximate value of improvements on land included in the consideration 4 MILLION SHILLINGS

(c) Any other consideration passing between the parties ... NIL

7. If a transfer or lease of the land—

Proposed development programme of purchaser, including funds available therefor with approximate date ... IMPROVEMENT OF COFFEE YIELDS - PROPOSES TO SPEND ABOUT ONE MILLION SHILLINGS

Does the purchaser/lessee intend to reside on the land? ... NOL

8. (a) Other agricultural land registered in the name of or held under contract for sale by the proposed purchaser, transferee, lessee or allottee, or any member(s) of his immediate family, or any company in which he has an interest (state the nature of any interest in such company)—

L.R. or Parcel Nos. ... Area ...

Owner ... /

Nature of interest ...

Whether contiguous to land being purchased ...

(b) Particulars of agricultural land held and disposed of by purchaser or lessee in the last three years—

L.R. or Parcel Nos. ... District ... Area ...

L.R. or Parcel Nos. ... District ... / Area ...

9. Farming experience of transferee ... THE TRANSFEREE INTENDS TO RETAIN THE SERVICES OF THE PRESENT MANAGER WHO HAS MORE THAN 20 YRS EXPERIENCE

We hereby declare that the above information is true to the best of our knowledge and belief.

RUGI & GICHURU
Signature of purchaser, lessee, [illegible] or authorized agent or agents, etc.

KASARINI ESTATES LTD.
Signature of owner, lessor, [illegible] or authorized agent or agents, etc.

EV 8 MNM6 196

9

NJUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

This is the exhibit marked "MNM 8" referred to in the annexed Affidavit of MARGARET NYOKABI MBUGUA Sworn Declared before me this 16th day of SEPTEMBER 2013

Tusker House
Second Floor
Ronald Ngala Street
(Formerly Duke Street)
P.O. Box 46093
NAIROBI, Kenya

Commissioner for Oaths

OUR REF. PGN/393

YOUR REF.

10th September, 1974

The Commissioner of Lands,
Nairobi

Dear Sir,

SALE OF L.R. NO. 7153/2 FROM KASARINI ESTATES LIMITED TO KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED

We act for Kasarini Farmers Co-Operative Society Ltd. We enclose herewith the Application for consent of the Kiambu Land Control Board to the above proposed transaction and should be grateful if you could forward the application to the said Board at your earliest convenience.

Yours faithfully,
NJUGI & GICHUKIA ADVOCATES

This is the Exhibit marked "MNM6" referred to in the annexed Affidavit / Declaration of MARGARET NYOKABI MBUGUA Sworn Declared before me this 2ND day of JUNE 2016 at Nairobi

Commissioner for Oaths & Notary Public

GICHUKIA

56

Mr. Kydd

CVO Agric

Pse arrange for an early valuation of this property & [illegible] Lands [illegible] application to be [illegible]

WHEN REPLYING PLEASE QUOTE OUR REFERENCE

14/9/74



THE KENYA GAZETTE

Published under the Authority of His Excellency the Governor of the Colony and Protectorate of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. LXII—No. 9 NAIROBI, 9th February, 1960 Price: Sh. 1

CONTENTS

GAZETTE NOTICES

	PAGE
Appointments, etc.	132
The Courts Ordinance—Appointments	132
The Criminal Procedure Code	132
The Education Ordinance—Appointments, etc.	132
The Registration of Persons Ordinance—Appointment	132
The Factories Ordinance—Appointment	133
The African District Councils Ordinance—Appointments	133
The Museums Trustees Ordinance—Appointment	133
The Animal Diseases Rules—Appointment	133
The Townships Ordinance—Appointments	133
Coast Labour Committee—Appointments	134
The Oil Production Regulations—Renewal of Licence	134
The Rice Factory Rules—Application for Licence	134
The Firearms Ordinance—Authorization, etc.	134
Tenders	134
The Native Lands Trust Ordinance—Setting apart of Land	135-149
Liquor Licensing	149
Vacancies	149, 150
H.M. Supreme Court of Kenya at Nyeri and Kisumu—Cause Lists	151
Language Examinations—Results	151
The East African Industrial Licensing Ordinance—Application for Licence	151
Loss of Share Certificates	151
Colony and Protectorate of Kenya—Exchequer Return	152
Loans for Higher Education	153
The Water Ordinance—Qualified Engineers	153
Applications	153
Kenya Stock	154
Transport Licensing	154
The Production of Food Crops Rules—Earliest and Latest Planting Dates	154
The Pharmacy and Poisons Ordinance—Registered Pharmacists	155
The Records (Disposal) Ordinance—Destruction of Records	156
Resident Magistrates Court—Unclaimed Legal Deposits	156
City Council of Nairobi—Election of Councillors	157-162
Imposition of Charges	162
Municipal Council of Mombasa—Assessment Rate	162
Township of Malindi—Supplementary Valuation Roll	162
Trade Marks	163
Bankruptcies	164, 165
The Companies Ordinance	166
The Marriage Ordinance—Licensing of Place of Worship	166
The Trade Unions Ordinance—Registration	167
The Societies Ordinance—Registrations, etc.	167
Probate and Administration	167, 168
The Fraudulent Transfer of Businesses Ordinance	168
Dissolution of Partnerships	168, 169
Revocation of Power of Attorney	169
Notice of Change of Name	169

