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4/5/23

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT (SECOND SESSION)


PUBLIC PETITIONS COMMITTEE

REPORT ON -

(PUBLIC PETITION NO. 7 OF 2022)

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

APRIL, 2023

 THE NATIONAL ASSEMBLY PAPERS Laid	
DATE: 04 MAY 2023	
DAY: Thursday	
TABLED BY:	Hon. Nimrod Mbei (Chair-person, Public Petitions Committee)
CLERK-AT THE TABLE:	Joyce Kemerele

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

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CHAIRPERSON'S FOREWORD

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

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

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

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

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

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

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



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

PART ONE

1. PREFACE

1.1 Establishment and Mandate of the Committee

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

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

1.2 Committee Membership

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

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.
Kitui East Constituency

United Democratic Alliance (UDA)

Vice Chairperson

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

Independent

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

Wiper Democratic Movement-Kenya (WDM-K)

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency

Wiper Democratic Movement-Kenya (WDM-K)

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency

Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency

United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency

United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.
Awendo Constituency

Orange Democratic Movement (ODM)

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

Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South

Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.
Machakos Town Constituency

Maendeleo Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency

Wiper Democratic Movement-Kenya (WDM-K)

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency

Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency

United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency

Wiper Democratic Movement-Kenya (WDM-K)

1.3 Committee Secretariat

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

Lead Clerk/Team Leader

Mr. Samuel Kalama
Principal Clerk Assistant II

Ms. Anne Shibuko
First Clerk Assistant

Ms. Miriam Modo
First Clerk Assistant

Mr. Willis Owino Obiero
Clerk Assistant III

Mr. Shadrach Omondi
Legal Counsel II

Ms. Patricia Gichane
Legal Counsel II

Mr. Martin Sigei
Research Officer III

Mr. Andrew Shangirai
Principal Sergeant at Arms

Mr. Yezel Jilo
Sergeant at Arms

Ms. Lilian Mburugu
Media Relations Officer

PART TWO

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

2.1 INTRODUCTION

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

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

2.2 PETITIONERS' PRAYERS

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

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

PART THREE

3. STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 THE PETITIONERS

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

3.1.1 The Structure of Cytonn Investments Management PLC

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

3.1.2 Challenges that faced Cytonn Investments

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

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

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

31. The Petitioners further prayed that -

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

3.2 SUBMISSION BY CYTONN INVESTMENTS MANAGEMENT

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

Background of Cytonn Investments

32. Cytonn Investment Management has the following arms -

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

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

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

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

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

Shareholders of Cytonn

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

Contracts signed by the investors

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

The role of the of CHYS and other SPVs

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

The status and plans of refund to investors

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

Products currently regulated by CMA

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

On the status of the real estate projects

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

Why Cytonn could not approach banks for funding the deficits

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

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

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

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

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

Insurance for the investments

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

Whether Cytonn continues to advertise their products

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

Proposals to address the issues in real estate development

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

3.3 THE CAPITAL MARKETS AUTHORITY

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

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

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

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

Application of Investor Compensation Fund (ICF)

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

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

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

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

69. Further, Regulation 69 requires that investors shall apply to the Authority for compensation from the Compensation Fund in cash or securities equal to the net loss following a pecuniary loss due to the failure of a stockbroker, dealer or an investment bank carrying out stock broking business or dealing operations, to meet its contractual obligations.
70. Based on the above provisions, investors in the CHYS are not entitled to benefit from the Investor Compensation Fund in case they suffer loss of their investment.

3.3 THE OFFICIAL RECEIVER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.4 SITE VISITS

The Alma

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





The Ridge

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



River Run Estates

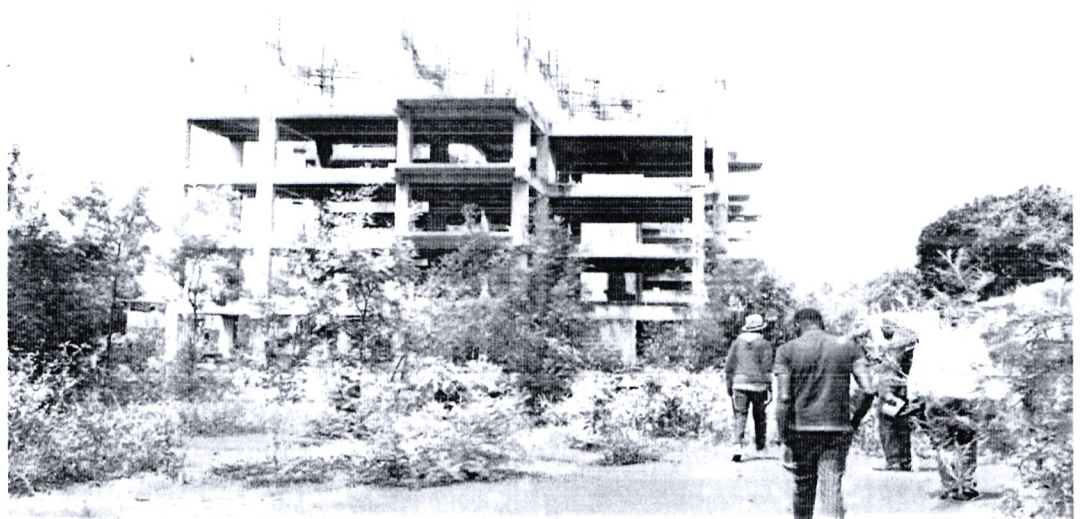
92. *River Run Estates* is a master-planned development to be undertaken on a 100-acre parcel, formerly a coffee farm on the leafy Ruiru slopes. This sloppy terrain is complimented by a retaining dam stretching over 8 km along the parcel's peripheral and a river cutting across a section of it. The development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

93. There was only a site House at the parcel of land as the project had stalled since 2020.



Taraji

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





Kilimani

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



COMMITTEE OBSERVATIONS

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

THAT –

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

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

105. CMA engaged Cytonn requiring it to procure a license to allow it to operate the service and products that falls within the purview of the Capital Markets (Collective Investment Schemes) Regulations, 2001 and also apply for a fund manager license under the Capital Markets (Licensing Requirements) (General) Regulations, 2002. To this end, Cytonn did not procure the required licences.

106. Cytonn High Yields Solution (CYHS) was an unregulated product with the promise of guaranteed returns contrary to the provisions of the *Capital Market (Securities) (Public Offers, Listings and Disclosure) Regulations, 2002* and specifically Regulations 20 and 21. The Regulations provide that -

“a private offer is that which is offered to not more than 100 persons or the securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer”.

107. CMA engaged CIMP on the need to convert the unregulated CHYS to a regulated fund i.e. Cytonn High Yield Fund (CYHF), which they applied for the registration and registered by CMA on March 22, 2019.

108. A road map for the conversion was developed, where the clients in the CHYS would convert into a regulated CHYF and the eventual wind up of CHYS. However, the same was not implemented as agreed prompting the CMA to issue a directive vide a letter dated January 4, 2020 for CHYS to cease operation by January 31, 2020. CIMP threatened to sue the Authority and issued a demand letter, seeking withdrawal of the Authority’s directive. After several engagements with CIMP, the Authority reviewed its earlier directive and granted CIMP a three-month extension to allow for the transition of the CHYS to CHYF via a letter dated January 20, 2020. Upon lapse of the extended period, CIMP failed to effect the transition. CIMP related persons have filed several matters in court challenging various directives and mandate of the Authority.

109. Section 18 of the Capital Markets Act and Regulation 64 of the Capital Marketing (Licensing Requirements) (General) Regulations 2002 provides that investors in Capital Markets products and/or services are entitled for compensation from the Fund if they suffer pecuniary loss resulting from the failure of a licensed stockbroker or dealer, to meet his contractual obligations and paying beneficiaries

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

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

PART FOUR

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

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

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

111. The Committee -

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

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

112. The Committee -

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

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

113. The Committee -

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

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

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

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

PART FIVE

5. COMMITTEE RECOMMENDATIONS

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

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



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

DATE..... 03/05/2023



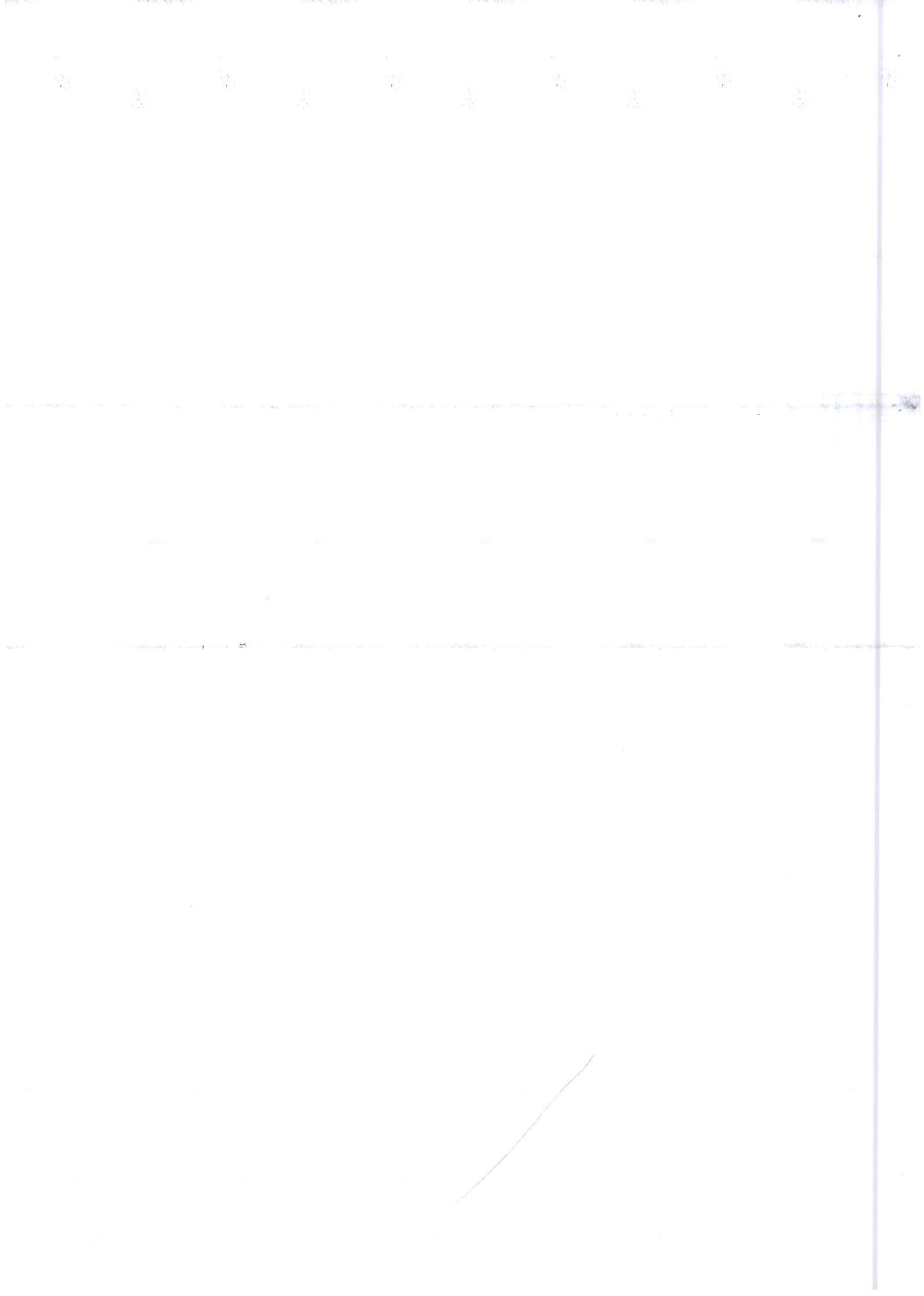
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION
PUBLIC PETITIONS COMMITTEE

ADOPTION SCHEDULE OF THE REPORT ON THE CONSIDERATION OF THE PROBABLE
LOSS OF INVESTMENTS IN CYTONN HIGH YIELD SOLUTIONS PLATFORM

DATE:

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this **Report on the consideration of the Probable Loss of Investments in Cytonn High Yield Solutions Platform** to affirm our approval and confirm its accuracy, validity and authenticity:-

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





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE EIGHTH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON WEDNESDAY, DECEMBER 14, 2022, HILTON GARDEN INN HOTEL AT
9:30 AM

PRESENT

- | | | |
|--|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. Ernest Ogesi Kivai, M.P. | | |
| 5. Hon. Maisori Marwa Kitayama, M.P. | | |
| 6. Hon. Edith Vethi Nyenze, M.P. | | |
| 7. Hon. Caleb Mutiso Mule, M.P. | | |
| 8. Hon. Bernard Muriuki Nebart, M.P. | | |
| 9. Hon. Peter Mbogho Shake, M.P. | | |
| 10. Hon. Sloya Clement Logova, M.P. | | |
| 11. Hon. John Bwire Okano, M.P. | | |

ABSENT WITH APOLOGIES.

