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REPORT
OF THE
DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL
RESOURCES
ON THE
OWNERSHIP OF SOUTH NGARIAMA RANCH -
- L.R 13963, IN KIRINYAGA SOUTH DISTRICT,
CENTRAL PROVINCE

CLERK'S CHAMBERS
NATIONAL ASSEMBLY
NAIROBI

AUGUST 2012

INTRODUCTION

1. The Departmental Committee on Lands and Natural Resources, following various complaints, question by Members of Parliament in the House, memoranda's, conflicts and or disputes leading to deaths arising out of the ownership of South Ngariama Ranch in Kirinyaga County resolved to intervene and investigate the cause of conflicts and ownership of the Ranch, The Ranch is South Ngariama Ranch referred to as **L.R. 13963**;
2. The Committee began the investigation to try and resolve the ownership, alleged grabbing and subsequent subdivision of L. R No. 13963, South Ngariama Ranch in Kirinyaga County Council, Kirinyaga County by noting the following:
 - a. The land under investigation is **L.R. NO. 13963** which was trust land vested in Kirinyaga County Council for the people of Kirinyaga and measures approximately 7034 hectares The ranch, was **leased to South Ngariama Ranching Co-operative Society Limited since 1968 until 2013 when the lease expires**;
 - b. L.R 13963 was gazetted in the same year vide Gazette Notice **No.100 of 8/11/68 by the Commissioner of Lands for the purpose of ranching, to the cooperative society. The initial lease period was for 20years from 1/3/68**;
 - c. The Society secured a loan with AFC for addition stock and they were required to have the lease extended and by a minutes of the County Council of Kirinyaga **Minute No. AL&F of 17/8/1973**, the Council recommended an extension of 99 years lease to the Commission of Lands. However, the extension of lease for the ranch could only be a maximum of 45 years which Commissioner of Lands did and a title was issue in favour of South Ngariama Ranching Cooperative society Ltd;
 - d. in 1987, The land was surveyed and numbered as follows:
 - L.R.13962 -1440 hectares
 - **L.R.13963-7034 hectares**
 - L.R.14212-1515 hectares
 - e. The above process was followed by issuance of two titles to the ranching society under the provisions of the Registration of Titles Act, Cap 281 as follows:
 - **L.R no.13963-Grant No.4338**
 - L.R No. 13962-Grant No.4337
- f. In 1989 the County Council of Kirinyaga opened another Register at Kerugoya Land Registry, as "parcel" No. Ngariama/Lower Ngariama/431.
- g. Kirinyaga County Council has claimed ownership of the ranch using reference No. Ngariama/Lower Ngariama/431 and have attempted to take over the land by setting apart and establish a settlement scheme;

- h. There have been several court cases pitting the various parties and claiming ownership of the ranch but with different references i.e. L.R No. 13963 and Ngariama/Lower Ngariama/431.
- i. The local leadership, which includes Members of Parliament both past and present, provincial administration, civil leaders and local community leaders have been involved in one way or another in the disputes, claims, ownership and settlement on the disputed piece of land.

3. Disputes over the Ranch, therefore is:-

- a. Kirinyaga County Council and South Ngariama Ranching Co-operative society Limited have both claimed ownership of the ranch;
- b. Kirinyaga County Council have attempted to take over the land and establish a settlement scheme but South Ngariama Ranching Co-operative society Ltd have not co-operated on this subject matter;
- c. The lease granted to South Ngariama Ranching Co-operative society Ltd where the Council has denied that they were party to grant and or extension of the lease from 20 to 45 years.
- d. Reference to the land as “parcel” No. Ngariama/Lower Ngariama/431 under the provisions of the Registered Land Act Cap. 300 by the County Council while the South Ngariama and the Ministry of land claims that the reference number 431 is invalid.
- e. The land had already been surveyed under cap 281 and two titles issued to the South Ngariama Ranching Co-operative society Ltd. The two Titles registered under Registered Land Act Cap 281 were properly issued to the South Ngariama Ranching Co-operative society Ltd by the Commissioner of Lands on behalf of Kirinyaga County Council;
- f. The protracted court cases since 1978 revolves around Ngariama/Lower Ngariama/431 not L. R. 13963. There were four cases which were consolidated into Meru HCC Case No.71 of 2006 where the Kirinyaga county council was ordered to set the land apart to settle all the disputing parties. The Commissioner of Lands and the South Ngariama Ranching Co-operative society Ltd were not defendants in the suit and thus raise questions as to the disclosure of material facts in this case. For instance the existence of a 45 years lease is fundamental plus the role of the Commissioner of Lands; and
- g. The council attempted to enforce the Meru High court order vide Gazette Notices by the County clerk. The Notices were No's 10751 and 10752 of 14th November 2008;
- h. The legal basis and subsequent agreements to settle people from the larger Kirinyaga County on the disputed land;

QUESTION

4. **Further through a Parliamentary Question** - On 4th December, 2008, Member for Mwea, Hon. Gitau asked the Minister for Lands a question and while responding to a parliamentary question, the Minister stated, That:-
- The land is currently owned by South Ngariama Ranching Co-operative Society Ltd. The Minister stated that the lease is set to expire in the year 2013.
 - The land in question was part of trust land until it was set apart in 1968. Currently it is not trust land until expiry of the lease;
 - The District registry in Kirinyaga in favour of Kirinyaga County Council as the owner of Ngariama/Lower Ngariama/431 is not valid as the land was never registered; and
 - There is nothing to cancel in the District register because there is no entry. The Minister appeared before the committee on 10th November 2011 and undertook to prepare a comprehensive report for the committee and submit in subsequent appearance.
5. And the House rejection of the minister's explanation and its answer for being unsatisfactory, the matter was referred to the Parliamentary Committee on Lands and Natural Resources pursuant to provisions of Standing Orders of the House to investigate and make a report.

MANDATE OF THE COMMITTEE

6. The Departmental Committee on Lands and Natural Resources is established pursuant to provisions of Standing Order No. 198 (2) and (3) with the following terms of reference: -
- to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
 - to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
 - to study and review all legislation referred to it;
 - to study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
 - To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

7. The Committee is mandated to consider:-
 - 7.1 Lands and settlement;
 - 7.2 Forestry, water resource management and development;
 - 7.3 irrigation;
 - 7.4 Environment;
 - 7.5 Wildlife, and
 - 7.6 Mining and Natural Resources.

8. **Oversight** - In executing its mandate, The Committee oversees the following Government Ministries; namely: -
 - 8.1 Ministry of Water and Irrigation;
 - 8.2 Ministry of Environment and Minerals Resources;
 - 8.3 Ministry of Lands; and
 - 8.4 Ministry of Forestry and Wildlife.

Committee composition

9. The Departmental Committee on Lands and Natural Resources was constituted on June 17th 2009 and its membership is as follows:-
 - 9.1 Hon. Mutava Musyimi, M.P. – **Chairperson**;
 - 9.2 Hon. Peris Chepchumba Simam, M.P. - **Vice Chairperson**;
 - 9.3 Hon. Benjamin Jomo Washiali, M.P.
 - 9.4 Hon. Silas Ruteere Muriuki, M.P.
 - 9.5 Hon. Benedict Fondo Gunda, M.P.
 - 9.6 Hon. Justus Kizito, M.P.
 - 9.7 Hon. Njuguna Gitau, M.P.
 - 9.8 Hon. Mohammed Affey, M.P.
 - 9.9 Hon. Omar Zonga, M.P.
 - 9.10 Hon. Kiema Kilonzo, M.P.
 - 9.11 Hon. Dr. Erastus K. Mureithi, MBS, HSC, MP

INVESTIGATION METHODOLOGY

10. The Committee adopted the following methods in order to undertake the investigations:-
 - i.) Requested for written submission from the Minister for lands;
 - ii.) Met and received submission from the Member of Parliament for Mwea;
 - iii.) Held a meeting with the Provincial Commissioner and briefed on the ownership of South Ngariama Ranch;
 - iv.) Visited Kirinyaga county council and held a meeting with Chairman, the Town Clerk and other stakeholders;