SUPPLEMENT No. 10

Bills, 1960

SUPPLEMENT No. 11

Legislative Supplement

LEGAL NOTICE NO.	PAGE
74—The Crown Lands (Amendment and Miscellaneous Provisions) Ordinance, 1959—Appointment of day of Operation	185
75—The Agriculture (Scheduled Crops) (Prices) (No. 2) (Amendment) Order, 1960	185
76—The Boards of Governors for Government Schools (Amendment) Order, 1960	186
77—The African District Councils Ordinance, 1950—Prescribed Occupation	186
78—The Nanyuki Urban District Council (Public Markets) By-laws, 1959	187
79—The Nyeri Urban District Council (Public Markets) By-laws, 1959	192
80—The Thomson's Falls Urban District Council (Public Markets) By-laws, 1959	197
81—The Naivasha Urban District Council (Licensing of Premises and Traders) By-laws, 1959	202
82—The Naivasha Urban District Council Dangerous and Offensive Trades) By-laws, 1959	206
83—The Traders Licensing Ordinance, 1951—Exemption	207
84—The African Courts (Hearing of Charges) (No. 4) Order, 1960	207
85—The Detained and Restricted Persons Regulations, 1960—Place of Detention	208

NJUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

Telephone: 24304

Tuskar House,
Second Floor,
Ronald Ngala Street,
(Formerly Duke Street)
P.O. Box 46693,
NAIROBI, Kenya.

OUR REF: PG/K/393

YOUR REF:

29th July, 1974

Messrs. Hamilton Harrison & Mathews,
Advocates,
Esso House
Nairobi

Dear Sirs,

RE: The Co-Operative Bank
of Kenya Ltd. and Kasarini
Farmers Co-Operative Society Ltd.
Purchase of Kasarini Estate

We refer to the Co-Operative Bank's letter to our clients, Kasarini Farmers Co-operative Ltd. dated 24th July 1974 and copied to yourselves among others in which the Co-Operative Bank confirmed approval of our client's application for a loan of Shs. 4,050,000/= to enable our clients to purchase Kasarini Estate. The writer did subsequently meet your Mr. Ndungu and confirmed that the Agreement of sale between Kasarini Estates Ltd. and Zakariah Kimemia Gakunju and four others who are incidentally members of Kasarini Co-Operative Society. Specifically provides that Messrs. Gakunju and others will purchase the total shareholding of Kasarini Estate Ltd and not the land. The Exchange Control permission to remit the total purchase price to Switzerland was granted on the basis of the agreement of sale.

Kasarini Estates Ltd have indicated that they will not agree to transfer the land to the Co-operative Society and that they will insist on the transfer of the total shares in terms of the Agreement of sale. Your client's Bank main concern, we reckon, is to obtain a mortgage of the Estate and also to ensure that the loan goes to Kasarini Farmers Co-Operative Society Ltd. On the basis of the above, the writer did put forward the following suggestions to your Mr. Ndungu. That Kasarini Estates Limited will transfer all shares in the Company to Messrs. Gakunju & Four others to hold upon trust for Kasarini Estates Ltd. Then Kasarini Estates Ltd. will give notice to Messrs. Gakunju & Others to hold the shares for the benefit of Kasarini Co-Operative Society Ltd. The co-operative Society will then mortgage the same to your client Bank.

By dealing with the transaction as suggested our clients will save an enormous amount of Stamp Duty. Your client Bank will get the mortgage of the Estate and in our view there will be no infringement of the Co-operative Bank Rules. Further there will be no breach of the agreement of sale and the Exchange Control permission.

.....2/con.

(5) 43

The writer understood from your Mr. Ndungu that our above suggestions will have to be put before Mr. Slade for opinion and we should be grateful if on receipt of this letter you could please attend to this aspect of the matter at your earliest convenience.

We confirm that the other members of the Co-operative Society are the wives of the Signatories to the Agreement of sale.