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. John Walter Owino, M.P.
3. Hon. Suzanne Ndunge Kiamba, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.

IN-ATTENDANCE

- | | | |
|--------------------------------|---|-------------------------------|
| 1. Hon. Samuel Atandi | - | MP, Alego Usonga Constituency |
| 2. Mrs. (Amb.) Josephine Awuor | - | Petitioner |
| 3. Mrs. Caroline Atieno | - | Petitioner |
| 4. Mr. Omondi Abonyo | - | Petitioner |

SECRETARIAT

1. Mr. Samuel Kalama	-	Principal Clerk Assistant II
2. Ms. Miriam Modo	-	Clerk Assistant II
3. Ms. Willis Obiero	-	Clerk Assistant III
4. Ms. Patricia Gichane	-	Legal Counsel II
5. Mr. Shadrack Omondi	-	Legal Counsel II
6. Mr. Martin Sigei	-	Research Officer III
7. Ms. Eunice Jalang'o	-	Office Assistant
8. Mr. Yeziel Jilo	-	Serjeant-At-Arms

MIN./PPETC/2022/37: PRELIMINARIES

The Chairperson called the meeting to order at 9.30 a.m. and said the prayers. The Members of the Committee introduced themselves after which the Lead Clerk introduced the secretariat. The Petitioners also introduced themselves.

MIN./PPETC/2022/38: CONSIDERATION OF A PUBLIC PETITION REGARDING PROBABLE LOSS OF INVESTMENTS IN CYTONN HIGH YIELD SOLUTIONS PLATFORM

1) Brief from Legal Counsel

The Legal Counsel presented a brief on the Petition (*See attached Brief on the Petition*) as follows:

a) The Petition

- i. That Hon. Samuel Onunga Atandi, Member for Alego Usonga Constituency drew the attention of the House to a matter relating to probable loss of investments in Cytonn High Yield Solutions.
- ii. The Petition was presented on behalf of Mrs. (Amb) Josephine Awuor, Mrs. Caroline Atieno and Mr. Omondi Abonyo who averred that they entered into an investment arrangement with Cytonn Investments Ltd for purchase of one-bedroom apartments valued at Kshs. 7.8 million in a project named 'The Ridge' in Kiambu County on an off-plan arrangement.
- iii. However, despite making regular payments, the company has neither delivered the house nor any compensation for their investments.
- iv. The Petitioners therefore prayed that the National Assembly engages the company and its partners to clarify how they intend to fulfil the agreement.
- v. Further, the Petitioners sought the Committee intervention in holding the Chief Executive Officer, one Mr. Edwin Dande responsible for mismanagement of their hard earned

investments and secures a timely compensation/refund of the investors' money. Further, the Petitioners sought that the Capital Markets Authority be engaged to establish how they intend to operationalize the Investor Compensation Fund according to section 18(1) of the Capital Markets Act.

b) *Applicable legal provisions*

- vi. The Law of Contract Cap. 23 and Capital Markets Authority Act CAP 485A are the key legal provisions underpinning the Petition. That the Capital Markets Authority Act, CAP 485A provides for mechanism for redress for losses suffered by an investor owing to the acts or omissions of a person or entity that is regulated by the Authority.
- vii. The Committee would consider seeking more information from the Petitioners with regards to the relationship between them and the company. The Committee should also seek the views of the Cytonn Management Ltd and the Capital Markets Authority.

2) **Legal brief on the application of sub-judice rule**

- viii. The Committee took notice of a letter dated 2nd December 2022 from the management of Cytonn Investments Management Plc drawing the attention of the Committee to a case filed at the High Court in Milimani **Commercial Case No. E526 of 2022: Taaleri Afrika Rehasto II KY versus Cytonn Investments Partners Eleven LLP**. The Company claimed in the letter that the matter was subject of an ongoing suit hence the same was *sub-judice*.
- ix. With regards to the matter of *sub-judice*, the the Committee was informed as as follows:

a) *The Sub-judice Rule*

That the rule is set out in Standing Order 89 and is premised on the constitutional principle of separation of powers between Parliament and Judiciary. That for the rule to apply, the matter alleged to be pending before the Court or other legal body must be active and there must be a likelihood of prejudice to the fair determination of the issue under consideration if the House or its Committees refer to it in debate.

b) *Legal Opinion*

The Legal opinion was as follows:

- i. The House voluntarily imposes the Rule on itself, subject to the discretion of the Chair to allow reference to a matter notwithstanding that it is active and that there is a likelihood of prejudice to its fair determination by the courts.
- ii. The document provided by Cytonn indicates the Case Number which could not be found on the Kenya Law database, the alleged ruling has not been attached to the letter, neither

did the company attach the arbitration proceedings: and or the next hearing date of the matter.

- iii. Honorable Speakers of Parliament have given several directions on the application of the Rule and the reasonable exercise of discretion, which ought to guide the Committee in pursuing the Petition.

3) Submissions by the Petitioners

The Petitioners made their submissions before the Committee as follows:

a) Composition of Petitioners

- i. The Petitioners stated that while only three of them were recorded in the Petition during submission, there were thousands of other people affected by the same matter. The Petitioners were comprised of the investors who mobilized themselves after the Cytonn Investment Ltd failed to honour the agreement between the two parties.

b) The Structure of Cytonn Investments Management PLC

- ii. The main company in question is Cytonn Investments Management PLC. The Company had two (2) substituent companies (CHYS and CPN) 'not regulated', Special Purpose Vehicles (SPVs) (49) and other regulated entities either by Capital Market Authority (CMA) or Retirement Benefits Authority (RBA) (20) totalling to 71 entities.
- iii. Cytonn High Yield Solutions (CHYS) was registered in 2014. The Company invited the public to invest in their projects with an interest of 13 per cent, and this was approved by Capital Market Authority. Cytonn began to contravene certain sections of the Capital Markets Act, for example, exceeding the number of people on private offers, and amounts required. The CMA would engage them to inform them that they were going overboard.
- iv. The SPVs would get loans from CHYS and CPN and develop real estate projects like The Ridge along Kiambu Rd., The Alma in Ruaka, and Newtown in Athi River. From the developments, Cytonn would get money to pay back the CHYS and CPN for them to pay back creditors yet some of the projects did not even take off.

c) The Issues with Cytonn Investments

- v. The investments were in two forms. There were basic investments where investors would put their money and earn interest while others put in money to finance house projects in 'off-plan' arrangement. During the presentation, the following key issues were raised.
- vi. Cytonn went to court to seek insolvency after which an administrator was appointed by the court in October 2021 without informing creditors contrary to the Insolvency Act. The creditors in question were about 4,000 for both CPN and CHYS according to what they presented to court and about Kshs. 14 billion was owed.

d) Failure by the Administrator

- vii. The administrator put by the court was serving the interest of the company rather than the investors and the company claimed that CHYS and CPN had no assets to pay the creditors, yet all the projects done were from the creditors' money. The CHYS and CPN gave money to SPVs under loan notes agreement where they were supposed to buy land, put up apartments, sell them and give money to creditors. The creditors therefore could not reach their assets because they were managed by different legal entities which they did not sign a contract with. However, all the SPVs were owned by the same directors of Cytonn.

Mischief in financial reporting

- viii. There were mischiefs on the financial reporting of the company. The claim of facing financial problems during COVID-19 pandemic in 2020 was not true since they already had a negative working capital of Kshs. 5 billion in 2016. The financial statements of the company were erroneous, for example, a closing balance of Kshs. 5 billion in 2016 was recorded as one billion shillings of the opening balance in 2017 thus a loss of Kshs. 4 billion.
- ix. A South Africa based audit company dealing with credit rating rated Cytonn and found that the debt equity ratio of 86 per cent which was not good enough and recommended to them to diversify by getting long-term financing from international institutions which happened.

Incomplete projects and loss of money

- x. Since 2014, the Cytonn Investment Management Plc commenced only eight projects, and only one (The Amara) was complete. This was despite the company having about 49 SPVs suggesting that about 6 SPVs were doing a single project contrary to the agreement that an SPV does one project. According to the Petitioners, this bordered mischief and proved that the company was out to divert money. The Amara project, which was complete had ten villas which were sold, and they made a loss of Kshs. 500 million. The Petitioners claimed that the loss can be attributed to the CEO owning a villa there and giving the landowner two villas.
- xi. The Company, when doing their projects, engaged architects, designers, and other services which were paid huge sums of money despite the projects being incomplete. The monies were then written off and thus lost.

Contravention of guidelines

- xii. The Company did not follow its guidelines and invested in areas not allowed, for example, Cytonn Education Services, a plot in Westlands Estate bought by one of the directors, built a

public road in Ruaka going to the Alma, botched purchase of land in Machakos and Rongai, amounts advanced to landowners, and purchase of shares in Superior Homes.

The overriding role of the CEO

xiii. The management especially the CEO of Cytonn appeared fixated on taking money from the public. They claimed that the CEO himself had an overriding role in the company and real estate functions, for example, collecting money, looking for investments, developing property, marketing, consultancy, and legal services. This was orchestrated such that all these money would only get lost in the hands of the CEO.

Corporate guarantee

xiv. The corporate guarantee that they believed would assist them when things go wrong was equally amended without their knowledge which bordered fraud.

Prayers to the Committee

xv. The Petitioners submitted the following prayers to the Committee:

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

Committees Concerns

a) *Letter from Cytonn Investment Management Plc*

The Committee noted a letter written to the National Assembly by Cytonn dated 2nd December, 2022, informing the Committee of a pending case on the matter at the High Court in Milimani, Case No. E526 of 2022, did not have the Name of the Sender. The Committee also sought to know the status, the issues, and prayers in the case.

With regards to the letter, the Petitioners, through their Legal Counsel stated that they were not aware of that court case referred to by Cytonn, but they were aware of several other court cases pending before court. The said cases were of several nature, for example, about 30 cases by

Cytonn on defamation, administrative and insolvency cases for CHYS, Case No. E063 of 2021, and for CPN, Case No. E064 of 2021 to mention but a few.

b) The Nature of the issues raised in the Petition.

The Committee sought to understand the nature of the issues raised in the Petition as to whether they were criminal or civil.

With regards to the nature of the matters raised in the Petition, the Petitioner's legal counsel stated that the issues raised in the Petition were of both criminal and civil nature. For instance, the DCI, CMA and ODPP investigated the issues. Many of the investors recorded statements with the DCI and investigations began but along the way the three Directors of Cytonn obtained Court Orders ex-parte to stop the investigations by the three agencies, which orders still stand.

c) Investment agreements/contracts between investors and Cytonn

The Committee sought to have the contract documents signed between by Cytonn and the investors to be incorporated in the paperwork making up the Petition. The Committee also sought to establish whether there were any sale or purchase agreements for the real estate projects.

With regards to the contracts, the Petitioners' legal counsel undertook to avail contract agreements for the creditors/investors to the Committee.

With regards to sales and purchase agreements for real estates, the Petitioners stated that those clients who invested in real estate 'off-plan' arrangement were not issued with agreements instead, they were put under the CHYS.

d) Due diligence for the ownership of the real estates

The Committee sought to know whether there was any due diligence and document to ensure that the properties in question belonged to Cytonn.

The Petitioners stated that while different investors chose different investments, the CHYS after failing to refund Petitioners, moved them to CPN instead under loan notes agreement. However, since the houses were there, they continued investing relying on charge documents signed by CEO, chief accountant, and the legal person. Further, majority of investors were not buying houses.

e) Role of the commercial banks

The Committee sought to establish the role of commercial banks in the process of investments.

With regards to the role of the banks, the Petitioners stated that the banks lent money to the SPVs that constructed and developed the real estates. The Kenya Commercial Bank (KCB) loaned

funds to the SPV that was used to develop Sight Suites while SBM Bank lent an SPV that constructed "The Alma Homes."

f) Current financial statements and assets of the SPVs and Corporate Veil

The Committee inquired on the financial statement of the SPVs considering that indeed they had some projects completed already even if the company did not own it. The Committee sought to know the beneficiaries of assets/monies in the SPVs if the lifting of veil of corporation would be achieved.

The Petitioners stated that lifting the veil of corporation was proposed because the assets were owned by SPVs who bought them majorly using money from creditors, and they cannot get to the SPVs. With regards to the assets, the Petitioners stated that, for example, they could not get the register at the land registry prompting them to do an application for a preservation order on all assets to the insolvency court. However, the application was still pending in court.

With regards to preservation of assets, the Petitioners stated that an existing corporate guarantees on the agreements restricted investors. For example, the CHYS investors were told they are guaranteed because the parent company of Cytonn would pay them back. When the creditors requested to invoke the corporate guarantee, the company responded that the guarantee has been amended.

g) Shareholders of the companies

The Committee sought to know the shareholders of the CHYS, CPN, SPVs and any other affiliate company of Cytonn and whether they were registered companies in Kenya.