- v.) Visited Kerugoya Lands Registry and assessed documents related to South Ngariama Ranch;
- vi.) Held a public hearing at Wanguru Girls High School - Members of the Public were given a chance to air their grievances on South Ngariama Ranch;

FINDINGS AND OBSERVATION

11. The committee observed the following that:-

- a) In 1968, vide Gazette notice no. 100 of 8th November 1968, the land L.R. No 13963 was allocated to South Ngariama Ranching Co-operative society Limited which was registered as a co-operative society in 1967. The ranch was gazetted by the Commissioner of Lands for ranching purposes by the Society.
- b) In 1968, vide Gazette Notice No. 100 of 12th January, 1968, the land L.R. No 13963, which was initially trust land, was set apart with an area of 24,800 acres as per boundary plan No. 179/83 and was leased to the South Ngariama Ranching Co-operative Society Limited by Kirinyaga County Council for an initial period of twenty (20) years as per letter of allotment Ref. No. 77364/21 of 19th February 1968; which was subsequently renewed to forty five (45) years. The term of the lease was approved by the Council and advised by the Commissioner of Lands that the maximum term for ranching user was 45 years.
- c) In 1987, the land L.R. No 13963 was surveyed and numbered as follows:
 - a. L.R.13962 -1440 hectares
 - b. L.R.13963-7034 hectares
 - c. L.R.14212-1515 hectares
- d) The above process was followed by issuance of two titles to South Ngariama Ranching Co-operative society Limited under the provisions of the Registration of Titles Act, Cap 281 as follows:
 - i. L.R no.13963-Grant No.4338
 - ii. L.R No. 13962-Grant No.4337
- e) In 1973, The South Ngariama Ranching Co-operative Society Limited secured a loan with AFC for addition stock and they were required to have the lease extended.
- f) By Minute No. AL&F of 17/8/1973 of the County Council of Kirinyaga, recommended for an extension of 99 years lease to the Commission of Lands. However, the extension of lease for the ranch could only be a maximum of 45

years which Commissioner of Lands did approve and a title was issue in favour of South Ngariama Ranching Cooperative society Ltd.

- g) The Council of Kirinyaga has denied ever being party to the extension of the lease;
- h) On 29th January, 1988. The title for LR. No.13963 or grant No.4238 was used to secure a loan of 1 million Kshs.1,000,000/= from AFC for additional stock on 20th July 1988;
- i) In 1989, the County Council of Kirinyaga had registered at Kerugoya Land Registry reference no. Ngariama/Lower Ngariama.431 parallel to the one held at Ministry of Lands without following the due process which requires an application for change of registration from registration of Title Act RTA to Land Registration Act LRA. This requires the approval by the Commissioner of Lands with involvement of the Director of Survey for preparation of the maps. This register is purported to have been opened in 1965 but not signed to be an authentic meaning that it is a forgery and does not exist. The date of opening the register in 1965, the Land had not been set apart through a gazette notice which was done much later in 1968 - 8th November Notice No. 100 of 1968;
- j) The Committee noted the noble idea and efforts made by the leadership of the larger Kirinyaga county to try to settle the “landless” on L.R. no. 13963 as these means resolving the never-ending landlessness being experienced throughout the county however, ensuring that the land is available and following the laid down rules and procedures or taking due diligence should have been taken into consideration. Further, noting that the land was leased and there were pending court cases;
- k) The Committee noted that there have been several unfortunate deaths arising out of the disputes surrounding the ownership and subsequent attempted settlement of the people on L.R. 13963;
- l) South Ngariama was hived out of the larger Gichugu constituency, specifically Ngariama location on the southern part. Hence south Ngariama. During the hiving of south Ngariama, Kirinyaga Districts had only two divisions – Ndia and Gichugu. This therefore served as the reason why those residents of Gichugu claimed that south Ngariama belonged to them, by virtue of it having been hived from their area. This is one of the problems of south Ngariama. Later, Gichugu and Ndia division/constituencies were sub- divided into Mwea and

Kerugoya/Kutus divisions/constituencies. This shifted the location of south Ngariama to Mwea Division/constituency, Therefore the resident of Mwea division/constituency have claim over it. This conflicted with resident of Gichugu constituency.

- m) There seems to be a general consensus in the area that the landless and needy people in the area need to be settled on the disputed land. However the current position indicates that people who have so far benefited from the controversial allocations is a list of prominent people to the exclusion of deserving squatters;
- n) The manner in which HCC case no. **71 of 2006** was handled by the parties then was proper as the material facts of the case were never brought on board or before the court and that the most important stakeholders on matters of South Ngariama were never enjoined i.e. the Commissioner lands and South Ngariama Ranching Cooperative society Ltd; in addition the reference number for the land i.e. Ngariama/Lower Ngariama/431;
- o) The Committee noted that the subject matter to the Court is an abuse of court process in that:-
- i. The case subject matter Ngariama Lower Ngariama/431 does not exist anywhere in the registers of the Ministry of Lands and only exists as L.R. No. 13963 Title No. L.R.No. 4338 issued by Commissioner of Lands on 29th January, 1988 to South Ngariama Ranching Co-operative Society Ltd. for a period of 45 years.
 - ii. South Ngariama Ranching Co-operative Society Ltd. is private society which has not been sued and therefore not party to the civil suit case No.71 of 2006 in Embu High Court but an amorphous body called South Ngariama Ranching Scheme which is not a Co-operative Society Ltd. was listed as a defendant.
 - iii. The Commissioner of Lands was never made party to the suit so as not to disclose the facts that the suit property has never been registered as Ngariama/Lower Ngariama/431 but is registered as L.R.No.13963 in favour of South Ngariama Ranching Co-operative Society Ltd. who are owners and has a charge with AFC of Ksh.1,000,000/= and title is the security in 1988.
- p) The court nullified the title on the basis of L.R No. Ngariama/Lower Ngariama/431 and not L.R No.13963 under civil case no.71 of 2006 in Meru High Court.

- q) The Committee noted that the South Ngariama Ranching Cooperative Society Limited may have wanted to extend the lease without the consent of the County Council of Kirinyaga;
- r) The Committee noted that on 14/10/2004 the Ag. Clerk to the County Council Mrs. Roselyne Miano, sworn in an affidavit in favour of South Ngariama Ranching Co-operative Society Ltd. as the owners of the Land;
- s) The Committee noted that the then Acting Clerk, Mrs. Roselyne Miano, gazetted herself as member of the Lands Board against the law, without the authority from the Commissioner of lands or Minister; this is to allow her set the land aside and then subdivide;
- t) The Committee noted that the local politicians are directly involved in the matter, as they are the direct beneficiaries and their supporters. Though they were aware that the South Ngariama Ranch Co-operative Society Limited had a lease for over a long period which was believed to have expired. The lease extension was an illegality since the land is held in trust by Kirinyaga County Council on behalf of the people of that particular area;
- u) The Committee noted that when the squatters realized that the land was leased by the County Council in 1968, they went to court to sue it and an order to stop the Council from evicting them was issued in 1968 another order to restrain the Council from demarcating the land was issued in 1979.

12. RECOMMENDATIONS

Following the above observations; aware of the fact that the land in question will revert to Kirinyaga County government in April 2013, also aware that legislation on Community land will have been enacted by then, the Committee recommends as follows:-

- i). That the status quo be maintained: and
- ii). That determination of all pending court cases be expedited;

ACKNOWLEDGMENT

- 13. The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate.

14. The Chairperson takes this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules which enabled us to complete the tasks within the stipulated period.
15. The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible.
16. Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Lands and Natural Resources, to present and recommend this report to the House pursuant to the provisions of Standing Orders of the National Assembly.
17. On behalf of the Committee, I request the house to adopt the report.

SIGNED:.....

HON. MUTAVA MUSYIMI, MP

CHAIRMAN

DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES

DATE:.....14.8.12.....