Yours faithfully,
NJUGI & GICHUKIA ADVOCATES

P. GICHUKIA

c.c. Messrs. Gakunju & Others
Nairobi.

Messrs. Robson Harris & Co.,
Advocates
Lullington House,
Nairobi.

NJUGI & GICHUKIA
ADVOCATES

T. M. NJUGI
P. GICHUKIA

Telephone 21504

Tusker House,
Second Floor,
Ronald Ngala Street,
(Formerly Duke Street)
P.O. Box 14693,
NAIROBI, Kenya.

OUR REF: PG/K/393

YOUR REF:

12th April, 1974

Messrs. Kasarini Estates Limited,
P.O. Box 49443,
Nairobi

Dear Sirs,

RE: Proposed Sale of 50,000 Shares of Shs. 20/= each held in Kasarini Estates Ltd. to Kabogo Kangetha and others

We act for Messrs. Kabogo Kangetha and others. Your letter of 19th March, 1974 addressed to our above named clients have been placed in our hands with instructions to writs to you as follows:

Our clients will purchase the total shareholding at a price of K. £300,000. The total purchase price shall be paid in full in switzerland subject however to the Central Bank of Kenya granting the necessary consent.

Condition 2 of the terms and conditions contained in your letter of offer is acceptable to our clients.

As regards conditions 3 and 4, our clients suggest that vacant possession be given on 31st July, 1974 which in effect will be the completion date and that our client be responsible for all the expenses on the farm as from 1st July, 1974.

Our clients will pay 10% of the purchase price on signing the agreement of sale.

If the above conditions are acceptable to yourselves, please instruct your advocates to prepare draft Agreement of sale for approval by ourselves.

Yours faithfully,
NJUGI & GICHUKIA ADVOCATES

P. GICHUKIA

c.c. Kabogo Kangetha & Others
P.O. Box 74414
Nairobi.

WHEN REPLYING PLEASE QUOTE OUR REFERENCE

71

MNM-5

(18)

NJUGI & GICHUKIA
ADVOCATES

T. N. NJUGI
P. GICHUKIA

Telephone: 24304

Tusker House,
Second Floor,
Ronald Ngala Street,
(Formerly Duke Street)
P.O. Box 48693,
NAIROBI, Kenya.

OUR REF: PG/K/393

YOUR REF: K/153/1

3rd May, 1974

M/s. Robson, Harris & Co.,
Advocates,
Lullington House,
NAIROBI.

Dear Sirs,

Kasarini Estates Ltd. to Kabogo Kangethe & Others

We acknowledge receipt of your letter of 30th April, 1974 the contents of which are noted.

You will no doubt appreciate that the question of transfer of funds from Kenya to Overseas is indeed a difficult one. Our clients therefore need ample time to negotiate the transfer of the funds with the Central Bank of Kenya. They will certainly be required to produce the Agreement of Sale. In this connection, we would suggest that you arrange to let us have the Agreement of Sale for execution by our clients as urgently as possible if the transaction is going to be completed on the 31st of May 1974.

Yours faithfully,
NJUGI & GICHUKIA ADVOCATES,

P. GICHUKIA

c.c. Kabogo Kangethe & Others,
P.O. Box 74414,
Nairobi.

This is the exhibit marked "MNM7" referred to in the annexed Affidavit of MARGARET NYOKABI MBUGUA Sworn

File No. [illegible]

before me this 16th day of SEPTEMBER 2013

at Nairobi.

Commissioner for Oaths

L.R. 7153/2 - KASARANI ESTATE - 212 ACRES

Please refer to my minute at (6) and subsequent discussion which we held in your office together with Mr. Pandya. On Monday 30th September 1974 three representatives of Kasarani Co-operative Society came to see me. They were M/s. Zakaria Gakunju (Chairman), Samuel Githegi (Vice Chairman) and Mbugua Mwangi (Treasurer). I informed them that the Government was interested in obtaining 225 acres from L.R. 7153/2 which their Co-operative Society was intending to buy. It was the wish of the Government that before they buy this land they should enter into a written agreement with the Government to the effect that after they have purchased this land they will sell to the Government 225 acres at the market price at the time the Government purchases the land possibly late next year. I further informed them that the quoted purchase price of 5.4 million shillings is considered by Government Valuers as excessive. In the opinion of Government Valuers the land and improvements should not be sold for a price exceeding 4.5 million shillings. While the 3 representatives of the Co-operative have no objection to the Government taking over 225 acres they requested me to put the Government wishes in writing to the Co-operative so that this matter can be discussed with the other 7 members of the Co-operative Society. These 3 representatives felt that they did not have full mandate to commit the other group but they thought that it is likely that there will be no difficulties in convincing the other 7 that it is appropriate to agree to sell 225 acres to the Government.