The Petitioners stated that all the SPVs were registered. Also, an inquiry by the DCI revealed that all the SPVs and affiliate companies had the same three shareholders (Mr. Edwin Dande, Ms. Patricia Wanjama, and Ms. Elizabeth Guku) who identified themselves as either director or partner. All the companies were under Cytonn Investments Management Plc umbrella.

h) Dispute mechanism methods in the agreements

The Committee sought to establish whether there was another dispute resolution mechanism under the investment agreements.

The Petitioners averred that there was an arbitration provision in the agreements. Further, several creditors had gone to court individually but a moratorium against all the cases made them stop after the Administrator was appointed by the Court. Therefore, the arbitration could not continue despite being provided for in the agreements.

i) Whether there were any beneficiaries of Cytonn Investments

The Committee inquired whether there were any people who benefitted from the investments out of the 4000 mentioned and whether there were any avenues the investors used to resolve the issues and their success state.

The Petitioners stated that indeed some of the investors were receiving their interests from 2014 and they were recycling them without many issues. It was until 2020 when the interests were not coming, and they were unable to access the principal amount also.

4) Committee Resolutions

The Committee resolved as follows:

- i. The legal counsel for the Petitioners to liaise with the Committee's legal counsel to establish the cases pending in court on the matters raised in the Petition;
- ii. The Petitioners' legal counsel to provide a categorized list of investors/creditors according to their investments;
- iii. The Petitioners' legal counsel to provide contract documents between the investors and Cytonn Investment Management Plc., and the corporate guarantee; and
- iv. The Committee to invite Cytonn Investments Management Plc including the Administrator to clarify on the issues as raised by the Petitioners.

MIN./PPETC/2022/39:

CONSIDERATION OF PUBLIC PETITION
REGARDING SAFEGUARDING THE ECONOMIC
AND SOCIAL WELFARE OF COMMUNITIES
LIVING NEXT TO FORESTS

1) Brief from Legal Counsel

The Legal Counsel presented the *brief (see attached Legal Brief)* on the Petition as follows:

a) The Petition

- i. The Hon. Julius Kipletting Ruto, Member for Kesses Constituency, on behalf of the forest communities and associations across the country drew the attention of the House to the issues of economic and social welfare of communities living next to forests.
- ii. The Petitioners sought the following prayers:
 - a) secure the rights and welfare of forest communities across the country.
 - b) review the Kenya Forest Service policy and ensure local communities are given priority to purchase at least 30% of forest resources and access to government procurement opportunities.

- c) ensure logging firms conduct corporate social responsibility activities to the forest communities to develop local infrastructure such as roads, schools, water piping and water catchment areas.
- d) to end the regular harassment of forest communities by Kenya Forest Officers.

b) Analysis of applicable legal provisions

- iii. The main issue in the petition is the protection of the interests and welfare of forest communities and associations, through benefit and incentive sharing, while sustainably exploiting forest resources.
- iv. The following legal provisions underpinned the Petition:

- a) The Forest Conservation and Management Act, 2016 where section 32 provides that all community forests are vested in the communities, and they may participate in conservation and management of public forests.
- b) Article 69 (1) and Article 66(2) on land use framework and need for investments in property to benefit local communities.

- v. Therefore, the Committee should interrogate:

- a) the Petitioner and the forest communities or associations in Kesses Constituency and as can be identified,
- b) The Ministry of Environment and Forestry on benefit sharing aspects of forest resource exploitation and existing policy,
- c) the Kenya Forest Service on forest concessions and forest agreements, number administered by local communities and how the concessions issued to foreign individuals benefit local communities pursuant to section 53 of the Forest Conservation and Management Act, 2016, and
- d) Uasin Gishu County on the implementation of the forestry policy and provisions on benefit sharing with local communities pursuant to section 53 of the Act.

2) Submissions by the Petitioner, the Hon. Julius Kipletting Ruto, MP

The Petition

- i. The Honorable Member presented to the Committee that the Petitioners were majorly comprised of the people living within Senkalu, Nabkoi and Loremkel Forests. The Petition was informed by constant lamentations by women, youth, and farmers in the area.
- ii. That section 8 of the Forest Conservation and Management Act, 2016, provides a framework on how Kenya Forest Service should ensure that communities living next to the forests live together with the forests. However, there is a constant inhumane harassment of the same communities. If the communities happen to use the available resources in the forests to

benefit themselves, as that is the only economic activity, the forest guards have constantly arrested and assaulted them. For instance, a man who was herding his animals within the forest was assaulted and there is evidence of that. The Petitioners are requesting that they be treated humanely because they do not have any other economic activity to engage. Sometimes, forest guards follow the women to their homes at night and also terrorize and take away their firewood and sell them.

- iii. There is a huge correlation between the forests and the said communities. For example, the people use the streams within the forests to water their cattle, yet the forest guards are constantly locking up their cattle and extorting the owners through cash demands.
- iv. The Petitioners prayed for the following issues to be considered:
 - a) Benefit sharing between the communities and government;
 - b) Improvement of social amenities by the Government;
 - c) Building a symbiotic relationship between the community and government through recruitment of locals as forest guards and allowing the community to get at least 30% of forest. This relationship will enhance cohesive forces towards forest protection and conservation.
 - d) Kenya Forest Service to bring to book Officers who are harassing and extorting the locals.

3) Committee Concerns/observations

i. Inclusion of other areas of the country

The Committee sought to have the recommendations on the Petition to cover all other protected areas in the country as the issues raised were cross-cutting. Also, the local communities around protected resource areas to be given priority to benefit from the areas.

ii. Social responsibility

On social responsibility, the Committee agreed that the communities should be given an opportunity to identify the services and benefits they need addressed rather than the authorities being the ones to determine that. However, this should be coordinated well within the law not to have a scenario where forests are misused.

iii. Health and safety of local communities

The Committee sought to find ways of compensating the local communities in cases where the local communities are affected by a particular conservation project. Further, the Committee expressed concerns on the issue of forest guards' unlawful harassment of the locals including their training curriculum.

iv. Procurement opportunities

The Committee sought to understand the aspect of the 30% procurement opportunities to the local communities as raised in the submission by the Petitioners. The Committee was further concerned about the capacity of the locals to be accorded procurement opportunities.

With regards to the 30% procurement opportunities, the Petitioner stated that the law provides for the youths, women, and persons with disabilities a certain portion of government opportunities. Also, the uptake of local communities is likely to change now and the county governments could capacitate the communities to uptake the available opportunities.

v. Organizing the communities and balancing between the forest conservation and benefits sharing

The Committee raised concerns on the challenge of having the communities to organize themselves to claim the available benefits. Some communities/people may take advantage and want to benefit more or benefit without taking responsibility for undesired actions. Also, some local communities may bring in foreigners to be considered in the benefit sharing scheme.

With regards to organizing the communities, the Petitioner stated that there are several associations willing to assist and it is the sole duty of the Kenya Forest Service to register and capacity build them.

With regards to the balancing act, the Petitioner stated that collecting all the available information on the issues raised would inform proper decisions to be made on the way forward.

4) Committee Resolutions

The Committee resolved to:

- i.) Meet with Kenya Forest Service to provide information pursuant to Section 53 of the Forest Conservation Management Act, 2016 on forest concessions and forests agreements;
- ii.) Meet with Cabinet Secretary for Environment and Forestry to provide information on benefit sharing aspects of forest resource exploitation through forest concessions and periodic reviews of the Forest Policy;
- iii.) Meet with the County Government of Uasin Gishu to get views on the implementation of forest policy and Section 53 of the Forest Conservation and Management, Act, 2016; and
- iv.) Undertake a site visit to Kesses Constituency to interact with the communities living next to the forests to establish more facts and situation on the ground.

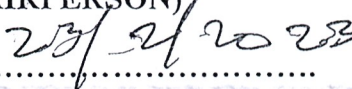
MIN./PPETC/2022/40:

ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1.30 p.m. The date of the next meeting would be on Thursday, 15th December, 2022 at 9.00 a.m.

Sign: 

(CHAIRPERSON)

Date..... 



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE TENTH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON TUESDAY, MARCH 21, 2023, IN THE COUNTY HALL MINI CHAMBER
AT 10:00 AM

PRESENT

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. Edith Vethi Nyenze, M.P.
5. Hon. Maisori Marwa Kitayama, M.P.
6. Hon. Joshua Chepyegon Kandie, M.P.
7. Hon. Caleb Mutiso Mule, M.P.
8. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
9. Hon. Peter Mbogho Shake, M.P.
10. Hon. Suzanne Ndunge Kiamba, M.P.
11. Hon. Bidu Mohamed Tubi, M.P.

APOLOGIES

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. John Bwire Okano, M.P.
4. Hon. Sloya Clement Logova, M.P.

WITNESSES

1. Hon. Samuel Atandi, MP Presenter of the Petition
2. Wycliffe Shamiah CEO, Capital Markets Authority (CMA)
3. Paul Wanga Advocate, Waweru & Gatonye Advocates (for CMA)
4. Luke Ombara Director, Policy and Market Development, CMA
5. Michael Wiso Head of Fraud & Investigations, CMA
6. Daniel Warutere Ag. Director, Operations, CMA
7. Hellen Ombati Director Corporation Secretary and Legal Services, CMA
8. Mark Gakuru Official Receiver
9. Diana Mumo Senior Assistant Official Receiver
10. Judy Mugo Senior Assistant Official Receiver

SECRETARIAT

- | | | |
|-------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo | - | Clerk Assistant II |
| 3. Ms. Anne Shibuko | - | Clerk Assistant II |
| 4. Mr. Shadrack Omondi | - | Legal Counsel II |
| 5. Ms. Patricia Gichane | - | Legal Counsel II |
| 6. Mr. Martin Sigei | - | Research Officer III |
| 7. Ms. Lilian Mburugu | - | Media Relations Officer |
| 8. Mr. Yeziel Jilo | - | Serjeant-At-Arms |

MIN./PPETC/2023/69: PRELIMINARIES

The Chairperson called the meeting to order at 10.30 a.m. and prayers were said by the Hon. Edith Nyenze, M.P.

MIN./PPETC/2023/70: ADOPTION OF AGENDA

The Meeting was taken through the Agenda as follows: -

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sitting
4. Matters Arising
5. **Consideration of the Public Petition regarding probable loss of public investments in Cytonn High Yield Solutions Platform Meeting with the Cabinet Secretary for National Treasury and Economic Planning on the following Public Petitions: -**
 - i.) Meeting with the Chief Executive Officer of the Capital Markets Authority; and*
 - ii.) Meeting with the Official Receiver*
6. Any Other Business
7. Adjournment

Thereafter, the Proposed Agenda of the Meeting was adopted to constitute business of the Meeting having been proposed by the Hon. Bidu Mohamed Tubi, M.P. and seconded by the Hon. Peter Mbogho Shake, M.P.

MIN./PPETC/2023/71: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Minutes of the Seventh Sitting held on 15th March 2023 were confirmed as a true record of the deliberations of the meeting having been proposed by Hon. Edith Nyenze, M.P. and seconded by Hon. Peter Mbogho, M.P.

Minutes of the Eighth Sitting held on 15th March 2023 were confirmed as a true record of the deliberations of the meeting having been proposed by Hon. Edith Nyenze, M.P. and seconded by Hon. Peter Mbogho, M.P.

Minutes of the Nineth Sitting held on 16th March 2023 were confirmed as a true record of the deliberations of the meeting having been proposed by. Hon. Bidu Tubi, M.P. and seconded by Hon. Peter Mbogho, M.P.

MIN./PPETC/2023/72: MATTERS ARISING

Arising from MIN./PPETC/2023/64 of the Sixth Sitting, it was reported that the Clerk of the National Assembly had requested that the Committee pardons the Cabinet Secretary and send another invitation instead of invoking the provisions of Standing Orders 191 to summon the Cabinet Secretary.

While the concerns of the Committee were justified, the meeting was informed that the Cabinet Secretary for the National Treasury and Economic Planning had been involved in the Budget Cycle and presentation of the Budget Policy Statement before Departmental Committees.

It was agreed that the chairperson of the Committee would meet the Clerk of the National Assembly to resolve the matter.