INVESTIGATIONS/EVIDENCE ADDUCED

BACKGROUND INFORMATION - History of the Ranch

18. The Ranching company was registered as a co-operative society in 1967. The land at the centre of the protracted dispute was allocated to the ranch in 1968 vide Gazette notice number 100 of 8th November 1968. The Land being LR No.13963 was gazetted by the Commissioner of Lands for ranching purposes by the Society.
19. The land was initially trust land and was leased to the ranching company by Kirinyaga County Council for an initial period of twenty (20) years which was subsequently renewed to forty five (45) years.
20. The question of the term of the lease was approved by the Council and advised by the Commissioner of Lands that the maximum term for ranching user was 45 years.
21. The land was surveyed in 1987 and numbered as follows:
 - a) L.R.13962 -1440 hectares
 - b) L.R.13963-7034 hectares
 - c) L.R.14212-1515 hectares
22. The above process was followed by issuance of two titles to the ranching society under the provisions of the Registration of Titles Act, Cap 281 as follows:
 - a) L.R no.13963-Grant No.4338
 - b) L.R No. 13962-Grant No.4337
23. The ranching society charged both titles to Agricultural Finance Corporation in 1988 for Ksh.1,000,000 (One million Kenya shillings).

24. THE MINISTER FOR LANDS - SUBMISSION

- a. The land was initially Trustland and was set apart vide Gazette Notice No. 100 of 12th January, 1968. The land that was set apart had an area of 24,800 acres as per boundary plan No. 179/83;
- b. 20,460 acres was subsequently leased to South Ngariama Ranching Cooperative Society Ltd for a term of 45 years with effect from 1st March, 1968 to 28th February, 1978 for ranching purposes only;
- c. On 17th August, 1973, Kirinyaga County Council recommended extension of lease to 99 years to enable Agricultural Finance Corporation (AFC) assist the society with loan to develop the land. This recommendation was however not implemented;
- d. The Titles issued to South Ngariama Ranching Cooperative Society Limited are as follows:-
 - (i) L.R. No. 13963-Grant No. I.R. 4338 –Term– 45 years - w.e.f 1/3/68;
 - (ii) (L.R. No. 13962-Grant No. I.R. 4337 – Term – 45 years - w.e.f. 1/3/68;

- e. Both titles were charged to Agricultural Finance Corporation in 1988 for Kshs. 1,000,000/-. This loan has not been discharged.

25. CHALLENGES RELATED TO THE LAND

- a. There have been several attempts by Kirinyaga County Council take over the land and establish a settlement scheme but South Ngariama Ranching Cooperative Society Limited have been resistant. The Council has even denied that they were party to extension of the lease from 20 to 45 years;
- b. Mapping of the area and in particular, reference to the land as “Parcel” No. Ngariama/Lower Ngariama/431 under the provisions of RLA Cap 300 is not backed by any survey records;
- c. Though there is an entry in the registry that the land is “registered” under Kirinyaga County Council and “reserved to South Ngariama Ranching Co-operative Society Limited until setting apart” is done, the entry is not signed and is therefore not valid;
- d. Protracted Court disputes have persisted since 1978 on L.R. No. Ngariama/Lower Ngariama/431. There were four (4) suits pending on the matter which were consolidated and designated as Meru HCCC No. 71 of 2006. Subsequently, the High Court on 18th June, 2008 ordered Kirinyaga County Council to set the land apart ostensibly to settle all the disputing parties.
- e. Neither the Commissioner of Lands nor South Ngariama South Ranching Cooperative Society were parties to the Court Cases and the fact that the land was set apart in 1968 and leased to the Society for 45 years appears not to have been brought to the attention of the High Court. The Court Order that the land be set apart and the attempt to do so by the Council therefore have no legal basis.

26. Current Status

- a. Leases to South Ngariama Ranching Cooperative Society Limited are still valid and set to expire in year 2013. Both titles are charged in favour of the Agricultural Finance Corporation. The society is doing ranching on the land but squatters have invaded the land where they are engaged in farming;
- b. The purported seizure and subdivision of the land by Kirinyaga County Council.
- c. The land will revert back to the trusteeship of the County Council only after the two leases held by South Ngariama Ranching Co-operative Society expire in year 2013;
- d. Current dispute can only be resolved if all parties interested in the land are brought on board for discussions and agreement on the way forward. Unilateral decisions by Kirinyaga County Council will only complicate the matter.

27. **PROVINCIAL COMMISSIONER, CENTRAL PROVINCE - MR. JAPHETH RUGUT** - Mr.

Rugut gave the Committee vital background information on the South Ngariama Scheme Ranch in Kirinyaga that:-

- a) The land is ancestral land held in trust by Kirinyaga County Council for area residents (Mihiriga Kenda - the nine Kikuyu clans) since independence. Initially it was 28,000 acres, but 11,000 acres was lost through mysterious circumstances;
- b) On authority of the Council, the Government gave a lease to a ranching company which utilized the land in the 1970s and 80s. **When the company collapsed and the lease lapsed**, the land reverted to communal grazing under Kirinyaga County Council. A few people practiced subsistence agriculture on the land and a few, in the course of time, tried commercial agriculture;
- c) In the 1980s, one person Nyamu Mugeru came up and laid claim to the whole land and lodged a case at the Meru High Court against the Council. Around 1990, a group of elders calling themselves the Mihiriga Kenda enjoined themselves in the case and claimed right of authority to allocate the land as representatives of the nine clans of Kirinyaga;
- d) The group started leasing out large tracts of land for commercial farming like tomato farming and in the process earned big monetary benefits. This move led to the start of problems over ownership of the land.
- e) In 2004, the county council, in consultation with other leaders, decided to carry out election for elders to represent the nine clans as the claimants were self-imposed. These were carried out with the support of the Provincial Administration. 15 elders were elected for each location among which the area councilor and chief were mandatory members. A minimum of four women were also proposed;
- f) Some of the self imposed clan leaders were dropped during elections. The dropped elders then incited the elected leaders among their group to reject the posts and revert back to their original leadership arrangement and continue with the court case.
- g) The council then went ahead and called for applications for land from deserving people in the 22 locations that formed the greater Kirinyaga District. Vetting and selection was done by the elected elders. The list of beneficiaries totaling 4,580 was then compiled and received the approval and blessings of the district leaders including the then four Members of Parliament. This was in 2007;
- h) The council then obtained the necessary court orders and embarked on survey work in 2007. Allocation was done in 2008, and the new settlers moved to the land in late 2008 and early 2009. Overall, the settlement programme has been

successful. However, vested interest from some individuals has continued to cause problems to the new settlers. For example the Mihiriga Kenda (the older group) who had hoped to be in charge of the resettlement exercise themselves has continued to seek any avenue and solicit any support to make the process unpopular and if possible scuttle it. There have been several cases of insecurity in the area, leading to the death of about 7 people. This can be attributed to incitement arising from these individuals who are unhappy with the way the program was conducted.

- i) Selfish interests have led to the loss of benefits of the whole scheme and opening of old wounds. He said that revision of the land policy is necessary. He was of the view that the system of allocation of 2004 was fairly thorough.
- j) There was a lot of propaganda on the land as concerns some individuals being given land illegally. Land has been set aside in the scheme for public utilities like schools.

28. CLERK, KIRINYAGA COUNTY COUNCIL - Mr. Jackson Arithi with his Deputy clerk Mrs. Roslyn W. Miano and the Chairman Cllr. Cyprian Kangeri. He informed the Committee, that:-

- a) The ranch is in Kirinyaga District and was initially Trust Land set apart vide Gazette Notice No. 100 of 12th January 1968. The land had an area of 28,800 Acres as per boundary plan no. 179/83.
- b) 20,460 Acres was subsequently leased to South Ngariama Ranching Cooperative Society Ltd for a term of 20 years with effect from 1st March 1968 to 28th February 1978, for ranching purposes only as per letter of allotment Ref. No. 77364/21 of 19th February 1968;
- c) In between, the lease was extended to the year 2013. This became contentious because the council was not party. Renewal was done by the Commissioner of lands;
- d) Court Case 71 of 2006 where the ruling for the renewal process of extension was questioned since the council was not involved. The Council was directed by the high court Embu to set the land apart for allotment vide the ruling of Case No. 71/2006, Gazette the land even though the Minister had not gazetted.
- e) From there the people could be allowed to raise objection. The court directed that after the procedure has been followed then the matter should be followed up by the Ministry of Lands, the clerk also indicated that he had documentary evidence.
- f) The deputy clerk said that the bone of contention is the ownership of the land. In 1968 Nyamu Mugeru took the council to court, the land was group ranch then. The purpose of the lease was grazing. The case started until 2006 when

the judgment was passed. On expiry of the twenty years subdivision was done by the co-operative without the knowledge of the council.