On Tuesday the 1st October, accompanied by Mr. Mbugua Mwangi who is the Treasurer of this Co-operative I visited Kasarani Estate. Bulk of the land is covered with coffee and there are 3 dams which are used for irrigating coffee. Whichever part of the farm the Government takes from them for residential development it will be necessary to up-root considerable number of coffee trees. I consider that before making decision on the best portion to take for Government residential development it may be a good idea to seek the recommendations of officials of Physical Planning Department. As far as possible areas occupied by permanent buildings and coffee mill and factory should be avoided. Subject to your views I recommend that for now a letter should be addressed to the Co-operative informing them that the Government intends to acquire either by mutual agreement or compulsory acquisition an area of 225 acres from this Estate for public purposes. In addition the Co-operative should be advised that the proposed purchase price is excessive and that this Department will not recommend the purchase of that land at that price to Kiambu Land Control Board. The Co-operative should therefore negotiate the purchase price with the Estate owners with a view of reducing its purchase price.

Please let me have your instructions.

D.Z.U.

September, 1974

C/Lands

5

13 6

60

File 2455/6

73

L.R. 7153/2, NAGARINI ESTATE - 912 ACRES

The original file is missing and a temporary cover has been opened to enable the Department to deal with the application to the Board for the purchase of this Estate.

An African Co-operative consisting 10 members wish to purchase this Estate. As the price exceeds £270,000 I referred it to Mr. Kydd for valuation. He has held discussion with Mr. Pandya and they jointly consider that the price asked for by the owners i.e. £270,000 is too high. They consider a price of £225,000 to be more realistic.

Mr. Kydd will take 3 to 4 days to produce a detailed valuation report. According to Mr. Pandya the Government would like to purchase this farm for future housing and if the whole farm cannot be purchased Mr. Pandya has suggested that a 225 acre portion be purchased by the Government.

The African Co-operative has already paid the owners a deposit of Rs. 600,000/-. Since June 1974 this Co-operative took over the management of the estate and meets all the farm expenses including the salaries of the workers. The African Co-operative has not yet received any monies from the sale of coffee. This farm has an area of 560 acres covered with coffee.

Since the Government has no money to acquire this Estate in the next few years and since the owners are no longer managing the farm I suggest that the owners should be permitted to sell the Estate to the African Co-operative less the 225 acres which should be sold to the Government for future housing estate. Alternatively the Treasury can raise the £225,000 the Government can buy the Estate and then lease it to the African Co-operative until the Estate is for housing. This latter suggestion may not appeal to the Co-operative but I am sure the Co-operative will be happy to the Estate less 225 acres rather than a lease of uncertain

Your instructions please.

D.C.L.

1974.

EV 16 EV 2 (11)

DATED 31 ST. DECEMBER, 1974

KASARINI ESTATES LIMITED

and

KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED

A G R E E M E N T

28(2)

AN AGREEMENT made the 31st day of December 1974 BETWEEN KASARINI ESTATES LIMITED a limited liability company incorporated in England and having its registered office at Grimsby England aforesaid (hereinafter called "the Vendor" which expression shall where the context so admits include its successors in title and assigns) of the one part and KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED a body corporate registered under the Co-Operative Society Act Cap.490 of the Laws of Kenya of Post Office Box Number 74414 Nairobi in the Republic of Kenya (hereinafter called "the Purchaser" which expression shall where the context so admits include its successors and assigns) of the other part

W H E R E A S the Vendor is seised for an estate in fee simple subject as hereinafter provided but otherwise free from encumbrances of all that piece or parcel of land more particularly described in the First Schedule hereto and known as Land Reference Number 7153/2 together with the buildings and improvements being thereon or on some part thereof including the 1974/1975 coffee crop whether picked or still on the trees (all of which land buildings and improvements are together hereinafter called "Kasarini Estate") and has agreed to sell the same to the Purchaser together with the movable assets specified in the Second Schedule hereto (hereinafter referred to as "the Movables")

for the consideration and subject to the terms and conditions hereinafter set forth

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

1. THE Vendor shall sell and the Purchaser shall purchase Kasarini Estate and the Movables for the sum of Kenya Shillings Four million seven hundred and forty-seven thousand two hundred and ninety-nine and Cents sixty (K.Shs.4,747,299.60) allocated as to Kenya Shillings Four million five hundred thousand (K.Shs.4,500,000.00) for Kasarini Estate and Kenya Shillings Two hundred and forty-seven thousand two hundred and ninety-nine Cents sixty (247,299.60) for the Movables (being the book value thereof as at the date of transfer hereinafter stipulated)