**MIN./PPETC/2023/73: MEETING WITH THE CHIEF EXECUTIVE OFFICER OF
THE CAPITAL MARKETS AUTHORITY**

The CEO of Capital Markets Authority submitted to the meeting as follows: -

1. Background

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

2. Suspected unregulated business by CIMP prior to 2017

- d) The CMA observed a practice where most financial service institutions including its licensed entities were offering an unregulated cash management product that would pool funds from the public for a guaranteed return. This product was not within the mandate of CMA.
- e) The CMA, to curb associated risks, issued a circular (Circular No. 8/2016) requiring all licensed intermediaries to cease and desist from offering and engaging in unregulated activities outside the perimeter of regulated products under the Capital Markets Act, Cap 485A of the Laws of Kenya.
- f) It was also noted that, during that period CIMP was offering services suspected to resemble those that were being offered by licensees of CMA but without a license as stated above. This led to a protracted engagement between CMA and CIMP culminating in the CMA requiring CIMP to procure a license from the CMA if it wished to continue with the service. At the same time for products that seemed to mimic regulated products, Cytonn agreed to restructure those products to fit under the Capital Markets (Collective Investment Schemes) Regulations, 2001 and also apply for a fund manager license under the Capital Markets (Licensing Requirements) (General) Regulations, 2002.
- g) CMA received an application from CAML, after compliance with the applicable regulatory requirements, CAML was granted a fund manager licence.

3. Cytonn High Yield Solutions

- h) Cytonn High Yields Solution (CYHS) was an unregulated product with guaranteed returns, CIMP was presenting CHYS as a private offer but upon scrutiny by the Authority it was determined to be a public offer especially due to the mode of its distribution which targeted the general investing public. This was contrary to the provisions of the Capital Market (Securities) (Public offers, listings and Disclosure) Regulations, 2002 and specifically regulations 20 and 21. The Regulations provide that a private offer is that which is offered to not more than 100 persons or the securities are offered to the members of a club or association (whether or not incorporated and the members can reasonably be regarded as having a common interest worth each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer.
- i) Due to the foregoing, CMA engaged CIMP on the conversion of unregulated CHYS to regulated fund. CIMP applied for the registration of a Cytonn High Yield Fund (CYHF). To ensure a seamless transition, a road map for this conversion was developed. The Road map stipulated how the clients in the CHYS would convert into a regulated CHYF and the eventual wind up of CHYS.
- j) CHYF was registered by CMA on March 22, 2019.

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

Application of Investor Compensation Fund (ICF)

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

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

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

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

- n) Further, Regulation 69 requires that investors shall apply to the Authority for compensation from the Compensation Fund in cash or securities equal to the net loss following a pecuniary loss due to the failure of a stockbroker, dealer or an investment bank carrying out stock broking business or dealing operations, to meet its contractual obligations.
- o) Based on the above provisions, investors in the CHYS are not entitled to benefit from the Investor Compensation Fund in case they suffer loss of their investment.

Committee concerns

The Committee raised the following concerns with regards to the presentation by the CEO of Capital Markets Authority: -

- a) *Capacity of CMA to regulate*

The Committee sought to understand whether CMA had authority to regulate. The CEO stated that the Capital Markets Authority Act and the Central Depositories Act provide the regulatory

framework of its operation. In addition, the Authority has an in house Fraud investigation unit that investigates unlicensed products.

For licensed products, the Authority stated that it constantly ensures that necessary disclosures are made to the public upon detection of irregularities. For unlicensed products, the entities are usually charged in court.

The Authority admitted that there was a gap in the legal framework that Cytonn and similar organisations had taken advantage of. It had commenced to remedy the situation through submission of the draft "*Alternative Funds Regulations*" through its Parent Ministry (National Treasury and Economic Planning) to regulate private Markets so as to seal loop holes by rogue operators.

b) Licensing of Cytonn

The Committee wondered why CMA had licensed Cytonn to operate in light of the fact that the Directors who were former employees of BRITAM had questionable credibility. It was clarified that the matter on their credibility while working for their former employer had been in court for 9 years. At the time of registration of Cytonn, the judgement had not yet been given hence there was no legal basis to stop issuance of an operating license to Cytonn.

c) Monitoring system and remedial measures

The committee expressed concern on the manner of effecting punitive measures on errant licensed companies. It was clarified that regulated service providers who did not observe the laid out regulations are usually criminally charged and stopped from operations; while the unregulated entities are charged for fraud or obtaining money by false pretense.

d) Compensation of petitioners

The Committee was keen to know when and how the Petitioners would be compensated. The Head of Fraud & Investigations, CMA explained that the matter was being handled by the Director of Public Prosecutions (DPP) therefore not much could be done by CMA until conclusion of the matter by DPP. The petitioners' best resolution would be to seek to be enjoined in the case through the Official Receiver.

e) Whether Cytonn is still in business

The Committee was concerned on whether Cytonn would defraud investors using their other investment vehicles. The CEO of CMA assured the other products offered by Cytonn were regulated and had not been affected. Further, there had been no complaints filed by investors under the regulated products.

Committee Resolutions

The Committee directed that the Authority fast tracks the "*Alternative Funds Regulations*" for private Markets so as to seal loop holes by rogue operators.

When asked to table the written submission before the Committee as per the following aspects as communicated in the letter:

- i. Latest audited accounts of Cytonn Investments Management PLC
- ii. Opinion on the Financial Status of Cytonn Investments Management PLC
- iii. Evidence of the properties owned by Cytonn Investments Management PLC and bank Statements the official receiver stated that Cytonn PLC does not fall under the entities that are under liquidation. The two entities under liquidation are Cytonn High Yield Solutions LLP (CHYS) and Cytonn Real Estate Project Notes LLP (CPN). The Official Receiver had therefore not done any written submission as the entity they were dealing with was different.

The chair invited the witness to give his oral submission, which he proceeded to as follows: -

- a) That he had been appointed as a receiver by the Court.
- b) That Cytonn had 9 Special Purpose Vehicles (SPVs).
- c) That the liquidation process had commenced and the following activities undertaken:
 - i. issuance of Gazette Notice and Advertisement in Newspapers,
 - ii. identification of 1400 creditors who had filed proof of debt, and
 - iii. call for creditors' meetings.
- d) That the Official Receiver had not yet conducted a site visit to the 9 properties
- e) That it had been challenging to obtain most of the information from Cytonn Directors hence the slow progress of the liquidation process

Committee concerns

The Committee was concerned that the property would be lost. It was clarified that the court had issued a preservation order on all assets of Cytonn.

The Committee asked what steps had been taken so far to refund the investors. The Official Receiver admitted challenges in ascertaining the genuine creditors and transfer of monies among the various entities within Cytonn.

Committee Resolutions

- a) The Committee directed that the Official Receiver submits a written submission as soon as possible.
- b) The Committee gave the Official Receiver 30 days to report back to the Committee on the progress made which was expected to be substantial.

Written Submissions

The Official Receiver undertook to present the Written Submissions to the secretariat by Close of Business of Wednesday 22nd March 2023. The following is the written submission: -

1. Brief Background

The Official Receiver was appointed as Liquidator of Cytonn High Yield Solutions and Cytonn Real Estate Project Notes by an Order of the Court dated 6th January, 2023.

While issuing the Liquidation orders, the Court also granted Preservation orders over assets identified as: Alma, Appleton/Miotoni, Riverun, Ridge and Taraji.

The Official Receiver ascertained the partnership records of the two entities in liquidation and confirmed the following:

1. **Cytonn High Yield Solutions LLP (CHYS)**

In accordance with records held at the Companies Registry, the Partners are; Cytonn Investments Management PLC & and Edwin Harold Dayan Dande, while the Manager is Patricia Njeri Wanjama.

2. **Cytonn Real Estate Project Notes LLP (CPN)**

In accordance with records held at the Companies Registry, the Partners are; Cytonn Investments Management PLC and Cytonn Real Estates LLP, while the Manager is Edwin Harold Dayan Dande.

Liquidation process:

The Official Receiver was in the process of reviewing the documentation filed and are also in the process of ascertaining the assets and liabilities of the LLPS. This will be done by admitting proof of debt forms from creditors and ascertaining the legitimacy of all claims.

From preliminary perusal of the records submitted, the following are the Special Purpose Vehicles (SPVs) affected in relation to the above LLPS in liquidation:

i. Cytonn Investment Partners 15 (Superior Homes)

A financing agreement between CHYS and Cytonn Investment Partners 15 was entered into in January 2017, with an agreement to borrow Kshs 500 million shillings to acquire and facilitate the acquisition of shares in Superior Homes Kenya Limited.

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

ii. Cytonn Investment Partners 16 – Kilimani Properties (4 acres)

This is a 4-acre parcel of land along Argwings Kodhek road in Kilimani area of Nairobi County. The property is unencumbered. The Official Receiver has requested for the Title documents in relation to the parcels and are yet to receive feedback on the same.

Funds were borrowed from CHYS and another project, “the Ridge” to acquire the property.

iii. Cytonn Integrated Projects – The Alma (46 Acres) Ruaka

To finance the SPV, a financing agreement was entered into between LLP 16 and CHYS to borrow a principal sum of up to Kshs 3.0 billion. We are yet to ascertain how much was drawn down from CHYS following this agreement.

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

iv. Cytonn Investment Partners 10 – Taraji Heights 3 acres, Ruaka Kiambu

To facilitate the acquisition of the land and financing the development of LLP 10, the LLP entered in a financing agreement with CHYS in April 2016 to make available for the SPV Kshs 2.0 billion; and Cytonn Real Estate Project Notes (CPN) in December 2017 to make available a facility to the LLP of Kshs 2.0 billion. We are yet to ascertain how much was drawn down from CHYS and CPN following this agreement. There are other purchasers with varying interests on the property which are yet to be verified.

v. Cytonn Investment Partners 11 – the Ridge – 9.9 acres, Ridgeways, Kiambu County

To finance the SPV, a financing agreement was entered into between Cytonn Investent Partners 11 and CHYS to borrow a principal sum of Kshs 2.0 billion to acquire and facilitate the purchase of the land and finance the project in June 2016 and later in November 2017, entered in financing agreement of Kshs 1.0 billion with CPN.

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

vi. Cytonn Investment Partners 20 – Cysuites (serviced apartments, Wetlands)

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

Additionally, the LLP has borrowed Kshs 75.8 million from other SPV which we are required to verify. Cytonn Investment Partners 20 also took over a liability of USD 3,600,000.0 from the previous ownership, charged to the title by Kenya Commercial Bank.

vii. Cytonn Investment Partners 18 – Applewood – Miotoni Karen

To fund the project, the SPV entered into a financing agreement in August 2017 with CHYS to borrow Kshs 1.0 billion to finance land purchase and begin construction of the project, and later,

in November 2018 agreed to be financed by CPN, with an agreement to borrow Kshs 2.0 billion. We are yet to ascertain how much was drawn down from CHYS following this agreement.

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

viii. Cytonn Investment Partners 5 Riverun – Kiambu

The Riverrun project was a Joint Venture between Laban Muiruri and Cytonn Investment Partners 5.

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

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

ix. Cytonn Investment Partners 4 and Mystic Plains – 1000 acres, Athi River

This was a joint venture between Cytonn Investment Management and a family referred to as the Mutuas that sat on a 1,000 acres' piece of land to form the Mystic Plains LLP.

To facilitate the purchase of the portion of the property, LLP 4 entered into a financing agreement with Cytonn High Yield Solutions, with an agreement to borrow up to Kshs 2.0 billion in July 2015. We are yet to ascertain how much was drawn down from CHYS following this agreement.

MIN./PPETC/2023/75: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 12:55 p.m. The next meeting would be held on Wednesday, 22nd March, 2023.

for
Sign: 
(CHAIRPERSON)

Date: 23/05/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE SIXTEENTH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON FRIDAY, APRIL 21, 2023, IN DODORI ROOM, PRIDE INN PARADISE BEACH RESORT AT 10:00 AM

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. Ernest Ogesi Kivai, M.P.
4. Hon. Maisori Marwa Kitayama, M.P.
5. Hon. Edith Vethi Nyenze, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
8. Hon. Peter Mbogho Shake, M.P.
9. Hon. John Bwire Okano, M.P.
10. Hon. Sloya Clement Logova, M.P.

APOLOGIES

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. Suzanne Ndunge Kiamba, M.P.

SECRETARIAT

1. Mr. Rana Tiamapati - Deputy Director,
2. Mr. Samuel Kalama - Principal Clerk Assistant II
3. Ms. Miriam Modo - Clerk Assistant I
4. Ms. Anne Shibuko - Clerk Assistant I
5. Mr. Shadrack Omondi - Legal Counsel II
6. Ms. Patricia Gichane - Legal Counsel II

MIN./PPETC/2023/111: PRELIMINARIES

The Chairperson called the meeting to order at 10.30 a.m. and said the prayers.

MIN./PPETC/2023/112: ADOPTION OF AGENDA

The Meeting was taken through the Agenda as follows: -

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sittings
4. Matters Arising
5. **Consideration and adoption of draft report on the Public Petition regarding Probable Loss of Investments in Cytonn High Yield Solutions**
6. Any other Business
7. Adjournment & Date of Next Meeting

Thereafter, the Proposed Agenda of the Meeting was adopted to constitute business of the Meeting having been proposed by the Hon. Ernest Kivai, M.P. and seconded by the Hon. Clement Sloya, M.P.