- g) The matter was tabled in parliament and it was noted that the land belonged to the council.
- h) In 1988 the members met and agreed to subdivide the land and allocate to the needy people. The Minister of lands cancelled but the members went on. The Members of Parliament and the elders met and resolved to subdivide the land in order to avert the problem.
- i) The council met and decided to take a participatory position and use the elders to identify the landless. On 20/12/2004 the council conducted the elections in twenty two locations to elect a committee from nine clans who to be representatives of the clans. The committee was formed and the council adopted. The committee was given the mandate to identify the landless. The committee made an advertisement that those who are needy to pay Ksh200. The names were categorized according to locations. The list was submitted in 2005 and was scrutinized by the committee and submitted after vetting.
- j) George Njeru declined when his friends were not elected though most of his relatives were beneficiaries. The process was tight as it involved the indigenous.
- k) An objection was raised in 2006 where the court's ruling was that the committee was to use the names. 4580 allottees were identified where everybody was to get 3 acres of land. However, there came a complaint from other people that the beneficiaries were not genuine thus the board was to hear complains.
- l) The Clerk to the council vide letter dated 16/04/2010 wrote to the office of the Deputy Prime Minister and Ministry of Local Government stating the status of the disputed land and that the land was originally registered as Ngariama/South Ngariama/431 under the trusteeship of Kirinyaga county council on 21/6/1965;
- m) The Council leased the land to the Ranching Society for a period of 20 years from 1/3/1968 to 29/2/1988;
- n) Nyamu Mugeru and others filed a suit against Kirinyaga County Council and South Ngariama Co-operative Society in 1978. The plaintiffs prayed in the suit that they were the owners of the land. The suit was consolidated with others in 2006 where the court ruled that the land belonged to the Council.
- o) The Council claims that the operation of the lease was within the agreed framework until the Ranching Society started violating the terms of the agreement. The Ranching society Sought renewal of the lease in 1986 without seeking consent of the Council. The Council persistently objected to requests

for renewal of the lease and wrote to the Commissioner of Lands resisting the same;

- p) The Council wrote to the Commissioner of lands in 1988 seeking Government approval to put the land to a more economic use upon lapse of the lease on 29/2/1988. The Council's request was approved by the Minister for Local Government. Sub-division of the land to the landless was approved by the District Committee meeting held on 5/6/1989;
- q) Whereas the controversy over sub-division and ownership of the land continued, the council discovered that the Commissioner of Lands had extended the lease for 45 years from 1/3/1968;
- r) The Council wrote back rejecting the intended sub-division of L.R No.13963. The Ministry of Lands clarified to the Council that the earmarked parcel for sub-division was L.R No.13963 and not L.R No. Ngariama/South Ngariama/431;
- s) The validity of the 45 years lease was challenged in court in Meru High Court civil case no.71 of 2006 where it was held that the ranching society failed to show where it got extension of the lease from;

29. FORMER MEMBERS OF PARLIAMENT – KIRINYAGA – Hon. Daniel Karaba – Kerugoya Kutus and Hon. Alfred Nderitu - Mwea.

- a. They are former Members of Parliament in the 9th Parliament for Mwea and Kerugoya Kutus constituencies respectively. And they were fully involved in the re-settlement of people for the larger Kirinyaga district then together with other two Members i.e. Hon Martha Karua, and Hon. Robinson Githae, EGH, MP;
- b. Originally, south Ngariama was a forested area and set aside by the people of Kirinyaga for ranching as well as for rearing of cattle.
- c. A group of people from Kirinyaga who owned a few cows went ahead to acquire title for the land to rear cattle. And acquired the title in 1992, In the process of rearing cattle, they also hired portions of the ranch for cultivation at a fee;
- d. The above hired at fee led to double allocation for the same piece of land which led to infighting. This infighting subsequently led to collapse of the ranching company and the ranch became a safe haven for criminals, specifically the caves at Murunduki location.
- e. In 2003/4, the Mihiriga Kenda claimed ownership however they had different grouping among themselves which led to further splitting. There were five groupings among the Mihiriga Kenda with different leaders and opinions.
- f. The then leaders including Members of Parliament, Provincial Administration (the DC, Kirinyaga was Mr. J. Chege), brought together all leaders of the larger

Kirinyaga including the various groups of Mihiriga Kenda for a meeting to find a solution to the problems of Ngariama. During the meeting, there emerged different leaders of Mihiriga Kenda, 5 of them being fronted as chairs of Mihiriga Kenda. One George Njeru was declared the chair but there others who claimed the chairmanship.

- g. The meeting resolved that the matter for chairmanship of Mihiriga Kenda be sorted out by the people of Kirinyaga.
- h. That south Ngariama was hived out of the larger Gichugu constituency, specifically Ngariama location on the southern part. Hence south Ngariama. During the hiring of south Ngariama, Kirinyaga Districts had only two divisions – Ndia and Gichugu.
- i. The above therefore served as the reason why those residents of Gichugu claimed that south Ngariama belonged to them, by virtue of it having been hived from their area. This is one of the problems of south Ngariama. The residents of Gichugu claimed the ranch and were supported on the claim by the then chairman, Kirinyaga County Council one Mr. Jeremiah Gateri.
- j. Later, Gichugu and Ndia division/constituencies were sub- divided into Mwea and Kerugoya/Kutus divisions/constituencies. This shifted the location of south Ngariama to Mwea Division/constituency. Therefore the resident of Mwea division/constituency have claim over it. This conflicted with resident of Gichugu constituency.
- k. During the elections of the chairman the Mihiriga Kenda, all locations did elect their chairs and Mr. George Njeru was elected their chair in Nyagati location. However, having none of his splitter group elected he opted to resign. The elections were conducted in the all locations of the larger Kirinyaga district – 22 locations.
- l. The chairs of each location met at the district headquarters to elect one chairman, who was to serve as the chairman of the Mihiriga Kenda. The person elected was Mr. Apollo Njeru.
- m. In 2003 or there about, leaders,- Members of Parliament, councilors and the chairs of all locations, the county council of Kirinyaga and the Provincial Administration met to chat way out of resolving the problem of south Ngariama.
- n. The council was the lead agency, as it was trusted by the people and also to provide logistical support in terms of surveying, conducting allocation, development of ballot, demarcation and issuing allotment letters. In addition to having the elected leaders – councilors as the representatives in the council. The council was also mandated to develop an application form to be filled by those wishing to be given land.