2. THE date of transfer shall be the 31st day of December 1974 upon which vacant possession of Kasarini Estate shall be given and the Movables shall pass by delivery

3. AS from the date of transfer the Purchaser shall be responsible for the payment of all outgoings and shall be entitled to the receipt of all rents and profits

4. THE whole of the consideration shall be due and payable to the Vendor on the date of transfer hereinbefore stipulated

5. THE parties shall each bear the cost of their own Advocates but the Purchaser shall be responsible for all Stamp Duties registration fees and the like

6. THE Purchaser having been give inspection of the

muniments of title of the said land described in the First Schedule hereto shall be deemed to have notice of all matters affecting the same whether or not such matters are referred to in the First Schedule hereto

THE FIRST SCHEDULE

Description Of Land

All that piece or parcel of land comprising 368.67 hectares or thereabouts situate North of Nairobi City in the Kiambu District in the said Republic of Kenya being Land Reference Number 7153/2 which said piece or parcel of land is delineated and described on the Plan annexed to a Conveyance dated the 17th day of May 1960 (registered in the Government Lands Registry at Nairobi in Volume N.44 Folio 164/1 File 13705 and more particularly on Land Survey Plan No. 74226 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red together with all buildings and improvements erected and being thereon subject to the easements rights and privileges granted by and to the performance and observance of the covenant on the part of the original Kasarini Estates Limited contained in an Indenture of Conveyance dated the 10th day of July 1959 and made between the original Kasarini Estates Limited of the one part and Sydney Alec Chambers (hereinafter

described) of the other part registered as aforesaid in Volume N.44 Folio 2/1 and subject also to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder

THE SECOND SCHEDULE

Particulars of Movables

	K.Shs.
Machinery, Plant, Implements and Motor Vehicles	136,292.80
Furniture, Fittings and Equipment	23,272.80
Trade Investment	74,110.00
Deposits	13,624.00
	247,299.60

AS WITNESS the hands of the duly authorized agents of the parties the day and year first before written

SIGNED by the duly authorized representative of the Vendor in the presence of:-

JOSEPH N. KARUGIA
P.O. Box 49443
NAIROBI

SIGNED by the duly authorized representative of the Purchaser in the presence of:-



EV 16326 (6)

31 Dec 74 1200 4500/11 18 Ab/12

THIS INDENTURE is made the 30th day of December One thousand Nine hundred and Seventy-four BETWEEN KASARINI ESTATES LIMITED a limited liability Company incorporated in England and having its registered Office at Grimsby in England (hereinafter called "the Vendor" which expression shall where the context so admits include its successors and assigns) of the one part and KASARINI FARMERS CO-OPERATIVE SOCIETY LIMITED a body corporate registered under the Co-Operative Societies Act (Chapter 490) of the Laws of Kenya and of Post Office Box Number 74414 Nairobi in the Republic of Kenya (hereinafter called "the Purchaser" which expression shall where the context so admits include its successors and assigns) of the other part:

WHEREAS:

(A) By a Conveyance (hereinafter called "the Conveyance") dated the Seventeenth day of May One thousand Nine hundred and Sixty (registered in the Government Lands Registry at Nairobi in Volume N.44 Folio 164/1 File 13705 and made between Kasarini Estates Limited (therein described and hereinafter called "the original Kasarini Estates Limited") of the first part Peter Mervyn Johnson and George Rhoades Smith (therein described) of the second part and Kasarini Estates (1959) Limited (therein described) of the third part for the consideration therein mentioned ALL THAT piece or parcel of land comprising Three Hundred and Sixty Eight decimal Six Seven Hectares (368.67 Hec.) (912 Acres) or thereabouts situate

LCB — 10-Sep-16

This is the Exhibit marked "MNM1" referred to in the annexed Affidavit / Declaration of Mr. Mohamed Mohkabi Mbugua Sworn Declared before me this 6th day of Sept 2016 at Nairobi

Commissioner for Oaths & Notary Public

Agreement for Sale 30/12/74

North of Nairobi City in the Kiambu District of the said Republic of Kenya being Land Reference Number 7153/2 which said piece or parcel of land is delineated and described on the plan annexed to the Conveyance and more particularly on Land Survey Plan Number 74226 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red was conveyed unto the said Kasarini Estates (1959) Limited for an estate in fee simple TOGETHER WITH all the building and improvements erected and being thereon SUBJECT to the easements rights and privileges granted by and to the performance and observance of the covenant on the part of the original Kasarini Estates Limited contained in an Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine and made between the original Kasarini Estates Limited of the one part and Sydney Alec Chambers (therein described) of the other part registered as aforesaid in Volume R.44 Folio 2/1 AND SUBJECT ALSO to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder AND SUBJECT ALSO TO AND WITH THE BENEFIT OF the covenant on the part of the said Sydney Alec Chambers contained in the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine

By virtue of divers mesne assignments acts in the law and events and ultimately by an Indenture dated the Nineteenth day of August One thousand Nine hundred and Sixty-three and made between the said Kasarini Estates (1959) Limited of the first part the said Peter Mervyn Jenkins of the second part and

the Vendor of the third part (registered in the Government Lands Registry at Nairobi in Volume M.44 Folio 164/3 File 13705) the said piece or parcel of land hereinbefore more particularly described and known as Land Reference Number 7153/2 together with all the buildings and improvements erected and being thereon was conveyed unto the Vendor for the consideration therein mentioned subject as aforesaid but otherwise free from all encumbrances

(C) The Vendor has agreed with the Purchaser for the sale to it the Purchaser of the said piece or parcel of land for the price or sum of Kenya Shillings Four Million Five Hundred thousand (K.Shs.4,500,000/-)

NOW THIS INDENTURE WITNESSETH as follows:

1. THAT in pursuance of the said Agreement and in consideration of the sum of Kenya Shillings Four Million Five Hundred thousand (K.Shs.4,500,000/-) paid to the Vendor by the Purchaser on or before the execution hereof (the receipt of which sum the Vendor hereby acknowledges) the Vendor as Beneficial Owner HEREBY GRANTS AND CONVEYS UNTO the Purchaser ALL THAT piece or parcel of land hereinbefore more particularly described and known as Land Reference Number 7153/2 TOGETHER WITH all the buildings and improvements erected and being thereon TO HOLD the same unto the Purchaser for an estate in fee simple SUBJECT to the said easements rights and privileges granted by the said Indenture of Conveyance dated the Tenth day of July One thousand Nine Hundred and Fifty-nine and to the performance and observance of the covenant on the part of the

original Kasarini Estates Limited therein contained and SUBJECT ALSO to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder and SUBJECT FURTHER TO AND WITH THE BENEFIT OF the covenant on the part of the said Sydney Alec Chambers contained in the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine

2. THE Purchaser HEREBY COVENANTS with the Vendor that it the Purchaser will henceforth perform and observe the covenants on the part of the original Kasarini Estates Limited contained in the said Indenture of Conveyance dated the Tenth day of July One thousand Nine hundred and Fifty-nine AND will indemnify and keep indemnified the Vendor and its estate and effects from and against all actions and demands on account of the same.

IN WITNESS WHEREOF the Vendor and the Purchaser have caused their respective Common Seals to be hereunto affixed the day and year first before written.

THE COMMON SEAL of the Vendor was hereunto affixed in the presence of:

DIRECTOR

DIRECTOR

THE COMMON SEAL of the Purchaser was hereunto affixed in the presence of:

CHAIRMAN

SECRETARY

149/43 14 24/245
34/39 (Laikipia)

ORIGINAL
REPUBLIC OF KENYA *75/4

OFFICIAL RECEIPT C 8458682

Station Nab Date 11/12 20 15

RECEIVED from Francis Nyagoha

Shillings Three hundred

cents only =

on account of 7153/24 12825

Vote Head Dep 36

Sub-Head Rev

Item Search fee

Cash Cheque No. Cash

KSh 300/= cts

Ac. No. 36/4202/2

Signature of Officer receiving remittance

FORM 6

GPK (SP) 7469—10m B...

EV 11
EV 12
EV 13
EV 14
EV 15

Receipts for purchase of maps from survey of Kenya

ORIGINAL

REPUBLIC OF KENYA

OFFICIAL RECEIPT C/ 8458710

Station Nyb Date 11/12 20 15

RECEIVED from Francis Nyugsha

Shillings Two hundred

cents Only=

on account of 149/43

Vote Head Dep 36

Sub-Head Rev

Item Print fee

Cash Cheque No. Cash

KSh 200/- cts

Ac. No. 036/4202/2

Signature of Officer receiving Importance

Director of [illegible]

FORM

GPK (SP) 7469—10m B

ORIGINAL

REPUBLIC OF KENYA

OFFICIAL RECEIPT B 4477649

Station: NB Date: 7/5/2018

RECEIVED from: [illegible] Kibiri

Shillings: [illegible] only

on account of: [illegible] 9/2 77/78

Vote Head: [illegible]

Sub-Head: [illegible]

Item: [illegible]

Cash: [illegible]

Cheque No.: [illegible]