MIN./PPETC/2023/113: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Agenda was deferred to another day.

MIN./PPETC/2023/114: MATTERS ARISING


Agenda was deferred to another day.

MIN./PPETC/2023/115: CONSIDERATION OF THE PUBLIC PETITION REGARDING PROBABLE LOSS OF INVESTMENTS IN CYTONN HIGH YIELD SOLUTIONS


The Committee went through the Draft Report and aligned the observations based on the submissions of the petitioners and various stakeholders.

MIN./PPETC/2023/116: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 01:00 p.m. The next meeting would be held on Friday 21st April 2023 at 2.30 p.m.

Sign: 

(CHAIRPERSON)

Date:  03/05/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE SEVENTEENTH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON FRIDAY, APRIL 21, 2023, IN DODORI ROOM, PRIDE INN PARADISE BEACH RESORT AT 02:30 PM

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. Ernest Ogesi Kivai, M.P.
4. Hon. Maisori Marwa Kitayama, M.P.
5. Hon. Edith Vethi Nyenze, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
8. Hon. Peter Mbogho Shake, M.P.
9. Hon. John Bwire Okano, M.P.
10. Hon. Sloya Clement Logova, M.P.

APOLOGIES

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. Suzanne Ndunge Kiamba, M.P.

SECRETARIAT

1. Mr. Rana Tiamapati - Deputy Director,
2. Mr. Samuel Kalama - Principal Clerk Assistant II
3. Ms. Miriam Modo - Clerk Assistant I
4. Ms. Anne Shibuko - Clerk Assistant I
5. Mr. Shadrack Omondi - Legal Counsel II
6. Ms. Patricia Gichane - Legal Counsel II

MIN./PPETC/2023/117: PRELIMINARIES

The Chairperson called the meeting to order at 10.30 a.m. and Hon. Caleb Mutiso Mule, M.P. said the prayers.

MIN./PPETC/2023/118: ADOPTION OF AGENDA

The Meeting was taken through the Agenda as follows: -

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sittings
4. Matters Arising
5. **Consideration and adoption of draft report on the Public Petition regarding Probable Loss of Investments in Cytonn High Yield Solutions**
6. Any other Business
7. Adjournment & Date of Next Meeting

Thereafter, the Proposed Agenda of the Meeting was adopted to constitute business of the Meeting having been proposed by the Hon. John Bwire Okano, M.P. and seconded by the Hon. Peter Mbogho Shake, M.P.

MIN./PPETC/2023/119: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Agenda was deferred to another day.

MIN./PPETC/2023/120: MATTERS ARISING

Agenda was deferred to another day.

MIN./PPETC/2023/121: CONSIDERATION OF THE PUBLIC PETITION REGARDING PROBABLE LOSS OF INVESTMENTS IN CYTONN HIGH YIELD SOLUTIONS

The Committee went through the issues for determination and made recommendations on the report.

MIN./PPETC/2023/122: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 05:00 p.m. The next meeting would be held on Saturday 22nd April 2023 at 10.00 a.m.

Sign: 

(CHAIRPERSON)

Date: 

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

PUBLIC PETITION

(No. 7 of 2022)

REGARDING PROBABLE LOSS OF INVESTMENTS IN CYTONN
HIGH YIELD SOLUTIONS PLATFORM

SNA
Approved
SNA
15/11/22

*Mr. Speaker,
You may approve.
Lamp Koini DLO
15/11*

I, the **UNDERSIGNED** on behalf of Mrs. (Amb.) Josephine Awuor, Mrs. Caroline Atieno and Mr. Omondi Abonyo;

DRAW the attention of the House to the following: -

1. **THAT**, a company named Cytonn Investments Ltd dealing in capital investments and real estate placed adverts for one-bedroom apartments valued at Ksh. 7.8 million at a project named 'The Ridge' under LR NO. 28223/3, along Kiambu Road in Kiambu County.
2. **THAT**, investors who opted for 'off-plan' arrangements started making their payments in 2017 and continued making regular payments as and when required;
3. **THAT**, despite the very little activity on site, Cytonn Investment Ltd through their representatives kept explaining to investors verbally that they were finalizing other developments;
4. **THAT**, investors made an initial instalment of 10% of the sale value plus booking fee of Ksh. 50,000.
5. **THAT**, by year 2018 some investors who were paying by instalment had paid each in excess of Kshs 3.9 million during which time it seemed the company had started experiencing internal financial problems, since no construction ever started;
6. **THAT**, those who feared for their investments and started asking for refunds were told they would incur a mandatory 10% loss on their deposits;
7. **THAT**, in September 2019, when many investors began seeking refund, the Company announced that it would put the money in its substituent platform, i.e., Cytonn High Yield Solution, for one year to earn interest at 18% and then start refunding;
8. **THAT**, in 2020, the company began blaming COVID-19 pandemic interruption and promised to refund the investors in 2021, during which time they kept sending statements to show interest was being earned.

**PUBLIC PETITION
REGARDING PROBABLE LOSS OF INVESTMENTS IN CYTONN
HIGH YIELD SOLUTIONS PLATFORM**

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

THEREFORE, your humble Petitioners pray that the National Assembly through the Public Petitions Committee: -

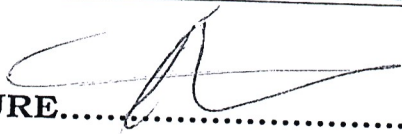
- (i) Engages Cytonn Investment Ltd and its partners to clarify how they intend to fulfil their agreement with the investors of the aforementioned Ridge development project;
- (ii) Holds the Chief Executive Officer (CEO) of Cytonn as responsible for the mismanagement and secures the timely refund of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

And your Petitioners will ever pray.

PRESENTED BY:

THE HON. SAMUEL ATANDI, MP
MEMBER FOR ALEGO USONGA CONSTITUENCY

SIGNATURE.....



DATE.....10-11-2022.....



REPUBLIC OF KENYA
PARLIAMENT

14

Hon. Samuel Onunga Atandi, MP.

Alego Usonga Constituency

Member: Budget and Appropriations Committee

Parliament Buildings
Tel: +254 20 2221291
P. O. Box 41842 00100
Nairobi, Kenya

Continental Hse. 3rd Flr. Rm. 331
Mobile: +254 739 169 196
+254 706 169 196
Email: samatandi@gmail.com

Chairman

Parliamentary Committee on Finance

Parliament Buildings

NAIROBI.

Dear Sir,

RE: PUBLIC PETITION REGARDING SAFE GUARDING OF PUBLIC INTEREST IN THE PROBABLE LOSS OF INVESTMENTS IN CYTONN HIGH YIELD SOLUTIONS - RIDGE, AND ANY THEREOF BY DEPOSITORS, RUNNING INTO HUNDRED OF MILLIONS OF KENYA SHILLINGS.

I wish to present this Public Petition on behalf of the under mentioned Investors/Depositors in the CYTONN HIGH YIELD SOLUTIONS - RIDGE development, among others in which several Investors/Depositors claim they were duped into taking investment facilities with the CYTONN INVESTMENT LTD and now they are fearing loss of their money after the company failed in its obligations. They are now appealing for Parliament's intervention to compel organization to refund their deposits.

The petitioners state:

- i. **THAT**, CYTONN INVESTMENTS LTD advertised to put up some one bedroomed apartments among others at the RIDGE and gave land reference as NO. 28223/3, along Kiambu Road.
- ii. **THAT**, for example those who were to purchase, or allocated a one bedroom apartments on G809 were to pay Kenya Shillings 7.8 million.
- iii. **THAT** those who took "off plan" arrangements started making payment in year 2017 and they state that they kept making payments with very little activity taking place on the ground.
- iv. **THAT**, against (iii) above, CYTONN INVESTMENT LTD through their representatives kept explaining to investors/depositors verbally that they (the company) were finalizing other developments.
- v. **THAT**, the first instalment was 10% of the sale value plus booking fee of Kshs. 50,000.00 (fifty thousand).
- vi. **THAT**, by year 2018 some Investors/Depositors who were paying by instalment (and are ready to provide evidence) had paid excess of Kshs. 3.9 million (Three million Nine hundred thousand), during which it seemed the company had started experiencing internal financial problems, since no construction ever started.
- vii. **THAT**, those who feared for their investments/deposits and had started asking for refunds were told they would loss mandatory 10% loss of their deposits.
- viii. **THAT**, in September, 2019 with many Investors/Depositors now asking for their money back, the company stated that they would therefore put the money in CYTONN HIGH YIELD SOLUTION for one year to earn

interest at 18% and then the company would start refund after one year.

- ix. **THAT**, come 2020, CYTONN INVESTMENT now claimed Covid 19 pandemic interruption and promised to rolls the money in 2021 – during this time sending statements to show interest was being earned, and at times the consistency of the interest earned was lacking in their statement.
- x. **THAT**, later an administrator was appointed and the company continued to experience financial difficulty and nothing to date has come to fruition with regards to Investors/Depositors money, or this development (RIDGE) taking off the ground.
- xi. **THAT**, the Chief Executive Officer (CEO) Mr. Edwin Ndande should be held responsible and made to refund the Investor/Depositors money as there are indications that the company has been trying to sell some of their properties in vain and might sink with depositors money.
- xii. **THAT**, meanwhile the company has kept their posts on social media platforms on investments analysts alive to dupe the Investors/Depositors and unsuspecting Kenyans that they are liquid and in optimum operational capacity.

The content of this Public Petition is dear to the Petitioners whose prayers are included and myself that the management of the CYTONN INVESTMENT and any of their partners and accomplices are summoned to appear before Parliamentary Departmental Committee (s) to explain how they intend to fulfill their agreement with Investors/Depositors or refund full amount of their investment plus interest.

The Petitioners will forever PRAY.


















SIGNED 
THE HON SAMUEL ATANDI, MP
ALEGO USONGA CONSTITUENCY

Dated 1/11/2027

PETITIONERS

No	NAMES	ID NO.	SIGN
1.	Amb. Josephine V. Auvor	4829025	JvAuvor
2.	Caroline Ateño Ajunga	16549972	C
3.	Diamond Abongh	6772598	D.A. 07-11-2011
4.			
5.			
6.			
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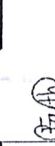






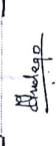


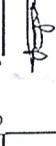

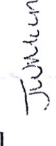



gning of the parliament petition. CPN&CHYS

	Name	Code	ID	Signatures
1	Abraham Parmuat Purkei & David Lesiam	CHYS 5985	25109418	
2	Adhiambo Okomba	CHYS 2035	553162884	
3	Agnes Wanjiru Kangethe	CPN 7444	8518088	
4	Agnes Ndegwa	CHYS 1609	11316080	
5	Ajay Virenda Kumar Patel & Mayuri Ajay	CPN 8190	5333584 / 3433328	
6	Aldrin Malemo	CHYS 4156	30071433	
7	Alice Muasa	CHYS 10027	22269797	
8	Allan Kinungi Njoroge	CPN 14762	27389732	
9	Anders C. Qvortrup	CHYS 161	245514	
10	Ann Wanjiku Ngugi	CHYS 8608	8507943	
11	Anne Doris Mutiso	CPN 4078	8791757	
12	Anne Doris Mutiso & Tristan Vrolijk	CPN 4217	34633639	
13	Anne Kairu	CHYS 6685	22199118	
14	Argwings Otieno Kodhek/Zagro Limited	CHYS 6484	10404376	
15	Argwings Otieno Kodhek/Zagro Limited	CHYS 6038	CPR/2009/12194	
16	Ashita Girishchandra Patel	CHYS 2611	14497616	
17	Ashita Girishchandra Patel		14497616	






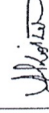




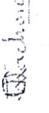








18	Austin Msagha Mbogholi	CHYS 36064	22670687	<i>Emble</i>
19	Austin Msagha Mbogholi	CPN 36064	22670687	<i>Emble</i>
20	Beatrice Vuhya Omwanda	CPN 7824	9258721	<i>Abuhaywa</i>
21	Beatrice Wanjiru Njogu	CHYS 2380	28498618	<i>WV</i>
22	Blueprint Partners Ltd (CHYS 15381)	CHYS 15381	PVT-RXUZYX8	<i>BP</i>
23	Benson Karimi	CHYS 5593	24921681	<i>BK</i>
24	Ben Magaki	CPN 2209	13341015	<i>BM</i>
25	Brian Mukopi	CHYS 5195020	51950201	<i>Bmukopi</i>
26	Brigitte Aoko Odipo	CHYS 15188	13759025	<i>Boipo</i>
27	Caroline Ngetuny	CPN/CHYS 633	20847282	<i>CN</i>
28	Catherine Nyambura Muoki & Daniel Mud	CPN 2161	8538815/57805	<i>Cmuoki</i>
29	Catherine Mutahi & Eliud Njoroge	CHYS 2346	23542043	<i>CM</i>
30	Catherine Njeri Kimaru	CHYS 3123	5101496	<i>CK</i>
31	Charity Lumbasi Wainaina	CHYS 6137	14717217	<i>CL</i>
32	Charles Gathondu Gichuki	CHYS 10485	16122947	<i>CG</i>
33	Charles Nzioki Kanyaa	CPN 6881	6418439	<i>CK</i>
34	Christine Abondo	CPN 2139	9789937	<i>CA</i>
35	Christine Matumo	CPN 5545	21378991	<i>CM</i>
36	Cynthia Mudalungu	CHYS 12092	24830297	<i>CM</i>