- o. The elders were mandated to vet the beneficiaries from all the locations. While the Provincial Administration was only to oversee the process.
 - p. The application form was purchased from the council at a fee of Kshs 200. And at the end of the process there were 17,400 applications.
 - q. The splitter group of the Mihiriga Kenda led by George Njeru went ahead to invite others not to apply or buy the forms. That clan leadership was made an elective position and that the members of Parliament and councilors were not involved in the election of clan chairs as representatives at the location levels.
 - r. After the election of clan elders, a balloting process was started, where several ballots were prepared and one picks one with either YES/NO if yes, one is allocated a number.
 - s. While all this process was going on, a court process was being implemented which arose out of a ruling by under HCC Case No. 71 of 2006. The parties to the suit were, the Mihiriga Kenda, county council of Kirinyaga and South Ngariama Co-operative Society Limited.
 - t. There were many court cases involving south Ngariama However one was interesting involving one Mr. Nyamu Mugera and others, because he had a title, of the purportedly of south Ngariama. The court ruled that the title was fraudulent.
 - u. In other court ruling, specifically 71 of 2006 the court gave the county council of Kirinyaga, and the elders powers and orders to oversee the process.
 - v. In 2007, the process was halted to allow the national election take place in December 2007 and begun in early 2009.
 - w. In 2009, all those with ballot number – (YES) were recalled for a further balloting to get plot numbers.
 - x. Originally, the size of south Ngariama ranch was less by 11,000 acres, and this had no dispute.
 - y. On allocation of the plots by the council to the beneficiaries, they begun to sell at a cost of Kshs 30,000 due to insecurity and need for money. Some allottees moved in early 2009 and erected makeshift shelters.
 - z. The splitter groups were alleged to have incited others and a series of attacks took place in the ranch and seven (7) deaths were caused. The spate of attacks led people to settle at 3 centres – Ithangi, Ikurugu and Kadawa for easy provision of security.
-
- aa. Following the sales of land by allottees, the elders and council resolved to have the title to be issued have a caveat to present further selling.
 - bb. The Hon. Karaba and Hon. Nderitu own piece of land Measuring 3 acres in trust for their siblings and that the process was above board. Since the leaders did the best at the time to ensure fairness and therefore transparent.

- cc. Those that resided on the ranch before the allocation were evicted by the council in conjunction with the provincial administration.
- dd. The Ministry of lands has the title deed for the ranch and the co- operative society has a lease. They opine that: -
 - i. The status quo, as at now be maintained
 - ii. The provincial Administration provided security to those who have settled.
 - iii. Government set up the relevant institution allocated land, - hospital, schools etc.
- ee. Arch-Bishop Gitari did threaten to go on strike over the disappearance of the 11,000 acres portion of South Ngariama, and that he did make a request on behalf of the ACK Church to be allocated land, to set up a University. The church was allocated 57 hectares.

30. HON. MARTHA KARUA, M.P – GICHUGU CONSTITUENCY

- a. She was first elected to Parliament in 1992 as M.P for Gichugu. In 1993, the then Kirinyaga District Commissioner Mr. John Nadasaba convened a meeting of leaders from the larger Kirinyaga District and include the council of Kirinyaga, clerk of council, MPs and other politicians, specifically those from KANU then, Also Arch-Bishop Gitari was in attendance.
- b. The District Commissioner wanted to sub divide South Ngariama. Other members present were;
 - i. Kinyua Mboi – Former MP for Ndia
 - ii. Bishop Allan Njeru – former MP for Mwea
 - iii. Herself as a sitting Member of Parliament for Gichugu.
- c. The land in question then belonged to Kirinyaga County Council; therefore what was required was for leaders to find a solution and the County Council to formalize the decision or resolution of the leaders meeting.
- d. The land measured 28,000 acres (approximately) where the council clerk then reproduced in the meeting 2 titles of land measure 17,000 acres and the other 11,000 acres, were already exercised.
- e. The meeting also directed the clerk, Kirinyaga County Council to keep the two (2) titles deeds for the 17,000acre and seek the council minutes that resolved to exercise the 11,000acres. The allocation of the 11,000 acres may have been done through connivances by land grabbers with the Ministry of Lands and previous council.
- f. **They were aware that the South Ngariama Ranch Co-operative society had a lease for over a long period which was believed to have expired. The lease extension was an illegality since the land is held in trust by Kirinyaga County Council on behalf of the people of that particular area.**

- g. The Mihiriga Kanda in Kirinyaga with its many splitter groups went round to collect money purportedly for sub division.
- h. After 2002 elections, the Kirinyaga County Council convened a meeting to resolve the problems of the ranch. The meeting was for leaders for the larger Kirinyaga and includes the then four MPs- Nderitu for Mwea, Karaba for Kerugoya Kutus, Hon. Githae for Ndia and herself for Gichugu. The Provincial Administration, led by the District Commission Mr. J. Chege and the Mihiriga Kenda leaders also were in attendance. The meeting agreed that:
 - i. To dispose off the land to people as fast as possible
 - ii. That a day be set aside by the all the locations to meet and elect clan elders in order to resolve the problem of leadership in the Mihiriga Kenda.
 - iii. The County Council of Kirinyaga was mandated to formalize the resolution of the leaders meeting in the full council meeting. To be the council resolutions.
- i. Historically, demarcation of land is the larger Kirinyaga District in early 1960 was supervised by the Mihiriga Kenda. Therefore during this exercise, the Mihiriga Kenda was mandated to identify and vet beneficiary.
- j. All location elected their leaders – clan elders and one Mr. George Munene Njeru disassociated himself from the exercise though he was elected.
- k. Her father Mr. Jackson Karua was elected as a member of clan elders in Kirima location.
- l. The council surveyed the land for future planning to reserve parts public utility and to establish the equitable allocation process.
- m. Then the council requested for application in which one paid Kshs 200 to be given an application form. She did not want land therefore she didn't apply.
- n. All the clan elders and councilor were each allocated land since they were resident of Kirinyaga and they were overseeing the process. This was arrived at the leaders meeting.
- o. Balloting was done by the council and elders and those who benefited, their names were displayed on the notice board to allay any fears or complains on the process for one month.
- p. The letter of allotment was issued by the Kirinyaga County Council to all allottees.
- q. The splitting group of Mihiriga Kenda went to court and filed an injunction through Wanjau & Wanjau Advocates with the leading lawyer being a Mr. Gatonye. The court ruled among other things that an adjudication committee be set up and be gazetted by the Minister for lands. It also reminded the council the need for the land minister to be part of the process of allocation.
- r. The plot allocation were done after the court ruling in Embu – 71 of 2006

- s. Those who were initially settled or residing in the ranch were evicted by the council
- t. In 2008, attacks were reported and 3 people lost their lives and the Provincial Administration was requested to beef up security. Subsequently, in 2004, 4 people were killed and alleged by those against the settlement of people.
- u. That the three members of Parliament from Kirinyaga district support the process i.e. Hon. Ngata Kariuki, Hon. Njeru Githae and herself from Gichugu. This is because people from each of the constituencies are settled there.
- v. The government through the Provincial Administration has sub divided the ranch into administrative so that security can be beefed up.
- w. That two groups have been claiming that the piece of land – south Ngariama belongs to them i.e. people of Gichugu as they purport that it was hived off Ngariama location which people of Mwea purport that it is within their constituency or Division. However, all those settled in Mwea are from the larger Kirinyaga – Ndia and Gichugu since Mwea was curved out of both Gichugu and Ndia. Therefore Mwea is cosmopolitan as at now.
- x. The splinter group from Gichugu went to court to claim that south Ngariama ranch.
- y. The letter by PS Dorothy Angote to the Attorney general left a lot to be desired because how a PS can question the decision of the court. This shows that the Ministry of Lands is trying to protect land grabbers through falsifying of records.

31. EVIDENCE FROM FORMER DISTRICT COMMISSIONERS OF KIRINYAGA DISTRICT-
 Provincial Administration officials comprising of Mr. Omar Warfa – PC Rift Valley Province, Ms. Kula Hache – District Commissioner Kirinyaga district and Mr. John Chege – District Commissioner Koibatek District gave evidence on the South Ngariama Ranch;

1. **Mr. Omar Warfa was District Commissioner Kirinyaga from September 2008 to July 2009.**
 - a. He found the South Ngariama land issue existing and he helped create three (3) police posts for security of the people of South Ngariama which was very insecure. Over 2000 people had been moved to the ranch.
 - b. He called a consultative meeting with all the 4 sitting Members of Parliament including Hon. Peter Gitau, MP for Mwea. It was alleged Hon. Gitau, MP had an interest in the Ranch although there was not any communication between him and the DC over the same.
 - c. That there were three individuals involved in inciting people against the allocations and leasing the land at a fee charged per month or per year. These three were: - Dr. Mureithi a Clinical Officer from Gichugu, Mr. George Njeru a

former chairman of the South Ngariama Cooperative Society and Mr. Nyamu Mugeru a farmer also from Gichugu. They were charging a fee of Kshs. 3000/- per year for $\frac{1}{4}$ an acre farming while grazing would be charged Kshs. 100/- per animal per month.