Signature of Officer receiving remittance

FOR

GPK (SP) 7469 – 10m Bks – 04/2015

For: DIRECTOR OF SURVEY

EV 15 (201) 87

This is the exhibit marked "MNM 13" referred to in the annexed affidavit of MARGARET NYUKABI MBUGUA Sworn before me this 19th day of SEPTEMBER 20 B at Nairobi

MINISTRY OF LANDS AND SETTLEMENT

Name: "LANDS"
Phone: 27471-ext.
Replying please quote
No. 65100/36
and date

DEPARTMENT OF LANDS
P.O. Box 30089, NAIROBI

19th March, 19 79

The Secretary,
Kasarani Farmers Co-Operative Society Ltd,
P.O. Box 75155,
NAIROBI

PROPOSED CONSOLIDATED AND SUB-DIVISION OF L.R. NO. 7153/1 and 7153/2

I refer to your letters dated 30th January, 1979 and dated 14th March, 1979 and enclose herewith one copy of the subdivisional plan duly approved, subject to the following conditions:-

1. Surrender to the Government free of charge the sites earmarked for Nursery School, Church and Primary School.

2. Surrender to the Government free of charge all road reserves.

3. Construction of the said road reserves to a standard acceptable to the Local Authority.

JSKM/am

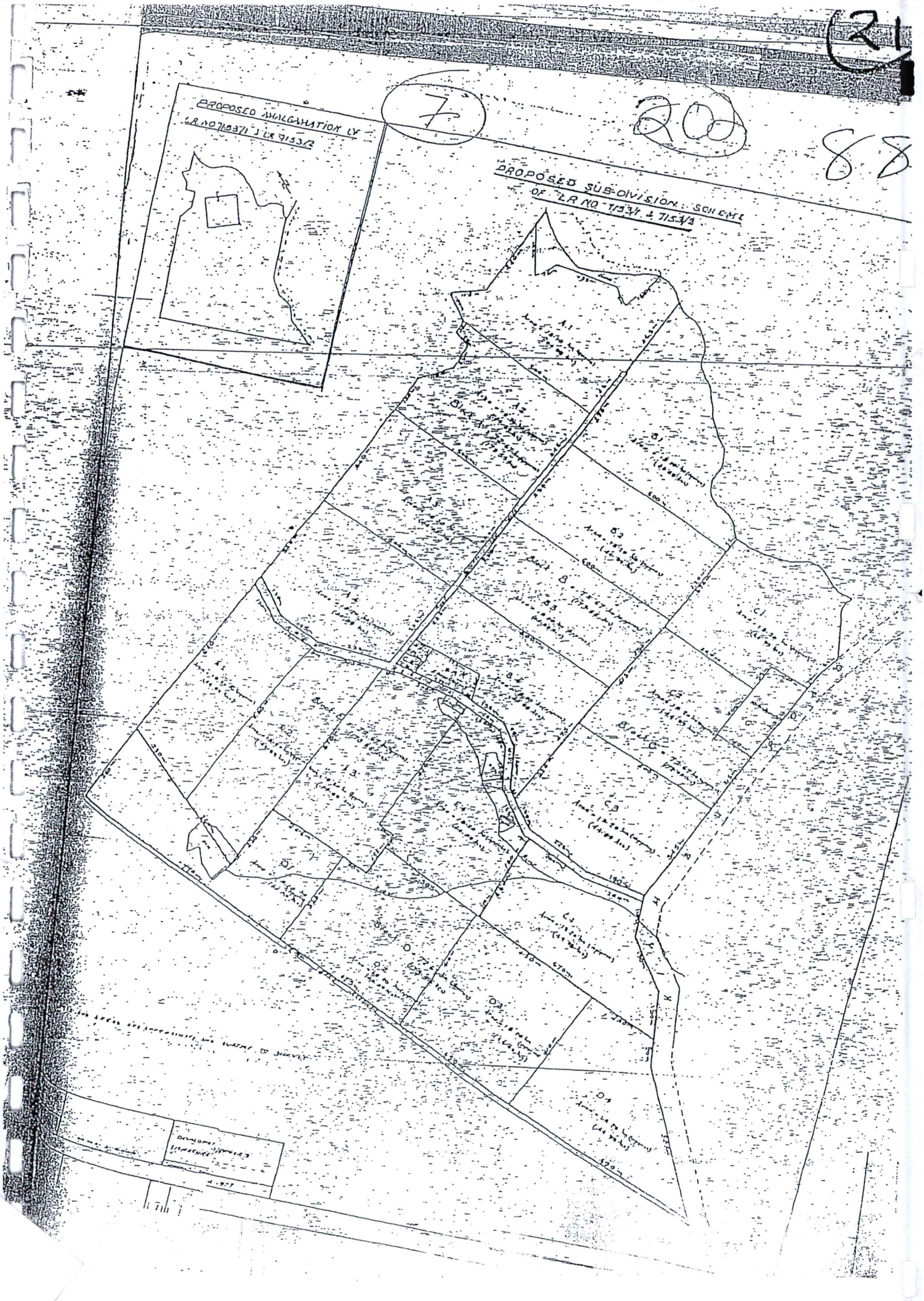
(J. S. K. Kutitu)
for: COMMISSIONER OF LANDS

The Town Clerk,
Kiambu Town Council,
P.O. Box 176,
Kiambu - with a plan.