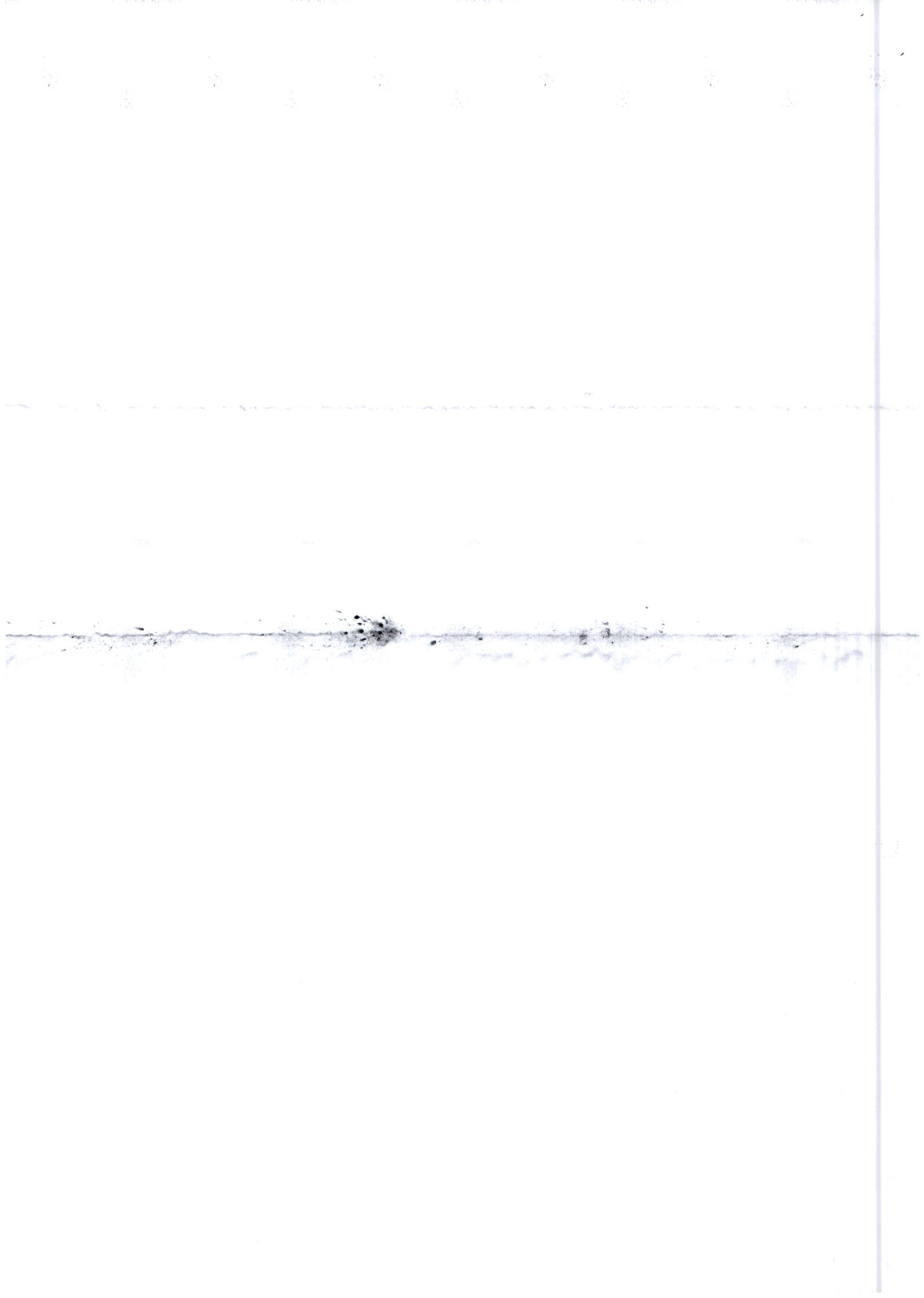


37	Damaris Katie Kitonyo	CHYS 44714	13446306	<i>Damaris</i>
38	Daniel Gituku Muindo	CPN 6569	11883159	<i>Daniel</i>
39	Daniel Kinyanjui Wanjiru	CHYS 2880	25766646	<i>Daniel</i>
40	David Chabala	CPN 41020	ZN580788	<i>David</i>
41	Davies N. Tanyasis	CHYS 5312	#####	<i>Davies</i>
42	Edwin Mungai Chege	CHYS 7395	27877878	<i>Edwin</i>
43	Edward Nigel Omollo & Jean Jael Guya	CHYS 7296	27510599/3170	<i>Edward</i>
44	Elijah Omusina Bukachi	CHYS 6757	4831669	<i>Elijah</i>
45	Eliud Mutuma	CHYS 2346	23542043	<i>Eliud</i>
46	Elizabeth Achieng Wandolo		23046081	<i>Elizabeth</i>
47	Elizabeth Kaguamba	CHYS 29593	21967504	<i>Elizabeth</i>
48	Emma Waitherero Njenga	CPN 4756	A1837831	<i>Emma</i>
49	Emilly Ochieng	CHYS 7819	23889857	<i>Emilly</i>
50	Emilly Ochieng/Rene Murage	CHYS 7220	23889857 / 234	<i>Emilly</i>
52	Esther Ndambiri	CHYS 4013	24150288	<i>Esther</i>
53	Evans Wanjohi	CHYS 4325	11035793	<i>Evans</i>
54	Evelyn Wagaiyu	CHYS 39669	4829791	<i>Evelyn</i>
55	Evelyne Munyoki	CPN 43322	11142720	<i>Evelyn</i>
56	Ezra Kanani	CHYS 2231	25548395	<i>Ezra</i>

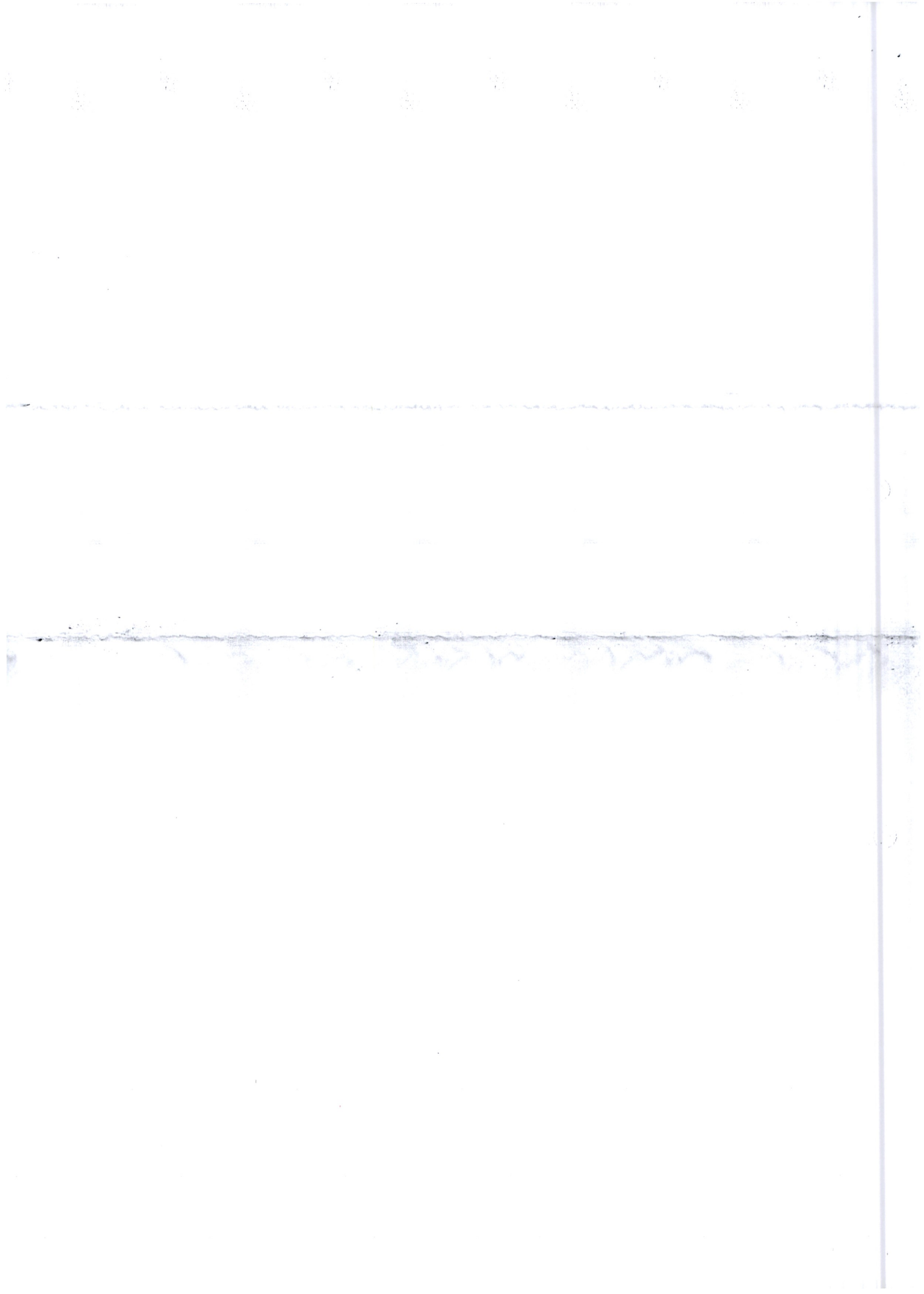
57	Fauziya Brek Karama	CHYS 6037	8460979	
58	Florence Evelyn Nyawira Kariuki	CHYS 5474	22054295	
59	Francis Masila Kingoo	CHYS 1356	8804026	
60	Getrude Faith Asimwa	CHYS 15090	25801409	
61	Grace Aluoch Ooko Opil	CPN 14236	6692725	
62	Grace Mumo Muteti	CPN 8970	33113153	
63	Henry Kamau Muigai	CHYS 2052	22513092	
64	Ibrahim Deaconer Wandalo	CPN 43041	13054797	
65	Inayethusein Kudrati	CPN 7838	4651153	
66	Irene Nguthuku	CHYS 8700	25097876	
67	Iris Brown Ondego	CHYS 13736	16028696	
68	Isiann Nyambu	CPN 5242	9079670	
69	Jacqueline Oruo	CHYS 2165	13236034	
70	Jane Ogore & Wilson Endege	CHYS 14966	1983506	
71	Jediddah Muriu	CHYS 2731	1871883	
72	Jennifer Wambui Kinyanzwii	CPN 13145	7365990	
73	Jinika Halai	CHYS 4042	26711802	
74	John Bosco Matheka & Frida Makau Nyiv	CPN 1406	13308501/1380	
75	Joram Mwacharo Mwashigadi	CPN 37335	10578846	






