- d. He was transferred on promotion as a Provincial Commissioner to Rift valley and the then Larger Kirinyaga District was sub divided into four (4) new districts. He was not allocated any piece of lands in the ranch.
2. **Mr. John Chege was District Commissioner Kirinyaga from January 2003 to June 2005.**
- a. On reporting he met a lot of wrangles concerning South Ngariama Ranch. The Council had leased the land to South Ngariama Ranching Cooperative Society for forty five years 45 from 1968 to 2013.
 - b. Two gentlemen Mr. Nyamu Mugeru and Dr. Mureithi took the matter to court while George Njeru the then Chairman of the Mihiriga Kenda started recruiting people to the society. He called for a meeting of all the sitting Members of Parliament and Councilors in which a resolution was passed to subdivide the land. The resolution was sent to the Ministry for approval to be granted by the Minister for Lands. This was done in September 2004 vide a letter to the Clerk County Council then.
 - c. They also resolved that each location of the nine locations of the Mihiriga Kenda elects a representative in the presence of the area MP, Councilor and Chief and, supervised by the District Commissioner. The elected leaders then formed a Committee to oversee the subdivision and allocation of land. Those who wanted to benefit applied at a non-refundable fee of Kshs.200.
 - d. The new Mihiriga Kenda Committee vetted the application and decided the beneficiaries of the land. George Njeru having lost the Chairmanship in the new Committee resigned being just a member and started inciting people.
 - e. The DC was not involved in the allocations, settlements and subsequent building of police stations and posts in the ranch. Cutting of trees and destruction of forests started before he was posted to Kirinyaga.
 - f. The former Mihiriga Kenda groups in areas like South Ngariama, Mwea and Mwea Irrigation Scheme continued collecting money from people up to the time the Mr. Chege was transferred.
 - g. He was aware that that land was bigger than 17,000 acres but grabbing was done before his posting. Mr. Chege suggested that there should be a permanent police post at the ranch;
 - h. The council should enhance provision of water and other social amenities in the area and, the process of legalizing title deeds should be fastened by the Ministry.
3. **Mrs. Kula Hache is the current District Commissioner from November 17th 2009.**

- a. She reported at the time when the hostility was as high as two women had been killed along the river fetching water. She found:-
 - i. Three existing Police Posts with no permanent officers posted there because of hostility of the area.
 - ii. Dr. Mureithi, Nyamu Mugeru and George Njeru were inciting people over the ranch land because they used to collect money from grazers Kshs. 100/= per animal per month and Kshs. 3000/= per ¼ an acre per year.
 - iii. There were big settlements around police stations with big shanties.
 - b. She established a forth police station near Mbeere boundary.
 - c. Asked why there were protests when the Committee visited the Ranch, the District Commissioner said the local settlers never wanted the area MP to appear before them leading to a high security team around.
 - d. She accepted that Councilors had planned to punish the MP because they knew the local settlers were hostile to him.
 - e. The District Commissioner reported that so far seven (7) people have died: four (4) men and three (3) women. The security has been beefed up more than before because of the contention.
 - f. People of Gichugu and Ndia benefited from the land.
 - g. The District Commissioner is not looking for any piece of land in South Ngariama.
4. **The three witnesses recommended that:**
- a. The Minister for lands should gazette the Chairman of Mihiriga Kenda Committee to legalize the process of allocation of land,
 - b. Locals should be mobilized to accept decisions of the council,
 - c. The area Member of Parliament and the Councilors should be brought together to speak one language in unity.

32. **MEMBER OF PARLIAMENT FOR MWEA** - He informed and notified the committee that:-

- a. South Ngariama Ranching Co-operative Society Limited was registered as a co-operative movement in 1967. The County Council of Kirinyaga allocated the Land LR.No.13963 which was trust land in 1968 and the same was gazetted in the same year vide Gazette Notice No.100 of 8/11/68 by the Commissioner of Lands for the purpose of ranching, to the cooperative society. The initial lease period was for 20years from 1/3/68. **-annex 1 – letter of allotment gazette notice;**
- b. The society wanted to secure a loan with AFC for addition stock and they were required to have the lease extended. By a minute of the County Council of Kirinyaga Minute No. AL&F of 17/8/1973, the Council recommended an extension of 99 years lease to the Commission of Lands. Extension of lease

- for the ranch could only be a maximum of 25 years which commissioner of lands did and a title was issue in favour of South Ngariama Ranching Cooperative society Ltd. **annex 2. minute of the council title with the charge**
- c. On 29th January, 1988. The title for LR. No.13963 is grant No.4238 and was used to secure a loan of 1 million Kshs.1,000,000/= from AFC for additional stock on 20th July 1988 and is still held as a security in the Bank.
 - d. Sometimes in 1989 the County Council of Kirinyaga opened another Register at Kerugoya Land Registry parallel to ones held at Ministry of Lands Headquarters without following the due process which requires an application for change of registration from registration of Title Act RTA to Land Registration Act LRA.
 - e. This requires the approval by the Commissioner of Lands with involvement of the Director of Survey for preparation of the maps. This register is purported to have been opened in 1965 but not signed to be an authentic meaning that it is a forgery and does not exist.
 - f. Note also that the date of opening the register, 1965, the Land had not been set apart through a gazette notice which was done much later in 1968 8th November Notice No. 100 of 1968- **annex 3 – register at Kerugoya land registry gazette notice no. 100 of 1968**
 - g. L.R 13963 whose (Title) grant No. is 4238 was named Ngariama/Lower Ngariama.431. This new name has no support of any map in record by Director of Survey for description or approval from the Ministry of Lands and therefore it does not exist. The only register known to the Government on this land is L.R.13963 which is privately owned by South Ngariama Ranching Co-operative society LTD.
 - h. In 2004 the Council embarked on allocation of LR.No.13963 in the name of Ngariama Lower Ngariama.431(which does not exist) on paper without conversation from RTA to LRA and withdrawal of the restriction and cancellation of the title for the remaining lease period. This forced the stake holders to go to Court. They obtained an order against the Council and its agent on 8th October, 2009 which they served to the Council.
 - i. The County Council rubbished the orders and was never followed as directed by the high court which is contempt of the Court. - **annex 4 - court order**
 - j. Even before they were heard by the Court, the Council and the Provincial Administration entered the suit property deployed goons protected by Administration Police to evict people living there and destroying houses, property and crops and confiscated domestic animals and slaughtering some, with some residents loosing over sixty animals in pretext of trespass on council property LR 13963 which is private.

- k. New people were brought in to occupy LR.13963 and the evictees are still waiting for justice living as IDPS in the adjacent villages. Because of rubbish the order and destruction of property and eviction skirmishes ensues. This escalated to attacks of the new settlers at night which has caused deaths of about 8 people.
- l. After the subdivision, several people were allocated more than one portion and some portions were allocated to more than one person which is a recipe for chaos. **Annex 5 – list of allottees & request for security by the evictees to government**
- m. The list also indicates who is who in Kirinyaga County. It also indicates all Leaders, Councilors and Council workers who benefited but did not deserve while people are still living in the road reserves within Kirinyaga. Note that the subject matter to the Court is an abuse of court process in that:-
1. The case subject matter Ngariama Lower Ngariama/431 does not exist anywhere in the registers of the Ministry of Lands and only exists as L.R. No. 13963 Title No. L.R.No. 4338 issued by Commissioner of Lands on 29th January, 1988 to South Ngariama Ranching Co-operative Society Ltd. for a period of 45 years.
 2. South Ngariama Ranching Co-operative Society Ltd. is private society which has not been sued and therefore not party to the civil suit case No.71 of 2006 in Embu High Court but an amorphous body called South Ngariama Ranching Scheme which is not a Co-operative Society Ltd. was listed as a defendant.
 3. The Commissioner of Lands was never made party to the suit so as not to disclose the facts that the suit property has never been registered as Ngariama/Lower Ngariama/431 but is registered as L.R.No.13963 in favour of South Ngariama Ranching Co-operative Society Ltd. who are owners and has a charge with AFC of Ksh.1,000,000/= and title is the security in 1988.
- n. The setting a part was done by Gazette Notice No. 100 of 8/1/68 therefore setting apart and constituting a location Land board was not necessary which the acting Clerk of the County Council of Kirinyaga did in disregard of the advice by the Commission of Lands in the Kenya Gazette Notice No. 10751 of 3/11/2008.
- o. Also not that the subject matter of the Notice refers to none existent register Ngariama Lower Ngariama/431 and the acreage is 1673/ha which is far much more than the acreage for L.R.No.13963 which is 7034 Ha on the gazette Notice by the Clerk. Gazette Notice No. 10751.