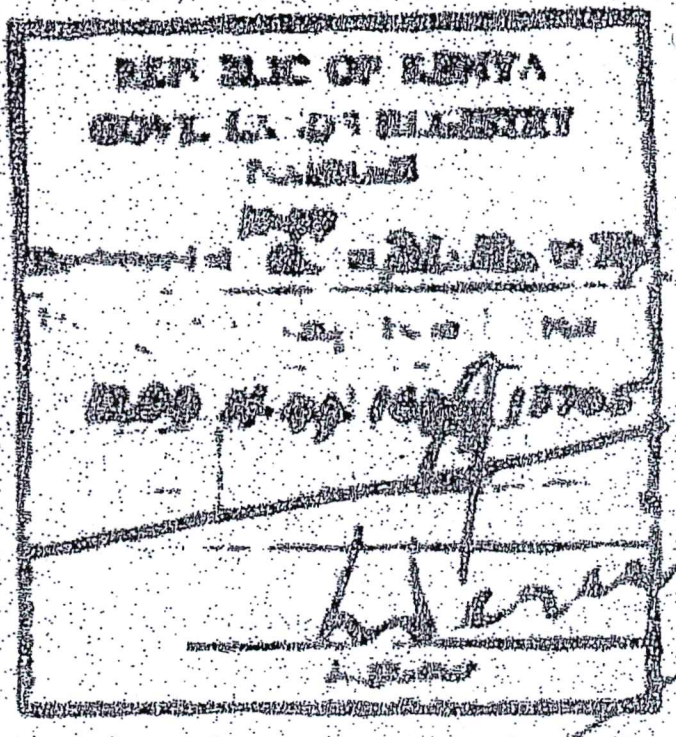
The Director of Surveys,
Nairobi (with a plan)

The Director of Physocal Planning
Nairobi with a plan)

The Land Registrar,
P.O. Box 291,
Kiambu


PROPOSED AMALGAMATION OF L.R. NO. 7153/1 & L.R. 7153/2
PROPOSED SUB-DIVISION SCHEME OF L.R NO. 7153/1 & 7153/2

10



PRESENTED FOR REGISTRATION

THIS INDENTURE is made the Nineteenth day of August One Thousand Nine Hundred and Sixty-three Between KASARINI ESTATES (1963) LIMITED a limited liability Company incorporated in Kenya and having its registered office at Nairobi in Kenya (hereinafter called "the Vendor" which expression shall where the context so admits include its successors and assigns) of the first part PETER MERVYN JOHNSON of Nairobi aforesaid Chartered Accountant (hereinafter called "the Liquidator" which expression shall where the context so admits include his successor or successors in office as Liquidator or Liquidators of the Vendors his and their assigns) of the second part and KASARINI ESTATES LIMITED a limited liability Company incorporated in England and having its registered office at Grimsby in England (hereinafter called "the Purchaser" which expression shall where the context so admits include its successors and assigns) of the third part.

WHEREAS:

(1) At the date of the passing of the resolution next hereinafter recited the Vendor was seised of the premises hereinafter described and intended to be hereby conveyed for an estate in fee simple in possession subject as hereinafter mentioned and had agreed with the Purchaser for the sale of the same premises to the Purchaser for a like estate subject as aforesaid and upon and subject to the terms and conditions hereinafter contained or implied but otherwise free from encumbrances at the price or sum of Shillings Two Million Three Hundred and Four Thousand One Hundred and Seventy (Sh. 2,304,170/-) but no part of the said purchase price has yet been paid to the Vendor and no assurance of the said premises has yet been executed by the Vendor in favour of the Purchaser in pursuance of the said agreement.

(2) At an Extraordinary General Meeting of the members of the Vendor duly convened and held on the Fourteenth day of June One Thousand Nine Hundred and Sixty-three a Special Resolution was duly passed that the Vendor should be wound up voluntarily and that the Liquidator should be and he thereby was appointed Liquidator of the Vendor for the purposes of such winding up.

(3) The Liquidator has agreed with the Purchaser to complete the said agreement in manner hereinafter appearing.