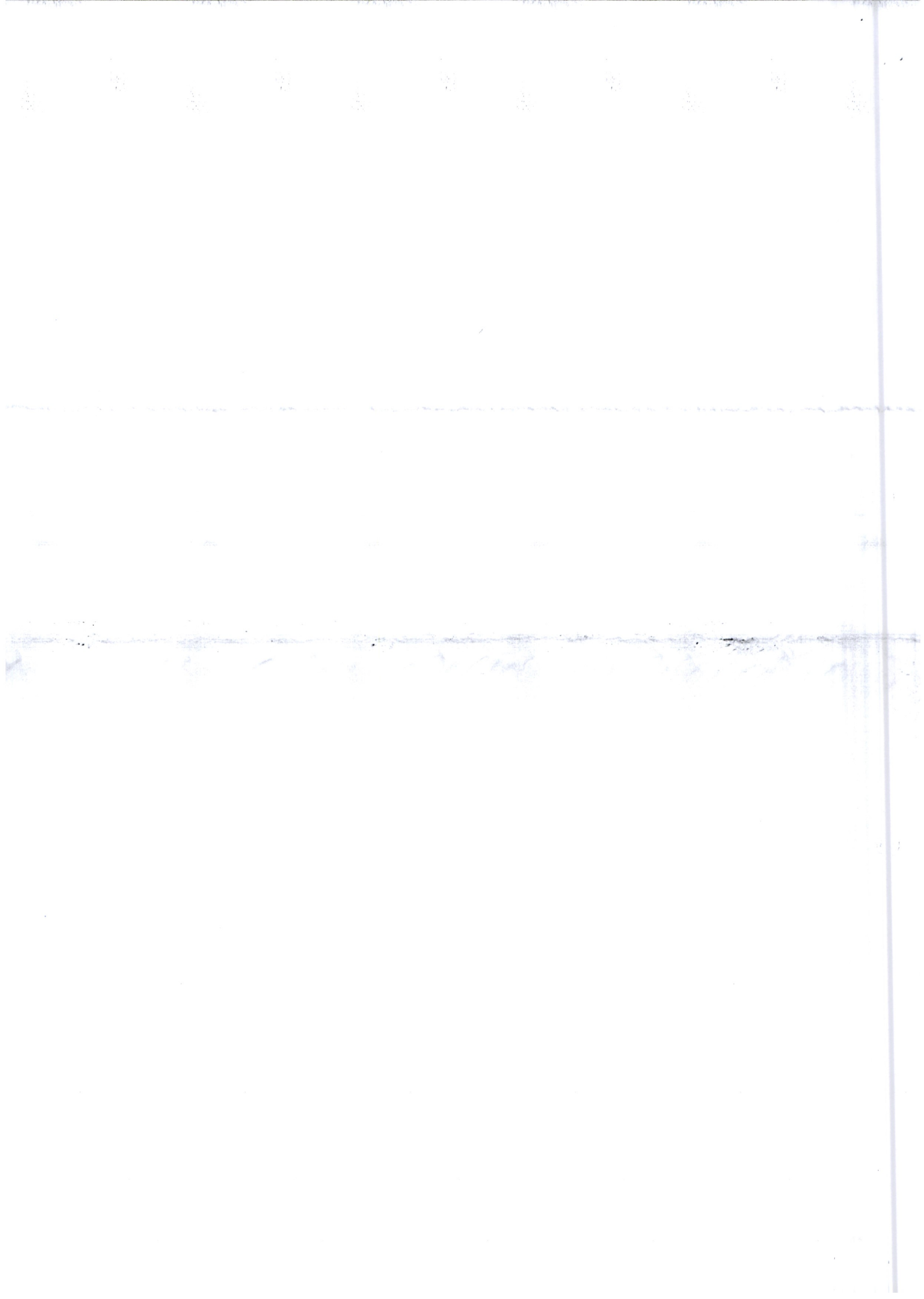
76	Joseph Njau Gakumo	CHYS 11746	3119647	
77	Joseph Kamau Mahugu	CHYS 7686	23325253	
78	Joseph Kiprono Chekwony	CHYS 7461	8071057	
79	Joseph Mwaniki Ndwiga	CHYS 5257	13854622	
80	Joseph Thuita Ndegwa	CHYS 12902	25891356	
81	Joseph Obudho Oware	CHYS	1822132	
82	Joseph Odongo Oketch	CPN 8648	9709869	
83	Joy Ntale Willis	CHYS 36050	36050	
84	Joyce Mutua	CHYS 8354	5212898	
85	Joy Mugambi	CPN 11442	22074316	
86	Jude Habhamba	CPN 13117	13281263	
87	Judy Wairimu Gachora	CHYS 5168	10088378	
88	Juliet Mwelu Muange	CHYS 6199201/	6693239	
89	Kennedy Mbugua	CHYS 10107	25250303	
90	Kenneth Mwaura Kamau & Anne Chege	CHYS 7822	13308052/2731(
91	Kevin Jamal	CHYS 13965	24275841	
92	Leah Kanyi	CHYS 12965	1871551	
93	Leah Muriu	CHYS 6106	21707759	
94	Leah Mwaura	CHYS 34803	28512376	



95	Lilian Igweta Tonnang	CHYS 1741	14494163	<i>Lilian Igweta</i>
96	Lisa Wangui Nyawira Murimi/Caroline Mu	CHYS 11998		<i>Lisa Wangui Nyawira Murimi</i>
97	Johnson Dedan Murimi /Caroline Murimi	CPN 2673		<i>Johnson Dedan Murimi</i>
98	Lornah Odero	CHYS 41482	6177846	<i>Lornah Odero</i>
99	Lynette Nyanchama Omambia Atenyo	CHYS 14049	3356292	<i>Lynette Nyanchama</i>
100	Margaret Juma	CPN 9831	21693240	<i>Margaret Juma</i>
101	Martin Mulinge	CPN 5228	20346318	<i>Martin Mulinge</i>
102	Martin Kanyeke	CHYS 8508	27052829	<i>Martin Kanyeke</i>
103	Mathew Adegus Kamasi	CHYS 5728	13368725	<i>Mathew Adegus Kamasi</i>
104	Maureen Mwinzi	CHYS 1469	9088630	<i>Maureen Mwinzi</i>
105	Maurice Muiruri Ndungu/Wendy Ntongai	CPN 11629	22243846/23259083	<i>Maurice Muiruri Ndungu</i>
106	Meshack Ngale & Jackline Mwendwa	CHYS 34864	24510255	<i>Meshack Ngale</i>
107	Michael Mwinzi Mutua	CHYS 6989	20923501	<i>Michael Mwinzi Mutua</i>
108	Milkah Mokeira Mariachana	CPN 5555	4828809	<i>Milkah Mokeira</i>
109	Miloya Godia	CHYS 6023	10007311	<i>Miloya Godia</i>
110	Mwanasiti Nyanje	34739CHYS	468673	<i>Mwanasiti Nyanje</i>
111	Nancy Gikori	CHYS 1815	31485040	<i>Nancy Gikori</i>
112	Njanja K. Mugungo	CHYS 1596	21943271	<i>Njanja K. Mugungo</i>
113	Esther Nyokabi Kirika	CHYS 4691	988405	<i>Esther Nyokabi Kirika</i>



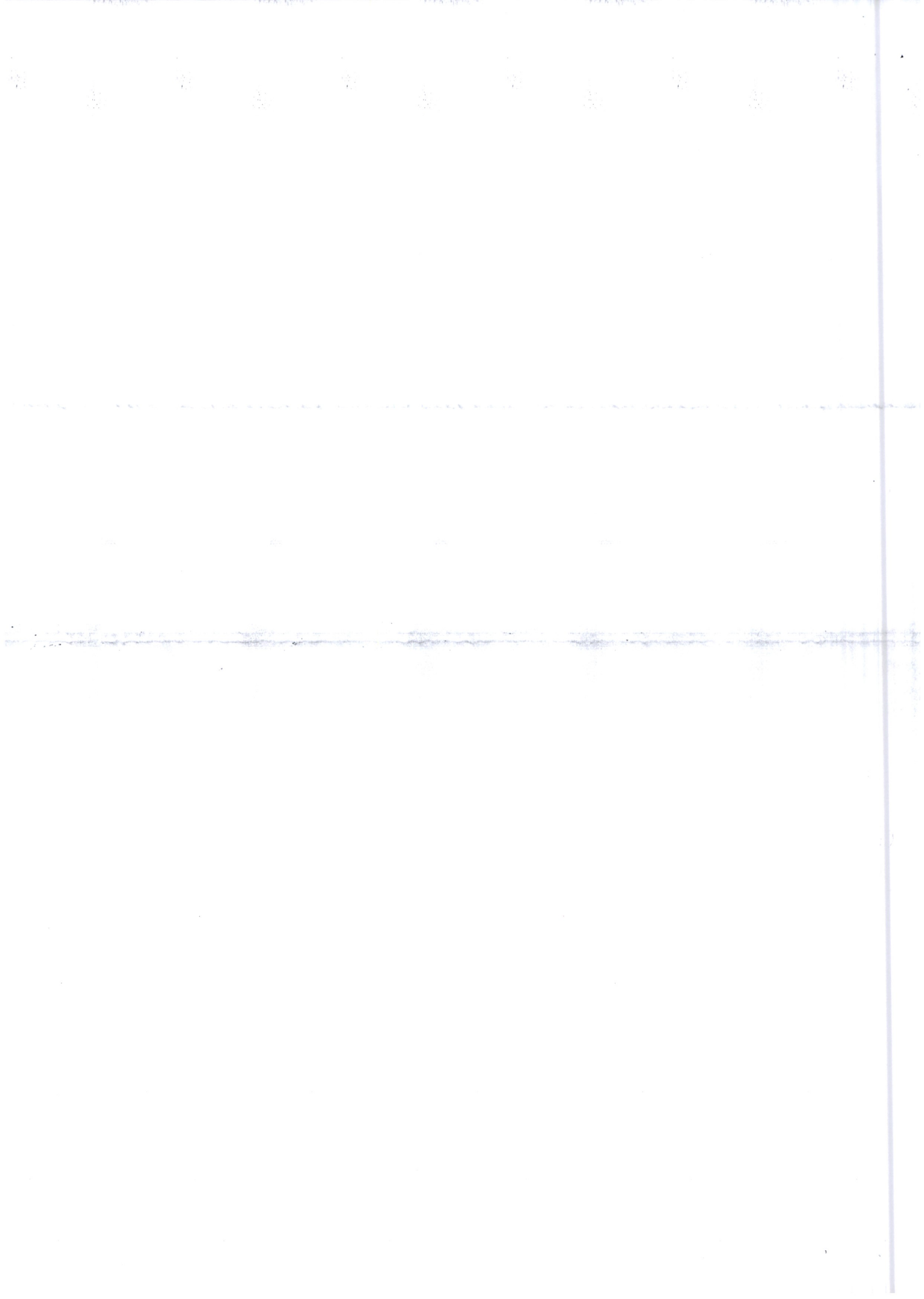
114	John Kiereini Kirika and Njanja Muguong	CHYS 2093	0984654/2194327	
115	Nyamrigo Faith Chacha	CHYS 10930	22133104	Faith 
116	Nyeri Teachers Investment Ltd.	CHYS 1310	13500422	
117	Pamelah Godia	CHYS 6023	10007311	
118	Parul Patel	CHYS 1613	20057814	
119	Patricia Aruwa Ogonji	CPN 10232	9088917	
120	Paul Mahugu	CHYS 6158	21216731	
121	Peter Mugi Kimondo	CPN 4771	10977190	
122	Priscilla Wendy Wangui Ndungu	CHYS & CPN 75	129263326	
123	Prof. Godfrey Muriuki & Margaret Muriuki	CHYS 2228	4829394	
124	Regina Maina	CHYS 1806	22058848	
125	Richard Githui, Simon Edapal and Mr. David	CHYS 4014	10578865	
126	Rose Wanjema	CHYS 6932	13060430	
127	Rosemary Wairimu Kioni	CPN 4245	3332510	
128	Rosemary Wanjiru Kitandu	CHYS 5817	9575252	
129	Ruth Mumbua Nzioka	CHYS 25357	22034371	
130	Samuel Gitonga & Njanja Muguongo	CHYS 4178	21283469	
131	Sharon Mwelu Kyungu	CPN 4201	14495308	
132	Silas Njeru Ngari	CHYS 3007	8485647	