- p. The property is purely private with the County Council invading it with the help of the Provincial Administration in disregard of the rule of law. Ownership of private property should be protected until the lease period expires in 2013 when the land shall be available for allocation by the County Governments in Kirinyaga County.
- q. when we visited the property people were being ferried by the Provincial Administration and the Councilors in pick-ups hired tracks and matatus and we had to be taken to furthest end for us to give time for people to arrive and make shift classes to be put in place for us to see;
- r. The Gazette Notice by the Clerk Kirinyaga County Council was on 3/11/2008 for the setting apart and the appointing of the location land board for the allocations of the land, while in their presentation they said that the Land was allocated in 2004. Who then was overseeing the allocation of this land before the location land board for this purpose which was later gazetted in 3/11/2008 as required by the law.
- s. Note that from the register presented by the acting clerk to the council Ballot No.1-12,17,33-35,46-48,56-61 are missing among others. Identity cards, Addresses of the allottees were not provided on the register. On 14/10/2004 the Ag. Clerk to the County Council sworn an affidavit in favour of South Ngariama Ranching Co-operative Society Ltd. as the owners of the Land. **Annex 6 - affidavit, gazette notice no.10751&10752 respectively.**
- t. Note also that the Council was collecting money for Title deed and survey on behalf of the Commissioner of Lands without any authority and the money has never been remitted to the Ministry of Land. Note on the list of allottees, all the elected Councilors in 2007 are beneficiary of an exercise of 2004.
- u. The Minister for Justice the MP for Gichugu wrote a letter to the Permanent Secretary and Secretary to the Cabinet on the same showing some interest in the matter and her letter states that allocation were going on in 2008. -**annex 7 - the letter**
- v. Note also that the portion allocated to the poor are in the dry areas (as per our site visit) where the land is not arable for any type of crops, and also water is difficult to get. The lower lands and the river sides were allocated to the leaders for the purpose of speculation. Courts have issued orders to the Ministry of Lands which are difficult to implement as they were not party to the suit so as not to explain their position.
- w. The Ministry of Lands wrote to the Attorney General's Office seeking direction on the way forward.

33. PUBLIC HEARING AT WANGURU GIRLS, KIRINYAGA SOUTH DISTRICT

The Committee on the 30th April 2010 committed part of its Programmed to hold a public hearing on L.R. 13963 in Kirinyaga South District in Central Province. Members of the public aired their views as follows:

1. **Stephen Mureithi** - He stated that
 - a. He is the secretary South Ngariama Ranch and that they have been displaced.
 - b. That the land was twenty eight (28) thousand acres where eleven thousand acres were subdivided to the council members and seventeen thousand acres was left in 1968;
 - c. He also reported that when the squatters realized that the land was leased by the county council in 1968, they went to court to sue it. That an order to stop the council from evicting them was issued in 1968 another order to restrain the council from demarcating the land was issued in 1979.
2. **Moses Gachoka Kamwea** - He stated that they realized that the council had demarcated the land without the knowledge of the elders. That he went to court as the chairman.
3. **Nelson Ndege Gatimu** – He reported that:-
 - a. He handles land issues, public and trustee land.
 - b. Elections were held one day in the whole larger Kirinyaga District with an intention of electing leaders to represent the community in the demarcation of the land.
 - c. Members were settled after the vetting exercise was done which was later ensued by a court order. The court ruling was in favour of what the elders plus the council had done.
4. **Jeremiah Gategu Njagi** - He reported that:-
 - a. He was the former chairman of Kirinyaga county council.
 - b. Embu council was a trustee and in 1963 Kirinyaga came into being and inherited the land.
 - c. At that particular time there were two divisions which were Gichugu and Ndia;
 - d. Ngariama was part of the trust land and that before demarcation was done the council held meetings all over and a committee was elected from the nine clans;

- e. The committee which was elected is the one that identified the needy people who had each paid Kshs two hundred (200) and did the vetting. This is a responsibility which was entrusted to the committee by the council.
- f. The people who are there are the ones who were legally vetted and the ones who are shouting are the ones who lost.

5. Charles Gitari Jakenda-Representative of a clan.

- a. He is an elder of Mihiriga Kenda clan.
- b. He said that the Ngariama ranch is three in one (Mwea, Gichugu and Ndia). That the fight they are going through is because people do not understand the different roles played by the Local government and the Central government;
- c. That in 2003 the local government which was and still the trustee then called for the elders of Mihiriga Kenda. They were mandated to identify the locals who were vulnerable to be allocated land;
- d. The issue was released to the press in the whole of Kirinyaga and everybody was to pay Kshs 200. The allotment was done by the elders and not the county council as claimed.

6. Sarah Ngethe - She reported that:-

- a. She is one of the elected elders and elections were done in one day in the larger Kirinyaga District where they proceeded to elect the district board.
- b. Those who were not elected formed the opposition.
- c. She requested the Committee on Land to do proper investigation and note that they are the ones who did the allocations and not the county council.

7. Caroline Wanjiku Mureithi - She stated that:-

- a. South Ngariama was demarcated by the elders. That all the people living there belong to the larger Kirinyaga and all the beneficiaries of the allocated land were poor as she had applied for the same but she did not qualify.
- b. Those who are opposing the allocations are doing so because they have collected money from people but there is no land.

8. Charles Kayugi Mbaruk - He reported that:-

- a. Allocations were done politically and according to those who are rich.
- b. According to him the demarcation was not done according to the Gikuyu customary laws.

9. Hon. Bishop Njeru-Former MP - He said that those who were allocated land are indigenous and that the government should solve the whole issue.

10. Eliud Ndege Mureithi - He reported that

- a. He was in Maragwa when he heard the announcements through the radio.
- b. That he comes from Ndia and the Chairman from his clan called for a meeting where the issue was discussed. That he is among those who were lucky to get the land which was vetted by the elders of the respective clans and that the beneficiaries come from the twenty clans.

11. Rebecca Ndungu She informed the committee that she among the beneficiaries. That the problem began in 2003 when people started burning people's houses.

12. Margaret Njeru Nyamu - She informed the committee that

- a. She is a single mother who paid Kshs 200 and then went to the Chief's Camp.
- b. This was not a hidden agenda as it was done through radio announcements.
- c. There were twenty two locations and the allocations were done by the elders according to the clans and the needy.

13. James Ndegwa - The people there are not the poor men. He was among those who were evicted.

14. Veronica Njeri wa Mwai - She said that she is a beneficiary. That she followed the right process-bought a form, went through the vetting and she got her 3acres.

15. Rev; J.W Njiri - He said that the land was 28,000 acres. That they made the announcement over the radio and churches .the process was followed and that it benefits the needy .There is no land in South Ngariama but what is there are plots.

16. Hon. Karaba - He informed the committee that:-

- South Ngariama has a long history.
- he was among the four former Members of Parliament who sat to deliberate on the issue.
- they mandated the Mihiriga Kenda elders to identify the vulnerable group which was done.
- He urged the Committee to ensure that there is security.