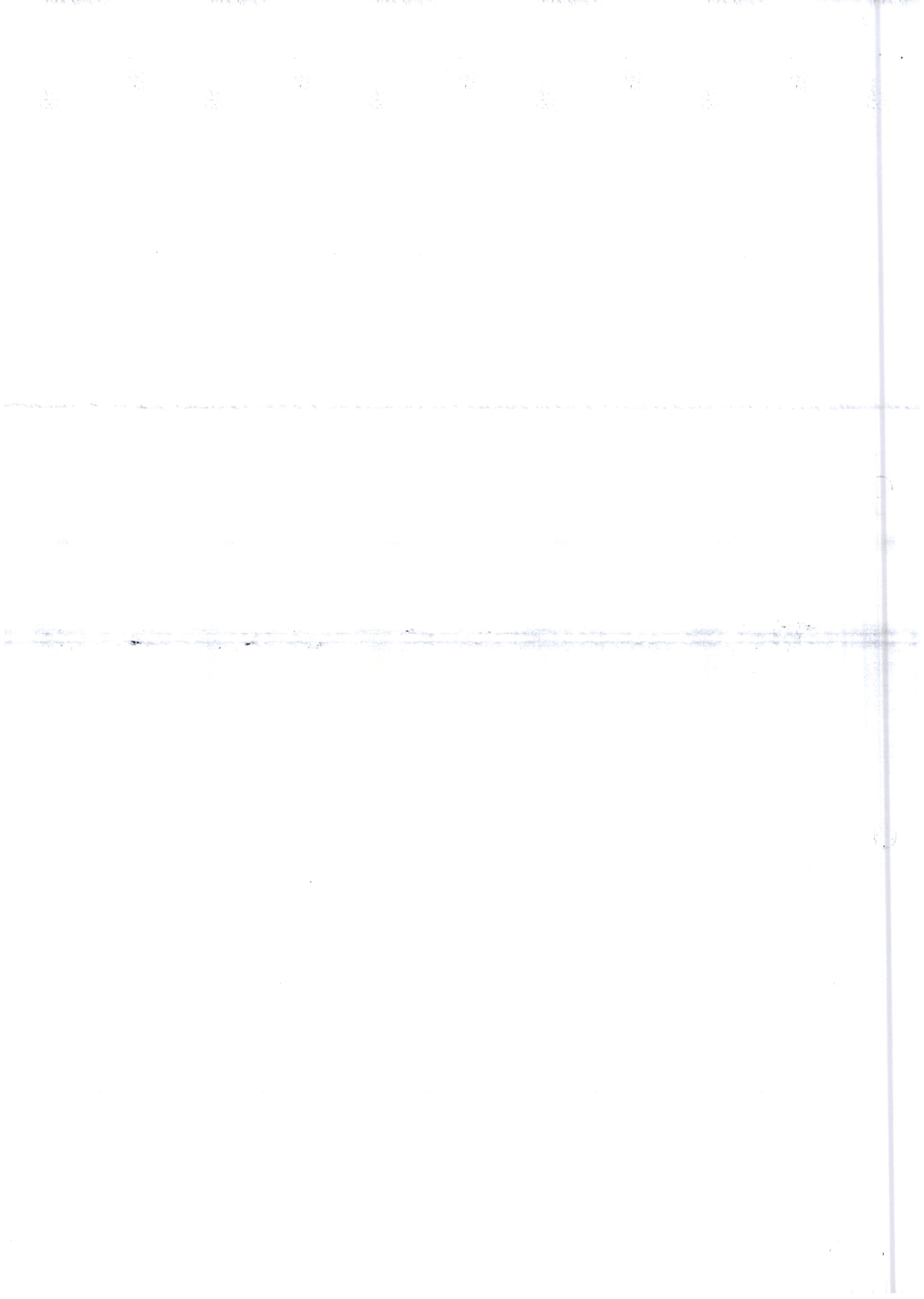
133	Simon Kimitei	CPN 7859	5793960	<i>Simon Tei</i>
134	Sospeter Gone Oganda	CHYS 2118	28011676	<i>Sospeter</i>
135	Stephen Kibuga Gakuo & Mary Kuchio	CHYS 6917	4827668	<i>Stephen</i>
136	Stephen Kibuga Gakuo	CHYS 10908	4827668	<i>Stephen</i>
137	Stephen Nzioka, Phylis Nzioka	CHYS 2285	21920894	<i>Stephen</i>
138	Stephen Nzioka, Martha Mbae		21920894	<i>Stephen</i>
139	Stephen Wamwala and Stellamaris Ngum	CHYS 6778	22907422	<i>Stephen</i>
140	Susan Nyambura Chege	CPN 10640	27220688	<i>Susan</i>
141	Suresh Bachheta & Asha Bachheta	CHYS 1172	1822176	<i>Suresh</i>
142	Timothy Muuo Muteti	CPN 8971	31294147	<i>Timothy</i>
143	Victor Ceasar Kimathi	CHYS 7711	21970769	<i>Victor</i>
144	Victoria Kale Mzuri	CHYS 41090	9079763	<i>Victoria</i>
145	Walter Kizito Kibango	CPN 8850	20370596	<i>Walter</i>
146	Wanjala Wanyama	CHYS	11657686	<i>Wanjala</i>
147	Wilfred Njeru	CPN 7795	6586568	<i>Wilfred</i>
148	Zachary Elung'at Imeje	CPN 2565	14679964	<i>Zachary</i>
149	Janet Akumu Philip Okoth	CHYS2847	11227847	<i>Janet</i>
150	James Kinuthia Gichuru	CHYS 14984	10318776	<i>James</i>
151	Isabella Anguba	CPN 10104	21828793	<i>Isabella</i>



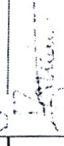



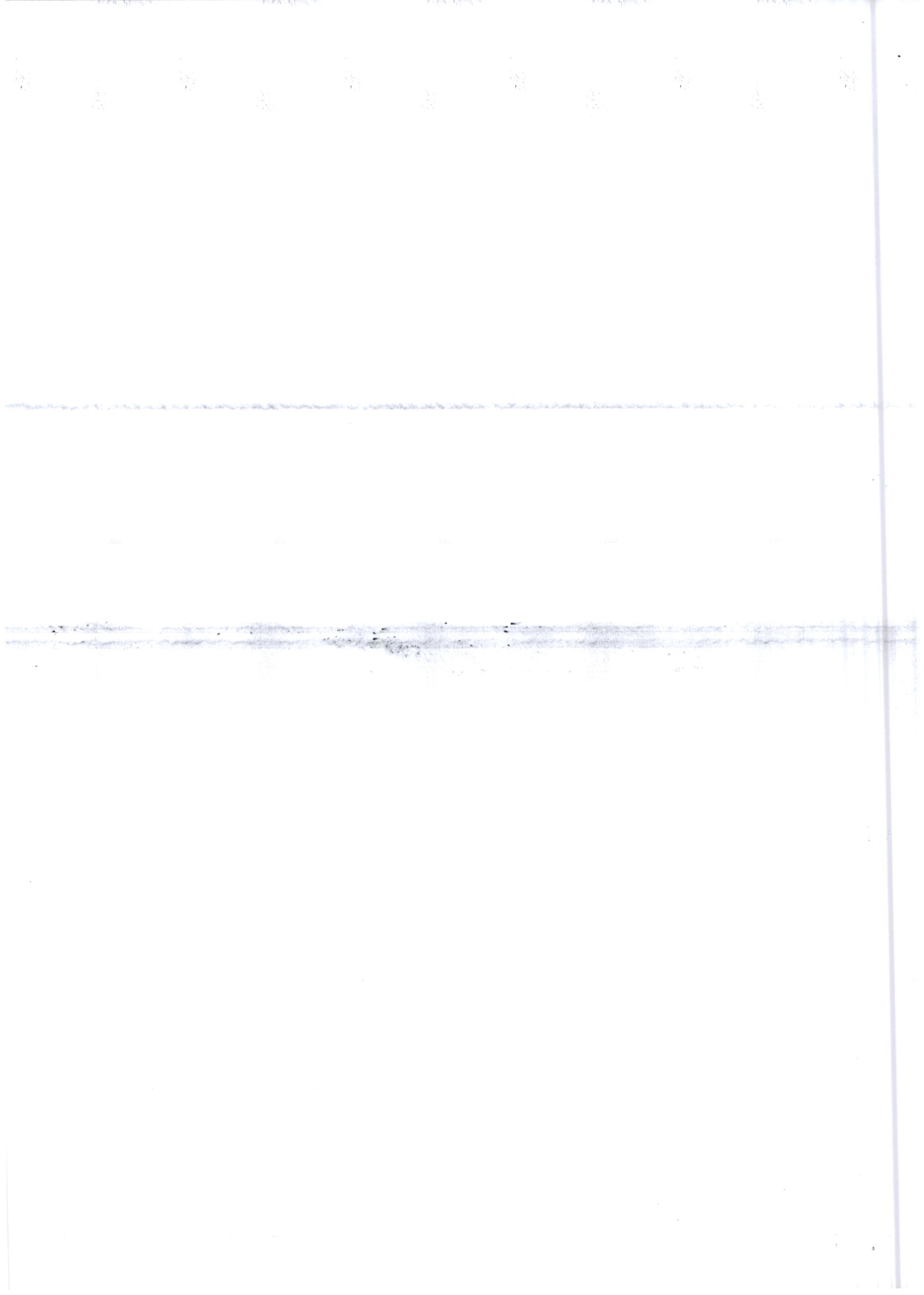
152	Benjamin Muteti Kiawa	CPN 7361	5212896	<i>Muteti</i>
153	Collete Boyani Manwari	CPN 2451	21001948	<i>Manwari</i>
154	Jacklyne Joan Makanda	CHYS 6153	14679621	<i>Makanda</i>
155	Jackline Wambui Mason	CPN 4675	10089702	<i>Mason</i>
156	Patrick Ngugi Mutiga	CPN 11266	11622165	<i>Mutiga</i>
157	Sharon Muthoka & James Mureithi	CPN 5703	29549260 & 245	<i>Muthoka</i>
158	Josphat K. Muriithi	CHYS 8140	23516733	<i>Muriithi</i>
159	Aggrey Omondi Ogutu	CHYS 36123	0919892	<i>Ogutu</i>
160	Alice Muchugi	CHYS 1401	8519260	<i>Muchugi</i>
161	Anne Kahara	CHYS 10467	24133524	<i>Kahara</i>
162	Billy Onyango	CPN 1131	21675424	<i>Onyango</i>
163	Christine Muchiri Theuri	CPN & CHYS 25	11725235	<i>Theuri</i>
164	Christopher Lippi	CPN 3034	34500606	<i>Lippi</i>
165	Mutua Ngalu	CPN 7721	8833101	<i>Ngalu</i>
166	Norah Jane Chemutai Bett	CPN	0303391	<i>Chemutai</i>
167	Beatrice Akinyi Miseda	CHYS 5986	10979511	<i>Miseda</i>
168	Belknap Sarah Kaya	CPN 6864	561707076	<i>Kaya</i>
169	Christine Mwaka	CPN 1080	10860255	<i>Mwaka</i>
170	Christine Mwaka	CHYS 1080	10860255	<i>Mwaka</i>

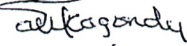



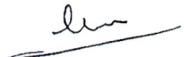
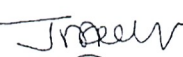


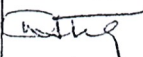




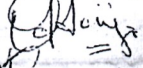
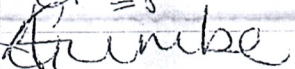




171	Esther Muthoni Gitau	CHYS 6984	0351553	<i>Muthoni</i>
172	Grace Akinyi Odongo & Reinhard Fleger	CHYS 43720	22948601	<i>Akinyi</i>
173	Grace Wangari	CPN 8294	0760998	<i>Wangari</i>
174	John Gachie	CPN 6085	11707335	<i>Gachie</i>
175	John Njenga	CHYS 14923	14923	<i>Njenga</i>
176	John Omondi	CHYS 7046	3462983	<i>Omondi</i>
177	Lucy Wanjiru Thua	CHYS 13216	9143066	<i>Thua</i>
178	Mathews Kiriago Nyaanga	CHYS 17615	5957725	<i>Kiriago</i>
179	Mary Mutoko	CPN 40856	22122152	M Mutoko
180	Nancy Langweni Maturi	CHYS 26131	0923298	<i>Maturi</i>
181	Jane Gathoni Ng'anga	CHYS 2227	10863550	<i>Ng'anga</i>
182	Anne W. Maina	CPN 7943B	8679373	<i>Maina</i>
183	Betty J. Sorinei	CHYS 13251	10760536	<i>Sorinei</i>
184	Dominic Wainaina Njoroge	CPN 130	11749864	<i>Njoroge</i>
185	Gladys Nasieku Tarayia	CPN 1330	1344871	<i>Tarayia</i>
186	Veronica Muthee	CPN 2835	21775261	<i>Muthee</i>
187	Anderson Mwiti Ernest/Llian Kawira/ Fed	CPN 36838	23349881	<i>Mwiti</i>
188	Beautrice Midambo Amugune	CPN 31777	1789949	<i>Amugune</i>
189	Caroline Mbugua	CHYS 7009	21752129	<i>Mbugua</i>



190	Catherine Wanjiru Njue	CPN 15199	11769002	
191	Hellen Chelangat Ruto	CHYS 8496	11205239	
192	Juliana Makasi Nzau	CHYS 38211	9539505	
193	Peter Otieno Ochungo	CHYS 5865	14494826	



NAME	ID NUMBER	SIGNATURE
1. SUSAN WANTIUKI KAGOMAU	3434456	
2. LYDIA WAMBUI NGATIA	7571114	
3. GEORGE NGATIA GICHURU	5925485	
4. LISA WANGUI NYAWIRA MURIMI	33674510	
5. JOHNSON DEBAN MURIMI	4825139	
6. Josephine V Awon	4829025	
7. Pamela Akinyi Juma	3963972	
8. Jackline Tabitha Kirjue	10094779	
9. Josphat Kirangi Thiong'o	5334548	
10. AGRESTA AGOSTA OWINGO	1875377	
11. Agatha Wathaka	6449005	
12. IBRAHIM ODHIAMBE	22324013	
13. WINNIE RVANTIRU MWANGI	8514835	
14. MAUREEN MERCY ATIENO (CHS 9126)	9290069	
15. Alice Nafula Grumbe - - 45116 CHYS+CPN	- 3159124 -	
16. Daniel Omandi Ochianda	23406131	
17. PHYLLIS CAROLINE NJERI GICHURU	22314093	
18. STEPHEN MWANGI GITITHI	5334530	S.M.G
19. MARY NTHAMBI MUTOKO	22122152	MWUTOKO