17. **Juma Msema Kweli** - She said that she is not feeling bad because of those who got the land but security is her main concern.
18. **Rev. Charles Mwai** He said he does not support any group but requested the Committee to identify those who are not needy and reposes' the land from them for the poor.
19. **Joseph Atira - He** informed the Committee that he represents the disable. That he was involved in the allocation of South Ngariama. That the land benefited the needy the disable included.
20. **Hon. Nderitu-Former MP** - He informed the Committee that they sat on their own as leaders in 2003 and decided to come with a committee from the clans. That the right procedure was followed in the allocation of land in South Ngariama.
21. **Naomi Nyamira-A student** - She recited a poem on South Ngariama requesting the government to look at issue of South Ngariama again and identify the right people. That they were evicted from there and that they are now squatters.

34. FINDINGS AND OBSERVATIONS

The committee received written submissions from various stakeholders and interested parties on the controversy surrounding the status of South Ngariama Ranch and the fate of squatters therein. **The committee observed the following that:-**

- a) In 1968, vide Gazette notice no. 100 of 8th November 1968, the land L.R. No 13963 was allocated to South Ngariama Ranching Co-operative society Limited which was registered as a co-operative society in 1967. The ranch was gazetted by the Commissioner of Lands for ranching purposes by the Society.
- b) In 1968, vide Gazette Notice No. 100 of 12th January, 1968, the land L.R. No 13963, which was initially trust land, was set apart with an area of 24,800 acres as per boundary plan No. 179/83 and was leased to the South Ngariama Ranching Co-operative Society Limited by Kirinyaga County Council for an initial period of twenty (20) years as per letter of allotment Ref. No. 77364/21 of 19th February 1968; which was subsequently renewed to forty five (45) years. The term of the lease was approved by the Council and advised by the Commissioner of Lands that the maximum term for ranching user was 45 years.
- c) In 1987, the land L.R. No 13963 was surveyed and numbered as follows:
 - i. L.R.13962 -1440 hectares
 - ii. L.R.13963-7034 hectares
 - iii. L.R.14212-1515 hectares
- d) The above process was followed by issuance of two titles to South Ngariama Ranching Co-operative society Limited under the provisions of the Registration of Titles Act, Cap 281 as follows:
 - i. L.R no.13963-Grant No.4338
 - ii. L.R No. 13962-Grant No.4337
- e) In 1973, The South Ngariama Ranching Co-operative Society Limited secured a loan with AFC for addition stock and they were required to have the lease extended.
- f) By Minute No. AL&F of 17/8/1973 of the County Council of Kirinyaga, recommended for an extension of 99 years lease to the Commission of Lands. However, the extension of lease for the ranch could only be a maximum of 45 years which Commissioner of Lands did approve and a title was issue in favour of South Ngariama Ranching Cooperative society Ltd.
- g) The Council of Kirinyaga has denied ever being party to the extension of the lease;

- h) On 29th January, 1988. The title for LR. No.13963 or grant No.4238 was used to secure a loan of 1 million Kshs.1,000,000/= from AFC for additional stock on 20th July 1988;
- i) In 1989, the County Council of Kirinyaga had registered at Kerugoya Land Registry reference no. Ngariama/Lower Ngariama.431 parallel to the one held at Ministry of Lands without following the due process which requires an application for change of registration from registration of Title Act RTA to Land Registration Act LRA. This requires the approval by the Commissioner of Lands with involvement of the Director of Survey for preparation of the maps. This register is purported to have been opened in 1965 but not signed to be an authentic meaning that it is a forgery and does not exist. The date of opening the register in 1965, the Land had not been set apart through a gazette notice which was done much later in 1968 - 8th November Notice No. 100 of 1968;
- j) The Committee noted the noble idea and efforts made by the leadership of the larger Kirinyaga county to try to settle the “landless” on L.R. no. 13963 as these means resolving the never-ending landlessness being experienced throughout the county however, ensuring that the land is available and following the laid down rules and procedures or taking due diligence should have been taken into consideration. Further, noting that the land was leased and there were pending court cases;
- k) The Committee noted that there have been several unfortunate deaths arising out of the disputes surrounding the ownership and subsequent attempted settlement of the people on L.R. 13963;
- l) South Ngariama was hived out of the larger Gichugu constituency, specifically Ngariama location on the southern part. Hence south Ngariama. During the hiving of south Ngariama, Kirinyaga Districts had only two divisions – Ndia and Gichugu. This therefore served as the reason why those residents of Gichugu claimed that south Ngariama belonged to them, by virtue of it having been hived from their area. This is one of the problems of south Ngariama. Later, Gichugu and Ndia division/constituencies were sub- divided into Mwea and Kerugoya/Kutus divisions/constituencies. This shifted the location of south Ngariama to Mwea Division/constituency, Therefore the resident of Mwea division/constituency have claim over it. This conflicted with resident of Gichugu constituency.
- m) There seems to be a general consensus in the area that the landless and needy people in the area need to be settled on the disputed land. However the current position indicates that people who have so far benefited from the controversial allocations is a list of prominent people to the exclusion of deserving squatters;

- n) The manner in which HCC case no. **71 of 2006** was handled by the parties then was proper as the material facts of the case were never brought on board or before the court and that the most important stakeholders on matters of South Ngariama were never enjoined i.e. the Commissioner lands and South Ngariama Ranching Cooperative society Ltd; in addition the reference number for the land i.e. Ngariama/Lower Ngariama/431;
- o) The Committee noted that the subject matter to the Court is an abuse of court process in that:-
- i. The case subject matter Ngariama Lower Ngariama/431 does not exist anywhere in the registers of the Ministry of Lands and only exists as L.R. No. 13963 Title No. L.R.No. 4338 issued by Commissioner of Lands on 29th January, 1988 to South Ngariama Ranching Co-operative Society Ltd. for a period of 45 years.
 - ii. South Ngariama Ranching Co-operative Society Ltd. is private society which has not been sued and therefore not party to the civil suit case No.71 of 2006 in Embu High Court but an amorphous body called South Ngariama Ranching Scheme which is not a Co-operative Society Ltd. was listed as a defendant.
 - iii. The Commissioner of Lands was never made party to the suit so as not to disclose the facts that the suit property has never been registered as Ngariama/Lower Ngariama/431 but is registered as L.R.No.13963 in favour of South Ngariama Ranching Co-operative Society Ltd. who are owners and has a charge with AFC of Ksh.1,000,000/= and title is the security in 1988.
- p) The court nullified the title on the basis of L.R No. Ngariama/Lower Ngariama/431 and not L.R No.13963 under civil case no.71 of 2006 in Meru High Court.
- q) The Committee noted that the South Ngariama Ranching Cooperative Society Limited may have wanted to extend the lease without the consent of the County Council of Kirinyaga;
- r) The Committee noted that on 14/10/2004 the Ag. Clerk to the County Council Mrs. Roselyne Miano, sworn in an affidavit in favour of South Ngariama Ranching Co-operative Society Ltd. as the owners of the Land
- s) The Committee noted that the then Acting Clerk, Mrs. Roselyne Miano, gazetted herself as member of the Lands Board against the law, without the authority from the Commissioner of lands or Minister; this is to allow her set the land aside and then subdivide;
- t) The Committee noted that the local politicians are directly involved in the matter, as they are the direct beneficiaries and their supporters. Though they were aware that the South Ngariama Ranch Co-operative Society Limited had

a lease for over a long period which was believed to have expired. The lease extension was an illegality since the land is held in trust by Kirinyaga County Council on behalf of the people of that particular area;

- u) The Committee noted that when the squatters realized that the land was leased by the County Council in 1968, they went to court to sue it and an order to stop the Council from evicting them was issued in 1968 another order to restrain the Council from demarcating the land was issued in 1979.

35. RECOMMENDATIONS

Following the above observations; aware of the fact that the land in question will revert to Kirinyaga County government in April 2013, also aware that legislation on Community land will have been enacted by then, the Committee recommends as follows:-

- i). That the status quo be maintained: and
- ii). That determination of all pending court cases be expedited;